



Capital punishment in India: whether a mode of justice or a matter of utility?

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Abstract

It is a matter of great debate, whether the capital punishment can be justified on the ground of justice rather than utility. The deterrent as well as the retributive concepts which support capital punishment can serve the interest of criminal administrative duty of a state but can never serve remedial justice to the victim.

Death penalty has been a mode of punishment since time immemorial. The arguments for and against has not changed much over the years. At this point of time when the issue, whether capital punishment must be abolished or not is still raging, it will be appropriate to remind ourselves as to how the legislatures and the apex court have dealt with this issue every time it has come up before them.

Keywords: capital punishment, justice, deterrent, retributive and India

Introduction

“An eye for an eye leaves the whole world blind”

-----M. K. Gandhi

Meaning of capital punishment

Capital punishment, also known as the death penalty, is a government sanctioned practice whereby a person is put to death by the state as a punishment for a crime. The sentence that someone be punished in such a manner is referred to as a death sentence, whereas the act of carrying out the sentence is known as an execution. Crimes that are punishable by death are known as capital crimes or capital offences, and commonly include offences such as murder, treason, espionage, war crimes, crimes against humanity and genocide. The term *capital* is derived from the Latin *capitalis* (“of the head”, referring to execution by beheading) ^[1].

Execution of criminals and political opponents has been used by nearly all societies- both to punish crime and to suppress political dissent. In most places that practice capital punishment today, the death penalty is reserved as punishment for premeditated murder, espionage, treason, or as a part of military justice ^[2].

In some countries sexual crimes, such as rape, adultery, incest and sodomy, carry the death penalty, as do religious crimes such as apostasy (renunciation of state religion). In many retentionist countries (countries that use death penalty), drug trafficking is also a capital offence ^[3].

In China, human trafficking and serious cases of corruption are also punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offences such as cowardice, desertion, insubordination, and mutiny ^[4].

Significance of capital punishment

The concept of Capital Punishment is one of the ancient as well as most controversial methods adopted by the human race whether it is a primitive society or a civilized one for the purpose of criminal administration of justice. The reason behind the never ending controversy is the question that whether taking one person’s life to settle the score is justice or mere act of vengeance? Instances of death penalty (*‘Mritvu Danda’*) can be traced back even from RIG VEDIC era. In 21st century though use of capital punishment became rare in Indian legal system but it still exists and is getting protection of Art.21 ^[5] even after getting severe criticism from various National and international human rights agencies for last few decades.

Concept of justice and its relation with capital punishment

The expression justice has been intended to indicate the exercise of an authority in vindication of right by assigning reward or punishment. In another sense, the expression signifies the quality of being fair and just. Since 1200 AD, the word began to be used in English as a title for judicial officers. The expression ‘justice of the peace’ was first used in the early fourteenth century. The expression which means to do justice to someone or something came to be used since the seventeenth century to denote the act of rendering fully and fairly showing due appreciation. Justice, meaning the exercise of authority in vindication of right by assigning reward or punishment is an expression which is over eight hundred and sixty years old. Apart from the word *justitia*, which traces its origin in the Latin expression that signifies righteousness and equity, a similar word with a Latin root was *jus’tis*, meaning thereby something which is upright and just ^[6].

If we want to know the actual meaning of justice we have to analyse the various patterns by which justice can be manifested. The following chart (Fig.1) reflects different modes of administration of justice.

Justice

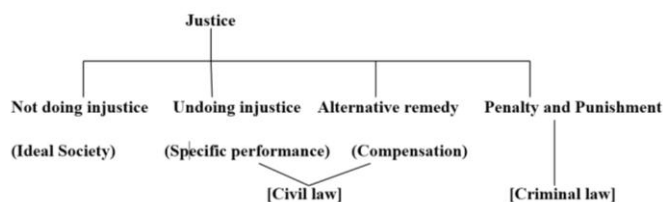


Fig 1: Different modes of administration of justice

The idea of justice is different under Civil and Criminal laws. While civil administration of justice is based mainly on remedial methods, Criminal administration of justice depends on imposition of punishment and of penalty.

Under the civil administration of justice the object of justice is upholding the rights of an individual may that be a natural person or juristic person. But criminal administration of justice works differently. State is the protector of life and property of every citizen. So in case of failure on part of state, it takes the responsibility to secure justice for the victim as well as for the society at large. Every life is accountable as because when a serious crime is committed it affects not only the victim or his/her family but also the moral fibre of the society. For that the criminal is punished by the state to maintain the balance of the society.

Punishment is the oldest method adopted by human race and is based mainly on two theories, i.e., Deterrent Theory and Retributive Theory. As per these two theories punishment can work in two ways firstly, punishment can provide mental satisfaction for the victim and his family and also to the society, secondly, it works as a deterrent to deter others from committing such crime. In old days alternative compensations like 'blood money' or other forms of remedy were given to the victim or his/her family. Even today in some primitive society such system can be found.

Capital punishment is the highest form of punishment which can be inflicted by state for some serious offences. But how it relates to justice? To know the answer we have to analyse the outcomes of capital punishment.

Outcomes of capital punishment:

1. Death of the criminal.
2. Psychological satisfaction for the persons concerned with probability of exceptions.
3. Can work as a deterrent which can prevent future possible crimes (Depends highly on hypothetical probabilities which may or may not occur).

It is clear that the first outcome is obvious resulting further loss of the society which already suffered loss due to violation of victim's public right. But the other two outcomes depend on probability. If we try to compare two situations, i.e., the situation when capital punishment is inflicted and when it is

not inflicted, we can get the idea regarding the utilitarian aspects of capital punishment. But it is already established fact that victim is getting nothing but psychological satisfaction which in practical scenario is incapable of indemnifying the loss sustained by the victim.

Utilitarian aspects of Capital punishment

According to the Oxford dictionary the term 'utility' means the state of being useful or profitable. Utility of a thing can be judged on the basis of its capacity to produce or increase good as well as the quality to decrease bad [7].

This form of ethics was founded by Jeremy Bentham and 'utilitarianism' comes from 'utility', meaning usefulness. Utilitarianism states that the result of an Act is the real measure of whether it is good or bad. This theory emphasizes end over means, therefore it is a teleological or consequentialist ethical theory. Utilitarianism is based on the principle of utility: act in that way which aims at the greatest good for the greatest number [8].

On utilitarianism, punishment is justified only in so far as it promotes the general happiness.

The following are potential utilitarian reasons to inflict capital punishment

1. To prevent offenders from doing further harm.
2. Deterrence (to prevent recidivism and discourage other potential offenders).
3. To give satisfaction to victims/society.

For the utilitarian, it is not morally permissible to punish criminals in order to give them what they deserve by exacting revenge or retribution on them. No one "deserves" anything...our only duty is to maximize utility. The basic problem with retributivism, for the utilitarian, is that "it advocates the infliction of suffering without any compensating gain in happiness." [9]

While inflicting capital punishment state is ignoring the actual interests of the victim. The main question which can be raised is that why state should be allowed to take one of its subject's (criminal) life when it failed to protect the life of its another subject(victim)? It is like covering its own failure by placing on the criminal all the responsibilities. Yes the criminal must be judged for his sins but the failure of state to protect the rights of the victim also must be taken into account. Capital punishment may satisfy the grudge of the society but it can never be called justice in actual sense. Capital punishment is a matter of utility on the part of state as it eliminates its responsibility against the criminal as well as the victim. If it can satisfy the society at large no one will put questions regarding its failure to perform its duty.

Suggestions

- There must be some sui generis legislations which can provide compensation schemes by imposing burden on the criminal and his/her property or if not possible to be paid by the state.
- Capital Punishment should be abolished phase by phase while making life imprisonment as the highest punishment.

- State must create best possible circumstances to prevent crime where by implementing capital punishment shall become irrelevant.
- During the transition period Capital Punishment should never be used for securing political interests on part of the state.

Conclusion

Justice the term itself creates ample ambiguity in different circumstances. But if we are ready to consider the term as it is applied in criminal jurisprudence it means unleashing evil to counter another evil. But the problem is that two negatives may produce something positive in mathematics but in respect of society it is impossible. The balance of the society can never be maintained by applying capital punishment because it is the society which is losing two of its members, i.e., both the victim and the criminal. Therefore there is nothing positive so far as we are considering the interest of the victim and society. It is irrelevant to discuss whether capital punishment is good or bad rather discussions should be made on the point that whether it is a mode of administration of justice to the victim or to society or it is favoured because it is a matter of utility for the state to cover up its incapacity to perform its primary function to protect the rights of its subjects? Capital punishment which is shown as a mode of justice in reality is a matter of utility for the state as because it is much easier to give death penalty to a murderer than preventing the murder. It is also convenient for state to inflict capital punishment because it decreases the financial burden of the state as it takes a fortune to maintain the prisoners. So it is clear that capital punishment has the quality to decrease the liabilities of the state where as it is unable to produce any real fruit for the victim or his/her family or the society.

Thus it can be concluded that capital punishment is more a matter of utility than a mode of justice.

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