

CAPITAL PUNISHMENT IS A BETTER ALTERNATIVE TO LIFE IMPRISONMENT

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"Justice that love gives is a surrender, justice that law gives is a punishment."

- Mahatma Gandhi

It is generally presumed that the earlier form of punishment for acts which can be called criminal was private revenge. Retaliation for an inflicted injury was the personal affair of the victims and this often led to a lot of bloodshed between different families and clans. The resulting loss of life and property sometimes assumed such large proportions that communities were forced to restrict personal revenge to impose trials and official penalties on offenders. Religious leaders acted as moderators of conflicts and offences. The threat of divine revenge was used against criminals at a time when the fear of Gods and supernatural forces was considerable; magic and religion were found to be effective socio political tools. If the punishments meted out to wrong doers were commensurate with the crime they had committed it was thought to lessen God's fury. This was the very early origin of 'lex talionis' (an eye for an eye and a tooth for a tooth).

The jurisprudence of Ancient India, which was essentially Hindu-ruled, was shaped by the concept of 'Dharma', or rules of right conduct, as outlined in the various manuals explaining the Vedic scriptures such as 'Puranas' and 'Smritis'. The King had no independent authority but derived his powers from 'Dharma' which he was expected to uphold. The distinction between a civil wrong and a criminal offence was clear. While civil wrongs related mainly to disputes arising over wealth, the concept of pataka or sin was the standard against which crime was to be defined.

The smritikaras have dealt in detail with the classification of crimes and the punishments to be given to the guilty. Manu prescribed admonition, reproof, a fine, corporal punishment and banishment. Brahmanas were exempted from capital punishment, but in extreme cases banishment was recommended. Varna considerations dominated Manu's ideas of prescribing punishments. For instance, if a Sudra even mentions the names and castes of the twice-born with contempt, "an iron nail, ten fingers long, shall be thrust red-hot into his mouth". If he is arrogant enough to teach brahmanas their duties, 'the king caused hot oil to be poured into his mouth and into his ears'. In case of assaults, "with whatever limb a man of the lower caste injures a man of three higher castes; even that limb shall be cut off. If a brahmana killed a sudra, it amounted to killing a frog or a dog, a sin of which he could get rid off by mere penance.

Kautilya even went to the extent of bringing in the brahmana within the scope of capital punishment by providing him the death penalty by drowning him if he is

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guilty of high treason. He is, however, less severe on the lower castes compared to the ancient law giver Manu.

A severe type of imprisonment prescribed by Kautilya was forced labour in state mines, state farms and such other concerns of the state. If a person who is injured as a result of quarrel within seven days of the occurrence, it was treated as murder and death penalty was inflicted. For spreading false rumours, house-breaking and stealing war animals of the king (elephants and horses) hanging was the penalty. 'Any person who aims at the kingdom, who forces entrance into the king's harem, who instigates wild tribes or enemies (against the king), or who created disaffection in forts, country parts, or in the army, shall be burnt alive from head to foot'. One who murdered the father, mother, son, brother or an ascetic was burnt alive. Any woman who murders her husband, preceptor, or offspring, sets fire to another's property, poisons a man or cuts off any of the bodily joints of another shall be torn off by bulls, no matter whether or not she is rag with a child, or has not passed a month after giving birth to a child. Those who insulted the king, betrayed his council made evil attempts against the king had their tongues cut off. When a man other than a soldier stole weapons or armour he must be shot to death with arrows; if he was a soldier, he had to pay the highest amercement. Kautilya, is comparatively lenient towards the sexual crimes. After describing some of the many forms of execution, Kautilya says, that painful punishments as the above have been laid down in the sastras of great sages; but it has been declared as just to put to simple death those offenders who have not been cruel.

The criminal code in the Arthashastra⁴ is rather severe and it has been characterized as 'an eye for an eye and a tooth for a tooth'. A person who insulted his father, mother, son, brother, teacher or an ascetic had his tongue cut off; 'if he bites any limb of these persons, he shall be deprived of the corresponding limb'.

Judicial torture was used to extort confessions. Kautilya speaks of Two kinds of torture (Karma); six punishments (shatdandah), seven kinds of whipping (kasa), two kinds of suspension from above (upari nibandhan) and water tube (udakanalika cha). The principle laid down was 'that those guilty believed to be true shall be subjected to torture'.

In civil cases, the Hindu Law as embodied in the sastra was administered. Manu has also dealt elaborately with civil law and has certain interesting observations to make on debt, property, agreements, inheritance etc.

Kautilya has shown a general repulsion against the savage punishments laid down in theory and an attempt to modify them in practice. Manu thought punishment both retributive and deterrent. Therefore he wants the king 'having fully ascertained and having due regard to the motive, the place of occurrence, the ability of the offender to suffer the penalty, and nature of the crime, should impose the penalty which the accused deserves. Let him (king) punish (offenders first by gentle admonition, afterwards by harsh rebuke, thirdly by fine and after that by corporal punishment. Unjust punishment destroys reputation among men and fame (after

death), and causes even in the next world the loss of heaven. Let him, therefore, beware of inflicting it.'

In a word, ancient Indian jurisprudence was 'much advanced in the field of administration of justice'. This advancement is particularly seen in the policy of regulating punishments. The very theory of inflicting punishments to various categories of civil and criminal offences brings out its high sense of justice.

It was the Mughals who introduced the Muslim law of crimes for purposes of administration of criminal justice. It was not only in force during the Mughal age but also for over hundred years during the British rule. Aurangzeb who was interested in enforcing Islamic law appointed a syndicate of learned theologians to prepare a comprehensive legal digest and they composed Fatwa-i-Alamgiri. The farmans on criminal law issued by Aurangzeb supplement the theoretical Muslim criminal law. In present day in our country capital punishment is given for rare cases like people who have committed hideous crimes like homicide, rape, etc. Death penalty has been a way of punishing people since ages. Although there are some countries that have abolished death penalty from their law, there are still many which still practice the act of killing a person for crime. Death penalty is prevalent in the US, Asian and Middle Eastern countries. Some of the ways of executing criminals are hanging, shooting, electrocution and giving lethal injections.

People have different opinions on the issue of death penalty given to a convict. While some think that death penalty is necessary for those who have committed a terrible crime, there are others who consider it as an immoral act that goes against the values of humanity.

ADVANTAGES:

1. A person who has committed a crime like killing or raping another person should be given death penalty, which is as severe a punishment as the act. It is said that when a criminal is given a death penalty, it dissuades others in the society from committing such serious crimes. They would refrain from such crimes due to fear of losing their lives. This would definitely help in reducing crime rate in society.
2. If a criminal is jailed, he may again commit the same crime after being released from prison. Giving him death penalty would make sure that the society is safe from being attacked by criminals. It seems to be an appropriate punishment for serial killers and for those who continue to commit crimes even after serving imprisonment.
3. Some believe that instead of announcing life imprisonment for the convicts, where they would have to live a futile life behind closed bars, it is better to kill them. It is said that imprisoning someone is more expensive than executing him. Rather than spending on a person who may again commit terrifying crimes, it is better to put him to death.
4. Death penalty is equated as revenge for pain and suffering that the criminal inflicted on the victim. Some people strongly believe that a person who has

taken the life of another person does not have a right to live. Sentencing such a criminal can give relief to the family members of the victim that their loved one has obtained justice.

5. It is also important for the safety of fellow prison inmates and guards, as people who commit horrifying crimes like murder are believed to have a violent personality and may, in future, attack someone during imprisonment. These reasons emphasize the importance of death penalty for the safety and betterment of the human society.

REFERENCES

1. H.V. Sreenivas Murthy, op. cit., pg. 210.
2. B.A. Saletore, Manu gave the stamp of sanctity and performance to the socio politics of the land, and has left to the Indian world the first code of civil and criminal law.
3. Chanakya (also known as Kautilya or Vishnugupta) was the Prime minister of the first Mauryan Emperor Chandra Gupta Maurya.
4. Arthashastra (also spelt Arthasastra) is an ancient Indian treatise on economics and politics written sometime between the 4th century BCE and 150 CE by the 'kingmaker' Chanakya (also known as Kautilya or Vishnugupta) during the early years of the Mauryan Empire.
5. H.V. Sreenivas Murthy, op. cit., pg. 212.
6. Cited earlier in Chapter I, pg. 18.
7. R.C. Majumdar, The Mughal Empire, pg.544.
8. M. Rama Jois, Legal and Constitutional History of India, Vol. II, pg. 11.
9. Stocia Do Mogar. Vol. II, pg. 419-420, quoted in Rama Jois, pg. 10-11.
10. H.V. Sreenivas Murthy, op. cit., pg. 264.
11. R.C. Majumdar, op. cit., pg. 544.
12. Jois, Vol.II, op. cit., pg. 11.
13. M.P. Jain, op. cit., 540.
14. Michael Edwards, op. cit., pg.242.
15. The original words "the said territories" have successfully been amended by the A. O. 1937, the A. O. 1948, the A. O. 1950 and Act 3 of 1951, sec. 3 and schedule to read as above.
16. Indian Penal Code-1860, pg. 4.
17. Indian Penal Code. pg. 16. Chapter III of Punishments.
18. Subs. By the A.O. 1950 for "the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were substituted by A.O. 1937 for the Government of India for the Government of the place."
19. Subs. By Act 26 of 1955, sec.II7 and schedule, for "transportation" (w.e.f. 1.1.1956).
20. Subs. By Act 8 of 1882, sec,5, for "be less than a."
21. Frank New Sam, "The Home Office", London. pg. 44 as cited in Hazary on pg. 3.
22. Ahmad Siddique, op. cit., pg 118.