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DEATH PENALTY AS A FORM OF PUNISHMENT

Introduction:

Death Penalty, or capital punishment is form of punishment practice that was designed to result in intentionally executing an individual as a retaliation to any act committed by him/her, that was deemed to be against and harmful for the society and after carefully following authorized and tedious procedures to arrive to the conclusion that the person is responsible for violating the norms of law and thus a warrant execution is issued. Capital punishment was introduced to act as a crime deterrent. Historically, a variety of regimes have carried out disciplinary executions for a wide range of crimes, for political or religious convictions and practices, for a status that is out of one's control, or without following any meaningful due process protocols. Additionally, more unofficial executions of people have occurred and are still occurring, such as those carried out by mobs, urban gangs, or terrorist organisations. However, for centuries, debates in Europe and America have centred on the death penalty as an established, law-governed practice of contemporary nations and legal systems controlling significant criminal behaviour and procedures.¹

The Deterrent Effect:

According to the Deterrence theory, the best way to prevent the commission of crime is to increase the severity of punishments for such crimes.

Various studies over the years have stated that there has been a significant decrease in crime rates since the introduction of death penalty as a form of punishment.

Death as a punishment is in most cases given for heinous crimes like murder and rape, and in earlier times, such punishment was given with the intention to make the people fear god and

¹ Robert Hoag, *Capital Punishment*, Internet Encyclopaedia of Philosophy (Feb 9, 2024, 5:37 PM)
<https://iep.utm.edu/>

the consequences of not abiding by the rules that were set by the ruler, who was in most cases, regarded as the same as god.

In the current times, however, since there is no longer any system of rulers or kings, and democracy is the rule of law, punishments are also supposed to reflect the nature of administration. In Britain, during the eighteenth century, there was seen a persistent rise in capital crimes, even when death penalty was imposed.

The UK Royal Commission on Capital Punishment (1949-1953), concluded that “modern penological thought discounts retribution in the sense of vengeance.”

“The general conclusion which we have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to a fall.”²

“Whether the death penalty is used or not and whether executions are frequent or not, both death penalty states and abolition states show [homicide] rates which suggest that these rates are conditioned by other factors than the death penalty” - Professor Thorsten Sellin

According to Dr. Ambedkar, abolition of death penalty was an option that needed to be considered seriously, to completely eradicate the controversy caused by this punishment. He stated that since the values of this country was based upon the principles of “non-violence”, capital punishment should be not used as a form of deterrence.

Arbitrariness while awarding capital punishment:

One of the most controversial aspects and a major issue highlighted in any discussion about death penalty is the fact of human error. When deciding upon a criminal case, every judges’ opinion may vary, what may seem as a heinous crime committed by one individual for which there may be no better punishment then death penalty as to set an example for the society, according to one judge, another judge may think that a punishment involving a prison sentence would be the correct method to set an deterrence example in the society, therefore they award the accused with a life imprisonment sentence. Hence, no matter how neutral a judge might be, that still does not mean that their idea of justice will always be the same or correct.

² Hansard Parliament UK, <https://hansard.parliament.uk/> (last visited Feb 9, 2024)

Hence, arbitrariness' in capital punishment is a very important point to be considered, since it is a matter of somebody's life. There have also been many instances where a person has been wrongfully convicted, that is a serious blunder.

According to Justice P.N Bhagwati, in the *Bacchan Singh v State of Punjab* case, "The views of judges as to what may be regarded as special reasons are bound to differ from judge to judge depending upon his value system and social philosophy with the result that whether a person shall live or die depends very much upon the composition of the Bench which tries his case and this renders the imposition of death penalty arbitrary and capricious."

Dr. Issac Ehrlich's Study on Death Penalty:

During the 1970s, studies analysing the national murder rate between 1930 and 1970, economist Isaac Ehrlich estimated that each one execution can prevent about seven or eight murders. He supported the idea that executional punishments have proved to be successful in preventing crimes and have significantly reduced crime rates.³

Conclusion:

Death penalty is a very complex topic, any decision made regarding it must be considered with proper care and caution, there are certain crimes committed that are heinous beyond human imagination, such crimes would require a punishment as severe as capital punishment. The possibility of the death sentence could either lower the number of crimes committed or have no deterrence effect at all, the answers are still very vague and have no proper clarity. Even though death penalty is often regarded as the worst punishment in the criminal justice system, it cannot be abolished in a hastily manner, unless and until there are proper systems to manage criminal activities in its place. Each judge's perception of the evidence varies according to their notions and personal beliefs; therefore, it must be the responsibility of the judge to be well aware of all the facts and circumstances and make sure that they take a completely unbiased stance when they decide to declare the defendant guilty. If there is any possibility of awarding a punishment less severe than death penalty, then such option must be thought about thoroughly.

3 RM McGahey, *Crime and Delinquency*, 26, Doctor Ehrlich's Magic Bullet - Economic Theory, Econometrics, and the Death Penalty, 485-502 (1980)