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Comparative study of death penalty legislation: Ethical and legal perspectives

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Abstract

As opposed to being swayed by popular mood and opinion, moral and ethical considerations play a crucial role in the application of the death sentence. In certain countries, the death penalty is the ultimate sanction for criminal behavior. There were four different philosophies of punishment in the pre-penal law era. The social order was preserved in accordance with this penalty. The death penalty is the most severe form of punishment in India. This might be substituted with any other crime. The death sentence should only be handed out after a fair trial. A number of nations have outlawed capital punishment. These geographical variances in the implementation of the death sentence are brought out by statistical analysis, demographic patterns, and trends in the study. It delves into the ways in which public sentiment, the media, political factions, and non-governmental organizations (NGOs) contribute to the implementation of the death penalty. Ethical discussions and adherence to international human rights treaties are used as yardsticks to measure human rights violations and wrongful convictions. This study endeavors to draw attention to the fundamental parallels and dissimilarities between the cultural, religious, and sociopolitical aspects impacting the death sentence in Indonesia and India. Finally, the report delves into future directions and policy suggestions in an effort to shed light on legislative and policy changes that respect human rights and justice principles, contributing to the ongoing international conversation around the death penalty.

Keywords: Capital punishment, punishment, deterrent, human rights, constitutional validity, Indian, Indonesia

Introduction

The practice of putting condemned criminals to death after a fair trial in a court of law is known as capital punishment or the death penalty. As soon as an entity other than the state carries it out, the death penalty becomes synonymous with murder. Therefore, the death penalty should be considered apart from all forms of extrajudicial execution. Murder, rape, and treason are examples of crimes that often call for this kind of penalty. While many nations still use the death penalty, others have done away with it entirely. The first legislation mandating the death penalty was enacted in the 18th century by King Hammurabi of Babylon. The monarch intended to punish twenty-five transgressions with the death penalty. Only a small number of European nations retained the death sentence beyond the 17th century. Since there was no codified statute authorizing capital punishment in India, it was imposed at the king's discretion. The king's desire was the ultimate determinant. While the United States

killed 111 individuals in 2008 and Saudi Arabia executed 102, China murdered more than 1,718 people. Iran executed 346.3 The United Nations passed a resolution condemning capital punishment on December 18, 2008. The resolution urges governments to temporarily halt executions in anticipation of a potential rescheduling. In honor of World Day Against the Death Penalty on October 10, 2006, the World Coalition Against the Death Penalty held a celebration in Rome.

The death penalty is a contentious topic across the world, including in India. It is given out under very unusual circumstances. Rape, murder, terrorism (an act of war against the state), and crimes committed against members of the schedule caste or tribe are the usual grounds for its imposition. As many as four petitions may be filed by Indian prisoners serving sentences. There are two methods for carrying out the death penalty: being shot or being hanged till death. The criminal process law, however,

specifies hanging as a means of carrying out the death sentence. The Air Force Act, the Navy Act, and the Army Act all provide for the lethal injection of a person. Whether or not the death penalty should be outlawed in India is a hotly contested topic. There are those who believe it undermines the constitutional legitimacy of the document and so call for its abolition. A person's right to life and personal liberty is violated when the state takes away that right via punishment, as stated in article 21 of the Indian constitution. Along with the right to life and personal liberty, Article 21 states that due process of law must be observed while rendering a decision. According to article 21 of the Indian constitution, which guarantees the right to life or personal liberty, the state may only take away an offender right provided the procedure is fair and legitimate. Only under the most exceptional of circumstances is the death punishment imposed in India.

Literature Review

Petrovici, Iasmina & Dean, Ivan. (2020) ^[4]. Can the death penalty be an effective deterrent? Is there a way to prove it or disprove it? In what ways are criminals to be penalized? Is it possible to find an alternative to the death penalty? Is this a really inhumane kind of punishment? Since the death penalty is still a contentious topic and is seen as a significant violation of human rights, it is inevitable that questions such as these will arise, along with many more. Difficult and intricate, delicate and deep, it seems to be a central topic for philosophical contemplation and not only because it is particularly important to practical ethics, but also because it is a contentious issue that pertains to life itself. The evident significance of this penalty lends special weight to this issue, which explores several facets of the lawful, intentional, and justifiable repression of a person's existence. Compositionally, we have arranged this study in a way that makes use of the critical dimension to bring attention to a few pertinent philosophical viewpoints that fall under the umbrella of this topic and that can still provide an ethical argument against the death penalty. We concluded the study by outlining some current unique thoughts, arguing for the author's preferred approach to the research question (not counting the fact that this isn't a solution) and the fact that no solid evidence can be found to back it up.

Fleury-Steiner, Benjamin & Kleinstuber, Ross. (2015) ^[5]. The state-sanctioned killing of an individual for the purpose of punishing them is known as the death penalty. The majority of nations have either severely limited or outright banned the death penalty in recent decades. Prohibition of capital punishment in several nations has happened with significant societal, legal, and political changes. On top of that, strong European organizations like the EU have made abolition a membership criterion, thus newly formed states have accepted it. Meanwhile, in China, the world's foremost executioner, the European effort has had less success. It is very difficult to abolish the death penalty in China due to the country's complicated politico legal framework.

Venturi, Giulio Carlo. (2016) ^[3]. The practice of publicly executing an offender as a form of punishment for a crime is known as capital punishment or the death penalty. Although there have been thousands of books and papers written about this topic, it seemed both academically and morally correct and useful to redact an analysis of this juridical

phenomenon. This is because 58 countries still retain it, including the USA, which is seen as the beacon of Western economic and human development. We discovered a big problem after reading a lot of publications: previous studies relied heavily on an inadequate statistical foundation. Subsequently, we resolved to investigate the source of this deficiency and, if possible, execute a more accurate operation by combining the data at our disposal. A little history of the death penalty will have to do before we get into the meat of the matter. The work's bias and lack of completion may shock the reader, but we felt this article did not call for a comprehensive history of the death sentence from the beginning of human civilization. Theoretically inquiring into the Occidental experience is the methodological approach we settled on. We hope the kind reader will forgive us for skimming the important thinkers and ideas in the sake of brevity. Following this short overview of Western penal thought's evolution, we shall examine the merits and demerits of the death sentence and reach a conclusion on its practical applicability. In doing so, we will primarily examine the case of the United States, which provides us with the most pertinent anthropological and sociological example from history. We have previously established that we have made brevity our "Polar Star" in an effort to avoid boring our readers and making pedantic errors; but, due to the disjointed nature of the North American criminal system, a dissertation of sufficient merit would need many volumes. Despite these important considerations, the American experience is represented more precisely than any other. This is because, as is well known, information on the Chinese, Arabic, and Indian situations is very difficult to get. Numerous, more in-depth studies have already shown the arbitrary nature of this kind of punishment, and our findings are consistent with theirs. Since this is the case, why do almost sixty nations continue to use the death penalty as a societal force? This question will be attempted to be answered towards the conclusion.

Mbah, Ruth Endam & Pruitt, Tanisha & Wasum, Forcha. (2019) ^[2]. Capital punishment, or the death sentence, is and always has been a contentious social issue. Although the death penalty has been outlawed in many countries, there are a few that maintain it as a legitimate tool for dealing with certain offenses. The family of the executed, the murdered, and the killer or victims are the subjects of this research on the effects of capital punishment. The death penalty in the United States is the subject of this paper's extensive examination of relevant facts and evidence. We focus in particular on the 31 states that have passed legislation legalizing capital punishment. All members of the families involved-victim and offender alike-and American society as a whole are profoundly affected by the death penalty, according to the examined evidence. In particular, research reveals that many of the killed children have mental and financial hardships, and that a small percentage of these children become resentful and seek vengeance. Some bereaved relative's express sadness that the execution of the killer did not provide them the solace they had hoped for. Additionally, the evidence points to the wrongful murder of several individuals, who were later exonerated from all charges by a court of law, even if it was some years after their execution. Courts should use extreme caution and not authorize executions unless there is

irrefutable and overwhelming proof of guilt. This is because even one innocent person executed is too many.

Hood, R. & Hoyle, Carolyn. (2012) ^[1]. This analysis of capital punishment, now in its fourth edition, updates its coverage to include recent global efforts to do away with the death sentence. It is based on up-to-date material from academic literature and non-governmental organizations, as well as on the author's own experience as a consultant to the UN for the UN Secretary General's five-yearly assessments of the death penalty. Many nations have done away with the death penalty, and even those that have kept it have been executing fewer people recently. Both the legal challenges against the death penalty's obligatory application and the movement to remove it for juvenile offenders have been successful. Additional discussion of the possibility that China may limit and regulate the quantity of executions 'on the path to abolition' is included in this version. Still, this book shows that the death sentence is still in use in numerous human rights violations, even if there have been some improvements. Many crimes in some nations are still punishable by death, and authorities there often disregard the protections guaranteed by international human rights treaties for those about to face execution. There is proof of police brutality, biased trials, incompetent defense attorneys, lengthy incarceration on "death row," and public, brutal executions. Recent discussions on the merits of the death penalty, particularly its role as an exceptional deterrence, are explored in this book.

Research Methods

Execution by hanging is the principal technique in India, as stated in the Indian Penal Code. The practice, which originated during British colonial authority, is codified in Section 354(5) of the Code of Criminal Procedure, which states that a person condemned to death must be executed by hanging him by the neck until he dies. Strict legal protocols guarantee humane treatment and due process throughout the execution process. After the Supreme Court upholds a death sentence, the individual serving the sentence has the right to petition the President of India for clemency. An integral aspect of the legal system, this clemency procedure grants access to a higher court for review and, in some cases, a reprieve. In order to ensure that justice is served fairly, the court adheres to the greatest standards of integrity by meticulously documenting every step of the process.

The techniques of execution in India have changed throughout time, reflecting both the variety of old practices and the uniformity of contemporary methods. In ancient times, the seriousness of a crime and local traditions dictated the manner of execution in the Indian subcontinent. The brutal punishments of the time, such as beheading, drowning, and impalement, are plainly seen in them. British colonial power in the 19th century brought about a shift away from these practices and toward hanging, which satisfied both British legal requirements and public perception as a more compassionate alternative. Raising India's criminal code to meet that of its colonial masters was a radical shift in the country's approach to justice. Executions continued to be carried out by hanging even after the country gained its independence. More complex legal protocols concerning executions were established,

including safeguards provided by the judiciary and the incorporation of human rights concerns. Therefore, these occurrences demonstrate how historical, cultural, and legal variables impact the ever-changing variation of death punishment practices in India.

Analysis

India and Indonesia couldn't be more different in terms of the death penalty's implementation, execution rate, and demographics of sentenced individuals. This kind of study differs in that it uses comprehensive reports and data from both nations. If we want a convincing case on the moral, legal, and societal effects of the death penalty in various areas, we must first understand these aspects.

Although the Indian Supreme Court established a theory in *Bachan Singh v. State of Punjab*, 1980 that states the death sentence should only be used in the "rarest of rare" circumstances, the level of seriousness required to justify its use is still frequently surpassed. Although the verdict called for a strict sentence analysis, the reality was quite different. For instance, the records reveal that sentencing hearings were often mundane affairs, with mitigating considerations being hardly taken into account.³⁷ Further undermining the justice of the sentencing process is the poor quality of legal counsel provided to death row inmates.

However, drug trafficking, terrorism, and corruption are among the many crimes that include a broader range of offenses that carry the death sentence under Indonesian law. As a result of differences in cultural and judicial views on the death sentence, the Indonesian legal system has made it easy to inflict the death penalty. People have been demanding the death sentence for corrupt officials for some time now, and the COVID-19 epidemic has brought the country's continued use of the death penalty into sharp focus. ³⁹ Executions of death sentences, on the other hand, have been less common, with the most recent ones occurring in 2016.

There are striking differences in the demographics of Indian death row inmates. Numerous inmates on death row originate from economically and socially disadvantaged backgrounds. Again, this is because they have inadequate legal counsel, little resources, and systematic prejudice on their side. ⁴³ Indeed, the issue of mental health among death row convicts is often disregarded, adding to the list of concerns about the justice and compassion surrounding the death sentence.

One demographic perspective on Indonesia's death row convicts is as a microcosm of the country's larger social and economic disparities. The Death Penalty Project found that the majority of death row inmates are impoverished people who fell into drug dealing as a means to an end after being unable to find other work. ⁴⁵ Despite government policy to the contrary, the report's research of public opinion and opinion formers reveals a nuanced picture of educated people's significant support for abolition.

There are certain parallels and some variations between Indonesia and India when looking at the death penalty's demographics, application, and frequency. Two distinct cultural, social, and legal frameworks provide the groundwork for these. In theory, India is obligated to use the death sentence in accordance with the notion of the "rarest of rare," but in practice, it is very difficult to apply it

consistently and in its entirety. However, a much broader application of capital punishment is seen in Indonesia's system, where the death sentence is imposed for a more extensive list of offenses. Depending on the specific crime and the Indian state in question, the death penalty may be imposed in a wide variety of ways. Although executions are less common, death sentences are far more common in Indonesia, especially for drug-related crimes. The percentage of death row convicts from economically and socially disadvantaged origins is inflated in both nations. Indonesia primarily targets socioeconomic influences and drug traffickers, in contrast to India, where mental health issues constitute a significant but often ignored group among death row inmates. The number of death sentences handed out by courts in India in 2018 for murders involving sexual violence jumped by 35% from the previous year, driven partly by changes in legislation.

of law. The execution and demographic dismissal of capital punishment cases rest on the foundation of the enormous influence that socioeconomic variables, the caliber of counsel, and judicial uniformity may exert. In asking these questions, we get a more complete picture of the factors influencing capital punishment in Indonesia and India, as well as the broader socio-political dynamics and media impacts on this issue.

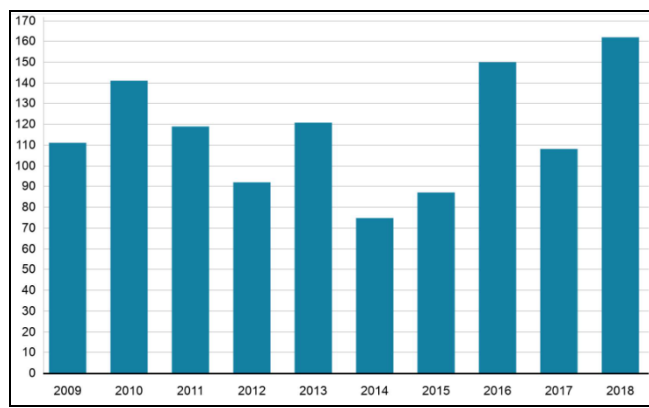


Fig 1: Global Figures of Death Execution of India 2009-2018

From 2008 to 2015, Amnesty International tracked the worldwide trend of capital punishment and found that it fluctuated. As an example, between the years 2010 and 2014. Nonetheless, there has been a clear upward trend in the number of executions worldwide throughout the last five years (2010–2015) (figure 1). Executions of condemned criminals have surged under President Joko Widodo's watch, mirroring a worldwide trend. Indonesia is now experiencing a national emergency relating to narcotics, which necessitates a severe penalty, according to President Jokowi's policies, which is strongly tied to this crisis. 4 Eighteen death row inmates were put to death by President Jokowi at the beginning of his government (see figure 2).



Fig 3: Death Execution in Indonesia 2007-2016



Fig 2: Global Figures of Death Execution 2008-2015

The complexities and moral quandaries that the death penalty has brought to light in these two very different areas

Conclusion

Intersecting with discourses in a socio-political criticism of death penalty procedures in Indonesia and India, this empirical research teases out public opinion and media depictions. Judgment results in both nations are influenced by sensationalist media coverage, which strengthens the position of those seeking retributive justice. In India, there are clear divisions along political lines; some groups are advocating for very harsh punishments, while others are demanding its outright elimination out of concern for human rights. Wrongful convictions and ethical concerns have led several civil society groups to aggressively advocate against the death sentence. However, there is substantial popular and political backing for Indonesia's tough enforcement, especially of drug offenses, and advocacy organizations are still quite vocal in their opposition to these policies on human rights grounds. The comparative study highlights the ethical issues faced by both nations and the international critiques, highlighting the need of legislative changes to achieve procedural fairness and human rights norms in both countries. There have been calls for more public education on the ethical implications of death penalty, stronger legal representation for oppressed communities, and a general tightening of the legal frameworks in both nations. Future practices that are more compassionate and equitable will be the result of this kind of interconnected multidisciplinary study and campaigning. India and Indonesia will have a significant impact on the global conversation about death punishment by tackling these intricate concerns and working towards a judicial system that respects human dignity and life.

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