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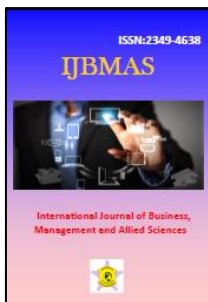
Balancing Deterrence and Rights: A Comparative Study on Mandatory Capital Punishment and Human Rights Violations

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ABSTRACT

One important topic of legal discourse is the conflict between the duty of protecting human rights and the deterrent reasons for mandatory capital punishment. This comparative research looks at how two nations – one that has outlawed the death penalty and the other that still uses it – handle this difficult juncture. Advocates of the death penalty frequently contend that it deters significant crimes because the threat of execution may deter potential perpetrators. Empirical data, however, indicates that this deterrent impact is essentially illusory, since death punishment-wielding nations do not systematically see lower rates of crime than non-capital punishment jurisdictions.

On the other hand, the application of the death sentence gives rise to serious issues with respect to human rights, especially with regard to the internationally recognised right to life. The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) both uphold the intrinsic dignity of every person and forbid cruel, inhuman, or degrading treatment. The death penalty frequently has a disproportionately negative impact on underprivileged groups, aggravating social injustices and transgressing anti-discrimination laws.

This research delves deeper into the ways that international human rights frameworks cast doubt on the validity of the death penalty and argues that its abolition is a vital first step towards upholding international human rights responsibilities. Through an examination of case law, legislative patterns, and public opinion in both nations, this paper seeks to shed light on the

continuous battle to balance state interests in deterrence with basic human rights safeguards.

Keywords: Capital Punishment, Human Rights, Deterrence, International Law, Death Penalty, Human Dignity, Discrimination.

Introduction

The idea that the threat of punishment can deter people from committing crimes constitutes the criminal justice concept of deterrence. Especially under debate regarding the death sentence, where it is believed to be a possible deterrence against horrible crimes, the idea has been especially important. For its supporters, the harshness of the death penalty deters criminals and brings down the rate of crimes. For example, research has revealed that each murder is associated with fewer crimes, implying that the fear of death may scare potential perpetrators from committing violent offenses¹. Many, however, strongly disapprove of this school of thought, especially human rights groups argue that even the practice of capital punishment violates some essential human rights in this instance, the right to life.

A fragile balance must be achieved between human rights and deterrence pressures when forming legal structures for societies worldwide. Such a challenge comes in the form of ensuring that punitive sanctions are not committed at the expense of rights they seek to protect as nations continue struggling to combat growing crime rates in conjunction with the pleas of justice calling from the public. Many strong moral and legal arguments are at stake in the collision of human dignity and harsh punishment.² Citing wrongful convictions and the gravity of state-sanctioned killings, some states have banned capital punishment outright while others reserve it only for specific offenses³.

This study explores the intricate interaction between human rights and deterrence concerning the obligatory death penalty. The article compares different legal systems' views on such a contentious topic and argues that, although deterrent punishment can sometimes be used as an easy excuse for severe punishments, elementary human rights should not be sacrificed. To take an example, creating a just and effective criminal justice policy requires a nuanced understanding of the equilibrium here involved.

1. Theoretical Framework

1.1. Deterrence Theory

One of the most fundamental theories in criminology is deterrable theory, with the proposition that people can be deterred from the commission of crimes due to the possible adverse effects of such crimes through punishments. The basis of this theory is grounded in the utilitarian theories advanced by 18th-century intellectuals like Cesare Beccaria and Jeremy Bentham⁴, who maintained that punishment should be used for deterrence of crime rather than for revenge⁵. The idea of deterrence

¹ iPleaders. "Capital Punishment a Deterrence or Injustice?" Available at: <https://blog.ipleaders.in/capital-punishment-deterrence-injustice/>

² National Institute of Justice. "Five Things About Deterrence." Available at: <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>

³ Johnson, Ben. "Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice: A Primer." Available at: <https://www.house.mn.gov/hrd/pubs/deterrence.pdf>

⁴ Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation*. 1789.

⁵ Beccaria, Cesare. *On Crimes and Punishments*. 1764.

comes from the assumption that would-be criminals actually make rational decisions weighed on the pros of committing a crime over the risks of getting caught and punished.

Over time, the two kinds of deterrence theory have emerged, such as the individual deterrence, which attempts to prevent the particular offender from repeating the same crime, and general deterrence, which attempts to prevent crimes in society by making the broader public fear punishment⁶. Three elements are required for deterrence to be effective: the certainty, severity, and celerity (speed) of the punishment.

Key Components

Certainty: The chance that a criminal is detected and sanctioned for his offense. From the research, the prospect of punishment deters crime more effectively than does the severity of the penalty⁷. For example, research indicates that people are less likely to commit crimes when they feel that the probabilities of being apprehended are high.

Severity: This factor deals with the severity of the penalty that would be given for any particular crime. Though severe penalties, such as capital punishment, are sometimes defended on the grounds of their deterrent effect, empirical evidence on the effectiveness of these in reducing crime rates is largely mixed⁸. Critics claim that the level of severity for a given punishment is irrelevant to decision-making relating to most violent crimes, including especially those committed under some form of duress or heat of the moment.

Celerity: An important control variable in deterrence is also how promptly the sanction is imposed. Prompt sanctions enhance their deterency by repeating the crime-punishment relationship. Such a relationship can be diluted by delayed sanctions because if time is taken too long, the culprits may not relate their actions to the sanction⁹.

The Supreme Court of India in the case of *State of Karnataka v. Sharanappa Basanagouda Aregoudar*¹⁰, for the very first time came to a reasoning that was rather detailed in managing punishments versus deterrence, while at the same time underlining the fact that deterrence will undoubtedly be an important part of sentencing policy where the punishments have to be proportionate with the nature of the offence.

1.2 Human Rights Perspectives

Overview of Human Rights Principles Relevant to Capital Punishment

Human rights principles assert that everybody has dignity and rights per se, with respect to such rights. Among these rights, the right to life stands as the supreme one protected by the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights¹¹. The death penalty raises fundamental human rights concerns, both in terms of its irreversibility and also the possibility of wrongful execution accompanied by discrimination.

⁶ See footnote 1.

⁷ Max Planck Institute for Legal History and Legal Theory, "Deterrence, Crime, and the Criminal Justice System: Myths and Realities" (2024) accessed 11 November 2024, <https://law.mpg.de/event/deterrence-crime-and-the-criminal-justice-system-myths-and-realities/>

⁸ Minnesota House of Representatives Research Department, "Deterrence and the Death Penalty" (2005) accessed 11 November 2024, <https://www.house.mn.gov/hrd/pubs/deterrence.pdf>

⁹ Ibid.

¹⁰ *State of Karnataka v. Sharanappa Basanagouda Aregoudar* (2002) 6 SCC 740.

¹¹ See footnote 8.

The abolitionist movement argues that since capital punishment involves exposure of persons to cruel and inhuman treatment, it violates basic human rights. In so far as the death penalty is ineffective in deterrence of crime and there are always irreparable injustices at stake, the UN has called for a world moratorium on executions¹².

International Human Rights Law and Its Stance on Capital Punishment

International human rights jurisprudence typically is in opposition to the death penalty, as it is deemed to run contrary to the prevailing standards of modern human rights. Many international conventions either severely restrict its use or outlaw it altogether. Article 6 of the ICCPR expresses that "no one shall be arbitrarily deprived of his life" and, thus, advocates the idea of reserving the death penalty for exceptional offenses.¹³

This approach is also evident in the case law; in *Soering v. United Kingdom* (1989)¹⁴, the European Court of Human Rights ruled that extradition of a person to a country where he could be executed would breach his Article 3 right within the European Convention on Human Rights, to be free from inhuman treatment. This becomes such a case demonstrating how international human rights standards that place more emphasis on the dignity of humans than punitive measures undermine the legitimacy of the death penalty.¹⁵

In short, although the deterrence theory may provide a justification for capital punishment in criminal justice systems, it has to be weighed against the precepts of human rights while safeguarding the concept that leans towards the sanctity of life and fair, error-free justice. This is always an uphill task for legal systems all over the world to balance different perspectives.

2. Mandatory Capital Punishment

2.1 Definition and Implementation

The term "mandatory capital punishment" refers to a system whereby some crimes are punishable by death without the option of a term in life imprisonment. The judges in states whose mandatory executions do not offer choice are denied discretion in investigating mitigating circumstances or elements of evidence that may require a lighter sentence. This approach is normally used for crimes that are held to be utterly and diabolically evil. The crimes are considered so bad that they require the harshest sentence possible to denote the public's condemnation and act as a deterrent.

For instance, the erstwhile IPC provides that some crimes, including murder (Section 302), gang rape along with death (Section 376A), and crimes associated with terrorism, are subject to capital punishment. The "rarest of rare" doctrine of the Supreme Court of India opines that a death penalty should be awarded only in exceptional situations where the offense involved is of a very grave nature¹⁶.

Many countries have introduced laws which provide for the issuance of the death penalty over specific crimes. Some of them include:

¹² See note 7.

¹³ Universal Declaration of Human Rights (UDHR), United Nations General Assembly Resolution 217 A (III), 1948.

¹⁴ *Soering v. United Kingdom* (1989) 11 EHRR 439.

¹⁵ International Covenant on Civil and Political Rights (ICCPR), United Nations General Assembly Resolution 2200A (XXI), 1966.

¹⁶ iPleaders. "Capital Punishment in India." Available at: <https://blog.ipleaders.in/capital-punishment-in-india-2/>

Saudi Arabia: Murder, drug trafficking, and apostasy are a few of the crimes where death sentences are mandatory in the country. Crucifixion and beheading are some examples of executions¹⁷.

Iran: Murder, drug trafficking, and some sexual offenses carry obligatory death sentences. The Iranian legal system is prone to grant the death penalty rather often and without regard for mitigating circumstances.

Malaysia: The Malaysian Penal Code requires the judges to impose the penalty of death on the defendant who is convicted of such crimes as trafficking in drugs and murder.

These examples illustrate how such differences in legal systems of different contexts, in their own legal and cultural contexts, interpret and apply the directive for the death penalty.

2.2 Arguments for Mandatory Capital Punishment

Deterrence as a Justification for Its Use

Supporters of the death penalty argue that it is a deterrent to horrific crimes. The idea of execution acts as a deterrent to the potential criminal and, at the same time, reduces the rate of crime. Even though research regarding the effectiveness of the death penalty as a deterrence has been inconclusive, advocates argue that the presence of the death penalty can help reduce violent crime.

For example, the US Supreme Court established that the death penalty was constitutional in *Gregg v. Georgia* (1976)¹⁸, ruling it could serve a governmental interest in preventing crime. Supporters of the death penalty argue that states with the death penalty experience lower homicide rates than do states without the death penalty, although many studies refute this argument and assert that there is little empirical evidence that relates capital punishment directly to reduced rates of crime¹⁹.

Public Safety and Crime Reduction Claims

True application of the death penalty is justified by the belief that it enhances public safety while ensuring justice for the victims. The point is that their killing deters them from committing crimes against others, thereby safeguarding society against harmful members. Such thinking views the death penalty as a vital tool of law and order.

Thus, in *Jagmohan Singh v. State of U.P.* (1973)²⁰, the Indian Supreme Court also recognized the use of the death penalty by focusing on the reality that heinous crimes would be deterred and social norms against violence would be promoted. Similarly, the proponents argue that mandatory capital punishment legitimizes the negative view that society should have toward egregious crimes and grants peace to the victim's family.

The death penalty is criticized on grounds that it allows such wrong applications. Through mention of problems like wrongful convictions and institutionalized prejudices in the application of the death penalty, critics reject these claims²¹. They argue that the mandatory punishment eliminates judicial discretion needed to consider peculiar circumstances, which might lead to unjust rulings.

¹⁷ Internet Encyclopedia of Philosophy. "Capital Punishment." Available at: <https://iep.utm.edu/death-penalty-capital-punishment/>

¹⁸ *Gregg v. Georgia*, 428 U.S. 153 (1976).

¹⁹ Encyclopaedia Britannica, "Capital Punishment" (2024) accessed 11 November 2024, <https://www.britannica.com/topic/capital-punishment>

²⁰ *Jagmohan Singh v. State of U.P.*, AIR 1973 SC 947 (1973).

²¹ Amnesty International. "Death Penalty." Available at: <https://www.amnesty.org/en/what-we-do/death-penalty/>

As such, it can be said that even though proponents suggest that enforced capital punishment performs several salient functions in public safety and deterrence, the endless debates about whether it is effective or morally right only add to the controversy over its place in modern criminal justice.

3. Human Rights Violations

3.1 Impact on Human Rights

Human rights, especially rights to life and fair trial, are grossly violated through capital punishment, which by nature is mandatory in character. Since the death penalty permanently takes away from a human his life, it is in most cases considered the ultimate violation of human rights because it violates Article 3 of the UDHR, which states that "everyone has the right to life, liberty and security of person." Since the death penalty is irreversible, mistakes that occur at every step of the trial process cannot be reversed, and the innocent victims of wrongful convictions and executions can never fully recover²².

In addition, capital punishment by necessity tends to take place within judicial systems that cannot ensure the protection of fair trials. In fact, most people accused of capital offenses receive either legal representation or trials that cannot be classified as meeting acceptable international standards for fairness. For example, people can be found guilty and convicted in countries with defective or rotten legal systems on shaky evidence or coerced confessions under duress or torture²³. According to Amnesty International, such practices exacerbate the pre-existing socioeconomic gaps because this practice is as a matter of preference applied to the marginalized by disenfranchisement in their ability to contribute meaningfully to the society, an example being those in poverty and members of ethnic and religious minorities²⁴.

Maybe another form of merciless and inhuman treatment is also the psychological impacts of waiting for execution. Long periods of anxiety and uncertainty associated with death row can critically harm the mental health of inmates. This element of mandatory capital penalty highlights more how it disregards human rights.

3.2 Case Laws

Mandated capital punishment often results in violating rights. Here are a few instances of case law:

The case of Troy Davis (USA): Witness evidence was the focus in Troy Davis' 1991 conviction for murdering a policeman. Several witnesses later retracted the statements that led to his conviction; and such has raised severe queries concerning his guilt over many years. However, after several appeals were turned down, Davis was executed in 2011. It is exactly this type of example that comes to highlight the risks of conducting executions in flawed legal systems where there is still a high likelihood of wrongful convictions²⁵.

²² Amnesty International. "The Death Penalty - Your Questions Answered." Available at: <https://www.amnesty.org/en/what-we-do/death-penalty/the-death-penalty-your-questions-answered/>

²³ Amnesty International UK. "Why We're Working to End the Death Penalty." Available at: <https://www.amnesty.org.uk/end-death-penalty>

²⁴ See note 22

²⁵ Davis v. Georgia, 21st Century Legal Defense Fund.

The Hoo Yew Wah Case is a fine example of the structural flaws in Malaysia's mandatory death penalty, as Hoo was condemned to death for drug trafficking, which in regulations prevents an unbiased trial and does not consider mitigating circumstances sufficiently. There have been allegations that he was subjected to coercive interrogation techniques and was given poor legal representation. This case, therefore proves to be an example of how the mandatory death penalty can possibly violate international human rights norms when it does not provide any assurance of a fair trial and adequate legal protections²⁶.

It is in the leading case *R v. Smith* (Canada), that the Supreme Court of Canada proclaimed mandatory execution for certain crimes unconstitutional, because, or so held these laws violate the guarantees of due process and a fair trial provided by Canadian law. The court noted that perhaps more importantly, it may deprive judges of considering unique circumstances or mitigating factors²⁷.

The mandatory death penalty has been condemned consistently by different international bodies, including Amnesty International, as a violation of human rights. In totalitarian regimes, it becomes a political tool to suppress the views of those dissenting voices and silence those who disagree with the government²⁸. The fact that usually, countries with high execution rates have serious issues relating to judicial systems raises important questions about justice and equality before the law.

In conclusion, capital punishment carried out under a threat of compulsion seriously threatens the global preservation of human rights. Given that executions are considered irreversible and because systemic inequalities prevail in legal frameworks, the application of executions must be critically reevaluated.

4. Comparative Analysis

4.1 Countries with Mandatory Capital Punishment vs. Abolitionist Countries

It's interesting to note that whereas countries which have abolished the use of the death penalty have complete and total prohibition of capital punishment, countries which are still using death penalty mandatorily are in sharp contrast on the global scale. Some countries like China, Saudi Arabia, and Iran for instance, are still in the practice of the death penalty as mandatory punishment for quite a number of crimes such as murder and drug trafficking. On the other hand, more than two-thirds of the world's countries outlawed or did away with the death penalty. Canada, Australia, and majority of Europe led the way.

Crime Rates and Human Rights Records

Countries where capital punishment is obligatory usually consist of higher crime rates than abolitionist countries. Statistics show that Saudi Arabia and Iran, known for putting their citizens to death, maintain substantial rates of violent crime, including murder and drug-related offenses. According to Amnesty International, 89% of recorded executions within the last few years could be attributed to just a few countries, Iran among them in greatest numbers²⁹. This adds further weight to the systemic use of the death penalty as a response to crime rather than effective measures at preventing crime.

²⁶ Amnesty International Malaysia Report on Hoo Yew Wah Case.

²⁷ *R v. Smith* [1987] 1 S.C.R. 1045 (Canada).

²⁸ See note 23.

²⁹ Amnesty International. "Death Penalty Report 2023." Available at: <https://www.amnesty.org/en/documents/act50/7952/2024/en/>

On the other hand, abolitionist countries usually have better human rights records and lower crime rates. For instance, in 1976, Canada had abolished the death penalty and then concentrated on restorative justice and even methods of rehabilitation. The homicide rate of Canada was as low as 1.8 per 100,000 in 2012 compared to many other countries retaining the death penalty³⁰. Rather, as it is illustrated by the trend, the abolition of capital punishment signifies concern for the rights of man and just judicial systems and not increasing crime.

Different Approaches to Deterrence

Using the deterrence theory, countries that use the death sentence postulate that would-be offenders are deterred to commit grave offenses because of their fear of capital punishment. However, empirical evidence has been inconclusive on this hypothesis. Researchers argue that effectiveness of law enforcement, participation in the community, and socio-economic factors diminish crime rates rather than the death sentence³¹.

However, abolitionist nations employ different methods of deterrence, starting with treating the sources of criminals through social services, education, and mental health care. For example, Norway's rate of recidivism is on record as one of the lowest globally due to its criminal justice system that primarily focuses on rehabilitation rather than punishment³². By giving respect to criminals, this approach helps with public safety by staying in line with the scope of human rights standards.

4.2 Effectiveness of Deterrence

Another much-debated criminology issue is if the death sentence actually deters. Many studies, trying to prove a causal relationship between the death penalty and lower crime rates, have reached no conclusive outcome. After conducting a comprehensive analysis, the National Research Council concluded that there is no empirical evidence that the death sentence prevents killings more effectively than life imprisonment without the possibility of parole³³.

Another non-punitive approach to sentencing in the prevention of crime has been proven to lower violence rates. For example:

Community Policing : Engaging the community into policing has been demonstrated to increase public confidence in law enforcement, which reciprocally reduces the crime rates.

Programs for Restorative Justice: These programs work on reconciliation between the victim and the offender as a way of dealing with the root cause of criminal behavior.

³⁰ Statistics Canada. "Homicide in Canada." Available at: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00003-eng.htm>

³¹ National Research Council. "Deterrence and the Death Penalty." The National Academies Press (2012). Available at: <https://doi.org/10.17226/13363>

³² Norwegian Ministry of Justice and Public Security. "The Norwegian Criminal Justice System." Available at: <https://www.regjeringen.no/en/topics/law-and-order/criminal-justice-system/id2000055/>

³³ American Council on Education, "Preventing Crime through Deterrence" (2024) accessed 11 November 2024, <https://ace-usa.org/blog/research/research-criminaljustice/preventing-crime-through-deterrence/>

Education and Employment Initiatives: By bringing in more education and employment, the gap of socioeconomic differences can be widely reduced and can drastically decrease the crime rate³⁴.

Although the proponents of mandatory capital punishment argue that it discourages crime rates, it has been evidenced that there exist plausible alternatives which include social justice and human rights in their consideration. According to comparative analysis, most results relating to protection of human rights and public safety will better be attained in abolitionist countries.

5. Balancing Deterrence and Rights

In actual terms, criminal justice systems have to be substantially reformed so that deterrence works in tandem with human rights considerations on an efficient basis. That is, while the focus on improved public safety and crime reduction is emphasized, such reforms must ensure that punitive action does not become violative of fundamental human rights. In fact, one strategy may be to introduce sentencing guidelines that afford the discretion of judges in capital cases to consider mitigating factors in a defendant's background and mental health and instead enforcing obligatory death sentences. The strategy ensures that all subjects within the judicial system receive equitable treatment, which is in keeping with standards for human rights. This can be realized by the emergence of independent review bodies to investigate death penalty cases in bringing in accountability and transparency through reviewing wrongful convictions and upholding due process. An example of human rights into criminal policy is the national human rights framework in Australia³⁵. Public education about human rights can promote more humane crime prevention approaches through a culture that places dignity above retaliation.

A viable replacement for capital punishment is LWOP, which guards society and respects human rights as well. What the restorative concepts say also goes along with the fact that LWOP makes sure that dangerous perpetrators will not be given the death penalty because they are incapable of doing so³⁶. LWOP has been a good and efficient way of safeguarding public safety without sacrificing much in human rights, just like what some countries do, such as Canada and Germany. The death penalty was abolished in Canada in 1976; instead, a life sentence was established, though the latter still involved the possibility of parole after what was deemed an appropriate amount of time³⁷.

International law significantly influences national laws on capital punishment. Most accords require the country to respect human rights norms and limit application of the death sentence. The International Covenant on Civil and Political Rights puts stress on "no one shall be arbitrarily deprived of his life" and still applies strict standards for the application of the death penalty³⁸. International law can influence the domestic death penalty laws by encouraging debate on best practices in criminal justice reform; this will then translate to a more balanced compassionate strategy between deterrence and individual rights.

³⁴Donohue III, John J., & Wolfers, Justin. "The Death Penalty: No Evidence for Deterrence." *The New York Times*, 2015. Available at: <https://www.nytimes.com/2015/05/03/opinion/sunday/the-death-penalty-no-evidence-for-deterrence.html>

³⁵ Australian Human Rights Commission. "Discussion Paper: A Model for Positive Human Rights Reform." Available at: <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/discussion-paper-model-positive-human-rights-reform>

³⁶ Canadian Government. "The Death Penalty in Canada." Available at: <https://www.canada.ca/en/campaign/abolition-death-penalty.html>

³⁷ Ibid.

³⁸ Soering v. United Kingdom, European Court of Human Rights (1989).

Conclusion

The very intricate relationship between obligatory capital penalty, deterrence, and human rights breaches was surveyed in the article. Here, we begin with the examination of the deterrence hypothesis that suggests that the threat of severe punishment, particularly the high pecuniary value attached to the death penalty case, deters crime. However, substantial human rights issues surrounding the death sentence, such as infringement of rights to life and right to a fair trial, cast doubt on the said reasoning, though.

We looked at how enforced capital punishment could aggravate human rights abuses from mistaken convictions and also an inappropriate lack of legal representation. Case studies reflect that people have suffered the yoke of punishment over justice. Such abolitionist countries often show lower crime rates and better human rights records, comparing the countries which have abolished the death penalty and those that have not.

We also discussed possible amendments that would neither be repressive nor permissive but instead strike a balance between human rights concerns and deterrents. Options such as lifetime imprisonment without having any possibility of release present an empathetic option that upholds individual dignity and also public safety. How international law impacts the measures of national anti-capital punishment measures shows how much the world is concerned with human rights norm.

After all, a balance has to be achieved between human rights and deterrence in the development of fair and efficient criminal justice systems. Societies may effectively combat crimes and most importantly retain the core values of justice and human dignity with the emphasis on rehabilitation and restorative justice rather than retaliation. Public safety and human rights have to become integral in discussion pertaining to the death penalty, which needs further development.