

## Is Capital Punishment Acceptable?

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### Abstract

*Even after entering the twenty first century, we read about capital punishment in newspapers, is it acceptable or not? This is one of the most controversial issues in current legal system. Our judicial system is how much fair? Is it true that though there are may be a connection between justice and punishment it is the hidden hand of the powerful which moves the sword? Is not capital punishment purely a subjective matter? Capital punishment cannot be justified from either the material or spiritual point of view. If we look at it from the materialistic point of view then death is the end of everything. The criminal actually suffers more if he is given life sentence. He does not actually have to bear physical captivity nor does he have to suffer from physiological stress till the end of his days. On the other hand hanging releases him from pain and suffering far more quickly.*

**Key Word:** Human rights, Materialistic Viewpoint, Ideological Viewpoint

### Introduction

Even after entering the twenty first century, we read about capital punishment in newspapers, which is nothing but the ultimate barbarous act of civilized society. Any discussion on capital punishment raises many questions from the moral, humanitarian and philosophical points of view.

The system of punishing the wrongdoer is very ancient. To maintain law and order in society punishment is necessary. In Bhagbad Gita Lord Krishna says that he will reincarnate again and again to protect the good and punish the evil. The poet Rabindranath Tagore says in one of his poems those who do wrong and those who put up with wrong doing both are to be despised. So, it is just to punish the wrongdoer but punishment should be according to the crime.

Philosophy however is not concerned with what punishment should be given for what crime. It is interested in the basic questions of the rights and wrongs of punishment itself. This leads to three different theories;

**1) Deterrent of preventive theory-** ``Deterrence theory is based on the concept that, if the consequence of committing a crime outweighs the benefit of the crime itself, the individual will be deterred from committing the crime.``(Summerfield ,Morgan(May 18,2006).``Evolution of Deterrence Crime Theory ``May 18, 2006. Here the criminal is punished to set an example to others to prevent them from repeating such crimes. The major drawback of this approach is that here we are using the criminal as a mean to teach others. This sometimes leads to severe punishment for a minor offence.

**2) Reformative theory –** The object of this theory is to reform a person through punishment and ultimately make him a law abiding citizen. Nowadays many people like the Right Honourable Justice Mackenzie support this school of thought as it is humanitarian. ``It is required that we should regard even thieves and criminals as our brothers and sisters, and crime as a disease of which the latter were the victims of disease and needed to be cured ``.(M.K.Gandhi-Harijan, dated august 11<sup>th</sup>,1946).

**3) Retributive theory-**``According to this theory the aim of punishment is to make the accused realize that he has to suffer for his wrong doing. It echoes the proverbial words “an eye for an eye and a tooth for a tooth”. 1.``If you rob him, you rob yourself ,if you slander him, you slander yourself ,if you strike him ,you strike yourself and if you kill him, you kill yourself.`` Immanuel Kant.(Immanuel Kant ,The Metaphysics of Morals ,Trans. E. Hastie Edinburgh ,1887, originally published 1779),155.

Now I must come to the main point of my discussion of whether capital punishment is justified in a civilized society. The proponents of the Deterrent or preventive theory as well as those of the Retributive theory support capital punishment. On the other hand people who believe the Reformative theory are against capital punishment on humanitarian grounds.

### **Points in Favour of Capital Punishment**

There are many points for and against capital punishment. First I will discuss the views of those who support capital punishment.

- 1) There are some members of the society whose propensity to murder or to carry out a terrorist act is so strong that to show its abhorrence and to prevent them from repeating such crimes society metes out capital punishment. This is also done to warn others with a similar bend of mind about the consequences of such acts.
- 2) Secondly if instead of capital punishment such persons are given life sentence the cost of keeping them in jail for years can be phenomenal.
- 3) When a person is released after serving a life sentence he is often not accepted by his family and social circle. He finds it difficult to get any work and is then forced to return to antisocial activities.
- 4) Every human being has a right to live. If anyone snatches away that right then that person ought to be given capital punishment.

### **Points against Capital Punishment**

Next, let us consider the views of those who are against capital punishment.

- 1) By giving exemplary punishment crime cannot always be prevented. During the struggle for Independence in India many freedom fighters were not deterred by the hanging of their fellow fighters. Moreover to avoid capital punishment many criminals arrange to murder the witnesses. This would not occur if capital punishment is abolished.
- 2) Those who break the law are not always wholly responsible for their crime. They may have been victims of social, economic or political injustice. These persons may be reformed if they are made to see where they have gone wrong. But if capital punishment is carried out then there will be no chance of reformation. For example, we can consider the cases of Valmiki or Ashoka. Rishi Valmiki, the author of the epic Ramayana, was at one time a ruthless robber. But he later reformed to become one of the greatest sages of India. King Ashoka was restored from a war mongering king to one of the greatest patrons of Buddhism.
- 3) Criminals awarded life sentence are made to work so that they can earn their own keep. This will save state expenditure.

### **Issues with Legal System**

As I have mentioned in the beginning, punishment is just and necessary. Form of punishment may vary depending on circumstances but punishment itself is essential to maintain the integrity of the moral fiber of society. Even after that, I firmly believe, capital punishment is unacceptable. We have not been able to create a completely transparent legal system. Our decisions are often manipulated by social and political power. As a result it is not uncommon to find that someone has been given capital punishment only to attain certain individualistic or political gain and that has nothing to do with justice. Galileo was sentenced to death for stating scientific truths. Fortunately this was not carried out and as a result he was able to discover many mathematical theories while in prison.

Report has already shown that the uneducated poorer sections of the population are given capital punishment more frequently than the educated well to do people. The rich manage to escape. This cannot be supported from the moral point of view. From time immemorial legal judgment has been forced to bow down to political, economic or religious power. Amnesty International expresses what many legal experts have said about death penalty –that in many countries, the penalty is discriminatory and used to victimize the poor, the underprivileged, religious and ethnic Minorities. Influential people escape the penalty more often than the poor. (Today, October 10, is World Day Against Death Penalty, 10-10-2012, [digitaljournal.com/article/312591](http://digitaljournal.com/article/312591))

A great philosopher like Socrates was sentenced to death just to wield religious power. Similarly a great scientist like Lavoisier was guillotined to satisfy political power. Sometimes the powerful people use the legal system as a weapon to take revenge. Then innocent people are hanged for crime they have not committed.

Again, question will arise whether it is not justified to order the capital punishment for a terrorist killing hundreds or thousands of innocent people. But often an arrested terrorist is not the kingpin behind the terrorist act. He is the tip of the iceberg.

Even if this person is given capital punishment that will not prevent future attacks. Instead if we give life sentence for his activity, there is a possibility that one day he will understand the depth of his heinous crime and he may help to catch the real perpetrator.

### **Human Rights**

Capital punishment does not reflect the same level of respect we should show to our fellow human being. It is equivalent to pre-planned murder. It demolishes any possibility for the reformation of the criminal. Eminent Bengali writer Sunil Gangopadhyay said “My view is that capital punishment should be abolished because it's barbaric.”.(Hang him and save our daughters``-Rediff.com.30.06.2004 ) .Lawyer Yug Choudhury and secretary Moushumi Basu have similar thoughts on capital punishment. ``The death penalty violates the right to life, as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.`` .((U.S.Death Penalty Facts/Amnesty International USA) NOT MAKING US SAFER CRIME, PUBLIC SAFETY AND THE DEATH PENALTY ,Amnesty International.)Amnesty international has declared that the death penalty is the ultimate denial of human rights.

Moreover as discussed earlier punishment is purely a subjective matter. Often it varies in three different ways

- 1) **Change of punishment with place-** Capital punishment has been banned in one hundred and thirty countries but it still exists in others.
- 2) **Change of punishment with time-** In the past death sentence was passed according to the whims and fancies of the monarch and they were beyond any law. Interestingly philosopher like Kant also has supported the idea that the monarch should not be given capital punishment. Fortunately this has changed with time. Nowadays death sentence is passed according to the law and constitution of the country
- 3) **Change of punishment according to individual-** Opinions varies from person to person on whether to order capital punishment for a person.

The bottom line is form of punishment is subjective. And the extent of crime changes from different perspectives. For example, freedom fighters were sometimes considered as a traitor by the government but they were considered as martyr by the other government.

### **Issues with Spiritual or Materialistic Point of Views**

Capital punishment cannot be justified from either the material or spiritual point of view. If we look at it from the materialistic point of view then death is the end of everything. The criminal actually suffers more if he is given life sentence. He does not actually have to bear physical captivity nor does he have to suffer from physiological stress till the end of his days. On the other hand hanging releases him from pain and suffering far more quickly.

### **Conclusion**

In conclusion I want to say that in order to maintain law and order in society punishment is necessary. But I do not believe in capital punishment because it does not give a person a chance to reform to a better human being. In The Merchant of Venice, Portia says “The quality of mercy is not strain’d,It dropeth as the gentle rain from heaven Upon the place beneath: it is twice bless’d: It blesseth him that gives and him that takes. “

We all do wrong sometime or another. It may not be a criminal act but we all would like a chance to rectify ourselves, rather than be severely punished. In the same way a murderer has definitely done a heinous crime but law and society should give him a chance to rectify himself.

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