UNIT-5: CAPITAL PUNISHMENT

UNIT STRUCTURE

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5.1 LEARNING OBJECTIVES

After going through this unit you will be able to:

- Know about capital punishment, the frequently discussed issue in media.
- Describe how it is related to the core agenda of philosophy.
- Analyze different theories of punishment.
- Find out the possible justification for and against capital punishment.
- Understand its relevance as well as its proper execution in the present social phenomenon.

5.2 INTRODUCTION

Philosophy is a discipline which discusses the life and the universe as a whole. It discusses the phenomenal as well as the transcendental world as our curiosity towards knowledge goes beyond. Again it endeavors to know how to lead a worthwhile life as a human being in true sense of the term. It is the activity of that branch of philosophy which is called Axiology. Ethics, "the science of human behavior" is important subject matter of Axiology. The theory of punishment is one of the key issues of ethics. Of course the issue of punishment may have two aspects, i.e. legal and moral. Ethics as the branch of philosophy under Axiology try to discuss different theories of punishment in these both aspects. This is how the theory of punishment has become one of the important issues of discussion in philosophy. The capital punishment is the important issue of discussion under theory of punishment. The focal concern of this chapter is to expose what capital punishment is and what are its issues and significance in the society.

5.3 BACKGROUND

The debate over whether execution is an acceptable form of punishment involves a complicated collection of legal, empirical and moral issues. The eighth amendment to the United States Constitution prohibits "cruel and unusual punishment," and so the legal debate has tended to center around whether capital punishment is cruel or unusual.

Crime is a disruptive act. It is the violation of the laws of society. Mackenzie says that a wrong against social law is a wrong against humanity, and it cannot be forgiven until the offended majesty of law is appeased. It is here that the justification of punishment is found. Society or State punishes the wrong doer because the latter has degraded the majesty of the social law by its violation. Punishment is inflicted on the wrong doer, because he has earned it by violating the moral law. The wrong doer has not only tried to disturb the social peace and harmony through his criminal acts, but has also degraded himself. Punishment is

inflicted on a wrong doer because justice demands it. Justice demands that there should be appropriate distribution of reward and punishment in proportion to the merit and demerit of actions. Here the issue arises how the degree of crime will be counted to measure the punishment.

5.4 THEORIES OF PUNISHMENT

To think clearly about whether we ought to carry out executions at all, it is helpful to begin with an overview of different views about the justification of punishment. We can divide justifications of punishment into two broad categories: deontological and utilitarian. These two categories mainly hint three different types of theories of punishment. These are: Preventive or Deterrent theory, Reformative or Educative theory and Retributive theory. Let us have a brief overview of these three theories.

5.4.1 Preventive Theory

According to the advocates of the preventive theory, the primary end of punishment is to prevent the recurrence of crime. Here it is said a criminal ought to be punished in order to prevent others from committing similar crimes. It should be an exemplary punishment. The problem of this theory is sometimes it may recommend severe punishment for slight offences. The main theme of this theory has best been expressed through the maxim “you are not punished for stealing sheep, but in order that sheep may not be stolen,” According to this theory, the criminal is punished as a means to an end which is the prevention of crimes. But, it can be said, it is not justified to treat man as means.

5.4.2 Reformative Theory

According to the advocates of the reformative theory, the aim of punishment is to reform the criminal himself. The offender was, prior to the commission of offence, a member of the society. It should be the duty of the society to regenerate the offender. The offender

should be punished for his own good. Punishment aims at reforming the offender of his anti-social tendencies so that he may regain his position in society. Punishment should educate the offender in the consciousness of the moral ideal and moral duties. It should never be tinged with retribution.

5.4.3 Retributive Theory

Retributive theory is the third important view of punishment. This theory is purely connected to the legal system. It says, punishment is an act of justice. It is (punishment) an end in itself, not a means to any end beyond itself. The primary aim of punishment is retribution. The aim of punishment is to defend the supremacy and authority of the moral law and to do justice to a criminal. According to the advocates of the retributive theory the offender against society must be punished. He has done a wrong against society. The wrong which he has done to others and to society should shrink back upon himself. It is through punishment that he should be made conscious of the wrong he has done. Punishment is the compliment paid to the criminal. The retributive theory has two wings. According to the first wing the punishing authority should take into consideration the motives and intentions of a wrong-doer while punishing the offender. Punishment should not be inflicted mechanically. Otherwise, punishment will be mere oppression. Punishment should be justice tempered with mercy. This is known as Mollified Retributive theory. On the other hand according to the second wing of this theory, punishment should be of the nature of “tit for tat, eye for an eye, and tooth for a tooth.” Severe crimes should have severe punishment. Nature of punishment is to be determined by the nature of the offence. This is known as regoristic retributive theory. In this context the issue of capital punishment comes.

The retributive theory justifies capital punishment under exceptional circumstances. Right to live is the fundamental right. If a person takes away the life of another, justice demands that he should

be deprived of his life. This is how the way of capital punishment can be understood. But generally the execution of capital punishment is a controversial debate since its inception. Let us see what capital punishment is and what is its issue?



CHECK YOUR PROGRESSS

Q. 1: What is preventive theory of punishment?

Answer: ……..... .....

Q. 2: What is reformative theory of punishment?

Answer: ……..... .....

Q. 3: What is retributive theory of punishment?

Answer: ……..... .....

5.5 WHAT IS CAPITAL PUNISHMENT?

Capital punishment means “death sentence”. It is also known as the death penalty, 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 can result in a death penalty are known as capital crimes or capital offences. The term *capital* is derived from the Latin *capitalis* means “of the head”, referring to execution by beheading. Capital punishment is a legal penalty in India.

5.5.1: Philosopjers View on the Issue

Different philosophers have given different views on punishment. The famous Greek philosopher Aristotle regards punishment as negative reward. The man who deliberately breaks

a moral law is entitled to a negative reward. The society gives him what is his due. The German philosopher Emanuel Kant holds that punishment ought to be inflicted on the criminal because he has committed a crime, not as a means to his own good or that of others. He advocates the retributive theory of punishment. Kant says, "Punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to society. The penal law is a categorical imperative". Hegel also advocates this view. He also holds that punishment is demanded by the criminal. It is his reward. It is what he deserves-what he has earned by breaking the moral law. It may be said to be his negative reward. The view of these three philosophers is very close to capital punishment as they have corollary to the retributive theory of punishment. The other thinker Rashdall advocates the reformative theory of punishment, and criticizes the retributive theory. He brands it as a vindictive theory. According to him, the amount of pain to be inflicted on the criminal in proportion to the crime cannot be ascertained.

5.6 DEBATE ON CAPITAL PUNISHMENT: IS CAPITAL PUNISHMENT JUSTIFIED?

The above mentioned three theories have their own view regarding capital punishment. The reformative theory of punishment aims at the reformation of the criminal. It is therefore, apparent that capital punishment is not justified according to this theory. If the criminal is given death sentence, the question of his reformation becomes meaningless. Secondly the preventive theory aims at preventing the recurrence of crimes. The criminal is not punished so much for his own good as for preventing others from committing similar crimes. This theory advocates exemplary punishment. Hence capital punishment is justifiable on this theory. The Mollified Retributive theory advocates punishment to the wrong-doer after considering his motive, intention and the circumstances

under which the wrong was done. But if the crime is of severe nature and if there are no extenuating circumstances, the criminal being hardened and incurable, capital punishment may be awarded. But Rigoristic Retributive theory does not consider the extenuating circumstances of the criminal. Rather it renders punishment to the criminal according to the gravity of the crime.

5.6.1 Reformists View

The reformists or the humanists as it is already hinted by reformative theory are opposed to capital punishment. They maintain that if punishment merely aims at vindication of the moral law, it smack of revenge. According to this standpoint a wrong doer becomes temporally insane while committing a crime. Usually no murder is committed in cold blood. But when society inflicts death sentence on a criminal, it does so in cold blood. Therefore, society or its leaders should also be punished with death. The humanists maintain that taking one's life to set an example to others is an act of barbaric cruelty. Homicidal crimes have not disappeared from the countries where capital punishment is in vogue. Capital punishment has no deterrent effect. According to the humanists, healthy and strong public opinion as well as mass awareness are the real deterrent to crime. Treating the offender as a means to an end is a crime against humanity.

The reformist theory is supported by Criminal Sociology. It regards crimes as outcomes of unfavorable social circumstances. According to them crimes are due to social inequalities, maladjustments and corruptions. For example, it presumes that theft is due to poverty. Therefore repression of crime without improving the social and economic conditions of criminals is useless and injurious. Crimes can be prevented only if the human society is reconstructed on the basis of justice and equity.

Here it can be said, if punishment can reform the offender, it serves its purpose well. There is a possibility that with the reformation of an offender punishment may harden the criminal habit of the criminal. A kind treatment may sometimes produce a better effect than punishment. Sometimes forgiveness may bring home to the criminal his guilt and lead him to repentance and reformation. Forgiveness by the offended person sometimes melts the heart of a criminal and transforms his nature.

From the above standpoint of the reformists it is clear that this theory cannot justify capital punishment, because the hanged man cannot be reformed.

5.6.2: Challenge to Reformists View

There are some problems in the reformists' standpoint. It is fact that all crimes cannot be attributed to social maladjustments. Crimes are deliberately committed by some persons, who are not necessarily under adverse social conditions. The common phenomenon of corruption is the right evidence of that. To ascribe all crimes to social distempers, as the reformists intended to, is to miss the distinctive character of crimes.

5.6.3 Releance of the Debate

Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union, Article 2 of the Charter of Fundamental Rights prohibits the use of capital punishment. Also, the Council of Europe, which has 47 member states, prohibits the use of the death penalty by its members. The United Nations General Assembly has adopted, in 2007, 2008, 2010, 2012 and 2014 non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition. Although most nations have abolished capital

punishment, over 60% of the world's population live in countries where executions take place, such as China, India, the United States and Indonesia.

The arguments against death sentence are true to a great extent. But abolition of capital punishment cannot also be advocated. It is true that crimes have not disappeared from the countries where capital punishment is in force. But it cannot be ignored that the incidence of heinous crimes may rise sharply if capital punishment is abolished in those countries. All cases of crimes, as the reformists advocate, cannot be due to social or economic inequalities, lack of education or to some mental defects. There may be some 'born criminal'; nothing can reform these born criminals. In that case if a criminal who has committed a heinous crime goes off with a lighter punishment, it will give an indulgence to the criminal tendencies that may be in other persons. So, here the preventive attitude of punishment cannot be ignored. If the crime is of severe nature and if there are no extenuating circumstances in favour of the criminal, death sentence may be justified in that case. Where the criminal commits murder in cold blood, he will have to accept death sentence as his reward.

5.7 CAPITAL PUNISHMENT IN INDIA:

Capital punishment is a legal penalty in India. Here at least 100 people in 2007, 40 in 2006, 77 in 2005, 23 in 2002, and 33 in 2001 were sentenced to death (but not executed), according to Amnesty International figures. No official statistics of those sentenced to death have been released. The president of India use to receive many mercy petitions who are convicted by Indian court and verdict death sentence. As of July 2015, President Pranab Mukherjee has rejected 24 mercy pleas including that of Yakub Memon, Ajmal Kasab, Afzal Guru. On 14 August 2004, Dhananjoy Chatterjee was hanged for the murder (following

a rape) of 18-year-old Hetal Parekh at her apartment residence in Bhowanipur on 5 March 1990. Chatterjee, whose mercy plea was rejected on 4 August 2004, was kept at Alipore Central Jail for nearly 14 years.

On 3 May 2010, a Mumbai Special Court convicted Ajmal Kasab of murder, waging war on India, possessing explosives and other charges. On 6 May 2010 the same trial court sentenced him to death on four counts and to a life sentence on five other counts. Kasab was sentenced to death for attacking Mumbai and killing 166 people on 26 November 2008 along with nine other Pakistani terrorists. He was found guilty of 80 offences, including waging war against the nation, which is punishable by death. Kasab's death sentence was upheld by the Bombay High Court on 21 February 2011 and by the Supreme Court on 29 August 2012. His mercy plea was rejected by the president on 5 November and the same was communicated to him on 12 November. On 21 November 2012, Kasab was hanged in the Yerwada Central Jail in Pune. Likewise Afzal Guru was convicted of conspiracy in connection with the 2001 Indian Parliament attack and was sentenced to death. The Supreme Court of India upheld the sentence, ruling that the attack "shocked the conscience of the society at large." Afzal was scheduled to be executed on 20 October 2006, but the sentence was stayed. He was hanged on 9 February 2013 at Delhi's Tihar Central Jail.

Yakub Memon, convicted of 1993 Bombay bombings, was executed by hanging in Nagpur Central Jail at around 6:30 am IST on 30 July 2015. On 21 March 2013 the Supreme Court confirmed Memon's conviction and death sentence for conspiracy through financing the attacks. On 30 July 2013 the Supreme Court bench headed by Chief Justice P. Sathasivam, Justice B. S. Chauhan and Justice Prafulla Chandra Pant rejected Memon's application for an oral hearing and dismissed his review petition by circulation. Indian President Pranab Mukherjee rejected Memon's petition for clemency on 11 April 2014. Memon then filed a curative petition to the Supreme Court, which was rejected on 21 July 2015.

A special mention here is to the 650-page written judgment in the 1984 Assassination of Indira Gandhi, who was killed by her bodyguards, in which the Delhi High Court panel said, “No excuse or circumstance can . . . mitigate such a treacherous and cowardly act where a defenseless woman was cruelly slaughtered by the ‘guardians’ of her safety.” The judgment condemned “the most inhuman mode of killing” and said, “Two persons crowding in before an elderly woman and mercilessly pumping into her not one or two but as many as 30 bullets is the ghastly scene to be conjured in the mind’s eye.” Kehar Singh was hanged on 6 January 1989 for conspiracy in the assassination, carried out by Satwant Singh and Beant Singh.

In June 2012 it became known that Indian president Pratibha Patil, near the end of her five-year term as president, commuted the death sentence of as many as 35 convicts to life imprisonment, including four on the same day (2 June), which created a storm of protest. There have been calls for the introduction of the death penalty for rapists and molesters, especially since an infamous 2012 Delhi gang rape case and later crimes. So here it can be said in Indian context capital punishment is executed considering the gravity of the crime.

5.8 RIGHT TO LIVE ARGUMENT

Here it can be realized the importance of capital punishment cannot be ignored. But another standpoint holds that human life is valuable. It is so valuable that even the worst murderers should not be deprived of the value of their lives. They believe that the value of the offender’s life cannot be destroyed by the offender’s bad conduct - even if they have killed someone. Some abolitionists don’t go that far. They say that life should be preserved unless there is a very good reason not to, and that those who are in favour of capital punishment are the ones who have to justify their position. Everyone has an inalienable human right to life, even those who commit murder; sentencing a person to death and executing them violates that right. This is very similar to the ‘value of life’

argument, but approached from the perspective of human rights. Another problem in case of capital punishment is the execution of innocent persons. It is a problem for the retribution argument - if there is a serious risk of executing the innocent then one of the key principles of retribution - that people should get what they deserve (and therefore *only* what they deserve) should be very carefully monitored by the judiciary of a State. But unfortunately sometimes it is violated may be due to the dishonesty of legal professionals and some instance can be seen even in USA where the capital punishment has been executed on the innocent people. Again the death penalty doesn't seem to deter people from committing serious violent crimes. But the reverse argument in this regard is that if there is no provision for capital punishment then the level of crime may cross the limit.



CHECK YOUR PROGRESSS

Q. 4: Fill in the blanks:

Answer: The term *capital* is derived from the Latin ……..means ……..

Q. 5: What is capital punishment?

Answer:……..

Q. 6: What is Aristole's view about punishment?

Answer:……..

Q. 7: Can Immanuel Kant, the German philosopher be said as the supporter of capital punishment?

Answer:……..

Q. 8: What is Hegel's view on the theory of punishment?

Answer:……..

Q. 9: What did Rashdall said about punishment?

Answer:……..

Q. 10: What is reformist approach to capital punishment?

Answer:……..

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5.9 LET US SUM UP

- Capital punishment means death sentence. It is 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.
- There are different opinions of different theories of punishment regarding capital punishment. One section supports it whereas others oppose.
- According to the Deterrent theory, a person who deliberately commits murder should be given capital punishment. The criminal deprived a person of his life, so he should be hanged to prevent others from committing the same. He should be made an example for others.
- According to the retributive theory also a murderer should be given capital punishment. He has taken away the life of a person in cold blood. So justice demands that he be deprived of his life. The rigorous form of the retributive theory does not make any concession. But the mollified form of it recommends taking into consideration the criminal's age, provocation, education, and other extenuating circumstances in softening the rigour of justice.
- Capital punishment is a legal penalty in India. Here lots of instances can be found of giving capital punishment legally to different criminals.
- Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment.
- As it is already seen the retributive theory justifies capital punishment under exceptional circumstances. Right to live is the fundamental right. If a person takes away the life of another, justice demands that

he should be deprived of his life. This is how the way of capital punishment can be understood. But generally the execution of capital punishment is a controversial debate since its inception.

- In the contemporary age the reformists or the humanists have been tried to enlighten public opinion against capital punishment.
- But one thing cannot be ignored that if there is no provision for capital punishment then the level of crime may cross the limit. The important thing here is that the judiciary should take special caution when executing the capital punishment so that the innocent people may not be affected.



5.10 FURTHER READING

1) Encyclopedia of Religion and Ethics.
2) John H. Piet and Ayodhya Prasad (ed) An Introduction to Applied Ethics.
3) Steven Luper & Curtis Brown, The Moral Life, Second Edition, Harcourt Brace College Publishers.
4) LaFollette, Hugh (2002). Ethics in practice: an anthology. Oxford: Blackwell.
5) Sinha, J.N., Manual of Ethics, New Central Book Agency (p) Ltd. London



5.11 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q no 1: The preventive theory of punishment is that theory according to which, the primary end of punishment is to prevent the recurrence of crime. Here it is said a criminal ought to be punished in order to prevent others from committing similar crimes. It should be an exemplary punishment.

Ans to Q no 2: According the reformative theory, the aim of punishment is to reform the criminal himself. The offender was, prior to the

commission of offence, a member of the society. It should be the duty of the society to rehabilitate the offender. The offender should be punished for his own good. Punishment aims at reforming the offender.

Ans to Q no 3: The retributive theory of punishment is purely connected to the legal system. It says, punishment is an act of justice. It is (punishment) an end in itself, not a means to any end beyond itself. The primary aim of punishment is retribution. The aim of punishment is to defend the supremacy and authority of the moral law and to do justice to a criminal. According to the advocates of the retributive theory the offender against society must be punished.

Ans to Q no 4: The term *capital* is derived from the Latin word *capitalis* means “of the head”.

The term *capital* is derived from the Latin *capitalis* means “of the head”,

Ans to Q no 5: Capital punishment means “death sentence”. It is also known as the death penalty, a government sanctioned practice whereby a person is put to death by the State as a punishment for a crime.

Ans to Q no 6: According to Aristotle, punishment is negative reward. The man who deliberately breaks a moral law is entitled to a negative reward. The society gives him what is his due.

Ans to Q no 7: The German philosopher Emanuel Kant holds that punishment ought to be inflicted on the criminal because he has committed a crime, not as a means to his own good or that of others. He advocates the retributive theory of punishment. Kant says, “Punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to society. The penal law is a categorical imperative”. Here it can be said, Kant supports capital punishment for the sake of the law and order itself.

Ans to Q no 8: Hegel advocates the retributivists’ view of punishment. He holds that punishment is demanded by the criminal. It is his

reward. It is what he deserves-what he has earned by breaking the moral law. It may be said to be his negative reward.

Ans to Q no 9: Rashdall advocates the reformative theory of punishment, and criticizes the retributive theory. He brands it as a vindictive theory. According to him, the amount of pain to be inflicted on the criminal in proportion to the crime cannot be ascertained.

Ans to Q no 10: The reformists or the humanists like reformative theory are opposed to capital punishment. They maintain that if punishment merely aims at vindication of the moral law, it smack of revenge. According to this standpoint a wrong doer becomes temporally insane while committing a crime. Usually no murder is committed in cold blood. But when society inflicts death sentence on a criminal, it does so in cold blood. Therefore, society or its leaders should also be punished with death. The humanists maintain that taking one's life to set an example to others is an act of barbaric cruelty.



5.12 MODEL QUESTIONS

A. Very Short question

Q 1: What is the literal meaning of the word 'capital punishment'?

Q 2: What is "tit for tat, eye for an eye"?

Q 3: What is Axiology?

Q 4: What is Ethics?

Q 5: What is punishment?

B. Short question (Answer in about 150 words)

Q 1: What is capital punishment?

Q 2: What is preventive or deterrent theory of punishment?

Q 3: What is reformative theory of punishment?

Q 4: What is mollified retributive theory of punishment?

Q 5: What is regoristic retributive theory of punishment?

C. Long Questions (Answer in about 300- 500 words)

Q 1: Is capital punishment justified? Explain with examples.

Q 2: What is humanist or reformist's view on capital punishment? Is it justified? Give reasons.

Q 3: Briefly discuss the scenario of capital punishment and its implementation in India.

Q 4: Give your arguments for and against capital punishment. Can capital punishment minimize the level of crime in the society?

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