

## **DEATH BY PENALTY**

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“An eye for an eye, a tooth for a tooth” is one of the oldest and most famous sayings in the world. It comes from the Mosaic Law in the Bible and it is an edict that has ruled millions for thousands of years. Today the issue of capital punishment has our nation split down the middle. The two sides have drawn lines in the sand and are emphatically holding their ground.

The requirement for the death penalty is more prominent today than it has been at any time in the past for a few reasons. The wrongdoing rate is taking off wild. Murders are tearing our kin, our urban areas, and nation apart. Numerous individuals have indistinguishable conviction from Thomas Draper, a writer on the book called Capital Punishment, that no general public can cancel wrongdoing, so their solitary expectation is to do all that they can to control it. It is the ideal opportunity for the United States to command capital punishment for the wrongdoing of homicide in every one of the 50 states and to do the executions of those condemned to death.

The death penalty is the legitimate curse of capital punishment. In England, by 1500, just real lawful offenses conveyed capital punishment: treachery, murder, theft, robbery, assault, and torching. The American settlements followed with England's view on capital punishment, for there was little they could do about it. Anyway in the 1750's change developments spread through Europe, and in 1847 they achieved the United States. In 1847, Michigan turned into the principal state to annul capital punishment for homicide. Starting in 1967, executions were suspended to enable the re-appraising courts to choose whether capital punishment was illegal. In 1972, the Supreme Court led in *Furman v. Georgia* that capital punishment for homicide or for assault abused the disallowance against "unfeeling and unordinary discipline" (Bedau 1). After four years the Supreme Court turned around its choice in *Gregg v. Georgia*. They held capital punishment for homicide and assault was not illegal. The following year executions continued, and by 1991, approximately 2,350 men were under capital punishments in 36 states.

Around 150 detainees including one lady, had been executed. Current capital resolutions approve a preliminary court to force either a decisive sentence simply after a post conviction hearing. Proof is submitted to build up which 'disturbing' or 'moving' factors were available in the

wrongdoing" (Bedau 1). On the off chance that it is in the courts mind that "irritating" factors win and hand down capital punishment, at that point the case is consequently assessed by a re-appraising court. Likewise in 1977, the Supreme Court held that capital punishments for assault were "terribly unbalanced and inordinate." The techniques for doing a capital punishment in the United States today are hanging, electric shock, gas chamber, terminating, squad, and deadly infusion. Americans feel firmly about capital punishment, however it is something they know next to no about. Their mentalities depend on feeling as opposed to data or discerning contention.

Individuals see capital punishment as something you are either in support. This thought is upheld by the way that the wording of inquiries regarding capital punishment in general sentiment surveys change the rates by the littlest sum (Ellsworth). Hugo A. Bedau, creator of Facing the Death Penalty, expresses that 70% of Americans support capital punishment for homicide. The general population who support capital punishment, support it since they have an objective as a primary concern, the decrease of wrongdoing. Regardless of whether it does or not will be talked about later. Thomas Draper, creator of Capital Punishment, expresses that there are sure individuals who don't have a place in our general public. There are some who have carried out such hevious wrongdoing that they don't have the right to live. Phoebe Ellsworth, creator of "Solidifying of Attitudes", took a survey that expressed the help declined through the 1950's to a low of 47% in 1966, however expanded consistently from 1966 through 1982 and has stayed stable in the scope of 70-75%. Another survey taken by Tom Kuntz, creator of "Should We Kill Those Who Kill" mirrors the general visibility on the obstacle impact of capital punishment. As indicated by a survey of 651 enrolled voters in New York, 57% feel capital punishment deters murder, 40% feel it doesn't, and 3% had no answer.

What citizens feel and why they feel it is up for debate, one thing there is no debating, though, is that they most definitely feel. Those in opposition to the death penalty give several reasons for the United States to abolish capital punishment. First, it is more expensive to the tax payer to execute a murder than have them serve a life sentence. "A Duke University study of 77 murder cases in North Carolina in 1991 and 1992 concluded that the average cost to try a noncapital murder case \$166,000, while the average cost to convict and execute was \$329,000" (Kuntz 3). Once the death penalty becomes a federal law and all 50 states must abide by it the cost of

capital trials will drop dramatically. The high cost is due to long litigation procedures and retrials that stem from the uncertainty of the law. Second, “The death penalty has been shown to have been administered with racial bias” (Bedau,179). On the other hand, “Evidence of racial discrimination proves it to be no worse than the discrimination in convictions on lesser crimes” (Bedau, 180). So the problem is not the death penalty, but rather an unfortunate trend in all legal cases. Third, even murderers have a right to life. Does a murderer have more right to life than the person or persons he killed? They are no longer with us, should he/she be allowed to continue his/her life. “If a murder is not executed he will eventually die anyway.

The death penalty only hastens the inevitable. Death of old age and disease are quite often more painful the execution” (Draper,130). Opponents will also say that the death penalty cheapens human life. “On the contrary to what some might argue, capital punishment does not cheapen human life, rather by making the penalty so high it strengthens the value of human life” (Draper,139). Some people feel it is wrong for the state to kill at anytime, but they do not oppose war. “If a foreign enemy did 1/10 of what our own criminal did to us they would be appalled. Let them consider this a war on crime” (Draper,121). They do not deem it right for the government to execute it’s own citizens, but by doing so the government is saving many innocent lives. Fourth, Americans who follow the teaching of Jesus Christ believe it is morally wrong to take the life of anyone at anytime. Some people invoke religious reasons why they will not support capital punishment. “Jesus forebode murder as a form of retaliation, not as a form of punishment. Jesus also said to forgive your enemies, but what if the wrong was not done onto you” (Draper, 119). One of the 10 Commandment states, “Thou shalt not kill”. Is it not also written in the Old Testament” An eye for an eye, a tooth for a tooth.” Fifth, opponents cite lines from the Constitution take out of context. “No person is to be deprived of . . . life . . . without due process of law,” according to the Constitution. If due process of law is given, then according to the very same document, life can be deprived. Next is the Eight Amendment which forebodes “cruel and unusual punishment,” by the government.

The Eighth Amendment was made part of the Constitution in 1791. It was aimed at preventing methods of execution which tried to inflict maximum suffering such as: burning, drawing and quartering, and impalement. Today's method of execution are painless, depending upon which method is chosen. Lastly is the deterrent affect. Anti-death penalty supporters claim that capital punishment has no deterrent affect on future murders. "The flaw people make when speaking of deterrence is looking at states with capital punishment statues rather than states where execution are carried out" (Draper 115). If the statistics are looked at from that angle a different result follows. "A study by econometrician Isaac Ehrlich contended for each execution carried out, between seven and eight murders were prevented" (Draper,115). Each one of the other sides seemingly solid arguments has an Achilles heal, and when it is exposed the argument loses much of its validity. The argument in favor of capital punishment are based less on emotion and more on rational thought and fact. Draper states in the late 1960's and early 1970's when there was a reluctance by judges to use the death penalty, the homicide rate doubled from 4.7 to 9.4 murders per 100,000 persons.

According to human nature, The question is not do threats deter, but how much more does one threat deter composed to another. Society believes that punishment is a deterrent. Draper concludes if it can be said that any punishment at all is a deterrent, then it would seem to me that the most severe punishment would be the best deterrent This is what author Walter Berns had to say, take a moment to reflect on this hypothetical situation. If life imprisonment was the sentence for murders committed on Monday, Wednesday, and Friday, and death was the sentence for murders committed on Tuesday, Thursday, and Saturday, we would quickly see the deterrent affect of the death penalty. To look at the legal side of the debate, "The law has two purposes: to forestall criminal behaviour, and to punish it. All sentencing is based on the principal that punishment should be proportionate to the seriousness of the crime" (Draper 111). What good is punishment if it does ratify the harm and injustice caused by crime. Quotes by convicted killers before they were put to death make it curious to know what made them speak out against killing right before they lost their own life". On the side of capital punishment are many great thinkers in our history, Rousseau, Kent, Lincoln, Jefferson, Washington, Locke, and Hobbes' (Draper 113). French philosopher Montesquieu went as far as to say "The death penalty shall be prescribed as the medicine for a social malady". "Data shows that some murderers have killed again after a conviction and prison sentence for murder. This indicates a risk it will happen

again” (Bedau, 179). So the problem lies in the risk of either executing the innocent or a recidivist murderer.

Nobody knows how long the debate over capital punishment will continue. Long after a law is passed, either for or against the death penalty, the argument will still go on. In my mind, anti-death penalty supporters are trying to avoid a very serious problem, the problem of brutal crimes in America.

### *Scope*

1. Like most of countries (including countries where death penalty as a form of judicial punishment is abolished), in India the retentionist’s discourse (retributive and deterrent value concept, public conscience and demand, cultural diversity, etc.) continues to dominate public opinion.
2. Being emboldened by this public perception, the legislative wisdom – ruling and opposition alike – has expanded the scope of capital punishment either by amending laws or by enacting new laws to provide this punishment in certain cases of rape and other ‘serious crimes, like ‘terrorism’ etc.
3. The culture of vengeance and violence is prevailing in Indian society and the Indian State continues to be very violent and aggressive. Archaic concept of Roman law – life for life, eye for eye – has a strong grip over the people of India. Hence, despite the historical fact that India has a long tradition of ahimsa in a religion like Buddhism, and despite the position of the Father of the Indian nation, Mahatma Gandhi’s and others against the application of death penalty and practice of nonviolence, the arguments for abolition of death penalty has , till today, failed to gain much ground on Indian soil.
4. Although India is a signatory to the International Covenant of Civil and political Rights (1966), and, therefore, is committed to phase out the application of death penalty, India as we have already mentioned, expanded its scope under various pretexts. It is pertinent to note, way back in 1997, India abstained when the Commission on Human Rights of United nations passed a resolution calling for an end “to judicial executions in the world.”

5. Historically, in British colonial India, death penalty was the rule, life imprisonment was the exception. In post- colonial India, after the relevant reforms in Indian criminal laws in 1955, life imprisonment became the rule, death penalty became the exception; reasoning have to be provided by the judge of the trial court, as required by section 354(3) of Cr.P.C, as amended in 1973.

### *Constitutional Validity of the Death Penalty*

The study of death penalty was once undertaken by Law Commission of India as far back in 1967 and in its 35th report, it justified for retention of the death penalty. The view was concurred by the five judges of the Supreme Court of India, when the matter of constitutional validity came for hearing. Whether the right to life is an inherent right and the State must not be given the power to extinguish any life – irrespective of his or her crime – and whether this is violative of article 21 and article 14 since two persons found guilty of murder could be treated differently, the said judicial bench in the well known case , Jagmohan Singh vs State of U. P (1993), refused to be persuaded by the decision of the U.S. Supreme Court in *Forman vs. Georgia* in this regard, and argued for the retention of death penalty. The judges cited different social conditions and low intellectual level of the public as grounds of argument.

In 1980, there was a renewed challenge in *Bachan Singh v. State of Punjab* to the constitutional validity of the capital punishment. Political situation in India in the post-emergency period (1977 onwards) was different; liberal democratic atmosphere was evident and respect for rights of citizens became the cry of the day. Judicial activism was accepted and heavily appreciated. Yet, even in these developments, the four judges out of five judges (Justice P.N. Bhagwati being the sole dissenting voice) upheld the constitutional validity of the death penalty, but severely limited the scope of this punishment. The majority acknowledged the human rights jurisprudence and developments in international laws in this regard. They held , inter-alia: A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That “ought not to have done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.” [(1980) 2 SCC at751).

And till today, this remains the unchanged judicial position in India. This judgment undoubtedly affirmed again that the death penalty was the exception, not the rule. Subsequently, the Supreme

Court in another famous case, *Machhi Singh v. State of Punjab*[(1983)3 SCC470], directs the trial court to draw up a balance sheet of the aggravating and mitigating circumstances and opt for the maximum punishment and considering all these factors, if the judge then finds no other alternative, then he can hand down the death penalty.

***Problems relating to application of “rarest of rare cases”***

Justice P. N. Bhagwati in his long, erudite dissenting judgment has refuted all the arguments advanced by his learned co-judges and this judgment is still the silver lining in Indian Judiciary. Human Rights movement in India has justifiably questioned such criteria for pronouncing death sentence. How to judge “rarest of rare cases”? In terms of plan and conspiracy? Or, in terms of execution of the capital crime? Or, in terms of method of destruction of evidence of the crime? There is no definition, no explanation to this end.

Various studies reveal that even the exercise of balancing the aggravating and mitigating circumstances is rarely performed.

Third, as no uniform criteria could be laid down, and as no objective evaluation of legislative thresholds exists, the question of death penalty is not free from the subjective vagaries of the judges. One erudite judge, Mr S.B. Sinha (now retired), raised this difficulty in testing the criteria of rarest of rare cases: “What would constitute a rarest of rare must be determined in the fact situation defining in each case. We have also noticed here different criteria have been adopted by different benches of this court, although the offences are similar in nature ... No sentencing policy in clear cut terms has been evolved by this court.” Hence, we can safely observe that this lack of systematic principles governing sentencing gives birth to the system of judicial whims vis-à-vis capital punishment. A Research scholar, A.R. Blackshield, who examined seventy judgments of the Indian Supreme Court between 1972 and 1976 in which judges had to decide on whether to uphold death penalty or commute to life imprisonment, concluded that “arbitrariness and uneven incidence are inherent and inevitable in the system of capital punishment in contemporary India.”

Extensive study by Amnesty International and PUCL (Tamil Nadu) on supreme Court judgments in death cases between 1950- 2006, has shown conclusively that it is the judges’ subjective discretion that eventually decides the fate of an accused. They never consider the issue of

death penalty as human rights issue, beyond the pale of law, (save and except few judges like Bhagwati, Krishna Iyer, A.P. Shah). As a result, we often find that it is largely cases involving the poor and the down-trodden, who are victims of class bias, which culminate in an imposition of death penalty. Here one hardly finds a rich or affluent person going to the gallows. Therefore, the death penalty, as it is used now, is discriminatory. It strikes against the disadvantaged section of the society, showing its arbitrary and capricious nature – thus rendering it unconstitutional. Not to mention, how many innocent were victims of Indian judicial murders. The former President of India, APJ Kalam, suggested the Government of India to launch an open debate over the issue of retention of death penalty in Indian statute books. It went unheeded. He wrote, in his *Turning Points*, “We all are the creatures of God. I am not sure a human system or a human being is competent to take away a life based on artificial and created evidence” (134) His observations were based on his study of social-economic background of the convicts whose clemency petitions were pending before him.