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# The End of The Rope: A Critical Analysis of Capital Punishment with regards to Deterrence Theory

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## ABSTRACT

*The capital punishment is one of the oldest and most enduring punishments, with its brutality and instinctiveness inciting the primal instincts of “civilised” societies. When questioned, it is typically defended using the deterrence theory and the theory of retributive justice, both of which are analysed in the article. The deterrence theory states that the death penalty deters crime by deterring crime: it does so by apprehending criminals and by preventing future wrongdoers by setting an example. However, it is discovered that countries with and without the punishment have no significant difference in crime levels. This is because crime is not typically committed after weighing the punishment, and because the certainty of being caught is more important than the severity of the punishment when it comes to deterrence theory. The theory of retributive justice is flawed and impracticable, as it addresses only the symptom of a larger illness impacting society. Instead of improving societal conditions to prevent the making of a criminal mind, it chooses the short-term satisfaction of killing a person who should be seen as a victim of society. Finally, it is proven that people belonging to marginalised backgrounds are mostly the recipients of the death penalty, which indicates a clear societal failing and an administrative bias. Life imprisonment is presented as a viable and peaceful alternative to the death penalty, performing the same function but with better intentions and results. Additionally, as long as the judicial system remains human and prone to error, the State must refrain from taking away what it cannot restore: the gift of life.*

**Keywords:** Capital punishment, Death Penalty, Deterrence theory.

## I. INTRODUCTION

Capital punishment has always divided opinions and generated controversy and clamour. The notoriety surrounding the punishment is centred around debates on morality, justice, and revenge. Trials take place not only in courts of law, but also in the minds of men and women, and the verdicts given in both settings are relevant. When society collectively judges that a crime befitting the death penalty has been committed, it exerts pressure on the legal system to

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implement its will. Some people are such staunch believers in the punishment that they take the law into their own hands and kill the criminals themselves, acting as judge, jury, and executioner.

The law prescribes the capital punishment for a range of crimes for engaging in various acts. In the Indian Penal Code (the IPC for short), it applies to crimes such as waging war or attempting to wage war against India (Section 121), and forging evidence that leads to the execution of an innocent person (Section 194), committing murder (Section 302), assisting the suicide of a minor or intellectually disabled person (Section 305), kidnapping (Section 364A), rape that results in vegetative state (Section 376A), repeat rape offenders (Section 376E). Additionally, directly or indirectly participating in the commission of *Sati*, selling large quantities of psychotropic substances, may also lead to a death sentence. As per the extant law, minors, pregnant women, and intellectually disabled persons are exempt from the punishment.

The death penalty is often defended using the theory of deterrence, which operates on the belief that the certainty and severity of punishment deters crime, rather than a deep-rooted sense of morality. It also works acts as a deterrent against future crimes by instilling a sense of fear, discipline, and respect for the law in people.

If the severity and certainty of punishment are disproportionate to the nature of the crime, deterrence may fail. Severity of punishment has been suggested to be less effective as compared to certainty of punishment<sup>2</sup>. Once this is accepted as true, the futility of the death penalty as a deterrent is brought to light.

The theory of deterrence also suggests that criminals weigh the punishment before committing the crime. Crimes are often committed impulsively, leaving little room for complex analysis. If deterrence is the only aim of the punishment, a life sentence would serve the purpose just as well. Capital punishment adds an element of fear and retribution to the process of criminal trials.

This is the backbone for the theory of retributive justice. Following this system would mean that every criminal would be punished according to the severity of their crime. Equal and opposite vengeance is sought, and an eye for an eye is taken. The closure that society is said to receive from the execution of a criminal is a façade. Instead of minimising the hurt caused to society, it spreads more hurt to the remaining members of it.

From a prudential standpoint, it must be considered that if a crime is punished with death, it incentivises criminals to take extreme measures (which may take the form of worse crimes) to

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<sup>2</sup> Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 INT. J. LAW CRIME JUSTICE, 199–263 (2013).

avoid being apprehended by the authorities. For example, a rapist would not hesitate to murder their victim in order to hide any evidence of the crime in order to destroy any evidence of the crime<sup>3</sup>.

Most importantly, there is no conclusive evidence to prove that the death penalty effectively deters crime. Countries imposing the death penalty have the same percentage of crime as countries that do not impose the death penalty<sup>4 5</sup>. If the deterrence theory truly worked, there would be little to no crime in countries with severe punishments. The mere fact that crimes are committed in such countries indicates that the commission of a crime involves a complex interplay of an individual's mental makeup, their societal context and immediate context triggering the crime.

It has been proven that the correlation between crime rates and capital punishment is negligible and weak<sup>6</sup>, and does not justify the killings carried out by governments in the name of morality and protection. However, the year 2022 alone saw more than 2,016 death sentences and 883 executions worldwide, none of which are supported by the reduction of crime rates<sup>7</sup>. The data does not provide a complete picture of the number of deaths, as they only represent the official statistics provided by countries. Some countries do not release such data.

It must also be noted that as long as the judiciary and society remain fallible and prone to prejudice and bias, there is room for error. Blackstone's ratio supports this, stating that "It is better that ten guilty persons escape than that one innocent suffer"<sup>8</sup>. Capital punishment is irrevocable, and as long as there is the smallest margin of error, the State has no moral grounds to authorise such killings.

Arguments in favour of the death penalty presume that the laws, judicial system are legitimate, and that the process is free of bias or prejudice. Contrary to this belief, it has been proven that 74.1% of the victims of the death penalty in India come from weaker economic backgrounds, and that 76% of the victims belong to minority or backwards social communities<sup>9</sup>. The limited

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<sup>3</sup> Amnesty international, *Does the death penalty deter crime?*, AMNESTY INTERNATIONAL (2021 June), <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500062008en.pdf>.

<sup>4</sup> *Do Countries with the Death Penalty Have Higher Homicide Rates?*, FULLFACT.ORG (2011 August 5), <https://fullfact.org/news/do-countries-death-penalty-have-higher-homicide-rates/>.

<sup>5</sup> *Murder Rate of Death Penalty States Compared to Non-Death Penalty States*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>.

<sup>6</sup> Amnesty international, *Does the death penalty deter crime?*, AMNESTY INTERNATIONAL (2021 June), <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500062008en.pdf>.

<sup>7</sup> Amnesty International, *Death sentences and executions 2022*, AMNESTY INTERNATIONAL, (2023 May 16), <https://www.amnesty.org/en/documents/act50/6548/2023/en>.

<sup>8</sup> Maedot Teka, *What is Blackstone's Formulation in Criminal Law?*, LAWINFO (2023 November 13), <https://www.lawinfo.com/resources/criminal-defense/what-is-blackstone-s-formulation-in-criminal.html>.

<sup>9</sup> 1, Dr. Anup Surendranath, *Death Penalty India Report*, 101 (2016).

access of these people to resources impairs their access to fair representation, leading to unfair trials.

Often, a spectacle is created around a death penalty. The process whets the appetite of the raving mob, ensuring that justice is seen to be done. It is used to renew the faith of people in the judiciary by painting the situation in shades of black and white. Capital punishment gives the illusion of progress, while failing to improve the actual situation surrounding the crime, the criminal, and the society in which it took place.

There must be a limit to the severity of punishments that any social institution can prescribe and legally implement. No matter how satisfying, if the same effect may be achieved by an alternative solution (i.e., imprisonment for life), it must not seek to inflict the same pain that was caused by the perpetrator. A punishment as severe as the death penalty impacts all of society, no matter how sparingly it is used.

Capital punishment is but a spectacle of the execution of justice. By carrying out the death penalty, the State commits the same crime it seeks to punish. If the actual benefits of the death penalty, cannot be measured in an objective and conclusive manner, what purpose can it be said to serve, except for sating the bloodlust and frenzy of the spectacle of justice it seeks to achieve? The death of a criminal is not cause for celebration, but an admission of failure by both society and State to raise a law-abiding citizen free of criminal tendencies, or even to entertain the thought of reformation of the criminal. It does not address or resolve the core factors that led to the commission of a crime. It is a slapdash measure that fixes the symptom without treating the disease afflicting society at large. The cycle of violence is allowed to continue, unbroken. Both sides have blood on their hands, and the State cannot claim the higher moral ground.

Life imprisonment ultimately achieves the same objective that capital punishment is supposed to fulfil. The objective of isolating a criminal from society is the outcome of both the life sentence and death penalty. As punishment for the crime, the rights of the criminal are curtailed, while still retaining scope for growth and rehabilitation.

A life sentence pales in comparison to the death penalty, but it remains fearsome in its own regard. The life of the criminal is changed for good, as opposed to their death changing nothing. An error of judgement can always be rectified when it comes to life imprisonment, but executed persons cannot be brought back to life.

Considering the lack of credible evidence that proves the efficacy of the death penalty, it should be put to an end. The theory of deterrence does not stand up to objective scrutiny, but it continues to justify the deaths of hundreds of persons every year. The death sentence remains

state-sponsored murder, and retributive justice neither heal the wounds caused by any crime, nor provides closure to those affected by it. Death is not a proportionate response to the collective outrage generated by a crime. While the punishment might seem satisfying and just, it must also be remembered that the death of a criminal does not put an end to crime. No crime can ever be undone in any meaningful manner, and no amount of atonement or compensation will undo the damage. However, one wrong cannot justify another. A criminal is as much a byproduct of society as the most law-abiding citizen is, and must be treated as such.

To conclude, the death penalty is the dead end for justice.

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