

# THE RHETORIC AND REALITY OF CAPITAL PUNISHMENT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Vector illustration of a Hangman's Gallows and Noose for crime and capital punishment.

Following the Supreme Court's dismissal of review petitions by all four convicts in the Nirbhaya rape and murder case, the four have moved one step closer to the gallows. In the light of this, and the repeated demands to punish all rape convicts with the death penalty, it becomes important to examine empirical evidence on the topic.

If the experience of the past century is taken as a guide, it is clear that death penalty as a measure to end sexual violence has completely failed. In 1965, only 23 nations had abolished the death penalty. But, subsequently, criminal justice systems across the world lost confidence in this mode of punishment. Today, over two-thirds of countries have given up on capital punishment either in law or in practice. The standards by which nations conduct themselves have evolved. But, in India, we continue to go against the tide.

In the system of criminal justice worldwide, including in India, underpinning the element of sentencing is the 'Theory of Punishment'. This is classical law, proved so by having stood the test of time for centuries. It stipulates that there should be four elements of a systematic punishment imposed by the state: the protection of society; the deterrence of criminality; the rehabilitation and reform of the criminal; and the retributive effect for the victims and society. Capital punishment, in its very essence, goes against the spirit of the 'Theory of Punishment', and by extension, natural justice.

The first element, 'protection of society,' is not served by imposing the death sentence any better than by incarceration. This has been proven time and again as inmates have spent decades on death row, harming no one, but being brutalised by the inhuman punishment meted out to them. Second, there are several factors which effect criminal activity and deterrence is only one of them. In a UN survey, it was concluded that "capital punishment deters murder to a marginally greater extent than the threat of life imprisonment." The report of the Justice J.S. Verma Committee said that capital punishment is a regressive step and may not provide deterrence. The committee recommended the life sentence for the most grievous of crimes.

It is not just statistics that prove the case against deterrence, so does logic. A reasonable man is deterred not by the gravity of the sentence but by the detectability of the crime.

Third, the facet of 'reform and rehabilitation of the criminal' is immediately nullified by the prospect of capital punishment, *ad oculos*.

This leaves only the final element — 'the retributive effect'. Killing should never be carried out based on the primal and emotive desire among human beings for revenge. Revenge is a personalised and emotional form of retribution, which often loses sight of proportionality.

A comparative study of death row conflicts shows that the jurisprudence in this regard is skewed against the weaker sections. Justice P.N. Bhagwati, said that "death penalty in its actual operation is discriminatory for it strikes mostly against the poor and deprived". The reasons include lack of adequate legal assistance to the marginalised. The Death Penalty Project has

conclusively shown the manner in which wrongful capital sentencing is carried out. In the United States alone, over 350 people have reportedly been wrongfully sentenced in the last century.

Hence, in the light of the recent incidents of heinous violence perpetrated against women, it becomes imperative for the judiciary not give in to the public clamour for making capital punishment mandatory for rape convicts. Public angst and emotions cannot be an alternative to reason and logic. There needs to be better enforcement of law in response to valid questions on justice but death penalty holds no answers.

*Prashant Singh is a Supreme Court advocate*

You have reached your limit for free articles this month.

Register to The Hindu for free and get unlimited access for 30 days.

Already have an account ? [Sign in](#)

Sign up for a 30-day free trial. [Sign Up](#)

Find mobile-friendly version of articles from the day's newspaper in one easy-to-read list.

Enjoy reading as many articles as you wish without any limitations.

A select list of articles that match your interests and tastes.

Move smoothly between articles as our pages load instantly.

A one-stop-shop for seeing the latest updates, and managing your preferences.

We brief you on the latest and most important developments, three times a day.

\*Our Digital Subscription plans do not currently include the e-paper ,crossword, iPhone, iPad mobile applications and print. Our plans enhance your reading experience.

*Why you should pay for quality journalism - [Click to know more](#)*

Please enter a valid email address.

How an idea for a 'perfect Mumbai feature story' failed to materialise

Subscribe to The Hindu now and get unlimited access.

Already have an account? [Sign In](#)

Sign up for a 30-day free trial. [Sign Up](#)

To continue enjoying The Hindu, You can turn off your ad blocker or Subscribe to The Hindu.

[Sign up for a 30 day free trial.](#)

**END**

CrackIAS.com