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ARTICLE 21 OF THE CONSTITUTION OF INDIA WITH REFERENCE TO CAPITAL PUNISHMENT

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Article 21 of the Constitution of India-:

" No person shall be deprived of his life or personal liberty except According to Procedure established by law".

ABSTRACT

The death penalty imposed by the state due to the commission of a crime is referred to as capital punishment. In today's culture, the effectiveness of this punishment is up for debate. Based on the basis of human rights violations and sentencing prejudice, abolitionists feel capital punishment is unethical. The "deterrent theory" and the "eye-to-eye approach" are cited by proponents of the death penalty as important grounds for their support. However, various Indian court statements have underlined that the death sentence should only be used in the "rarest of the rare" instances.
Deterrent theory, ethics, abolitionists, and prejudice are some of the terms that come to mind while thinking about the deterrent theory.

Key word-Abolitionists, deterrence theory, ethics, and bias

INTRODUCTION

"The law must be steady, but it must not be still," wrote Roscoe Pound[1].The meaning and harshness of "punishment" have changed over time. Law is the culmination of widely accepted human behavioral norms that are sanctioned by the legal system. It resembles the definition of ethics, except with the exception of the legal implications. There are two points of view in ethics: right and wrong. Since the beginning of time, it has been seen important to structure communities to safeguard moral loyalty and approved behavior in a community through the use of punishment[2]."Any pain, penalty, suffering, or imprisonment inflicted upon a person by the power of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his neglect of a duty required by law," according to the definition of punishment[i].Individuals who violate a society's code of conduct are subjected to penalties. It is a necessary component of criminal law. Punishment is a legal tool that can be used to discourage crime, rehabilitate the wrongdoer, or completely remove the wrongdoer from the social circle. The term "crimes punishable by death" is used to describe capital punishment[ii].

(I) Capital punishment and India

This form of punishment in India is carried in the form of “hanging”. A series of judicial pronouncements and law commission reports in India regulated the law relating to capital punishment. The aforementioned entities did not isolate the legal aspect from the ethical and moral standards. Indian Penal Code currently prescribes death penalty under sections 121, 132, 194, 195A, 302, 305, 307(2), 364A, 376A, 376E and 396[iii]. In Bachan Singh v. the State of Punjab, the dignity of human life was examined through the prism of ethics[iv]. "A genuine and enduring concern for the dignity of human life presupposes opposition to taking a life through the legal instrumentality," the ruling stated. That should only be done in the rarest of circumstances, when the other opinion is absolutely excluded."

[1] ROSCOE POUND, INTERPRETATIONS OF LEGAL HISTORY 5 (Univ. of Chicago Press, 1923).
[2] James H. Galliher, Criminology: A “commonsense” theory of deterrence and ideology of Science, 92 J. OF CRIM.

(II) What is the purpose of Capital punishment?

The efficiency of capital punishment in deterring similar or comparable acts is one of the main reasons for its existence. It is also stated that specific types or classifications of crimes revoke a person's claim to life. Theory of utilitarianism[v] Jeremy Bentham's welfare maximisation theory seeks for acts that maximise welfare. The reasoning behind this approach is that the societal benefit exceeds the criminal's loss of life.

(III) Ethics and Capital Punishment at a Crossroads

Statistical data reveals the discriminatory patterns in capital punishment, which are rife with a blatant class prejudice[vi].One of the ethical issues with utilitarian philosophy and its "goal-oriented" approach is that an innocent person may be executed in a few situations. In other circumstances, a criminal may be executed as a deterrent to future crimes. This draws attention to the issue of "favour in capital punishment." The justification for capital punishment is "deterrence," yet this notion fails when it comes to hardened criminals[vii].In a democratic system, identical acts must be punished equally, yet the poor, lower castes, and uninformed are more frequently subjected to the death sentence, resulting in "uncivilised irrationality." Because of the internalised danger of being detected, the general population does not commit crimes, and so raising the harshness of punishment or imposing the death sentence adds zero or insignificant value. A seasoned criminal doubts that he will be apprehended[viii].

The value of life and the dignity of death have moral allegiance. Capital punishment is viewed as a “gross human rights violation.”

(IV) The connection between ethics and the death penalty

The earliest defined collection of regulations dealing with death sentence was found in the "Code of King Hammurabi of Babylon" in the eighteenth century BC. Around the eleventh century AD, hanging became the most popular method of execution in Britain. Later on, India followed suit. Because there is no worldwide consensus on the

legitimacy and constitutionality of capital punishment, there is rising pressure on governments to abolish it. Today, 106 nations have declared themselves "abolitionist states," meaning they have abolished the death penalty in both laws and practise[ix].The Indian Law Commission has also proposed abolishing the death penalty for all crimes except "terrorism" and "waging war[x]."

The trend of countries becoming "Abolitionist States" stems from ethical and systemic faults that do not support capital punishment.

(V) Capital Punishment on an Unethical Basis

The morality of the death penalty is debated across the world, taking into account various schools of thought. Killing another person appears to be a morally reprehensible act. However, the circumstances surrounding the death of another person are frequently examined to establish if the conduct was right or wrong. As a result, according to utilitarian philosophy, murdering a human person to save or preserve the lives of other innocent individuals is a justified act[xi]. Despite what proponents of capital punishment assert, countries that have used it as a deterrent to future crimes have not seen a significant reduction in the number of violent crimes committed in their country. Empirical data from a poll of criminologists and a study of crime trends in states that have the death penalty suggests that the rate of crimes in death penalty states is 42 percent higher than the rate of crimes in abolitionist states[xii].

The simple argument of proponents of the Deterrent theory is that the death sentence poses a greater danger than life imprisonment. This, however, has the problem of homogeneity. To be effective, a punishment must be used on a regularly basis. However, because an individual's life cannot be taken away at any time, it is irregular and so ineffectual. According to data on the death penalty in the United States, roughly 300 cases of capital punishment were recorded in the mid-1990s, accounting for only 1% of all crimes documented. This demonstrates that only a tiny percentage of the population receives equal protection under the law, as well as the irregularity of punishment.

The most compelling argument against deterrence theory is that everyone, including hardened criminals, has a self-preservation instinct. If they feel they will be caught,

they will not commit a crime[xiii].Another viewpoint is that some offenders commit crimes to fulfil a subconscious or conscious desire to commit suicide or harm others, which defeats the purpose of the Death Penalty. Hardened criminals aim and expect to be penalised for their wrongdoings, according to studies[xiv]. In fact, the Supreme Court ruled in Woodson v. North Carolina[xv] that implementing "Mandatory death penalty statutes is unconstitutional." As a result, if the deterrence argument does not work in discouraging crimes by implementing the death penalty, then there is no reason in depriving another person of his or her life. Even if the culprit has committed horrible acts, the amount of anguish and suffering endured between being sentenced to death and being executed is unreasonable. The trials of these inmates lasted, on average, 5-10 years[xvi].

(VI) Discrimination Factors-

According to statistics, the death penalty is more frequently given to criminals who are impoverished and belong to a minority population than to those who are affluent and belong to the majority society[xvii].There is also a gender bias, since women are said to be guilty for "one out of every seven killings." From 1930 through 1962, however, just thirty people were sentenced to death[xviii].Only twelve of India's 397 death sentence inmates are female. Renuka Bai v. Maharashtra[xix] is a case where a woman sued the state of Maharashtra. "[C]ourts penalise the offence, not the person," the Supreme Court declared. Despite this, there remains gender, caste, and wealth bias in the records. Retainists say that crime is primarily a social problem. As a result, the vulnerability and societal animosity encountered by a certain caste and gender are greater and should be taken into account while imposing the death sentence. This, however, goes against the worth of life, as the value of each life, regardless of monetary or social comfort, is equal.

According to India's death penalty report, about 76 percent of death sentence offenders were from lower and disadvantaged classes. All twelve women put to death came from economically and socially disadvantaged backgrounds[xx].In addition, 93.5 percent of those condemned to die for terrorism charges are from Schedule Castes or religious minorities[xxi].These numbers eloquently highlight the disparate sentencing patterns that go counter to ethical and moral theory.

Deterrent theory's basic notion is to keep other criminals from committing the same crime as the one for which the offender is being imprisoned. Even if this were to succeed, it would still be discriminatory since it sets a precedent for one individual, putting him in a disadvantageous position.

When it comes to the "eye to eye" notion, which assumes that a person's crime is comparable to him giving up his right to exist, critics argue that the theory is incorrect. The family of those who have been murdered do not favour state-sanctioned euthanasia[xxii].

As a result, rehabilitation of offenders, rather than retributive justice, which focuses on punishment, would serve a greater and more ethical purpose.

(VII) Philosophers' Opinions on the Death Penalty

Immanuel Kant believed strongly in retributive justice and criminal punishment. He pleaded for widespread support for the "Law of Retribution," or Lex talionis. He thought that if someone committed a murder, he deserved to die[xxiii].

Cesare Beccaria, on the other hand, was an abolitionist who advocated for "sympathetic emotion and admiration for Humanitarianism." He questioned the state's right to carry out the death punishment as well as its value[xxiv]. They remain the most contentious aspects of the death penalty debate.

(VIII) Capital Punishment in India from a Legal Perspective

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that no one should be denied or deprived of their "Right to Life." Although Article 6(6) indicates that the provision does not address "Capital Punishment," it may be inferred that the clause's essence is the protection and worth of life. Article 21 of the Indian Constitution preserves an individual's "Right to Life and Liberty." In Independent India, around 755 death sentence offenders have been executed to date[xxv].The British wrote the Indian Penal Code in 1860, and they were deemed "Sovereign" at the time. According to John Austin, a member of the Positive School of thinking, the Sovereign possessed unrestricted authority, and so section 303 provided the State arbitrary right

to take an individual's life[xxvi].There are four petitions to challenge the death penalty order. According to Article 136 of the Constitution, an appeal against the Supreme Court's imposition of the death penalty may be made by filing a "Special Leave Petition." Under Article 137, a review petition may also be submitted, and the court may, in its discretion, grant it, taking into account the possibility that the court erred. A review petition is not an appeal; rather, it is a mechanism to correct an error. A curative petition can be submitted to correct a mistake by the court if a review petition is denied[xxvii].Here, the defendant must establish that the "Principles of Natural Justice" were violated or that his prejudice was taken into account. Finally, under Articles 72 and 161, "mercy petitions" may be sent to the "President" and the "Governor," respectively. Clemency is a key component of this strategy.

In the well-known case of Mithu Singh v. the State of Punjab, the mandatory death penalty was abolished for all convicts serving life sentences under section 303 of the Indian Penal Code, 1860[xxviii].The Supreme Court ruled that Section 303 violated "Article 14" and "Article 21" of the Constitution since it took a man's life. Additionally, it was acknowledged that the obligatory life sentence violated section 235(2) of the Criminal Procedure Code of 1973 since it denied the defendant his "Right to be Heard." Additionally, because the court must give "special grounds" before inflicting the death penalty, such a sentence violated section 354(3) of the Criminal Procedure Code.

The case of Ediga Anamma v. State of Andhra Pradesh illustrates the concerns of abolitionists with regard to discrimination[xxix].The court stated that "Crime cannot be divorced from the Criminal" in this instance. The argument continued to be that whether a criminal is "too young" or "too elderly," the punishment is altered. The verdict did not follow the principles of abolitionists or those of revenge. It adhered to "Correctional therapists'" principles. However, there was bias in the court's decision to commute her sentence, citing "her feminity, youth, social circumstances, and exile from home" as justification. The moral code of ethics suffers because morals and sensitization are only used in certain circumstances, even if the goals of morality can be realised because Law must be made sensitive. State of Uttar Pradesh v. Jagmohan Singh[xxx] is the matter at hand. Moral relativism is evident. In contrast to what is required in the United States under "due process," the Supreme Court of India is not required to apply the norm of "Reasonability," according to the top court in this case.

The court determined that because "Freedom to live" is not covered by "Article 19," the death penalty does not contradict it. Due to the unique facts of each case, "Article 14" did not find the judges' decision to condemn someone to live in prison to be arbitrary[xxxi].Many Indian rulings were based on the decision in Furman v. State of Georgia[xxxii], which said that "If the Punishment is particularly severe and there is a significant chance that it is being imposed arbitrarily and does not fulfill a judicial purpose, it then violates the Eighth Amendment." Similar to this, India upholds the constitutionality of the death penalty unless it is used in a way that is justifiable. Bachan Singh v. State of Punjab[xxxiii] is arguably the most significant ruling with regard to the death penalty in India. The "Rarest of the Rare" doctrine was born as a result of this case. "A true and lasting concern for the dignity of human life postulates opposition to taking a life through the instrumentality of law," the Court maintained. This should only be done in extremely rare instances where the other opinion is categorically excluded. Even today, because it respects the worth of human life, this rules India's criminal justice system. It placed emphasis on the fact that there are often "special reasons" to take someone's life. The Supreme Court's compassion may be observed in the case of Shatrughan Chauhan v. Union of India[xxxiv], which highlights how frequently the President is rejecting applications for mercy. A three-judge panel recently clarified that Article 21 was violated by the president's delay in dismissing compassion requests. A mercy plea might be turned down in anywhere between 1.5 and 11 years. The inmate expected to die every day, therefore that constituted "torture." According to this ruling, "Excessive delay in rejecting a petition for compassion is a crucial mitigating element for appeal for commutation." As a result, it is clear that the Indian legal system and judicial rulings only use the death penalty in extremely rare and exceptional circumstances. This preserves the morality that derives from the idea that human life is valuable.

(IX) CONCLUSION AND SUGGESTIONS

India belongs to the group of nations that still impose the death sentence for some crimes. The statute does not specify what qualifies as "Rarest of the Rare," leaving it up to the judges who hear the case to decide, which can result in bias based on race, gender, and even cognitive ability. In other words, the deciding elements are the judge's convictions and conscience. The death sentence does not effectively prevent

future offenses because it does not function as a deterrent. According to the author, the death penalty should be abolished since it is a kind of state-sponsored murder. On the other side, countries that oppose the death penalty, like Canada, see a decline in crime rates after doing so[xxxv]. The utilitarian principle of giving up one's life for the better good is false in this instance since there is no evidence of a "greater good" even after the death penalty has been implemented. An effective criminal justice system is essential in a "Constitutional democracy." Rehabilitating the inmate should be the primary objective of a criminal justice system. In many instances, "Psychosocial maladjustment" may be the fundamental cause of criminal behavior. To prevent recurrent offenses, it is imperative to rectify this maladjustment. The theoretical foundation of rehabilitation is the idea that crime is committed because of poor social conditions. Therefore, the criminal has the moral right to ask for society's assistance. Given that the death sentence is only used in the "rarest of the rare" circumstances, Indian legal rulings and statutes have demonstrated a humane side. The death penalty must be abolished, according to the author, and life imprisonment combined with rehabilitation must become the norm. An unethical practice like the death penalty shouldn't exist in the 21st century. It is, in other words, a violation of human rights.

END NOTES -:

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[iv] Bachan Singh v. State of Punjab, AIR 1980 SC 898.

[v] Tony Draper, An Introduction to Jeremy Bentham's Theory of Punishment, 5 J. OF BENTHAM STUDIES 121, 122-131 (2002).
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[xxix] Ediga Anamma v. State of Andhra Pradesh, (1974) 4 SCC 443
[xxx] Jagmohan Singh v. State of Uttar Pradesh, (1973) 1 SCC 20
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[xxxii] Furman v. Georgia, (1972) 408 U.S 238
[xxxiii] Bachan Singh v. State of Punjab, AIR 1980 SC 898.
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