

Abolition of Capital Punishment – Critical Analysis

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RESEARCH DESIGN

Title: Should reflect the objectives of the study. It must be written after the whole synopsis has been written so that it is a true representative of the plan (i.e. the synopsis).

The Title of the Synopsis is “**Abolition of Death Penalty**” as it discusses the facts which support the abolition of death penalty. It takes in consideration all those points which need to be taken in consideration during this discussion.

Introduction: Should contain brief background of the selected topic. It must identify the importance of study, its relevance and applicability of results. It must clearly state the purpose of the study.

There have been and always will be cases of executions of innocent people. No matter how developed a justice system is, it will always remain susceptible to human failure. Unlike prison sentences, the death penalty is irreversible and irreparable.

Objectives: An objective is intent of what the researcher wants to state in clear measurable terms

The main objective behind the research here is to disclose that the Capital Punishment violates the right to life which happens to be the most basic of all human rights. It also violates the right not to be subjected to torture and other cruel, inhumane or degrading treatment or punishment. Furthermore, the death penalty undermines human dignity which is inherent to every human being. The paper takes in consideration several other points which strongly support the abolition of the capital punishment as it is ethically against human life.

How it is useful to the Society: An eye to eye will make whole world blind was said by Great M.K Gandhi. The Capital Punishment was introduced to create fear in the mind of the people so that they deter from the crime. However capital punishment encourages revenge theory in the mind of the people as it is based on the same premises. No one

should be deprived of the life and if we are punishing someone for taking someone else's life by taking his life then what is the difference between him and the law which supports the death punishment. The society has to learn the value of life and that cannot be understood till Capital Punishment exists.

Research Methodology: The Research methodology used is non-empirical one. The primary sources are the books and articles from the library of MNLU while the secondary sources contain the articles and other relevant information found on different websites on Internet. The tools used are different statistics and data's from various agencies on Capital Punishment in India and different countries and the law prevailing there .At length discussion has been done on the Capital Punishment and why it need to be scrapped up in our country when most of the countries in World have abolished it.

Hypothesis: A hypothesis is a statement showing expected relation between 2 variables.

The hypothesis used is that the Abolition of Capital Punishment will help society understand the value of Human life.

Division of the Paper: The research paper shall be divided into 2 chapters. The first chapter will be Research Design of the Synopsis. The Second chapter discusses the abolition of capital punishment with emphasis on India. The Chapter one tells about the Design of the synopsis like the Title of Research, Type of Research, Objective of Research, Hypothesis, Literature review while Chapter two discusses what Capital Punishment is? It's Impacts, Scenario in different Countries, Criticism, with discussion of Capital Punishment in India

Review of the Literature: Mainly articles, reports, guidelines and material available on

websites will be consulted while conducting this research. The various cases have also been read over and the laws and all debates relating to capital punishment with main focus on India have been done.

Reason of Selecting the Problem: Man has achieved a lot since the inception of civilization. One thing which differentiates him with other species is his value towards life. Capital punishment has been there since the civilisation started however as the man has moved ahead and it has learned that life is precious especially after the second world war, there came a new side of human civilization. The talk of abolition of death penalties has increased. Therefore the topic was selected to highlight why the reason why death penalty must be abolished in India too like several other countries have done.

Synopsis – Abolition of Capital Punishment

Introduction: Justice has long become a relative term as people term incidences that are contrary to their self will and desires as injustice, the human nature is very retributive, its thirst for vengeance is so evident that, States find it difficult to ignore, until humanity has been raised to greater heights, vengeance will remain their quest. The concept of death penalty is highly controversial; those fighting for its retention are majorly fighting for the retributive nature and interest of man. Retribution has overridden the concept of rehabilitation in the criminal justice system. The legality or otherwise of the use of capital punishment has been deliberated by many constitutional courts and their resolutions vary from one jurisdiction to another, the variation is so notable that some States within certain countries have abolished the use of capital punishment in their own municipal setting, when same is legal in the country. This write-up seeks to evaluate the controversies of this concept, and make recommendations afterwards.¹

The right to life is a phrase that describes the belief that a human has an essential right to live, particularly that a human being has the right not to be killed by another human being. The concept of a right to life is central to debates on the issue of capital punishment. Proponents of human rights believe capital punishment violates the right to life and human dignity, but some constitutions have argued otherwise. This seeks to extensively discuss capital punishment and human rights and

to evaluate the relationship between human rights and capital punishment so as to ascertain whether or not they contradict and violate each other.

Capital Punishment: Capital punishment, death penalty or execution is government sanctioned punishment by death. The sentence is referred to as a death sentence. Crimes that can result in a death penalty are known as capital crimes or capital offences.

Capital punishment is one by which an offender is sentenced to death for committing a heinous crime like murder, waging or attempting war against the Government of India, abetment of mutiny actually committed, giving or fabricating false evidence upon which an innocent person suffers death, murder by a life convict, abetment of suicide of a child or an insane or intoxicated person, attempt to murder by a life convict, dacoity with murder. The death punishment is based on the theory of punishment that life should go for life, eye for eye, hand for hand, tooth for tooth and foot for foot.²

Controversy: Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. Opponents of capital punishment see it as barbaric and degrading to the dignity of the individual. Many believe it poses too great a risk of executing an innocent person. Supporters respond that the death penalty provides a uniquely effective punishment. They consider it a necessary form of retribution for terrible crimes. Those who support capital punishment believe it serves an important function of vengeance. Some proponents of the death penalty argue that those who kill should also be killed because death is the only fitting punishment for an individual who takes another's life. Supporters of capital punishment also believe that executing offenders will deter others from committing similar crimes.

Thirty-six countries actively practice capital punishment, 103 countries have completely abolished it de jure for all crimes, six have abolished it for ordinary crimes (while maintaining it for special circumstances such as war crimes), and 50 have abolished it de facto (have not used it for at least ten years and/or are under moratorium).

National Scenario: In India capital punishment has not been abolished, yet it is awarded only in the rare case. The legality as well as constitutionality of death penalty has been upheld by the Apex court

1 Justification for and the abolition of Capital Punishment under Human Rights Law by Orchia Blessing Iveren

2 A Critical Study on Abolition of Capital Punishment Dr. S.D. Moharana, Principal, G.M. Law College, Puri, Odisha

in India. Decision of the constitution Benches in **Jagmohan Singh v. State of Punjab**³, **Bachan Singh v. State of Punjab**⁴ and **Deena v. Union of India**⁵ are the authorities on the controversy of these decisions Bachan Singh case may be regarded as treatise on the subject.

Case against Capital Punishment:

1. **Innocent being Punished on numerous occasions** : Miscarriage of justice is, in fact, one of the biggest concerns about the death penalty. Is it possible that someone could be wrongly hanged in 21st century India? The answer, unfortunately, is yes. Studies conducted by Amnesty International and the People's Union for Civil Liberties have shown that the process of deciding who should be on death row is arbitrary and biased. The Supreme Court has itself admitted on several occasions that there is confusion and contradiction in the application of the death penalty.⁶

Last year, 14 eminent retired judges wrote to the President, pointing out that the Supreme Court had erroneously given the death penalty to 15 people since 1996, of whom two were hanged. The judges called this "the gravest known miscarriage of justice in the history of crime and punishment in independent India."

2. **Deterrence on Crime a False Notion** : Some argue that the death penalty is the only way to deter heinous crime, especially violence against women and children. But a comprehensive study done last year in the United States found that there is no credible evidence that the death penalty has any deterrent effect on crime.

Those who believe that deterrence justifies the execution of certain offenders bear the burden of proving that the death penalty is a deterrent. The overwhelming conclusion from years of deterrence studies is that the death penalty is, at best, no more of a deterrent than a sentence of life in prison. The Ehrlich studies have been widely discredited. In fact, some criminologists, such as William Bowers of North eastern University, maintain that the death penalty has the opposite effect: that is, society is brutalized by the use of the death penalty, and this increases the likelihood of more murder. Even most supporters of the death

penalty now place little or no weight on deterrence as a serious justification for its continued use.

3. **Ambiguity and lack of uniformity in what constitutes the 'rarest of the rare cases'** One of the arguments is⁷ "... though the court was shocked by the manner of the offence and the fact that the security guard had raped and murdered an 18 year old girl, in case of Dhananjay Chatterjee. In *Soni Thomas's case*, the Supreme Court overturned the death penalty given in the case of rape and murder of an 11 year old girl by the co-paying guest, and in *Mohd Chaman's case*⁸, the Court gave a life sentence for the murder and rape of a one and half year old girl. The murders were all equally brutal and shocking and arguably fulfilled the 'rarest of the rare' criteria, but the court for reasons recorded in the judgment did not deem fit to give capital punishment. This difference in the political and legal understanding of the judges is most starkly seen in *Krishna Mochi's case*⁹. In this case, Justice M.B. Shah acquitted the accused for insufficiency of evidence and the majority, but Justices B.N. Agarwal and Arijit Pasayat not only found the evidence sufficient to convict but also enough to put the accused to death. According to the judges, the offence by militants which has been described by them as "caste war between haves and have-nots" was one of extreme depravity and proportional to the crime. In *Raja Ram Yadav v. State of Bihar*¹⁰, the Supreme Court held that in the case of a feud between Rajputs and Yadavs the retaliatory killings by Yadavs could not be held to be deserving of death penalty. Similarly in *Ramji Rai v. State of Bihar*¹¹ the Supreme Court held that a case of triple murder by a mob by chopping off the bodies of the victims was not the rarest of rare cases. In *Kishori v. State (NCT) of Delhi*¹², the Supreme Court commuted the death of the accused who had murdered three members of a family during the Sikh riots in Delhi.

4. **Unfair Distribution of Punishment: Death Penalty discriminates between the privileged and the underprivileged** : Justice Bhagwati in *Bachan Singh's (supra)* case pointed out in his dissent that death penalty strikes most against the poor and deprived sections of society. Most of the

3 Jagmohan Singh v. State of Punjab A.I.R. 1973 S.C. 947

4 Bachan Singh v. State of Punjab- A.I.R. 1980 S.C. 848

5 Deena v. Union of India-1983 CrL. L.J. 1602

6 Why the Death Penalty must End , The Hindu dated 5th July 2013, Retrieved on 8th April 2016

7 Sakharani, Monica and Adenwalla Maharukh, (2005): "Death Penalty: case for its Abolition", Economic and Political Weekly, Vol. XL No. 11. pp. 1023-1026

8 2000 SOL Case No 705

9 2002 Cr LJ 2645

10 1996(9) SCC 287

11 1999 SOL Case No 633

12 1999 SOL Case No 760

convicted persons are poor and illiterate, who cannot afford a competent lawyer. The defence lawyers provided by the State are often incompetent or do not take serious interest in the case. To quote Justice O. Chinnappa Reddy, experience shows that the burden of capital punishment is upon the ignorant, the impoverished and the underprivileged¹³. Unfair distribution of punishment is highlighted by bringing into focus the irrational racial discrimination in the USA.

5. Long delay in execution It is an undisputed fact that litigation in India is a very time consuming affair. Extensive delay in the execution of a sentence of death does not serve any kind of purpose and is sufficient to invoke Article 21 and demand its substitution by the sentence of life-imprisonment. At the time when the Murders of Rajiv Gandhi were about to be punished they have already served 22 years in Prison .

6 . Moral Grounds : By allowing death penalty morally nothing is achieved except more death, Suffering and pain. Secondly, why should a person be allowed to die a quick, almost painless death if he murdered another person violently Instead he must languish in prison up to his natural death. In fact, if the social values really mean that killing is wrong, then the society must abolish death penalty. Death penalty legitimizes an irreversible act of violence by the state.

However when one Discusses Capital Punishment it cannot ignore the other side of the argument. It has to be looked from the perspective of those who support the capital punishment as well. The supporters of the Capital Punishment give numerous points in its favour. Some of them are:

1. Appropriate Punishment is Imperative for Security in Society : Justice demands that courts should impose punishment befitting the crime, so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminals but also the rights of the victims of the crime and also the society at large

while considering imposition of appropriate punishment.¹⁴

2.Arguments, based on the theories of Punishment Deterrence theory : If a convict is imprisoned for life, there is no deterrence for him to kill others since there is no harsher punishment than life-imprisonment, which already has been given to him. If one assumes that death penalty will not operate as deterrence on some criminals then no other lesser punishment can logically deter them too.

3. Legal Arguments against Abolitionists: Various arguments raised by the abolitionists, may be well-countered in the light of following statutory provisions and judicial precedents

a. Crimes under grave and sudden provocation: For crimes committed in the heat of the moment, death penalty is either not possible or is not awarded.¹⁵

b. Fundamental Right to Life: In this regard, Article 21 of our Constitution clearly provides: “No person shall be deprived of life or personal liberty except according to procedure established by law”. The implied meaning of Article 21 is that a person can be deprived of his life or personal liberty according to procedure established by law. Moreover, the Supreme Court in a catena of decisions has held such deprivation to be constitutional. If death penalty is infringement of the Fundamental Right to life, then logically, why should a convicted person also be given life sentence since they also have right to freedom along with right to life?¹⁶

4. . The Stockholm Declaration, 1977 :The above Declaration did not stand for the abolition of death penalty but required that the penalty ought not to be awarded arbitrarily and must be confined to only to extremely heinous crimes. Thus, the Indian position is identical to the Declaration by virtue of Article 20 and 21 of the Constitution and Section 354 (3) of the CrPC.¹⁷

13 “In Bishnu Deo Shawv. State of West Bengal, AIR 1979 SC 964, O. Chinnappa Reddy, J. defined 'special reasons' as to those reasons which are special with reference to the offender, with reference to the constitutional and legislative directives and with reference to the times, that is, with reference to contemporary ideas in the fields of criminology and connected sciences, etc

14 Dr. A. S. Anand, J. in Dhananjay Chatterjeev. State of West Bengal. (1994) 2SCC 220.

15 The Indian Penal Code, 1860, Sec.300 Exception 1

16 The Constitution of India, Art. 19

17 AIR 1980 SC 898; (1980) 2 SCC 684

CONCLUSION:

The society, illiteracy, unemployment and other reasons are responsible in turning ordinary human beings into criminals. Therefore an effort should be made by the lawyers, academicians, judges, N.G.O.s and other Government agencies to improve the social behaviour of the individuals. Even criminals possess some good traits in their personality and these traits can be fully exploited to ameliorate their behaviour so that they can be good citizens. Hence the death penalty is in no way to reform the criminals and bringing about harmony in the society. Amnesty International, India and the People's Union for Civil Liberties charted the gaps and weaknesses in the administration of death penalty in India since 1950. The report in its analysis of Supreme Court decisions on death penalty recorded that "the death penalty in India has been an arbitrary, imprecise and abusive means of dealing with crime and criminals."

Then we cannot ignore the other perspective the process of globalisation has made the world smaller and brought many problems also. One of the serious threats arising recently is the phenomenon of global terrorism. When terrorists groups strike at free will at innocent civilians and institutions of civil society then all arguments in favour of abolition of death penalty fail. These are exemplified by the December 2001 terrorist attack on the Indian Parliament, attack on Akshardham Temple, 9/11 attack on WTC in USA, train bombings at Madrid, bomb blasts in public transport in London, killing of an IIT professor emeritus in Bangalore, bomb blasts at holy places such as Varanasi temple, Mosque in Andhra Pradesh, Ajmer Sharif Dargah and at the Lord Hanuman Temple in Jaipur in May 2008. Since most of these strikes are made by suicide squads therefore the death penalty seem the only solution.

On one hand, there is a demand for abolition of death penalty and on the other hand, there is an increased rhetoric for capital punishment for rape, heinous crimes against women, trade and trafficking of women and narcotics. Much of the arguments for provisions of death penalty have strong rationale on moral and social grounds. Therefore, keeping in mind the maxim 'Salus populi est suprema lex' a proper approach to issue perhaps will be, that death penalty must be retained for incorrigibles and hardened criminals but its use should be limited to the 'rarest of rare cases'. The courts may make use of death penalty sparingly but its retention on the statute book seems necessary as a penological expediency.

Despite of all the arguments it can be said that death penalty need to be abolished completely

whatever reason we might give giving capital punishment cannot be justified and if one is a barbaric and hardened criminal he need to be severely punished by giving rigorous life imprisonment . Imagine what will be more punishable for him a death which will free him within 5 minutes or a 15-20 year Imprisonment which will punish him more severely , where he will think of his sins the crime committed over and over again and will be punished by his conscience by time , by law . By Giving Capital Punishment we also take a chance for remorse from him. Time is a great healer is changes the worst of criminals and even if they don't change they die every minute within 4 walls of Prison. This is the reason why Capital punishment must be abolished as it fails to serve any justice to society.