

# Capital Punishment in India

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## POINTS TO DEVELOP

Putting 'crime' and 'punishment' in context.

Capital punishment and retributive punishment

Changes in forms of capital punishment.

Reaction against capital punishment.

Reasons in support of and against capital punishment.

Ultimate control of crime depends upon Effective enforcement, fair investigation and firm investigation on death sentence.

Crime and punishment are perhaps as old as the human species itself. When one person snatched food or some necessary item from another, a crime was committed, and the victim would have probably retaliated to get back what he thought was his. Maybe, there was a fight unto death, and that was the end of it. But the word 'crime' perhaps is not quite correct in the context, for the word denotes an act against law, and there was no real law prevalent that long ago. As humans bonded into groups and society was formed, concept of law and crime and the need to control that crime through punishment came into being. In primitive societies, crimes were treated as wrongs against a person, and at other times against religious norms and group loyalty. Meting out punishment remained for long the prerogative of the individual or family that was wronged. It was vindictive, the primary motive being revenge rather than correction, and often had no proportional relation to the gravity of the crime committed. Gradually, the idea of proportionate punishment evolved, as in the Mosiac law of an 'eye' for an 'eye' and a 'tooth' for a 'tooth'. As nations came into being, the institution of punishment was transferred into the hands of the state. A system of law now evolved to place crime and punishment in context, and individuals were discouraged from taking the law into their own hands.

Punishment was, however, for a long time retributive in nature, and the idea of correction did not come into the picture till recent times. Capital punishment was awarded for petty crimes such as stealing as well as grave crimes such as murder, and there was also arbitrariness in the award of punishment. It was only in the 18th century, with the birth of Enlightenment in the Western context that thinkers like Montesquieu, Voltaire, Cesare Beccaria, and Jeremy Bentham spoke in favour of reform in the criminal system. Beccaria was an Italian

criminologist who, in fact, was the first to advocate the complete abolition of capital punishment in his work, 'Die delittie delle Pene' (Crimes and Punishment) in 1764. The rise of humanitarian movements as well as the growth of an industrial working class added strength to the groups calling for abolition of capital punishment.

It was in 1814 that hanging was substituted as the general mode of execution in Britain, while France chose the guillotine during the French Revolution to behead criminals irrespective of class; earlier there were horrifying processes such as hanging, drawing and quartering, burning at the stake and throwing the criminals to wild beasts. In more recent times, there have been discussions on the best modes of execution. Hanging, according to eminent lawyer Ram Jethmalani, is not Only quick but relatively painless and sure as well, and it is the form prescribed in India at present. The Law Commission recently asked public to respond to its questionnaire on preferable forms of execution. In the USA, the most prevalent form is the electric chair. Other states follow yet other modes of execution-the gas chamber, firing squad or lethal injections. Whatever the mode, the idea of killing another human being, whatever his or her crime, is repulsive to many people today.

The advocates and the abolitionists of capital punishment have their own arguments in support of their stand. Those who say death should be the punishment in some cases. agree that it is to be in special cases alone, the most heinous and gravest of crimes. The most prominent argument put forth by the advocates of the death penalty is that of deterrence. They feel that it is only fear of severe punishment that will deter the criminal and reduce the occurrence of heinous crimes. The theory appears to be valid at first glance, so to say. However, scientific studies have consistently failed to find strong and consistent evidence that capital punishment deters crime more effectively than other forms of punishment. The United Nations conducted research in 1988 (updated in 2002) and concluded that "it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment". It further says that the statistics on the relation between the changes in the use of the death penalty and the crime rates indicate that "countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty".

Another argument put forward by those favouring death penalty is that 'life imprisonment' is merely for 14 years or less in India, and then the criminal will be out, and free to resume his criminal activity. Besides showing a retrograde notion

of human nature-surely, not all criminals are so unredeemable, for do we not have our own Valmiki, and many others in more recent times to prove otherwise? -the argument also shows ignorance of the law. If the state wants it so, life imprisonment can be for life. Being imprisoned for life is enough to deter the hardiest of criminals. To which the advocates say that the corruption existent in out jails would make the life of these criminals too pleasant to make them regret their crime. That would bring up the question of inequality in this country. A Dhananjoy Chatterjee is not likely to enjoy those privileges which are reserved for the rich and influential or those with the right political contacts, who are unlikely, in the first place, to be awarded the death sentence; they would have the best lawyers and legal advice to get them off the hook. In such a situation of inequalities, awarding death penalty would compound the inequality and injustice. It is well known that the same kind of crime attracts different punishments from different judges and under different conditions of trial. It is equally well known that the underprivileged are easier to catch and convict, and are punished 'appropriately'.

As to the argument that keeping a convict prisoner for life is a heavy burden on the country's economy, and may be even dangerous if he is a ruthless killer, the abolitionists point out that these are aspects which can be solved; get the prisoners to do some constructive work that may more than compensate for their 'keep', and take the necessary precautions to prevent further crime.

The most important reason the abolitionists offer is that death is so final that no miscarriage of justice can be corrected. And there have been cases, even if rare, of convicts having been innocent though convicted. Even one such case is enough to call for the removal of the death penalty from the statute book. It may come as a surprise to many that in the USA, since 1973, more than 100 prisoners have been released from 'death row' after evidence emerged of their innocence of the crimes for which they were convicted. Recurring features in their cases include prosecutorial or police misconduct; the use of unreliable witness testimony, physical evidence or confessions; and inadequate defense representation. For each of the prisoner 'released, how many might have gone to their death in innocence? Can we say that the Indian system of law and justice is free of these features? The Supreme Court of India has given some guidelines on cases where capital punishment may be given-the rarest of rare cases, as they are known. Examples cited by the apex court include such cases as when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner, so as to arouse the intense and extreme indignation of the community; when the murder is committed for a motive, which evinces total depravity and meanness, such as murder by a hired assassin for money or

reward or a cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust, or if the murder is committed in the course of betrayal of the motherland; when the murder of a member of a Scheduled Caste or minority community, etc., is committed not for personal reasons, but in circumstances which arouse social wrath, or in case of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation; when the crime is enormous in proportion, for instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed; and when the victim of murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community. But even these are open to Subjective (and hence biased) interpretations.

Those who advocate death penalty have in their hearts revenge more than deterrence. The primitive emotion of wanting to avenge wrong exists in a collective manner in society. This was evident in the interviews carried out by the media when the Dhananjay affair was in the limelight. It was depressing to hear a school principal, albeit of the school where the victim of a horrifying crime studied, speak vociferously for the death penalty to be carried out. Worse, children in their early teens were made to show their support for capital punishment. Such strong emotions of revenge surely do not have a place in a civilised society, especially among the sections which would be expected to be enlightened. Emotional responses should not be taken as valid enough to perpetuate a practice which, if we are truly civilised, should be considered from many other angles. True, in India, death penalties have not been carried very rarely, according to reports; but there are several prisoners languishing in the death row for years together. There are few hangmen, and the procedures are lengthy and antiquated. This kind of delay in carrying out a sentence manifests an injustice all its own.

Ultimately, control of crime depends on an efficient legal and law-enforcing system, quick, efficient and ensuring fair investigation free of corrupt practices, a quick and fair trial and conviction. Make sure that a crime will be investigated and the criminal caught-however well-placed or well-connected he or she may be-and provide fool proof evidence that will lead to a conviction, and crime will go down whatever the punishment is. With the low conviction rate in India, mostly because the case put up is so feeble. death penalty will kill a few criminals, no doubt; it will not reduce crime, heinous or otherwise.