

# Death Sentence -Rethinking In Terms of Abolition: A Criminological Viewpoint

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The question of abolition of capital punishment has fuelled endless debate without producing any substantive conclusions which can be scientifically tested to make them convincing to both parties. This article attempts to establish that death penalty is a socially insufficient form of punishment and its disadvantages can be overcome only by abolishing it. Towards this end one can examine the following factors relating to death penalty:

## 1. Retributive theory

Attempts have been made to justify death penalty based on the retributive theory of punishment. Dr. Earnest Van Den Haag, a psychologist from New York rationalised on the grounds that the motives for death penalty include legal vengeance which solidifies social solidarity against law breakers and thus provides an alternative to the disruptive private revenge.<sup>1</sup> The Law Commission of India has also asserted that punishment must reflect the revulsion of the citizens.<sup>2</sup> It is submitted that death penalty cannot be justified in terms of retributive purposes in the contemporary world. It is meaningless to hang a person for the offence of murder but on the other hand, he can be punished with life imprisonment and the state can utilise the services of that person.<sup>3</sup> The purpose of sentencing should be such that it creates long and lasting impressions on the minds of others with least suffering to the criminal.<sup>4</sup> However, retribution aims only towards soothing societal feelings. Also, our Constitution, which is the basic organic law of the country does not propound the retributive theory.<sup>5</sup> Hence the retributive theory is not an adequate justification for the retention of capital punishment.

## 2. Deterrence

The retentionists claim that since every criminal fears death, capital punishment is bound to have a deterrent effect. However, statistics in several countries

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1. See, *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 at 722.

2. 35th Law Commission Report, Para 265 (18).

3. K. Ramabrahmam, "Death Penalty", (1980) 1 Cri. L. J. 49.

4. Mool Singh, "Death Sentence- Rethinking in terms of abolition", (1989) 1 Cri. L. J. 126.

5. The President and Governor have the power to grant pardon under our Constitution i.e convert death sentence into life imprisonment.

have proved that abolition of death penalty has not lead to any increase in the crime rate.<sup>6</sup> Many offences like murder or rape are committed under momentary impulses where the reasoning of the offender becomes too clouded to appreciate the consequence of his act. In such cases capital punishment cannot be said to have any deterrent effect. As a deterrent, capital punishment is a failure because:

- a. it is uncertain,
- b. it is applied rarely,
- c. states which apply capital punishment have a high if not higher rate of homicide than those which do not,
- d. the fear of death may not deter patriotic activities or urgent necessities which lead to crime.<sup>7</sup>

### 3. Public Interest

Retentionists contend that punishment must be guided not only by whether or not the criminal can be reformed but also by societal necessity. Hence death sentence can be justified in public interest. This argument lacks substance as the global winds are blowing in favour of reformatory and rehabilitary processes of punishment in order to make the criminal a useful citizen and benefit society as a whole.

### 4. Premeditated offences

Retentionists feel that in case of diabolical, brutal, cold blooded murders, the murderer must face the consequences even if he is put to death. However, as man is a creature of circumstances,<sup>8</sup> even in the case of premeditated offences, the criminal could be said to be a victim of surrounding circumstances. We must attempt to remove these acusative circumstances and not the criminal himself.

### 5. Economic argument

Retentionists argue that to maintain irreformable criminals is a very heavy burden on taxpayers and therefore these criminals must be removed from society.

### 6. Innocent people killed

Death sentences are irrevocable and there have been instances where innocent people have been hanged.<sup>9</sup> No amount of regret can bring back these

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6. Studies conducted in several states in the U.S.A. have established this.

7. K. S. Ajai Kumar, "Capital Punishment - New Trends", [1980] *C.U.L.R.* 153.

8. *Supra* n. 4, 127.

9. Inke Degering, "Abolition of Capital Punishment", [1983] *C.U.L.R.* 35.

people's lives or compensate their families. Thus, a judicial error could silence a human being forever.<sup>10</sup>

Hence the arguments of the retentionists are unconvincing.

### Legislative and Judicial Trends

The trend of the legislature in recent times has been moving towards the abolition of capital punishment. Efforts have been made by the Parliament in 1956, 1958 and 1962 to abolish capital punishment but have not been completely successful. Before the 1955 amendment to the Code of Criminal Procedure (Cr. P. C.), the judge had to record his reasons for not inflicting the death penalty. In the amended sub-section (3) to S. 359 of the Cr. P. C. it is no longer obligatory to record reasons for imposing the lesser penalty. By virtue of S. 235 (2) of the Cr. P. C. which provides for hearing on the question of sentence, the incidence of death penalty can be minimised. A glance at the relevant clauses of the Indian Penal Code (I.P.C) (Amendment) Bill, 1972 reveals the legislative trend to be in tune with the new judicial trend against death penalty. It provides for life imprisonment as the punishment for murder and death penalty only as a proviso for aggravated forms of murder. Likewise, S. 307 of the I.P. C. is proposed to be amended introducing life imprisonment as an alternative for death penalty.

The judicial trend has also been gradually moving towards the abolition of death penalty. In *Ediga Anamma v. State of Andhra Pradesh*,<sup>11</sup> the Supreme Court took into consideration the criminal's social and personal factors, her femininity and youth, her unbalanced sex life, her expulsion from the conjugal home, her being the mother of a young baby and held that these facts and circumstances tend towards the award of life imprisonment rather than death sentence.

The judgment in *State of U. P. v. Rajendra Prasad*,<sup>12</sup> represents the most ambitious judicial attempt towards the abolition of death sentence in India where, in all 3 appeals, death sentence was commuted to life imprisonment. The Court opined that the special reasons necessary for imposing death penalty must relate not to the crime but to the criminal. In spite of the crime being shocking, the criminal may not deserve death sentence. The correct approach is to read into S. 302 of the I. P. C. and S. 354 of the Cr. P. C., the human rights and human trends in our Constitution. In the landmark decision in *Bachan Singh v. State of Punjab*<sup>13</sup> the Supreme Court categorically laid down that death sentence must be applied only in the rarest of rare cases- life imprisonment being the rule and death sentence

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10. Dhairya Sheel Patil, "Capital Punishment", (1981) Cri. L. J. 29.

11. (1974) 4 SCC 443.

12. (1979) 3 SCC 646.

13. (1980) 2 SCC 684; these guidelines were applied in *Macchi Singh v. State of Punjab*, (1983) 3 SCC 470 and *Ketar Singh v. Delhi Administration*, (1988) 3 SCC 609.

the exception. Hence, the Supreme Court has restricted the award of death penalty to rare occasions. In *Mithu v. State of Punjab*,<sup>14</sup> the Supreme Court struck down S. 302 of the I. P. C. as unreasonable and arbitrary on the ground that it left no discretion to the judge, making death sentence mandatory. If the present judicial trend continues, then death penalty may soon become a completely redundant form of punishment.

### Conclusion

On the basis of the above discussion, it is felt that death sentence is not proper on any grounds- ethical, moral or social. A significant step towards the abolition of death penalty could be to limit imposition of death penalty to a few rare offences such as treason, political assassination etc. To ensure adequate punishment for cold blooded or pre-meditated crimes, as a matter of policy the Government may consider granting remission of life sentence only after 60-70 years instead of 14 years imprisonment as at present. Hence, the Judiciary and the Legislature should jointly strive towards the abolition of this cruel, inhuman and barbaric form of punishment.

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14. (1983) 2 SCC 277.