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## CRITICAL ANALYSIS ON DEATH PENALTY

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### .Abstract

Death penalty is the harsh and cruel punishment among all the punishments given to the criminals at the time of giving judgments of any case or suit. Eternally, people are carried out and condemned to death by the judicial authorities for different kinds of crimes. In times it is for those offences which do not fall under criminal offences. Another formal name of death penalty is judicial homicide. The crimes because of which the punishment of death is given are considered as capital crimes or capital offences. Usually these offences are heinous in nature but sometimes this also varies depending upon the jurisdiction. The most common crimes falls under the capital punishment are: - crimes against person, rape, sedition, child sexual abuse, kidnapping, crimes against state, crimes against aircrafts, crimes related to drugs, piracy, etc. According to some reports or data by the government, some countries retained death punishment from their nation whether some are still following this. But, majority of the countries has been abolished death punishment. It is also a matter of controversy in some nations and states because of religious, cultural and political thoughts. The eradication of death penalty is increasing on global level. It is also abolishing the fundamental right i.e., right to life which is provided by the Constitution of India. The Human Rights Committee and other organizations are also taking initials towards the abolishment of this capital punishment. While, some are in favor of continuation of death penalty as it is considered that death penalty deters the happening of cruel or heinous crimes.

### 1. INTRODUCTION:

Death Penalty is also known as Capital Punishment, and also another formal name of death penalty is judicial homicide. This punishment is sanctioned by the state or the judicial authorities in case of intentionally killing anyone or may be doing some crimes of heinous nature such as causing grievous hurt to person, or doing rape or may be involving in child sexual abuse. Such punishment given to the criminals or the offenders is considered as death sentence, and the declivity of completion of such punishment is known as execution.

The crimes because of which the punishment of death is given are considered as capital crimes or capital offences. This commonly deals with crimes of serious nature such as crimes against person like murder, rape, child sexual abuse, terrorism, war crimes, crimes against aircrafts like aircraft hijacking, crimes against state like:- actions against government i.e. against the favor of government, sedition, piracy, treason and espionage. Robbery and Kidnapping are also the offences in which death penalty has been given. Some other crimes which deals with capital punishment are drug dealing, drug trafficking and drug possession. In some cases this also differs depending upon jurisdiction.

One thing that is always considered injustice to an innocent person i.e., judicial murder which means purposely killing an innocent person or giving capital punishment to an innocent person.

There is a survey in 2022, about abolishment of capital punishment in some state or countries. According to this 53 countries are there in the whole world in which capital punishment to offenders are entertained, and 111 countries are

there which has abolished the capital punishment for all the crimes, while 7 countries are there in the world which has restricted the capital punishment for the crimes of ordinary nature and in these countries death penalty is given for war crimes, and 24 are abolitionist in practice. In this survey it can be clearly seen the 60% of the population in the nation are living in those countries where capital punishment is retained. It is also a matter of controversy in some nations and states because of religious, cultural and political thoughts.

The Human Right Committee and some other organization deal with the removal of the death penalty as they say that death penalty create conflicts in the fundamental rights of a person which is provided by the Constitution of India, the Fundamental Rights which is abolished is Right to Life. While, some organizations are also there which supports the death penalty and they favor it because they find that it deters the happening of crucial and heinous crimes, and because of this there is fear of losing life and fear of punishment among the offenders.

## 2. FACTS ABOUT DEATH PENALTY:

- i. According to UN, 170 countries around the world had abolished death penalty and do not entertain it as punishment. The use of evidence is implicit and serially self-willed in cases of death penalty.
- ii. There is a survey in 2021 of Amnesty International in which it has recorded 579 enforcements in 18 countries, an enlargement of 20% from the 483 recorded in 2020, which has represented a record which is less in number of enforcements around the world.
- iii. The methods used in the entire world to bring death penalty in operation are:- shooting, hanging, guillotining, lapidation, tied or nailed to a large wooden cross, depriving the usage of oxygen, giving electric shock, giving poisonous injection. All the methods are completely inhuman, cruel and derogatory, it clearly describes that

there is not a single way to take anyone's life.

- iv. International law completely abolishes the enforcement of death penalty upon children, people under the age of 18, women who are pregnant and the people suffering from mental illness and are of unsound mind.
- v. International law also needs those states who are continuing with the punishment of death penalty so that it can observe the vanishing point of its usage, involving only the punishment of death penalty on crimes of heinous nature and the crimes which are serious in nature. According to the UN special report, only intentionally killing someone is considered as the most serious crime. In 2019 it is recorded that its execution is done not only on intentional killing but also death penalty is given as a punishment on crimes like:- rape, drug related crimes, kidnapping, crime against war and state and so on.
- vi. In cases of death penalty the international law needs to observe that if death penalty is given as punishment to the offender it must be considered that it causes as less as pain to him/her.

## 3. PROS AND CONS OF DEATH PENALTY:

- i. Pros:  
For preventing the commission of serious or heinous crimes in our society and for avoiding all these, the punishment of death penalty is needed. Capital punishment is justified in cases of crimes which are typically serious in nature because this may help in reduction of happening of such crimes. The offender must be given death penalty as punishment if he is involved or has done heinous crimes such as intentional killing or rape so that the people in the society and the state are able to live with safety. In

some cases the offender tries to elope from the jail illegally and because of this the chances of commission of such serious crimes may increase, death penalty also reduces the chances of happening of illegal activities by the offender.

ii. Cons:

Death penalty is the most harsh, inhuman or cruel punishment in the entire universe. This punishment can never be converted or changed or replaced once given to any offender. In some cases it may be possible that the capital punishment is given to an innocent person and because of this the risk of life of an innocent person increases in terms of death penalty. After so many surveys in the entire nation, it can not be said that the crime rate has been reduced after giving death penalty. There is a risk of physical as well as mental harassment which may be caused to the accused in this entire process, as the whole process of the death penalty takes more time as it is a lengthy process. Sometimes the offenders are this much harassed physically and mentally, they themselves demand for their own death, in other words it can be said that they beg for their death.

**4. GUILTINESS AND DELUSION IN DEATH PENALTY:**

As it can be clearly seen that our entire system is somewhere biased depending upon the people living in the surrounding. Death penalty also treats different persons in different ways, as the poor and innocent person are not able to gather sources and evidences of their innocence and better techniques of dealing with the suit, there has been high chances that they have been given death penalty. And in case of rich and guilty people, they are able to gather better resources and are able to find

ways of avoiding the punishment of death penalty because of their high sources and money. Because of this, a large number of innocent persons are sentenced to death by the judicial authorities. According to a survey,

- Since 1973, almost 190 people who are convicted of any crimes are officially released from death penalty because of finding some new proofs and evidences.
- Almost 1548 people in U.S. have been sentenced to death since 1973.
- The person to whom death penalty has been given have been released and announced innocent, according to the survey it is 1 in 8 people.

There are also the factors which become the reason of wrongful conviction in those cases also where capital punishment is not necessary. This also includes:-

- Wrongful identification of eye witnesses
- If someone is forced to accept that he/she has committed the crime
- The legal defences which are used in the entire process are used in improper or illegal ways
- Making false forensic reports which are used for evidences
- In some cases the witnesses are wrongfully given some advantage like money, property or other things to give false evidences or to cause some accusation on the person

**5. ADVANTAGES OF DEATH PENALTY:**

- a) In some instances the punishment of life imprisonment is given to the wrongdoer instead of death penalty, but the supporters are against it and said that the action which is taken is irrelevant in terms of justice.
- b) The punishment of death penalty creates a fear in the eyes of criminals so that they may avoid commission of inhuman crimes, as

they found their own life at risk. It is a way of disqualification of commission such crimes in society by preventing them in this manner of raising fear to the offenders.

- c) Nowadays, it is also not necessary to sentence death in cases of punishment of death penalty by using harsher ways, it can be done without causing pain and can be done peacefully just by giving one lethal-injection to the accused. So that it create less amount of pain to the offender and can be medically-imposed death.
- d) Death penalty decreases the fear of the victim and the family of the victim as they found the person who has created harm to them is no more and can not do such activity with them again. It is a way of giving sympathy to the victim and victim's family. Death penalty makes the victim feel safe.
- e) Death penalty is a way to stop illegal escape from the jail, as it has been found that so many times the offenders used to escape from the jail illegally and the police authority is not be able to find him out. So, it is way to abolish such illegal escape and also a way to prohibit the occurrence of such crimes and reduces the possibilities of future victims.

#### **6. DISADVANTAGES OF DEATH PENALTY:**

- a) It is completely cruel, offensive and inhuman thing done by the judicial authorities in the name of justice. This is also the violation of the fundamental right i.e. Right to Life which is provided by the constitution to the citizens. It can be said that the judicial authorities are killing people (offenders) in the name of justice.
- b) Many cases also exist where the innocent person also had sentences

death because of the false evidences, this is one of the major reasons of abolition of death penalty.

- c) The cost involve in death penalty is much more higher than the other cases because of its lengthy process and also it takes more time than the others. In other words it can be said that it is the improper use of money, resources as well as time.
- d) Even after death punishment it is not necessary that crime rate will decrease. Till now there is no any survey which can say that the crime rate has been decreased by reatining death penalty.
- e) There is also a improper use of this punishment in some countries as they are using this punishment by clearing their political issues which is completely injustice and also against the humanity.
- f) If some one has been given death penalty and sentenced death, then there is no any way of its comeback.
- g) Sometimes because of this death penalty the victim and victim's family also gets affected.

#### **7. CONCLUSION:**

Death penalty is the solution of abolishing cruel and inhuman crimes but not every time it is needed and also it is not the only solution adopted by the judicial authorities to involve in the activity of decreasing crime rates. Proper and exact use of this punishment is justified but can not be justified if used in political issues and also in case if innocent is sentenced death.

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