# Relevance of the Indian Penal Code in Controlling and

**Combating Crime in Modern Age**

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***Criminals, people who commit crimes, usually society rejects these people. They are also part of society. Give them some form of punishment to say they were wrong, but show them they are part of society and can change. Show them compassion.”***

***- Dalai Lama.***

*The death penalty is a term used to describe the act of putting a person to death, after judgment by a legal system, either as an act of retribution, or to ensure they cannot commit future crimes. The concept was originated in order to serve as example to other would-be criminals, to deter them from committing murder or terrorist act, to punish the criminal for his/her act, to obtain retribution on behalf of the victims. Despite the inhuman adversities done by such criminals, death penalty is no answer. The answer lies in transforming and forgiving them as 'forgiveness is the virtue of the brave, and brave are those who make a difference. It has been already that a rehabilitated criminal can make a morally valuable contribution to society. All legal system of the world accepted that killing human life is morally wrong under all circumstances. We have precedents, which shows that wrongly convicted, innocent people have received death penalty sentences, and tragically, were killed by the state.*

# INTRODUCTION

“If every saint has a past, every sinner has a future and it is the role of law to remindboth of this.” - Justice V. R. Krishna Iyer[[2]](#footnote-2)

“What confers a criminal character on an act is not the nature of the act but thedefinition given to it by the society. We do not reprove certain behaviour because it iscriminal; it is criminal because we reprove it.” - Emile Durkheim [French sociologist(1890)]

Today one of the foremost needs of the society is its ability to render security and tosupport individual subsistence. We do not suffer much from the lack of physicalwants, but our actual suffering emerges from the excessive sense of insecurity that haswrapped us. We constantly fear losing what is rightfully ours. It is this basic fear thatmakes a person most uncomfortable and this is also the central mess that one bumpsinto most often.

**PUNISHMENT**

The word “punishment” has been defined as a penalty imposed for an offence or aninformal rough treatment.[[3]](#footnote-3) Whatever be the ultimate aim of punishment, in the firstinstance it is the imposition on an evil. Punishment, as Bentham said, is itself an evil;it is a negative premise. Any power of punishment to reform the offender is stronglydenied on the dual grounds of principle and experience. Mahatma Gandhi thuselucidated: 'hate the crime and not the criminal'.

Law is the string that binds society, and he who attempts to break the string is adanger to the society as a whole and dealt with sternly by the powerful arms of lawand here comes the role of punishments. Punishment, whether legal or divine, needsjustification.[[4]](#footnote-4)Experiments have revealed that punishment as a rule does omit reform. On thecontrary it often mortifies and sheathes.

Immanuel Kant, the German philosopher sounds pessimistic when he says:

"Judicialpunishment can never serve merely as a means to further another good, whether for the offender himself or for society, but must always be inflicted on him for the solereason that he has committed a crime."[[5]](#footnote-5) The aim of punishment must be to replacejustice for injustice. According to Paranjape the fundamental principle whichunderlies the doctrine concerning the desirability and objectiveness of punishment isto reduce the frequency of criminal behaviour either by deterring the prospectiveoffenders or by debilitating and thwarting them from replicating the offence or byreforming them into law abiding citizens.[[6]](#footnote-6)

The crying need of the day is thus to develop, through research, a mode of check thatis a facilitator, a pathfinder, a channel, a catalyst, a launch pad that provides solace,succour and respite. What we need today is a Code that is not penal butreformative. A Penal Code is at best revengeful and at worst revolting. It can neverhelp out a human being or a humane thought. A Penal Code would not only amplifythe crime rate in the society, it would also endorse the crime to subsist, breed andpropel in the society

# REFORMATION and DEATH PENALTY

The global winds are blowing in support of reformatory course of action as a consequence of the progressive modifications in the penological domain. The notion of retribution is obsolete. As a result of pathological research in criminology andpenology, it has been established beyond doubt that there is no express connectionlinking crime and punishment. On the other hand there is no substantial evidence ofthe fact that the ratio of crime increases because of soft or civilized punishment.[[7]](#footnote-7) Thecivilized goal of the criminal justice is the reformation of the criminal and deathpenalty means abandonment of this goal for those who suffer it.[[8]](#footnote-8)

The instance of Pancham Singh is also an excellent example to illustrate this.Pancham Singh Chauhan was a dreaded bandit, who headed a sixty member gang ofhardcore dacoits in the tarnished Chambal Valley. The police so badly hunted himthat they declared a robust remuneration of Rs. 1.30 lakhs to anybody who gave theminformation, which might ultimately lead to his capture. When the police turned theheat on him, Pancham Singh and his mob ultimately yielded to them. Though theysurrendered, the Court sentenced them to death in view of the magnitude of theiroffences. But for the late Jayaprakash Narain, Pancham Singh and his gang wouldhave been dead by now. The Government condensed their death sentence to lifeimprisonment. But, they were freed after eight years in prison, apparently for theirgood conduct.

Pancham Singh, who later became a Rajayogi in Brahma Kumari movement,exhausted the loot he had looted for benevolent purposes. He constructed a school inMadhya Pradesh and started living a life of a respectable citizen.[[9]](#footnote-9)

To hang a man is to disallow an embodied soul the sublime honour to convert him. Itis a course that they cannot chase when they must go to a scheduled demise.Some veterans who handle prisoners have concluded that murderers are among thebest-behaved prisoners.[[10]](#footnote-10) Figures show that most of those convicted for murder aresuccessful parolees. Of 36 persons under life sentence who were paroled between1943 and 1958 in New York, only two were returned to prison - one for technicaloffence and the other for burglary. Most of these prisoners would have been executedif their sentence had not been commuted.[[11]](#footnote-11)

“...Every saint has a past and every sinner a future, never write off the man wearingthe criminal attire but remove the dangerous degeneracy in him, restore his retardedhuman potential by holistic healing of his fevered, fatigued or frustrated inside and byrepairing the repressive, though hidden, injustice of the social order which isvicariously guilty of the criminal behaviour of many innocent convicts. Law must risewith life and jurisprudence responds to humanism.”[[12]](#footnote-12)

If we abolish capital punishment we shall have lost nothing; we shall not haveendangered the society, and we may do some practical good, because our energiesmay be diverted to solving the problem by new techniques.[[13]](#footnote-13) A capital punishment isan unwanted catastrophe, an artefact whose continued existence does causes injury tosociety without realising any comparable good. An execution is both wrong andtragic[[14]](#footnote-14)....“condemned man has lost the universal human power of correcting hisways.”[[15]](#footnote-15)

The criminal forever and a day remains a delinquent, and as a human he is alwaysgratis to absorb new morals and new adaptations. When Chessman was executed,millions across the globe felt that “the man killed on Monday by the Sovereign Stateof California was not the same man whom the State's Courts originally sentenced...California sentenced a young thug:

it killed a man who learned law, and probablycitizenship, the hard way.”[[16]](#footnote-16)

“There is divinity in every man and no one is beyond redemption.”[[17]](#footnote-17)

The burden of punishment is vindicated only by its ability to re-educate an offenderand thereby to return him to society as an integral human being. The evildoer cannotbe done to death. Capital punishment can certainly not serve the objective ofreformation. Justice V. R.

Krishna Iyer recalls Victor Hugo: “We shall look uponcrime as a disease. Evil will be treated in charity instead of anger. The change will besimple and sublime. The cross shall displace the scaffold.”[[18]](#footnote-18)

Even the Royal Commission on CapitalPunishment concurred with this view: “Not that murderers in general are incapable ofreformation; the evidence plainly shows the contrary. Indeed, the experience ofcountries without Capital Punishment indicates that the prospects of reformation areat least as favourable with murderers as with those who have committed other kindsof serious crimes. The released murderers who commit further crimes of violence arerare, and those who become useful citizens are common.”[[19]](#footnote-19)

In what does doing justice to man consist? It consists in giving him his due. You givefish its due by letting it in water, you give an artist his due by cheering him to painthis greatest pictures, and you give a man his due by nurturing his power to realize hisman-ness, his indispensable humanity, and that you cannot do by killing him.[[20]](#footnote-20)

Youcan never get a just society - by mechanical squaring of accounts; you can get onlywhen people learn to give and to love - and once they have learned it they discoverthat the giving and loving is their own free development itself, as well as that of14others. So you must forgive, unto seventy times seven; must love your enemies,including the enemies of the society.

**LIMITATION**

In, Maru *Ram and Ors. v. Union of India and Ors.[[21]](#footnote-21)*, Justice V. R. Krishna Iyerobserved thus: *The reason flows from a careful study of the penal law prevalent in thecountry, especially that contained in the Indian Penal Code which brings outclearly that the severity of each punishment sanctioned by the law is directlyproportional to the seriousness of the offence for which it is awarded.*

Though the reformative theory relies upon humanitarian modes of punishment, thistheory has a weakness against the hardcore criminals, and the (poor) people who seethe dungeons as a means of relaxed existence since they do not have to worry aboutthe basic needs of sustenance.

In *Mahesh v. State of Madhya Pradesh[[22]](#footnote-22)*, Khalid, J. refusing to reduce the deathsentence, said:

*To give the lesser punishment for the accused would be to render the justicingsystem of the country suspect. The common man will lose faith in courts. Insuch cases, he understands and appreciates the language of deterrence morethan the reformative jargon.*

Lord Justice Denning, Master of the Rolls of the Court of Appeals in England said tothe Royal Commission on Capital Punishment in 1950[[23]](#footnote-23):

*Punishment is the way in which society expresses its denunciation of wrongdoing; and, in order to maintain respect for the law, it is essential that thepunishment inflicted for grave crimes should adequately reflect the revulsionfelt by the great majority of citizens for them. It is a mistake to consider theobjects of punishments as being deterrent or reformative or preventive andnothing else… The truth is that some crimes are so outrageous that societyinsists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not.*

Hence, though, this theory of reforming the criminals works resplendently for therectification of juveniles and first time criminals; in the case of hardened, cynical anddisparaging criminals, this theory may not succeed.

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2. Mohammad Giasuddin v. State of Andhra Pradesh AIR 1977 SC 1926 [↑](#footnote-ref-2)
3. Oxford Dictionary Thesaurus, 24th Edition [↑](#footnote-ref-3)
4. An Analysis of Deterrent Theory of Punishment, Gaurav Priyadarshi and Nishant Prakash, Hidayatullah National Law University, Raipur

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5. Principles of Penal Laws, Jeremy Bentham, 1843 [↑](#footnote-ref-5)
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7. Rethinking in terms of Abolition of Capital Punishment, Mool Singh, 1989, Cri. L. J. [↑](#footnote-ref-7)
8. Capital Punishment in India, Subhash C. Gupta, 1980 [↑](#footnote-ref-8)
9. The Hindu, February 3, 1996 [↑](#footnote-ref-9)
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11. Role of Theories of Punishment in the Policy of Sentencing, Dr. Areti Krishna Kumari,

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13. Capital Punishment: A Case for Abolition, Mannes T. D. Marsh, Halloran O. P., J.D. and K.

    J.Connolly, 1963 [↑](#footnote-ref-13)
14. The Death Penalty: A Debate, Earnest Van Den Haag and John P. Conrod, 1983 [↑](#footnote-ref-14)
15. "The Sentence of Death": The Illustrated Weekly of India, Hiranandani, August 29, 1976 [↑](#footnote-ref-15)
16. Capital Punishment: A Worldwide View, James Avery Joyce, 1961 [↑](#footnote-ref-16)
17. Bachhan Singh v. State of Punjab AIR 1982 SC 1325, Justice P. N. Bhagwati, 13 [↑](#footnote-ref-17)
18. Ibid at 19 [↑](#footnote-ref-18)
19. Balbir Singh v. State of Punjab AIR 1979 SC 1384 [↑](#footnote-ref-19)
20. Capital Punishment: Heart of the Matter, Gollanz, 1955 [↑](#footnote-ref-20)
21. AIR 1980 SC 2147 [↑](#footnote-ref-21)
22. AIR 1987 SC 1346 [↑](#footnote-ref-22)
23. Ankush Maruti Shinde and Ors. v. State of Maharashtra AIR 2009 SC 2609 [↑](#footnote-ref-23)