

It general laxity in morality, the gravity

[Experience](#), [Human Nature](#)



It is significant to note that with the abandonment of the torturous and barbarous methods of inflicting death penalty, the meaning of the term ‘ capital punishment’ now extends only to death sentence for murder or homicides. Particularly, in western countries rape is no longer serious crime for two main reasons.

Firstly, with general laxity in morality, the gravity of this offence is fast declining. In the second place, scientists have established rape as a mere passive surrender by the victim because in their opinion it is practically impossible to commit rape unless the victim is made unconscious. Likewise, treason being exclusively a war-time offence, it is futile to enlist it as a peace-time offence and to provide death penalty for it. In the modern reformatory era, the retributive principle of ‘ tit for tat’ does not serve any useful purpose.

Retribution can only do more harm than good to the criminals and can never be an effective measure of suppressing crime. Retaliation and retribution, apart from being outdated are also against the accepted norms of modern criminal justice. Beccaria was perhaps the first criminologist who raised a crusade against capital punishment in 1764. He strongly protested against the use of cruel and barbarous modes of punishing the offenders and emphasised the need of individualised treatment. He expressed a view that death as a sentence symbolises man’s cruelty and insignificance of human life. In course of time, mens rea became the guiding principle for determining the guilt and punishment of the offender though it is true that in certain cases it is difficult to determine mens rea of the offender.

Yet another reason for discarding retribution as a principle of criminal justice is to be found in the fact that putting a person to death virtually amounts to killing him deliberately. That apart, experience has shown that more than eighty per cent of the persons committing murder are not really murderers but are persons who have fallen a prey to this heinous crime due to circumstances such as passion, provocation, jealousy, sexual impulsiveness, poverty or intoxication. Obviously, death sentence is hardly an appropriate punishment for such offenders.

Prof. Scot has expressed doubts about the adequacy of capital punishment as it involves the risk of innocent person being sent to guillotine. In a number of cases bona fide errors of judgment as to guilt of the accused are known to have occurred. If an innocent person is hanged due to miscarriage of justice, his life is lost forever and the loss is obviously irredeemable. Perhaps it is for this reason that slightest doubt about the guilt of the accused entitles him for an acquittal on the plea of 'benefit of doubt' under the criminal law of most countries. The abolitionists strongly argue that since death penalty is irrevocable, it should not be awarded. But the elaborate safeguards provided in the procedural law clearly indicate that though the sentence of death is irrevocable, it is awarded only after a thorough scrutiny at every stage of the case and therefore, chances of human error or judgment are not only minimised but reduced to almost nil. Slightest doubt about the guilt of the accused who is to be sentenced to death is sufficient to entail him benefit of doubt.

As such, abolition of death penalty on the ground of irrevocability hardly seems to be justified.