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# Relevancy of Capital Punishment -Should it be abolished or not?

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Crime is not a new concept. The concept of crime is also present in primitive times where every wrongful act was not considered a crime. The offender had to give compensation to the victim for the wrong committed by him. That compensation was called “Bot”. The King gave punishment only for the wrongs done against ‘religion’ and ‘state’, these wrongs were called as “Blotless Crimes”. Murder was not a crime at that time. The common modes of punishment prevalent in different parts of the world includes corporal punishments such as Flogging, Mutilation, Branding, Pillories, Chaining persons together, Stoning, Banishment, Transportation & Death Penalty or Capital Punishment. With Urbanisation and Modernisation, the crime rate has also been increased and a number of codified laws came into existence. Capital punishment continues to be used in the United States despite controversy over its merits and its effectiveness as deterrent to serious crime. A sentence of death may be carried out by one of five lawful means; Electrocutation, Hanging, Lethal Injections, Gas Chambers & Firing Squads.

The death penalty or capital punishment is reserved as punishment for premeditated murders, espionage, abetment of mutiny, waging wars against government of India, rape with murder, kidnapping or abducting in order to murder, kidnapping for ransom, repeat offender of rape (Sec. 376E), dacoity with murder (Sec. 396), etc. In many countries, death penalty is also for drug trafficking, human trafficking, serious cases of corruption and juvenile offenders.

### **Should death penalty be allowed**

One should take into consideration the positives and negatives of death penalty.

On moral grounds:-

The supporters of death penalty think that the person who commits murder of another person deserves death penalty because he has taken the life of another person and this forfeit his right to life which is given in Article 21 of the Constitution of India. This is thinking of a law abiding citizen. But opponents of capital punishment argue, “when it is used for lesser crimes, it is immoral because it is not in proportion of crime committed by the offender.

In many historical and religious documents- there is prescription of death penalty for crimes like crimes against state and religion. The supporters of capital punishment argued that it has a unique deterrent effect on potentially violent offenders to whom imprisonment is not a sufficient restraint but the opponents point out that death penalty is not so effective and deterrent for hardened criminals or recidivists or habitual offenders. For them effective punishment is long term imprisonment.

On practical grounds:-

Whether capital punishment can be administered in a manner consistent with justice is still a dispute. The believers of capital punishment are in support to fashion laws and procedures for execution of only those who really deserves death. In contrary, opponents believe that capital punishment in historical times is to single out certain kinds of crimes as death penalty will be arbitrary and discriminatory.

Owing to the lack of economic capabilities to obtain appropriate legal assistance as well as affects prevalent in our criminal justice system pre-judiciously affects the reasonable delivery of justice, sometimes leading to conviction in frivolously and veraciously convicted persons. It clearly hampers and pre-judiciously affects the

objectives of creating such a harsh punishment.

On the topic of capital punishment, criminal jurisprudence has divided in abolitionists and Retentionists.

#### **Arguments by abolitionists are:-**

The death penalty does not go by the deterrent effect theory which has been the major criteria of providing any punishment under the Indian Criminal Jurisprudence as capital punishment has been existing from a considerable period of time but still, despite decreasing the various offences like 376 A as well as 302 read with 300 are continuously increasing because of the final execution system of the punishment awarded.

In addition to the deterrent theory the reformatory theory which have also been one of the main pillars of the Criminal Jurisprudence is also not complied by awarding the death penalty as there is no scope for reformation after penalty being executed upon.

#### **Arguments by Retentionists:-**

1. A person who takes the life of another forfeits his right to life.
2. They argued in favour of deterrents and retributive theory. On this basis, there must be

a revaluation of heinous crimes in the society.

3. Although there have been several instances when innocents have been awarded capital punishment but they are very ignorable in number as every system is capable of committing errors.

All these arguments make a fair basis of reformation in judicial system and punishment procedure rather than abolishing capital punishment.

#### **Arguments against Capital Punishment**

Right to life is given by God and only he has the right to take it back and state have no prerogative. Not only in India, this thing has been widely accepted in various other countries where criminal jurisprudence is much more developed than Indians like U.S., U.K. etc.

India being a democratic country, the wishes of majority must surely be given effects to uphold the basic elements of democracy. There have been a number of cases where innocent people are executed and there lies no possible way of correcting such a mistake or compensating them for this miscarriage of justice.

Not only the persons who have been executed suffer pain but also his family members who are purely innocent suffer

because of no reason so death penalty bring measures not only to the person convicted but also to his family members which is completely unjustified.

It is not only the execution which causes pain but waiting for your death when your execution has been scheduled gives the most horrific pain which can't be measured with anything in other words, a person to be executed dies innumerable times till his final execution.

The Capital Punishment is considered as the bluntest of blunt instruments as it just eliminate the offender from the society and not the offence.

#### **Major Arguments against Capital Punishment:-**

1. Death Punishment is killing and killing in no ways is justified.

2. Death Punishment is violative of Human Rights.

3. The various methods of execution are extremely torturous and cruel which is completely wrong.

4. Criminal proceedings have inherent defects, many people awarded with death penalty have been exonerated, sometimes only the minutes before their execution where as others have been executed prior to the

discovery of evidences which proves them innocent. Thus, there is no scope of correcting the mistake done.

5. It is not having that much deterrent effect as is argued by the Retentionists.

6. It sends most brutal message in society that to kill a person is sometimes a right thing to do.

### **Arguments in favour of Capital Punishment**

1. The offenders committing the heinous crimes are those who have done crime in passion and there is no possibility of reformation among them, so it is better to eliminate them from society to reduce the further possibilities of any such offence.

2. It serves as most deterrent instrument as greatest fear to anyone to loose his life.

3. From economic point of view, it is more convenient to execute a person than to house them as a prisoner to whole of his life.

4. It upholds the rule of law, because it discourages self-help on the part of victim family. If not controlled, such self help can leads to extremely destructive blood feuds.

5. It is a nocturnal phenomenon that one who has taken birth will also die one day. The convicts of such a heinous offence are likely to face a great emotional anguish and suffer great pain by the hands of society in their life

time so awarding capital punishment can also be seen as cutting short their miseries.

6. It prevents repeated offenders to return to society and continues to so harm.

7. More importantly, to allow a person to roam in the society freely even after completion of his terms in prison is indeed a risk as no one can guarantee his future conduct.

### **Suggestions and Conclusion**

Although restoring capital punishment is the will of people yet there have been many arguments against it. Heated public debates upon the question of deterrence, public safety, sentencing equity and the execution of innocents among others. But they are all not convincing. In spite of the Godly principle of life and death, this is evident from history that there have been killing of people in the war and majority of them have been innocent and those who initiating wars remained safe.

In modern Indian history also there are records of people being killed who did not agreed to convert their religion like Shri Guru Arjan Dev Ji who was killed by boiling in water sprinkling hot sand on his body. Shri Guru Teg Bhadur Ji ,who was beheaded just because of his disagreement to conversion. In recent years also Kehar Singh, accused of Indira Gandhi murder case was hanged till

death even though there were no clear cut evidences against him. All these killings were ordered judicially.

When the accused is under trial everyone wants the severest punishment for him but once death punishment is passed our sympathy directs towards the convict and we want his appeal to be accepted and punishment be reduced to life. This is the physiology of the people and we must accept it as a fact of life.

In addition to this we have already converted our jails in to reformation houses, where people must get an opportunity to correct themselves and must be allowed to repeat. There has already been a lot of blood-shed in Pakistan and India and China and also to terrorism and riots. So now time has come when killing should be avoided both, through judiciary as well as through other means like terrorism. We have to accept non-violence as the final goal and abolish death penalty from our statutory books. We can introduce life imprisonment without parole as an alternative punishment to people committing heinous crimes. That is the only solution.