

6. Capital Punishment: Critical Analysis

By: Yash Raj Chaudhary

Pg. No: 70-82

i. Abstract

Capital punishment is the use of punishment which is sanctioned by the government for the death of a criminal after the criminal act committed by him in the state. But if you think that killing someone else in the search for justice will be considered as a better option. Instead, we should give a thought to remove or eliminate crime from society rather than criminals. Only China is the country where the rate of the death penalty has been high since many centuries, almost 1000 people are executed every year by them in search of justice whereas in India death penalty is given only in rarest of the rare cases even sometimes death penalty/sentence is changed into life imprisonment. Number is not any concern as India has executed around 4-5 criminals in the last 20 years. But in China, once the death sentence is given it cannot be opposed by anyone in any circumstances. Due to the increase of death penalty around world United Nation (UN) quoted that “life is important and death is no solution for anything”, however, they also stated that killing another person in the name of law or justice is not any type of human activity, it showcases the inhuman behavior in us. Yet we are nobody to take the decision of death of any other person.

Table of Contents

S. No.	Title	Pg. No.
i.	Abstract	71
1.	Introduction	73
2.	History	74
3.	Abolition of Capital Punishment	75
4.	Merits of Capital Punishment	76
5.	Demerits of Capital Punishment	77
6.	Public Opinion on Capital Punishment	79
7.	Capital Punishment in India	80
8.	Conclusion	81

1. Introduction

Capital punishment is the use of punishment which is sanctioned by the government for the death of a criminal after the criminal act committed by him in the state. In other words, it is a legal act of the government against someone who commits any capital offense in the state. This practice of killing people as punishment has been practiced in many countries all over the world for a very long time. Crimes that can lead to the death sentence by the judiciary are considered as capital offenses or capital crimes. The sentences of order manner are called a death sentence whereby the step of taking out such sentences by the judicial process is known as execution. The carrying out of such a punishment is as old as the concept of government. Any criminal who has received a sentence of death and is waiting for the execution is considered to be as condemned and is considered to be a death row. This is not applied in normal circumstances of the offenses but to people who have committed various forms of bad crimes like rape, child rape, terrorism, mass murder, hijacking, sedition, treason, piracy, war crimes, drug crimes or any act made of aggravated robbery, or any offense against the other human or genocide and even in some cases of recidivism and kidnapping and many more. From ancient to present time, there have been various methods of executions such as stoning, drowning, impaling, beheading but in modern times it is performed through chemical injections or gases, hanging, shooting, or electrocution.

But it is performed by the judicial act and practiced by state, so when any non-state organization speaks of having execution of a person, they have committed a murder. The phrase “Capital Punishment” has been obtained by the Latin word used for the head, whereas punishment such as flogging, takes its name from the Latin word of the body. The phrase death penalty/punishment is used in place of capital punishment, though inflicting of the death sentence is not performed always because of commutation to life imprisonment. Sometimes, it is important that we differentiate capital punishment from extrajudicial execution carried out without any due process of law.

In a major change in public opinion from 30 years ago, most Americans now favor capital punishment, although not dogmatically. When people are presented with stringent alternatives

(such as life in prison without parole), opposing capital punishment has been increasing considerably.

The public is not alone. The U.S. Supreme Court ruled in 1972 that executions are not inherently "cruel and unusual punishment." Courts have spent the last two decades determining how states can conduct death penalty proceedings constitutionally, and legislatures have been quick to modify state procedures to accommodate the courts' rulings. Prosecutors and judges have increasingly sought and imposed the death penalty.

56 countries still follow the death penalty, whereas 106 countries in the world have completely removed it from its root of laws for all the crimes, 8 nations have removed capital punishment for ordinary offenses in the state while keeping and following it for some special situations like war and 28 believe its roots but abolished in practice. It is the matter of the fact that Capital punishment is an active debate in nations and states all over the world and its position varies from political or cultural ideology. Statistics reveal that almost 60-65% of the world's people live in the nations where such punishment is practiced like Nigeria, Egypt, Indonesia, Pakistan, Bangladesh, United States, China, Saudi Arabia, India, Japan, South Korea, Taiwan, Ethiopia, Sri Lanka, Iran and among many other Islamic countries. It is reported that China has been executed more people than combined of all the rest of the countries.

2. History

Hanging of the people who oppose authoritarian state (dissidents) or committed any criminal crime has been nearly used by all the people from the starting of every era of human existence. Before the development of any authentic system like the prison system, there was no other option to be more protective or safe from criminals and incapacitations of criminals, the prison system was developed in the nineteenth-century which has made the difference in society afterward. In this new era of time, the death sentence usually involved impalement, boiling alive, blowing from a gun, hanging, keelhaul, sawing, etc.

Many historical records and different primitive tribal practices resulted that the execution/capital punishment was a part of their developed judicial system. The practice of

shunning and compensation was generally considered enough to be a type of justice for the tribal societies.

Many a time tribal warfare or blood feuds or compensation happens after any kind of offense carried out by other tribes or by any person in the community itself. They were least interested in any kind of apology from the offender. Usually, a blood feud occurs due to the problems of their families or any member of tribe falls. Before the development of the adjudication system formed on the basis of state or any organized religion, this practice was commonly used.

In the modern era, the practice of death penalty or capital punishment is granted on certain crimes which are considered to be heinous in nature such as brutal murder, war crimes, treason, or terrorism where people were killed at large scale. In some countries, it is granted for sexual crimes which are not acceptable in the society like rape or sodomy or fornication. Even in some nations, they give the death penalty for religious crimes like Zina, Qisas, blasphemy, witchcraft, etc. In some Islamic countries, drug possession and drug trafficking are also considered as capital offenses. It also includes human trafficking which is strictly punishable especially in China. China also took offenses like corruption and financial cheating very seriously and grant punishment of the death penalty.

3. Abolition of Death Penalty

The history says that Japan was the first country to abolish the death penalty. Around 724, the capital punishment is banned under the Emperor Shomu but lasts only a few years. Again it happens in 818, where Emperor named Saga removed the roots of the death penalty by the advice of other Emperor Shinto of that time. This time abolish remained abolished till 1156. In its native country China, capital punishment was removed just for few years their famous Emperor Xuanzong of state tang for at least 11-12 years way back in times replacing it with scourging or exile. In England, Sir Thomas More Utopia, published a book in 1516 which talks about the benefits and discomforts of the death sentence at the end it makes no firm conclusion about it. Moreover, he has himself executed in 1535 for committing the crime of treason. Influenced by many books, the first permanent abolition in modern times was made by Grand Duke Leopold II of Habsburg, the future Emperor of Austria. Similarly, the United Kingdom

also removed the punishment of the death penalty from certain crimes such as murder but leaving it only for severe crimes like treason, human trafficking, piracy with violence and wartime military offenses in 1965. It was a five-year experiment by them and the last execution made by them was in 1964, then they completely abolished in 1969, and later on, they took a decision to remove it for all the minor crimes in the year 1998.

Similarly, The Romans decided to abolish the death penalty following that it doesn't provide any justice in society, they made it clear in the year 1849. Venezuela followed them and abolished capital punishment in the year 1863. In Portugal, after the legislative proposals in 1852 and 1863, they decide to abolish or banned such punishment from their country in 1867.

It is said that many countries made their decision of abolishing capital punishment after World War II from both their laws and from practices. Around 102 countries have been completely abolished capital punishment, another 6 countries have done for all the crimes but leaving it for some special situation which may protect them at that time for peace. 32 nations more have banned it as they have not practiced it for the last 10 years and established a policy against execution.

4. Merits of Capital Punishment

It is considered that there are many benefits of the death penalty which is the main reason that many nations across the world still follow. Countries like China, Iran, and the United Nations actively practice this punishment without taking any other thoughts.

The death penalty is considered as the greatest tool to discourage criminals and create fear in their minds that if they commit any capital crime they will be punished by death. This will lead to a reduction of the crime rate and heinous crime will be lower down almost nil. This gives the reason for the judiciary as capital punishment would be the most effective tool to deterrent the crimes. The normal human being would always give a thought if he/she knows that the committing of the crime could lead to death as punishment.

Some of the nations like Saudi Arabia, where the heinous crime or several capital crimes does not exist because the death penalty has been practiced regularly at large scale. China is also

one of those countries where death sentence to the offender is given easily, they even use the death sentence for drug smuggling and human trafficking. This has been to reduce illegal activities in China.

The death penalty has been used as a source to reduce the expenses of the government. Imprisonment is considered to be a very high-costing thing as each nation has to provide basic amenities such as shelter, food, clothes, etc to prisoners to treat them like the other normal human. Let's look at the cases where a criminal is sentenced to life imprisonment. This criminal has to be taken care of by the country until and unless his/her death. By the time of his/her death, he/she would be costing a lot to the state in the term of money. But the person is executed for his heinous crime then a lot of money of state would be saved.

It is a thought that arises from the society that justice is not served to the criminal until he/she is punished equally to his offense. It is human tendency that wanted to punish offenders to the death who take away the life of another person without an eye blink. Many crimes are not acceptable in the society that should have the punishment of the death penalty. To a sound human being, the death penalty is considered a severe punishment. In some circumstances like terrorist attacks whose intentionally kill many other people should only be punished by the death penalty.

Many criminals like the serial killer in society are not meant to live with other people as the habit of killing continues over a long time. These people are violent and of unsound mind who does not give thought of their act. Keeping in the cells for life imprisonment doesn't give us a guarantee that they would be kept away from other people. For many years we have heard the news of running away from prisoners from the prison, when they run away they again start committing the same crime as before. It makes the society unsafe and unprotective which put the lives of many innocent people on the stakes. This is the reason why people wanted to execute those who commit heinous crimes.

5. Demerits of Capital Punishment

Our cultures and traditions say that killing somebody else is kind of immoral activity in the society. So it is considered to be a sin to take away the life of another person by a state or by

any person. Killing is something you cannot promote or endorse. As Christianity is the religion followed in most countries across the world their people have abolished the death penalty from their nations. Christians say that they never support or promote killing of any kind.

The capital punishment is considered as inhuman act and form of cruelty performed by the state or judiciary by many people. They think that a criminal should also be treated, as equal as, another human being while punishing them for their crimes. Life is precious and nobody has the right to take away another person life. They argue about that when state or society punish a person by killing him for his crime of murder so what is the difference between society and criminal? Does it make society a murderer? Does it make the state justified by its act?

We all know that the methods used by the state for execution are painful and the person suffers a lot before dying. Isn't it make us crude or inhuman by our acts? Some of the methods of executions are hanging, shooting, by injecting chemicals.

The report shows that even some innocent natives of society have been ending up killed by the death penalty. The awful thing to imagine is that it is unfortunate situations where a person ends up killed through the death penalty for offense he never committed. There have been instances where a person is framed for the crime he hasn't committed but sentenced to death. It is the hardest part to agree that sometimes the truth took a long time to come before the people and the innocent ones have been executed. This raises a great concern whether the death penalty should be abolished or not.

There are cases where a person commits the offense of murder in his anger and frustration where he/ she has no control over his/her emotions which makes him commit a mistake he doesn't want to commit. We all agree that committing murder is a crime and a person should be punished for his act but a murder committed by a person out of his mental state should he be punished? We should give a thought that whether that murder was planned? Whether he wanted to kill another person? Is he intended to do that act? In some countries, these questions are not taken into consideration a person who commits a murder irrespective of his mental or emotional state is hanged or executed for his actions.

Every human born on this earth has the right to live and no state or nation has any right to take away the life of a person. A life is considered a god's gift. Therefore the death penalty violates the rights of humans which he gets by his birth.

Apart from capital crimes, in some Islamic countries, a person is sentenced to death for minor offenses or crimes which aren't dangerous towards society. One of such crime which is considered under this is apostasy where one individual is punished just for abandoning his religion.

6. Public Opinion on Capital Punishment

The public opinion on the topic like capital punishment/ death penalty varies from country to country according to the crime rate. Countries where large no. of the population opposes capital punishment include Norway where 75% of people oppose it and 25% are in support. Most Finns, French, and Italians population also oppose the execution. A poll in 2016 shows the image that 40% of Americans are still against capital punishment, which was an increase in facts as 36% in 2010 and 30% in 2001 were opposing it.

From recent times, it has been seen that support for capital punishment has been grown after hearing many brutal crimes of murder and rape but reports state that actual completion of a death sentence is very rare comparing to death sentences granted. While support of capital punishment in China has been still high for several crimes, where executions have been dipped with 12000 in 2002 to 3000 executed in 2012. However country like South Africa where this kind of punishment has been abolished a long time ago, a poll suggested that 76% of people want to re-introduction of death punishment due to increasing incidents of rape and murder. Similarly, a poll in 2017 depicts that 57% of Brazilians support capital punishment, the same poll found the upcoming youth of Mexico supports the punishment of death than the older ones. The facts show that people aged between 25-35 supports the execution of those who condemned.

To safeguard the human rights, the International body lays down certain restrictions over the use of capital punishment for certain age groups such as one nation cannot punish a person younger than 18 as it would always be considered as a juvenile, yet some countries in the world don't follow and give a sentence to death and execute a juvenile. Since 1990, 149 executions of juvenile offenders have been recorded in 10 countries. The facts show that these executions of juveniles have been fewer than the total number of people executed across the world but the

subject matter is why these juveniles have been executed. These countries are Iran, Pakistan, China, Sudan even the USA is one of them. There are many more, However, the significance of this goes beyond the numbers and the question arises that the commitment of the executing states to follow the international laws. One of the countries, who have been in headline about these cases is Iran which has executed more double the many child offenders as the rest nine countries combined.

7. Capital Punishment in India

Capital punishment is considered as one of the debatable topic in India from many years, However, it is legally practiced here. Many instances of the death penalty have been recorded since 1990, one of the incidents took place in March 2020. In one of the cases, the Supreme Court ruled out the Section 303 from the IPC (Indian Penal Code), which lays down the punishment of the death penalty for the offenders who committed the crime of murder even when they are serving punishment of life imprisonment.

One of the matters of dispute in India is several people executed by the government after the Independence: the official reports state that only fifty-two people have been executed, however research by the People's Union who acts for Civil liberties indicating that 1,422 executions have been made alone from 1953 to 1963. Research published by NLUDELHI (National law college of Delhi) was that they studied around 1,415 prisoners of the country who had been already executed by the Government and Judiciary of India since 1947.

In the colonial period, death was prescribed as one of the punishments in-laws through the Indian Penal Code 1820 which include the number of capital crimes. It remained in effect even after the Independence in 1947. The first and foremost hanging in India was done by Two people named Narayan Apte And Nathuram Godse as they commit the Assassination of Mahatma Gandhi on 15th November, 1949.

In the case of *Bachan Singh v. State of Punjab (1980)*, the Supreme Court itself states that the death penalty will not be granted in every case of murder but it would be given only in those cases which are rarest of rare. This was previously made in the case of Jaggmohan Singh in 1973 and the Rajender Prasad case in 1979. The Supreme Court of India states that Honour killing

will fall within the “rarest of rare cases” recommended that capital punishment to be extended to those who do killing in the name of honor killing will be considered for the death penalty. The court also imposed capital punishment on those police officers who do murder in the name of encounter. Those cases won't be left without punishment.

The term of curative petition hasn't been a part of any law before 2002. This concept has been arising from an Indian case named as Rupa Ashok Hurra. In this case, our apex court state that an aggrieved person will have a right to get a relief from the order of Supreme Court as the court itself can make mistake or abuse the power, the court can rehear the petition for relief to exercise the law inherent by them in the right manner.

Apart from the court, our Constitution gives power to our president in cases of the death penalty which are as follow:

Power of the President as per the Indian Constitution

Article 72 of the Indian Constitution says that President has the capacity to turn down the orders death sentence made by the Supreme Court. President can give reprieves, or pardons, or respite the punishment or can suspend the sentence given to any person by the court.

- (a) He has the power to hear and consider all the cases of punishment of Court Martial.
- (b) He has the capacity to turn down the sentence made by the Supreme Court.

8. Conclusion

In my view, after all the study on capital punishment, I have a strong opinion that capital punishment shouldn't be abolished in any circumstances as it is acceptable both morally and socially to some extent. It gives a lesson to criminals for the heinous activities committed by them in different ways in the society, it would raise fear in the mind of people that if they commit such crime in society can cost death sentence. In the modern era, the death penalty has been carrying out through the chemical injection or gases in which the pain and suffering is the least as a comparison to the crime committed by them, earlier there were various method such as stoning or hanging, shooting, even with the electric shock till the person dies. Currently, the

method used for execution has been eased out more than ancient times. However, it ends the argument made that it is a brutal and cruel way for executed. It has become a more humane system since it rules out the torture of prisoners. Capital punishment is considerably good to act because it makes the possibility of running escaping from prison nil as well as the offender cannot commit the crime again in the society. Capital punishment has also reduced the crime rate as average human behavior will have a fear of committing any such crime resulting in his/her death. The death penalty has deterrent the crimes and will able to make society more peaceful and humanly. In the end, I would say capital punishment is conducted in a more humanly way and would reduce the crime as much as possible in the world.