



DEATH PENALTY – A BRIEF HISTORY

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ABSTRACT

Society has always used punishment to discourage would be criminals from unlawful action. Since Society has the highest interest in preventing murder from unlawful action, it uses the strongest punishment available to deter murder, and that is the Death Penalty.

There are however two major problems: Is the Death Penalty, in the light of its potential deterrent effects as measured by the available criminological data, a more adequate means for protecting the community than other modes of punishment?

Chapter 26, the final chapter of the Dhammapada, states, "Him I call a Brahmin who has put aside weapons and renounced violence toward creatures. He neither kills nor helps others to kill." These sentences are interpreted by many Buddhists (especially in the West) as an injunction against supporting any legal measure which might lead to the death penalty. However, as is often the case with the interpretation of scripture, there is dispute on this matter. Historically, most states where the official religion is Buddhism have imposed capital punishment for some offenses.

Some forms of Islamic law, as in Saudi Arabia, may require capital punishment, but there is great variation within Islamic nations as to actual capital punishment. Apostasy in Islam and stoning to death in Islam are controversial topics. Furthermore, as expressed in the Quran, capital punishment is condoned. Instead, murder is treated as a civil crime and is covered by the law of retaliation, whereby the relatives of the victim decide whether the offender is punished with death by the authorities or made to pay diyah as compensation.

Muslims frequently refer to the story of Cain and Abel when referring to killing someone. The Qur'an says the following: "If anyone kills person-unless it be (a punishment) for murder or for spreading mischief in the land – it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people" (Aur'an 5"32).

KEYWORDS :**INTRODUCTION:**

Death Penalty has a long history and closely associated with religion. In every religion God has been imagined as Judge. He is the neutral judge and operates a fair trial. No biasness touches Him. Hinduism & Islam openly supports the death penalty. Now we shall discuss how religion permits death sentence.

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There are however two major problems: Is the Death Penalty, in the light of its potential deterrent effects as measured by the available criminological data, a more adequate means for protecting the community than other modes of punishment?

Are the emotional predispositions of human beings such that its abolition would bring about increased hazards of private vengeance, as some have argued?

The application of death penalty has a long history. It is a very old method of punishment. When neither imprisonment had come into existence, nor the value of exploitation had been recognized or criminal and his criminality was not looked upon separately, the capital punishment was surer and certain method for getting riddance of the offender and his offensiveness. The death of the criminal satisfied the individual or the group which had been his victim. The retributory feeling passed on from individuals to groups and from groups to large societies as the civilization marched away from the primitive form of society.

HISTORY OF DEATH PENALTY:**BUDDHISM:**

There is disagreement among Buddhists as to whether or not Buddhism forbids the death penalty. The first of the Five Precepts (Pancha-sila) is to abstain from destruction of life. Chapter 10 of the Dhammapada states:

Everyone fears punishment; everyone fears death, just as you do. Therefore you do not kill or cause to be killed.

Chapter 26, the final chapter of the Dhammapada, states, "Him I call a Brahmin who has put aside weapons and renounced violence toward creatures. He neither kills nor helps others to kill." These sentences are interpreted by many Buddhists (especially in the West) as an injunction against supporting any legal measure which might lead to the death penalty. However, as is often the case with the interpretation of scripture, there is dispute on this matter. Historically, most states where the official religion is Buddhism have imposed capital punishment for some offenses. One notable exception is the abolition of the death penalty by the Emperor Saga of Japan in 818. This lasted until 1165, although in private manors executions continued to be conducted as a form of retaliation. Japan still imposes the death penalty, although some recent justice ministers have refused to sign death warrants, citing their Buddhist beliefs as their reason. Other Buddhist-majority states vary in their policy. For example, Bhutan has abolished the death penalty, but Thailand still retains it, although Buddhism is the official religion in both.

Without one official teaching on the death penalty. Thai monks are typically divided on the issue with some favoring abolition of the death penalty while others see it as bad karma stemming from bad actions in the past. In the edicts of the great Buddhist king Ashoka (ca. 304-232 BC) inscribed on great pillars around his kingdom, the King showed reverence for all life by giving up the slaughtering of animals and many of his subjects followed his example. King Ashoka also extended the period before execution of those condemned to death so they could make a final appeal for their lives.

CHRISTIANITY:

Views on the death penalty in Christianity run a spectrum of opinions, from complete condemnation of the punishment, seeing it as a form of revenge and as contrary to Christ's message of forgiveness, to enthusiastic support based primarily on Old Testament law. Among the teachings of Jesus Christ in the Gospel of Luke and the Gospel of Matthew, the message to his followers that one should "Turn the other cheek" and his example in the story Pericope Adulterae, in which Jesus intervenes in the stoning of an adulteress, are generally accepted as his condemnation of physical retaliation (though most scholars agree that the latter passage was "certainly not part of the original text of St John's Gospel. More

militant Christians consider Romans 13:3-4 to support the death penalty. Many Christians have believed that Jesus' doctrine of peace speaks only to personal ethics and is distinct from civil government's duty to punish crime.

The sixth commandment (fifth in the Roman Catholic and Lutheran Churches) is translated as "Thou shalt not kill" by some denominations and as "Thou shalt not murder" by others. As some denominations do not have a hard-line stance on the subject.

ROMAN CATHOLIC CHURCH:

St. Thomas Aquinas, a Doctor of Church, accepts the death penalty as a deterrent and prevention method but not as a means of vengeance. (See Aquinas on the death penalty). The Roman Catechism states this teaching thus:

Another kind of lawful slaying belongs to the civil authorities, to whom is entrusted power of life and death, by the legal and judicious exercise of which they punish the guilty and protect the innocent. The just use of this power, far from involving the crime of murder, is an act of paramount obedience to this Commandment which prohibits murder. The end of the Commandment is the preservation and security of human life. Now the punishments inflicted by the civil authority, which is the legitimate avenger of crime, naturally tend to this end, since they give security to life by repressing outrage and violence.

Hence these words of David: In the morning I put to death all the wicked of the land, that I might cut off all the workers of iniquity from the city of the Lord. In *Evangelium Vitae*, Pope John Paul II suggested that capital punishment should be avoided unless it is the only way to defend society from the offender in question, opining that punishment "ought not go to the extreme of executing the offender except in cases of absolute necessity: in other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, such cases are very rare, if not practically non-existent. The most recent edition of the Catechism of the Catholic Church restates this view: That the assessment of the contemporary situation advanced by John Paul II is not binding on the faithful was confirmed by Cardinal Ratzinger when he wrote in 2004 that, if a Catholic were to be at odds with the Holy Father on the application of capital punishment or on the decision to wage war, he would not for that reason be considered unworthy to present himself to receive holy Communion. While the Church exhorts civil authorities to seek peace, not war, and to exercise discretion and mercy in imposing punishment on criminals, it may still be permissible to take up arms to repel an aggressor or to have recourse to capital punishment.

There may be a legitimate diversity of opinion even among Catholics about waging war and applying the death penalty, but not however with regard to abortion and euthanasia while all Catholics must therefore hold that "the infliction of capital punishment is not contrary to the teaching of the Catholic Church, and the power of the State to visit upon culprits the penalty of death derives much authority from revelation and from the writings of theologians", the matter of "the advisability of exercising that power is, of course, an affair to be determined upon other and various considerations."

QUAKERS:

The Religious Society of Friends or Quaker Church is one of the earliest American opponents of capital punishment and unequivocally opposes execution in all its forms.

SOUTHERN BAPTIST:

Southern Baptists supports the fair and equitable use of capital punishment for those guilty of murder or treasonous acts, so long as it does not constitute as an act of personal revenge or discrimination.

ANGLICAN AND EPISCOPALIAN:

The Lambeth Conference of Anglican bishops condemned the death penalty in 1988: This Conference: ...3. Urges the Church to speak out against:

THE EVANGELICAL LUTHERAN CHURCH IN AMERICA:

In a 1991 social policy statement, the ELCA officially took a stand to oppose the death penalty. It states that revenge is a primary motivation for capital punishment policy and that true healing can only take place through repentance and forgiveness.

COMMUNITY OF CHRIST:

Community of Christ, the former Reorganized Church of Jesus Christ of Latter Day Saints (RLDS), is opposed to capital punishment. The first stand against capital punishment was taken by the church's Presiding High Council in 1995. This was followed by a resolution of the World Conference in 2000.

The Church of the Brethren and Friends have opposed the death penalty since their founding, and continue to be strongly opposed to it today. These groups, along with other Christians opposed to capital punishment, have cited Christ's Sermon on the Mount (transcribed in Matthew Chapter 5-7) and Sermon on the Plain (transcribed in Luke 6"17-49). In both sermons, Christ tells his followers to turn the other cheek and to love their enemies, which these groups believe mandates nonviolence.

HINDUISM:

A basis can be found in Hindu teachings both for permitting and forbidding the death penalty.

Hinduism preaches ahimsa (or ahinsa, non-violence), but also teaches that the soul cannot be killed and death is limited only to the physical body. The soul is reborn into another body upon death (until Moksha), akin to a human changing clothes. The religious, civil and criminal law of Hindus is encoded in the Dharmasastras and the Arthashastra. The Dharmasastras describe many crimes and their punishments and call for the death penalty in several instances, including murder, the mixture of castes, and

ISLAM:

Some forms of Islamic law, as in Saudi Arabia, may require capital punishment, but there is great variation within Islamic nations as to actual capital punishment. Apostasy in Islam and stoning to death in Islam are controversial topics. Furthermore, as expressed in the Quran, capital punishment is condoned. Instead, murder is treated as a civil crime and is covered by the law of retaliation, whereby the relatives of the victim decide whether the offender is punished with death by the authorities or made to pay diyah as compensation.

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This verse, in accordance with the Mosaic Law, maintains that the punishment for murder is the death penalty. "Mischief in the land" has been interpreted universally to refer to one who upsets the stability of the entire nation or community, in that his actions seriously damage the society, either through corruption, war or otherwise.

Although many hard-line and extremist Muslim societies have adopted capital punishment for other than the crime of murder, this is in violation of the Qur'anic law mentioned above, and so is rejected by most orthodox commentators and scholars. However, there is also a minority view within some Muslims that capital punishment is not justified in the light of Qur'an.

CAPITAL PUNISHMENT UNDER MUGHAL EMPIRE:

During the Mughal times in India, the main system of criminal law administered was Quranic one. The system had originated and grown outside India. Its main sources were the Quran as supplemented and interpreted by case law and opinions of jurists. Since all the three sources were "trans-Indian", it became necessary for the Indian Qazis to have digest of Islamic Law. The last such digest was Fatwa-i-Alambiri compiled by a syndicate of theologians under the orders of Aurangzeb.

Akbar's idea of justice may be gathered from his instruction to the Governor of Gujarat that he should not take away life till after the most mature deliberations. The Emperor himself was the final Court of Appeal, and when he appeared in front of his window every morning, it was open to any one to demand justice personally – through the demand was seldom made.

Akbar was keen to lay down, that capital punishment was not to be accompanied with mutilation or other cruelty, and that, except in cases of dangerous sedition, they should not inflict capital punishment until the proceedings were sent to the Emperor and confirmed by him. In the time of Jehangir no sentence of death could be carried out without the confirmation of the Emperor. Capital punishment, it is stated was almost totally unknown under Aurangzeb under the dictates of anger and passion he never issued orders to death.

The capital sentence, qati under the Muslim law is inflicted, after the offence has been legally proved, in the following cases: (i) when the next-of-kin of a murdered person demands the life to the murderer (qisas) and refuses to accept the alternative of money compensation (diva of price of blood); (ii) in certain cases of immorality; the woman owner is stoned to death by the public; (iii) on highway robbers.

The Muslim Criminal Law compared more favourably with the English Law as it was in force at that time. The English Law still prescribed barbarous punishments and contained some glaring anomalies, while as Hastings had declared, the Muslim Law was founded 'on the most lenient principle and on abhorrence of bloodshed.'

CAPITAL PUNISHMENT UNDER EARLIER BRITISH RULE

We may now consider the statutory modifications made in the Muslim Criminal Law during British times, in the period before the commencement of Indian Penal Code. The policy of the British being to interfere as little as possible with the Muslim penal law, only such modifications were made as were required to remove glaring defects. Regarding homicide only following changes were made by a Bengal Resolution of 1773 (Sections 50, 52, 55 and 76 substituted by Regulation 4, 1797).

(a) Nature of the instalment as signifying the intention was made immaterial in homicide: the intention was to be gathered from the general circumstances and the evidence: and

(b) The direction left to the next-of-kin of the murder.

Thus, the motive, not the method should determine the sentence. In 1791 the punishment of mutilation was abolished. All criminals adjudged in accordance with the Fative of Law officers to lose two limbs were to suffer instead of it imprisonment of life with hard labour for 7 years.

A Bangal Resolution of 1797 provided that in cases of willful murder, judgement was to be given in the assumption that "retaliation" had been claimed. The sentence could extend to death if that was the prescribed sentence under Mohammedan Law.

As regards 'fine of blood' I, the judges were directed to commute the punishment to imprisonment which could extend to life imprisonment.

Section XXVI Clauses 1st, 2nd, 3rd and 4th of the List of Capital Offences

under Bombay Regulation XTV of 1827 dealt with murder as follows: Clause 1st: "Any person who shall purposely, and without justifiable or extenuating cause deprive a human being of life, or who shall commit or assist in any unlawful act the perpetration of which is accompanied with the death of human being, shall be liable to punishment of murder, provided always that death takes place within six months after the act was committed."

Clause 4th: "The punishment of murder shall be death, transportation, imprisonment for life, or solitary imprisonment with flogging"

The reasons given by the framers of the 1827 draft in support of the various provisions relating to the death sentence suggested by them, were as follows:

First among the punishments provided for offences by the Code stands death. No argument brought to our notice has satisfied us that it would be desirable wholly to dispense with this punishment. "But we are convinced that it ought to be very sparingly inflicted, and we propose to employ it only in cases where either murder or the highest offence against the State has been committed.

Regarding the power of communication it was observed that it was evidently fit that the Government should be empowered to commute the sentence of death (without consent of the offender) for any other punishment. The Law Commissioners in 1846 dealt with the subject of death punishment and came to the conclusion that if death is certainly caused by words, deliberately used by a person with intention to cause that result, or with the knowledge that in the condition of the party to whom the words are spoken it is likely that the words will make such an impression on him also cause death, and without any such excuse as is admissible under "General Exceptions", such person should suffer the penalty of culpable homicide.

On 30th May, 1851, the revised edition of the Code was circulated to judges for comments. Later, in 1854 a Committee consisting of Barnes. Peacock. Sir James Colvills, Grant, Elliot, etc, was asked to consider the revised Code. That Committee did not recommend any substantial alteration in the original Code. The Code was read for the first time on 28th December, 1857 and referred to Select Committee. It was then passed by the Legislative Council of India. It received the assent of the Governor-General on 6th October, 1860.

Thus, it was left to the Britishers to give the country a systematized penal code which strictly limited the number of capital offences and laid down the procedure for criminal trials. In a sense, the Britishers were responsible for partial abolition of capital punishment.

CONCLUSION:

Recent decisions of the courts attempted to abolish the punishment directly and indirectly. The decision prescribed a limit of two years after which the sentence of death should not be carried out. This was over-ruled by a larger Bench which correctly pointed out that prescribing a period of limitation, as it were, was not open to courts. Another case enjoined a rather nebulous test by saying that the death penalty should be imposed in the "rarest of rare cases", it is not clear whether the test thinks in terms of frequency or in terms of the quality of the crime. There was a time when the court had to give reasons why it is imposed. This shows that the ordinary punishment is the lesser one and the extreme penalty is exceptional and to support it reasons of cogency must exist. Recently there was an attack on hanging as a penalty. It was said to be more painful than other modes of execution.

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