Ethics

**CAPITAL PUNISHMENT**

Stop execution on the name of law.

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# Group 9

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## Preface

We have written this report on the oppose of capital punishment because we strongly believe that this is a wrong practice that has been going on. Our motivation was driven from the fact that there was lot of interesting content available on the internet as well as in books. There are a lot of debates on this topic and also it has a very rich history. We were inspired by the fact that in the past few years United Nations have improvised their laws against punishments for various crimes. This report contains the history of death penalty, ongoing debates and arguments, our claims in opposition to capital punishment and also cases and philosophers supporting it. Our main aim was to analyze the whole situation through ethical principles and also to create awareness amongst people because a lot of people do not have idea about it. We had various problems in building up our argument since we did have a lot of resources to combine. Also it was difficult to convince people on this topic. It took us almost 15 days of material collection and research and approximately 2 days to complete the report. We would sincerely like to thank Dr. Vaibhav Shah for helping us and guiding us with the whole report and for introducing us to this course of Ethics. We would also want to thank Riddhesh Sanghvi for providing us with guidelines for this report

## Introduction

Capital Punishment ,also known as the death penalty, is the practice of legally killing someone as a punishment for crime. Death sentence refers to the sentence that someone be punished whereas the execution is the act of carrying out the sentence.Capital crimes or criminal offenses are the crimes that are punishable by death. These include murder, espionage, treason, war crimes, genocide and crimes against humanity. The term capital punishment in latin refers to execution by beheading(capital is head in latin). Capital punishment is handled differently across the world. FIfty six countries retain it whereas 103 countries have completely abolished it. Numerous controversies have been going on regarding capital punishment and its implementation in different countries across the world. China , India and the United States have still not abolished capital punishment. The United Nations introduced a resolution during the 62nd General Assembly calling for a universal ban.

## History

The laws for death penalty were at first brought to light in the eighteenth century BC in the Babylon Age, which stated death penalty for at least 25 crimes. Capital punishment was also part of the fourteenth century BC of Hittite Code. And in the seventh century BC’s Draconian Code of Athens which suggested that death is the ultimate punishment for all the crimes conducted at that time. And in 5th century BC Roman law of Twelve Tables. Death penalties were being carried out on large scale by beating the criminals, burning them or crucifying them. The most known case of capital punishment was recorded in 399 BC where Socrates was punished by forcing him to drink poison because he was charged for corrupting the young minds.The crucifixion of Jesus Christ in 29 AD is another example of capital punishment. About 300 years late Emperor Constantine abolished cruel death penalties in the Roman empire.

Britain influenced the colonies more than any other countries and has a famous history of punishment by death. During the Middle Ages capital punishment was accompanied with torture. In Britain the number of capital offences were increasing on a large scale. Approximately two hundred crimes were punishable by death. However the court did not declare them as criminals of the crime if the punishment was very large and the crime was not. Thus reforms began to take place, not only in Britain but in all Europe. Laws were being passed that reduced the number of crimes under death penalty. In 1840 a failed attempt was made to completely remove death penalty. Until today only a few European countries conduct death penalty. Beccaria was the first European to call for the end of death penalty. His study remains the most influential attack on death penalty ever published. He focused the attention of philosophers and politicians on this issue.s

The first recorded death penalty in the American colonies was in 1608 when George Kendall of Virginia was executed for treason. Some colonies were very strict with the death penalties while some were not. The Capital Laws of New-England went into action between 1636 and 1647. The death penalty was offered for premeditated murder, sodomy, witchcraft, adultery, idolatry, blasphemy, assault in anger, rape, statutory rape, man stealing, perjury in a capital trial, rebellion, manslaughter, poisoning and bestiality. Early laws were accompanied by a scripture from the Old Testament. Pennsylvania founder William Penn introduced his First General Assembly. Penn replaced death penalty and bodily punishment with imprisonment. The Founding Fathers intended to allow for the death penalty in drawing up the US Constitution of 1787. Not only did certain provisions of the Constitution - such as the Fifth Amendment - expressly allow for the taking of life, but others - such as the Eighth Amendment - were deliberately phrased in ambiguous ways that suggested even if certain forms of punishment could be banned the basic principle of government executions remained permissible if individual states and the federal government wished to legislate for these. Only Benjamin Rush, one of signers opposed death penalty at that time.The First Congress adopted several other bills relating to the federal judiciary or its functions. Punishment of Crimes Act was the first listing of federal crimes and their punishment. In addition to treason and counterfeiting of federal records, the crimes included murder, disfigurement, and robbery committed in federal jurisdictions or on the high seas. The fourth paragraph of the act allowed judges to sentence convicted murderers to surgical dissection after execution. The fifth paragraph provided fines and imprisonment for anyone attempting to rescue a body of an individual sentenced to dissection.

After 1833, public executions were addressed as cruel. Thousands of citizens would show up to view hangings. Fighting and pushing would often occur as the citizens wanted the best view for the best view of the hanging or the dead body! Onlookers often cursed the widow or the victim. Violence and drunk citizens often created havoc in towns far into the night after justice had been served. In 1845 the first national death penalty abolition society, the American Society for the abolishment of Capital Punishment is founded. In 1846 death penalty was abolished by Michigan for all the crimes except treason. The law took effect the next year, making Michigan, the first English-speaking jurisdiction in the world to abolish capital punishment. Rhode Island was the first state to abolish death penalty for all crimes including treason , in 1852. Wisconsin was the second state to do so a year later.The Fourteenth Amendment to the US Constitution is modified after the Civil War. The amendment extends the Fifth Amendment's protections to the states. The Fourteenth Amendment states: "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In the 1980’s the US Supreme court stated that the execution of a person who is insane, was an unconstitutional violation of the Eighth Amendment prohibition of cruel and unusual punishment. In June 1988 came a conclusion that it would be unfair to execute a person who is below 16 years of age. On February 3, 1997, ABA adopted a resolution initiated by the Section of Individual Rights and Responsibilities that urges a halt to executions until concerns about capital punishment in the U.S. are addressed. Specifically, the resolution calls for hold on all executions until they can (1) make sure that death penalty cases are inspected fairly and impartially, in accordance with due process, and (2) minimize the risk that innocent persons get executed.

After 1947, India became a democratic state, and the system of death penalties changed drastically. Constitution of India provided for awarding of capital punishment for certain specific offences. Art. 21 of the Constitution, which guarantees to every citizen the fundamental right to life, also expressly states, “no person shall be deprived of his life or personal liberty except according to procedure established by law." This means that under no circumstances your right to live will be taken away from you except by the due procedure established by law. Not all offences are punishable by death, in fact, most of the agencies do not support capital punishment. A debate was raised in British India's Legislative Assembly revealing that no issue was raised about capital punishment in the Assembly until 1931, when one of the Members from Bihar, Shri Gaya Prasad Singh sought to introduce a Bill to abolish the punishment of death for the offences under the Indian Penal Code. The Government's policy on capital punishment in British India prior to Independence was clearly stated twice in 1946 by the then Home Minister, Sir John Thorne, in the debates of the Legislative Assembly. "The Government does not think it wise to abolish capital punishment for any type of crime for which that punishment is now provided.”At independence, India retained several laws put in place by the British colonial government, which included the Code of Criminal Procedure, 1898 (‘Cr.P.C. 1898’), and the Indian Penal Code, 1860 (‘IPC’). The IPC prescribed six punishments that could be imposed under the law, including death.

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## Debate

The fight for the suppose and oppose of capital punishment has been going on for ages. More number of people who believe that every person has the right to live are going against capital punishment.

### Discouragement

People believe that death penalty might scare other people and the chances of them committing crimes would reduce. According to them the best way to stop prevent murders is to execute a murderer once caught. And thus other murderers would think before committing one, at least for the sake of their own life. Investigations has led to analysis of the number of murders that have taken place. But their was no relevance in the results. In 1973 Isaac Ehrlich has conducted a different kind of analysis and his results proved that for every murderer executed, seven less murders took place. The mere reason for irrelevance in the study was because execution took a lot of time to actually take place. Punishments if given at once can sure be discouraging for the criminals. Ernest van den Haag, a Professor of Jurisprudence at Fordham University said “Even though statistical demonstrations are not conclusive, and perhaps cannot be, capital punishment is likely to deter more than other punishments because people fear death more than anything else. They fear most death deliberately inflicted by law and scheduled by the courts. Whatever people fear most is likely to deter most. Hence, the threat of the death penalty may deter some murderers who otherwise might not have been deterred. And surely the death penalty is the only penalty that could deter prisoners already serving a life sentence and tempted to kill a guard, or offenders about to be arrested and facing a life sentence. Perhaps they will not be deterred. But they would certainly not be deterred by anything else. We owe all the protection we can give to law enforcers exposed to special risks." The places where crime rate is less has not yet implemented death penalty. But this doesn’t prove that capital punishment is not helpful, because if capital punishment was not implemented in the areas with more number of crimes, the number of crimes would keep on increasing and would never stop.

On the other hand people who are against in have weighed their points with a different perspective. They say that death penalty is not any more of discouragement than life imprisonment. Criminologists such as William Bowers says that capital punishment actually has the opposite effect, the society is suppressed or fears capital punishment and this increases the strong possibility of more number of murders. Even the supporters of capital punishments pay very little importance to discouragement. States in US and countries of Europe have records that the places that have not implemented death penalty have lesser number of crimes than the places that. The death penalty is not discouraging for the criminals because they have well thought the whole crime. There are chances that they might not get caught. There are chances that they have not carefully gone through the basic difference between death penalty and life imprisonments. Most of the times crimes are being committed on the basis of impulsive decisions. Most importantly there is no written proof that death penalty acts as a discouragement to the others.

### Innocence

Capital punishment is a statement that can not be taken back. Once a person is sentenced for execution there is nothing that can be done to stop the process. Plus we have evidence that our system is very faulty and there is no correct method for this process. Reports studies and analysis have shown that for every 7 people that are executed, one of them is falsely executed. This is a very big number and it is dangerous too. Society takes a lot of risks but we death penalty is an avoidable risk.

On the other hand people in the against have something else to say. They say that there is no confirm report that an innocent person is executed. That situation is very rare. In addition to that, they say that the society has to take this risk because if they do not, then ideally they should not even imprison any criminal because there is a chance that he/she is innocent. We can not blame death penalty because the system is faulty. The reforms in the systems ought to be implemented. And the claims of innocence are more based on the technicalities. You can not declare a person innocent just because his conviction is overturned and the prosecutor doesn’t wish to retry him/her.

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### Discrimination

A lot of discrepancy and discrimination is being observed while implementing death penalty. Death penalty is implemented often when a white person is murdered rather than when a black person is murdered. Also there is monetary discrimination. A rich person can afford to have a lawyer and also escape the punishment. Whereas a poor person is convicted for the same crime since he doesn’t have a lawyer. There is also discrimination of laws in different countries. A person if convicted for a crime is punished by death penalty in one country, whereas another person convicted for the same crime in a different country may not be hanged.

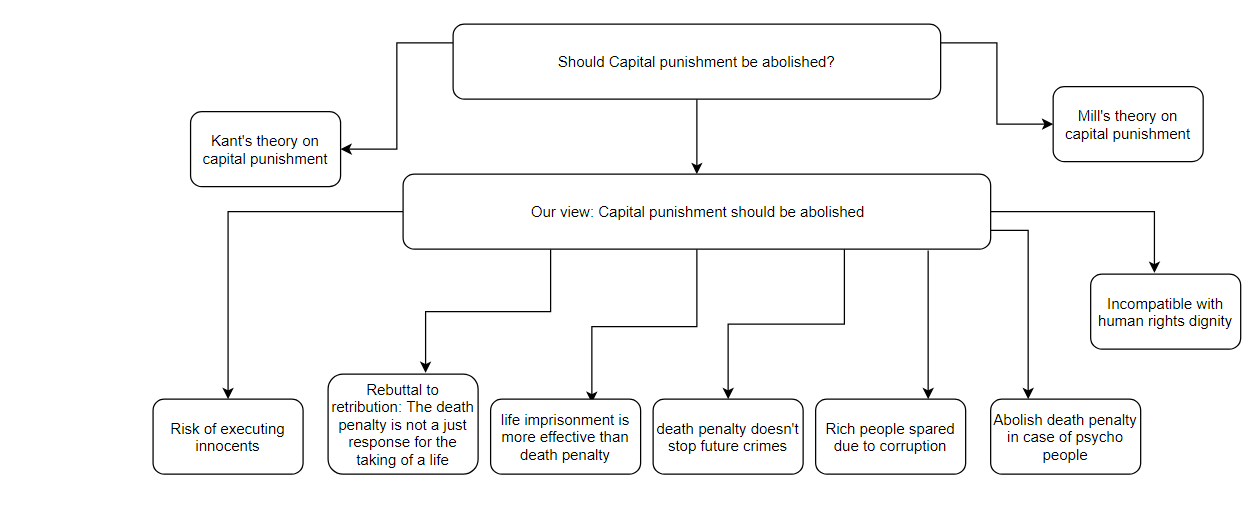
But some people have to say that discrimination has always been a part of the society. We can not expect to see each and every tiny point of view of the crime. In addition to that you can not compare two different crimes just because they did the same harm. Each crime is different, and also the criminal is different and so is his/her circumstances. Even if death penalty is provided in a discrete manner, all the criminals are not being spared entirely. The guilty should still be punished.

### Vengeance

When murder is conducted, the life of the victim’s family is disturbed entirely. The society is terrorized. That feeling can be normalized only when the murderer is punished. This step can not replace what the victim’s family has lost but at least they have an assurance that that person will not commit such a crime again. Any lesser amount of punishment would be equal to questioning the value of life amongst the government.

While the others have to say the vengeance is a word for revenge. Although the first thing is that comes to mind be cause immense pain to the criminal but that is not a mature act. Such impulsive decision can not be considered for implementing capital punishment. Our laws should be of higher principle and ethical values. Using death penalty to compensate someone’s loss is unjust and might result to more pain. Vengeance is a strong emotion. But it should not have a place in our society.

## Flowchart



## Analysis

If we examine the above legal history about the cases that happened and the change of world from some decades we are able to see that the crime level is only increased. The death penalty should be abolished or not, itself suggests that there is an idea which questions the existing system and the idea should have raised due to some quality of human lifestyle. The constitution of any region is not perfect because the life cycle of people changes constantly. Everyone knows that how the man has lived and grown. There were some flaws in the previous lifestyle and now that’s why the constitution has changed. Now this whole thing revolves around executing a person because he has done some crime. If we see then exists something known as death penalty. Now this penalty is again decided by some higher authorities. So if you say that one person’s life can only affect few other people then you might be wrong. There are various kinds of people in this world. And thus supporters of death penalty should think thousand times because if that execution affects even a single object then that execution proves to be harmful to the society.

There are some other issues on the other hand where people think that crime deter is done only by fear. To deter crime there should be not any crime. The human rights also suggest that capital punishment should be abolished. However, only a few criminals have been executed under death penalty, the rest are imprisoned for years. On what basis will the total term for imprisonment depend upon? The constitution seems very haphazard at a in such cases. The jury knows the condition of the victim and is allowed to take any legal step against him. But the court is also not justified right every time. If proper proof is not provided then the chances for zero punishment would increase. If the court’s duty is to protect human rights, then it is not being done in a proper manner as the crime rate is not decreasing. This proves that the constitution is faulty somewhere.

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### Kant

According to Kant’s opinion, no society or state can exist without laws. If there is no law, the society and state cannot exist. Foundation of society and its protection is based on laws which have to be enforced and thus protecting the state and society.

According to Kant, the person who has violated the law is a criminal and has committed “crime” and the society and state has “right to punish” him.

Kant’s has a clear view on “crime” and “right to punish”. According to him, a crime is a violation of laws committed against the society and thus subjected to punish. People who obey and observe the laws are the society members, while people who do not obey the law and commit illegal activities and thus breaking the law, lose the right to be the society members and must be punished.

However an action cannot be considered criminal and the person should not be held guilty if there is no sufficient, strong and corresponding decision made by jury/law. Only goal must be to inflict deserved punishment only to guilty person who has been proved guilty by sufficient evidences and thorough investigation. Else the punishment is groundless and denial of justice. This is also a sign of weak and deteriorating society, which cannot exist for long term and is bound to also further damage the other people and other society and thus the term “law” will lose its eventual importance extincting the whole foundation of a state.

### Mill

Mill states in favour of retention of capital punishment for murder and systematically bases his position on fundamental position that punishment has a significant deterrent effect on criminal behaviour. Mill defends this penalty, when confined to extremely unpleasant, evil and dreadful crime cases, on the very ground on which it is commonly attacked on that of humanity to the criminal as beyond comparison the least cruel mode possible to fulfill the objective of punishment and to do the rightful justice to criminals.

In regards to innocent person, who may have been mistakenly convicted and sentenced to irrevocable punishment, mill states that irrevocability of the punishment will ensure that the courts will become more sculptural in requiring the fullest evidences of guilt.

While in response to the point of apparent indifference of the hardened criminals to the risk of capital punishment, he states that deterrent effect cannot be dismissed by casual observation of the behaviour of convicted criminals. He also further states that we partly know who those are whom it has not deterred, but who is there who knows whom it has deterred, or how many human lives it has saved who would have lived to be murderers.

Many prominent medieval philosophers have given their remarkable theories. The medieval philosopher and theologian Thomas Aquinas made point very clearly stating that   
If any man is dangerous and a threat to the community and is subverting it by some serious sin, the treatment to be commended is only his execution in order to preserve the common good. Thus to kill a man who retains his natural worthiness is indeed an evil, immoral and to which in the long term that society is in grave danger, although it may or may not be justifiable to kill a sinner just as it is to kill a beast, for, as Aristotle states that, an evil man is worse than a beast and more harmful.

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**“*Execution of innocents”***

There is always a risk of executing an innocent when the human justice itself is fallible, when one takes bias decision without considering second opinion and thought of slightest of the doubt, the innocent can never get justice, and thus can leads to degradation of society.

The death penalty legitimizes an act of violence by the state which is totally irreversible & not justifiable and will inevitably claim innocent victims. Wouldn’t prison deter killings just as well as the death penalty? So as to fulfill the objective of just punishment, life imprisonment completely gives surety of the same as the criminals will not be free to commit other crimes. Thus state should fulfill their purpose of punishment in as less harsh and brutal way as possible.

Statistics show that more than 230 people sentenced to death have been found innocent in USA, since 1973 and later all they were released from all their allegations after being executed.Also, the average time taken on death row and trail before these exonerations was 11 years. Source - death penalty information center and FBI.

Thus death penalty should not be given unless the guilty is absolutely sure about the crimes he committed and the court should have ample evidences against him in extreme case.

### Case Study

In 1980, 16 year old white girl ferguson was raped and murdered at texas high school. Out of the five suspicious janitors who were accused of this crime, the jury decided to give death penallife ty to only one of the Janitor Brandley who was the only black in the group. 11 months after conviction, it was found that 165 of 309 exhibits used in the trial, many of which offered grounds for appeal, were vanished. After six years of appeal and hearing to this case post death penalty, texas court of criminal appeals and judge, after hearing to all allegations and investigation wrote a condemnation of procedures used in this case and concluded that court had previously given the death trial solely on the basis of color of brandley which indeed was a substantial factor pervading all aspects of state capital prosecution of him.

Further, supreme court in USA, took a controversial decision and refused to hold explicitly that the execution of a defendant in the face of significant evidence of innocence would be unconstitutional [Herrera v. Collins, 560 U.S. 390 (1993)]. However many US lawyers believe that in practice the court would not permit and is against the law to have such an execution in a case demonstrating persuasive evidence of what is termed as "actual innocence".

***“Rebuttal to retribution - The death penalty is not a just response for the taking of a life”***

Also the argument that the retribution is immoral is just a sanitised and more palatable version of revenge or so called vengeance. Mobs of people gathering around the vans where the prisoner is taken to court, aggresive chanting during public execution and howling mobs insulting an unknown prisoner, whom they don't even know, just because the rulers and their superiors have taken decision to execute him/her, suggests that vengeance remains a major ingredient in popularity of immoral justice of execution or capital punishment. This issue of executing innocent person is major problem for retribution argument. The people should only get what they deserve which is violated by current implementation of capital punishment, wherein innocent people gets executed.

According to theologian Archbishop Desmond Tutu- To take a life, when life has been lost is revenge and not justice. Crimes other than murderers do not generally receive a punishment that mimics the crime. The person who is convicted of raping is not punished by sexually assaulting them that mimics their crime to themselves and the people guilty of assault are not ceremonially beaten up.

Camus and Dostoevsky, prominent theologists argued that the retribution in the case of the death penalty was not fair and was totally unjust. They clarified this argument by saying that the anticipatory suffering of the criminal before execution would probably outweigh the anticipatory suffering of the victim of their crime.The impulse of revenge for revenge, in other words retribution which is just another word for revenge, is not by any means a justification for invoking a capital punishment with all its accompanying problems and risks. Torturing the torturer or raping the rapist is simply termed as vengeance and it has no place in our justice system.

Also the deep pain and agony of victim’s family and their desire to see punishment to those who have committed crime and have plunged them into this situation. Yet, this pain cannot be healed by simple means through retribution or vengeance.Also, when there is lack of evidence and the accused is stated guilty due to overzealous, unproductive mistakes that happens due to lack of investigation or due to hurry under pressure there not only the innocent is found guilty and justice is denied, but the money that is spent on death penalty is also of great concern and thus denial of justice leads to immoral society and its existence is at stake.

### Case Study

Chance and Powell were convicted for murder as a result of overzealous and dangerous police work. Other counsel and ministry took forward this case and demonstrated and proved their innocence. The judge termed the overzealous work of police department as reprehensible while apologizing for the gross injustice that occurred. Are the protections in the legal system adequate to prevent executing the innocent person without any strong ground, evidences and thus leading to unjust results which thus lead to unjust and dangerous consequences?

***“Life imprisonment is more effective than death penalty”***

Criminals of course deserve to be punished but how?. The main purpose and aim of giving punishment is not only to do justice but also to prevent crimes by giving such a punishment that not only impacts and improves criminals lives but also lead to well developed and safer society. For that to prevent a crime or punish a criminal, they must be given such a punishment which is as less brutal as possible and also sends a message to society. Life imprisonment is much more effective than death penalty.

Also the according to the recent survey it says that all the research have failed to provide a scientific, strong and prominent proofs that execution have greater deterrent effect than life imprisonment and also such proof is highly unlikely to be forthcoming in any case in future. Here the central key point to just, moral and truly deserved deterrence is to increase the likelihood of detection, arrest and conviction.  
 Also the high cost spent behind the death penalty has been significantly higher. Moreover there are some states wherein even though no execution happened, high costs were paid to abandon the death penalty once given. Even though New York spent about $170 million over 9 years they had no executions, another example of New Jersey which spent $253 million over a 25-year period and also had no executions. Source - Death Penalty Information Center.

### Case Study

Macias was sentenced to death in texas where his lawyer did nothing to prepare the case for trial. Two days before his execution, he received a stay, where new counsel was appointed to investigate who expertly overturned this case and thus saved him from innocent execution, though a considerable amount of resources was spent in this trials and investigation to overturn this execution. Court concluded the case by stating that We are left with the firm conviction that Macias has been denied his constitutional rights to adequate his counsel in this case where capital punishment is involved, the actual innocence was a close case. The state had paid the counsel $11.4 per hour, but unfortunately the justice system got only what it paid for.

***“ Killing someone is against the human rights”***

Human rights are the fundamental of the constitution and they are unchangeable. The right to life is a fundamental right and if you are not following then you are destroying the constitution and how can you live after destroying the constitution as lives will be at its peak vulnerable. Now as you see the consistency of world’s justice system then we cannot be 50% sure that the victim is really a victim and that is really a very poor thing that our society is killing poor.

Another thing about the death penalty is that this is not good with human rights. According to United Nations (They declared the human fundamental rights on 10th of December 1948) Article 3 of rights say, “Everyone has the right to life, liberty and security of person.” So it clearly says every one. It does not distinguish between a criminal and a jailer. It is a direct violation of Human rights. Human rights are the basic rights provided to all persons at earth total 30 of them. The rights are provided for not anyone is able to harm any human at any way there are also about slavery. By death penalty we are killing the person and harming the dignity humans. United Nations is an organization mainly at sight after deeds of it after WWII. At World War II there were many killings, that’s why they made these rights and they were all with global acceptance of over 150 countries. A human is a creature with ability of thinking and thus a wonderful creature ruling the world right now. Human has seen a series of improvements and then come to this stage. The world is changing every second at this conditions the death penalty is inhumane behavior. One is to change the universe to make human life better for that laws are important but if you are killing the human for other human’s security then you are making the life of a person to end that will not make life better; it will end it; How insane it is to end a person like this. Human are given the right to live. There can be constraints for him to do deeds like not harming anyone and therefore given punishment. But that doesn’t mean anyway that if he does then end it.

Now there is to think about on a claim that if killer knows that he will die then even he kills another person then the death penalty is just a waste. Now if you see a terrorist then he knows that he can be caught and put to death then even if we punish him then there is no good to the society. What will happen? One person's’ life will be ruined and others’ will be put to end. Well that’s just an end to the life and to the hope that they two could do some good to the society. If one is intended to make one see the consequences and thus the criminal may be feared to crime again, however that doesn’t mean that he had grief and that’s why if fear is not there sometimes he won’t do it again.

***“Death penalty does not stop future murders or crime”***

Even if capital punishment may act as a deterrent and may have been justified in some extreme cases but, is it acceptable for someone to pay for the predicted future crimes of others?. As a counter argument one may argue that one may as well punish innocent people; it will have the same effect. But this indeed is not valid, in other words it says that- the people are randomly picked from the streets and punished to which only consequence will be extinction of that society.

Rather going through legitimate legal process and to present evidence which convinced the public that the whether person being punished deserves the punishment or not?, some societies have been operating on the basis of fictional evidence and confessions extracted by torture, the ethical objections to such a system are sufficient to render the argument.The argument that the states who have given death penalty have threatened the criminals and have stopped the crimes is just a myth.

According to survey conducted by FBI, Death Penalty Information Center, death penalty leads to brutalization of society and have increased the murder rates significantly.

In 2010, the murder rate in states where the death penalty has been abolished was 4.01 per cent per 100,000 people.In states where the death penalty is legal and in use, the figure was 5%.The gap between death penalty states and non-death penalty states rose considerably from 4 per cent difference in 1990 to 25 per cent in 2010. Source - FBI.

Now if we think again about consistency of judgement given we may find some faulty judgements among the history. Following is the case in which the brutal face of death penalty was given in completely pressurised and unjust ways. Judges and jury in many cases have been biased and have given their decision under pressure from higher authority or extremists. Due to these immoral things, many innocents gets executed and convicted of murder. Also the poor people are hanged and rich doesn’t due to the corrupt nature of system, which again is of the great concern to existing society.

### Case Study

"I was wrenched from my family, from my children, from my grandchildren, from my friends, from my work that I loved, and was placed in an isolation cell, the size of a shoe box, with no sunlight, no companionship, and no work for nearly six years. Every minute of every day, I knew I was innocent.”

--Walter McMillian, Written testimony at Subcommittee Hearing, July 23, 1993.

McMillan,a black man, who was given death penalty hearing even after the four trials for murdering 18 year old girl shooting her to death, was later found innocent when court concluded that all the evidence, facts and eyewitnesses against McMillan were pressurized by the prosecutors to implicate him in the crime.

***“State should abolish capital punishment also in case of psycho and mentally challenged people”***

The people who are mentally challenged or psycho should not be convicted to death penalty. This doesn’t prevent them who have done terrible things being confined in secure mental institutions,but this is done for public safety, not to punish the insane, psycho or mentally challenged person.It is wrong to impose capital punishment on those who have at best a marginal capacity for deliberation and for moral agency. There is always a treatment for them, death penalty is not and has never been an only option for these kind of people. What is surety that they will commit another crime ? even if we have 1% doubt that they may not commit crime and they can be treated on a right way and leading them to correct path, then one should never give death penalty to them. Also, if you say the killer cannot be trusted again then court has also executed innocent people can we trust the court again? A killer cannot be a protector is completely wrong. Now if you understand that a person can be changed, then there can be many arguments against death penalty. The court is for welfare of the society and if we see Human is the base of the just society meaning a just human is the base for the just society. He did a deed bad then who says that will be done again. Now if you say that we cannot risk. Human only make mistakes and if that can be undone not directly but via doing good for someone else then why to kill the possibility.

Also, some of the persons perform criminal activities due to such an environment and atmosphere around them. They think it is the only way to survive as they are trained in such a way and their mind in manipulated like that. It is society’s responsibility to treat such kind of “psycho”, as we call them, so they have the right path and live better life. Also, Why are we going to give justice? Because of a good city or victim’s satisfaction? We are not trying to give justice to satisfaction of victim. Often these people are poor and live in a terrible situation. Due to this, judges become biased to racial decisions and racial prejudice, giving wrong decisions. These poor people cannot afford expensive lawyers as a result of which they lack skillfulness and can't prove their innocence.

To preserve an orderly society, state should punish the crime in least possible harmful way and also at the same time, with full deserved justice. Capital punishment is the worst possible and most harmful punishment available, so state should use it only if less harmful punishments are not available or not possible by any means. So far the cases, there were always other punishments available to fulfill the objectives of punishing crime properly and appropriately. And therefore, state should abolish the capital punishment.

Moreover, death penalty is not deterrent because major portion of people who commit murders do not expect and do not want to be caught or else do not carefully weigh the differences between possible execution and life in prison before they act. Moreover, most states now have a sentence of life without parole. Prisoners who are given this sentence will never be released and thus justice is at stake. Thus, the safety of society can be assured without using the death penalty.

### Case Study

Atkins v Virginia, the landmark case in history of USA, in which the Supreme court declares the execution of person with “Mentally challenged” unconstitutional. They stated that it is violation of 8th Amendment ban on cruel unusual punishment to execute death row inmates with "mental retardation". Mental health argued and stated that those with intellectual disability are characterized by suggestibility and their willingness to please can lead them to confess - sometimes falsely - to capital crimes. Further it was stated that it is nationwide culture open brutality to execute the mentally challenged people without any evidences of them committing crimes in near future so as to execute them solely on possibility and not the ground facts and evidences.

Why is it difficult to abolish death penalty ?

According to Utilitarian justification for the death penalty, it undoubtedly has some deterrent effect. The deterrent effect can be experienced in a scenario where even a minor crime has a death penalty attached to it. There is a minor chance that the number of crimes would drastically decrease.There is some non statistical evidence that gives weight to the hypothesis that death penalty has a deterrent effect and reduces the crime rate. Therefore the death penalty might act as a known priori for human actions. Hence the question to be asked regarding the deterrent effect is not whether it is actually effective, but rather how effective it is. But for how long can we survive on a possibility?

According to statistical surveys, people tend to really favour the death penalty in cases of gruesome homicide or rapes where in they feel personally victimized. Abolishing the death penalty would be extremely unfair to the victims as their rights for life, property and so on would be denied whereas the criminals rights would be greatly protected. According to this argument the death penalty tries to gain equilibrium between the violated rights of victims and the deprived rights of criminals. The problem with this is that whose feelings getting victimized are we talking about here? If it's the victim’s family then how are the qualified to ask for such stringent punishment if they are not killed?Now if the feelings of the victim's family are justified then is even accidental killing going to lead to a death penalty?This problem is riddled with uncertainty just like the one above.

## Conclusion

The idea that we must be punished for any crime, illegal activities may it be murder, theft, treason, whatever its nature, relies upon a belief in human free will and a person's ability to be responsible for their own actions.

If one does not believe in free will, the question of whether it is moral to carry out any kind of punishment arises.Arthur Koestler and Clarence Darrow argued that human beings never act freely and thus should not be punished for even the most horrific crimes.

The death penalty remains fraught with arbitrariness, discrimination, injustice, biased nature, caprice, and mistake.Experience has taught us that the constitutional goal of eliminating the above things from the administration of death can never be achieved without compromising an equally essential component of fundamental fairness and justice - individualized sentencing.

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