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Errors in Capital Punishment

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ABSTRACT

The death penalty is a legal method whereby someone is placed to death by a state in accordance to the crime committed against the law, capital punishment has been used over the years by virtually every society to punish the guilty for a few specific crimes similar to the following terrorism, sexual crimes, mass murder, treason, or as a part of military justice.

There is a growing discussion within the world concerning the necessity of capital punishment and also the issues with it. The death penalty has long been under scrutiny for being biased. It famously discriminates between socio-economic class, race, and so forth. Since discrimination, by its terrible nature, involves the unequal treatment, discriminatory punishment ineluctably dashes with the equal status of all. Discriminatory capital punishment seems to be one of the foremost mortifying and most wrongful kinds of discrimination. A bias towards white-victim cases has been found in most of the subtle studies exploring this field over several years. These studies generally account for different variables within the cases studied, like the number of victims or the brutality of the crime, and still found that defendants were a lot more likely to be sentenced to death if they killed a white person. The problem of affording representation conjointly arises. Whereas the judicature provides legal aid, the lawyers provided are non-competent, underqualified, and undertrained, and honest legal counsel value over what some will afford. This paper will analyze and highlight the issues of status and race in Capital punishment.

I. INTRODUCTION

Capital punishment, also called the death penalty, execution of an offender sentenced to death after conviction by a court of law of a criminal offense.² Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The death penalty has been widely used throughout history

as a method to punish the guilty. Capital punishment has been observed to be used as far back as the eighteenth-century BC in Babylon there exist reports of it being used even before the eighteenth-century BC by the Romans and Greeks as the punishment for most crimes. As history progressed the use of the death penalty became more and more evident. Since the tenth-

¹ Author is a student at Presidency University, India.

² Roger Hood, more on history of capital punishment on Britannica <https://www.britannica.com/topic/capital-punishment/Arguments-for-and-against-capital-punishment#ref224697>

century hanging became the mode of execution in Britain in the following century.³ Some of the forms of execution used at that time include boiling, burning at the stake, hanging, beheading, and being crushed to death. Executions were held for “Capital Offences” such as marrying a Jew, treason, and not confessing to a crime. Britain went on to influence many of the countries it conquered and many of them went on to adopt capital punishment such as America which uses it more than any other country and India.

Although capital punishment has been around for quite a while it has not generally been a broadly acknowledged practice. As an ever-increasing number of nations advanced and developed, they understood the issues faced with this practice like when used for smaller and lesser crimes, capital punishment seems highly immoral and entirely lopsided to the act of crime done. People who believe the death penalty should be abolished back their beliefs through the claims that capital punishment violates the condemned person’s right to life and is fundamentally inhuman and degrading. They additionally highlight other variables that would influence the decisions given that would block the likelihood that the death penalty can be genuinely and fairly applied, contending that poor people and people from different ethnical backgrounds and religious minorities frequently cannot afford a competent legal counsel, that racial bias is predominant and prevalent in white juries in capital cases and influence their judgments leading them to convict dark and other non-white

litigants in unbalanced numbers. The historical application of capital punishment shows that any attempt to single out certain kinds of crime as deserving of death will inevitably be arbitrary and discriminatory. Since mistakes and blunders are inescapable even in a well-run criminal justice system, a few people will be executed for violations they didn't carry out. At last, they contend that, since criminal proceedings can be dragged for months and even years, those condemned to death would be forced to endure long periods of uncertainty and hopelessness.

A. SCOPE AND OBJECTIVES OF STUDY

The purpose of this paper is twofold one is to examine the integrity of capital punishment and historical analysis of the evolution of capital punishment through the ages.

B. SIGNIFICANCE OF STUDY

This study is a significant endeavor to understand the importance of capital punishment through studying the different biases faced by different individuals through the process of the death penalty.

C. LITERATURE REVIEW

The death penalty has been in effect throughout the world for as long as we can remember. As time progress people have slowly opened their eyes to the horrors of the act of seizing someone’s life away that is the death penalty. One may argue that execution is murder in itself and no one wins when we attempt to “fight fire

³ [https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-](https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty)

penalty

with fire”. Capital punishment takes away the possibility of the accused being proven innocent in the future and set free.

Stephen B. Bright attempts to discuss a few of the largest problems with this practice in his research paper (Race, Poverty, the Death Penalty, and the Responsibility of the Legal Profession). The major flaws in such an inhumane punishment can be quickly realized when it is given a deeper thought. Analysis of cases proves courts hand out the death penalty without taking into account many factors of the case. While many countries have abolished the practice of the death penalty some still carry out the practice to this day. Many countries refuse to extradite people to countries that utilize the death penalty if exists a chance the person extradited would be subjected to the death penalty. The ability to afford a good and competent legal counsel also plays a major role in whether a person receives the death penalty. Bright suggests the re-examination of the criminal justice system and encourages lawyers to spread awareness of the need for competent legal counsel.

Jennifer L. Tilley deals with a few of the other issues in her research paper (Social Class and Capital Punishment: A Theoretical and Empirical Analysis). Capital punishment reiterated the massive class division that exists in this society. While capital punishment is supposed to be a bias-free process till the end the existing preconceived notions about certain classes and races heavily influence the decisions of everyone involved. The majority of people given the death penalty belong to the lower classes. The rich and upper-class use their money

and influence to get out of the sentencing. The death penalty has a massive influence on political parties. The capital punishment verdict is no longer given based on evidence and intuition, it now takes into consideration the culture of the accused, his social status, etc.

(Race Discrimination and the Legitimacy of Capital Punishment: Reflections on the Interaction of Fact and Perception) This article by David C. Baldus George Woodworth focuses on the interface between the empirical evidence of racial discrimination in the administration of the death penalty, the society’s observations of the existence of such discrimination, and the effect of those observations on the perceived legality of Capital punishment. The difference in the legal judgment between those with material riches and those without is highlighted. The article goes on to highlight the difference between conscious and subconscious discrimination and the differential treatment of defendants in a country that claims to exercise race-neutral policies and practices. One of the easiest methods to reduce racial discrimination in the issuance of the death penalty is restricting the use of the death penalty to the most serious crimes or abolishing the system entirely.

D. RESEARCH METHODOLOGY

A qualitative and analytical method of research was employed in writing this paper. Secondary sources like articles and websites have been referred by the researcher for the accomplishment of this project.

E. RESEARCH QUESTIONS

1. Does social status affect the enactment of capital punishment?
2. Is race the determining factor for awarding Capital punishment?
3. Historical analysis of whether the death penalty played a major role in history?

II. HISTORY AND DEVELOPMENT OF CAPITAL PUNISHMENT

Capital punishment has assumed a significant part in history. Evidence of the usage and laws pertaining to the death penalty has been found as far back as ancient Babylon with the laws being stated in the Code of King Hammurabi of Babylon. The Hammurabi Code was carved into stone for the world to see. The Hammurabi Code issued the death penalty for 25 different offenses peculiarly murder was not one of them. The offenses varied based on an individual's social status, one could be executed for theft, perjury, and other crimes that in the modern era would be handled far more lightly in most countries. The ancient legal principle *Lex talionis* —“an eye for an eye, a tooth for a tooth, a life for a life”— was famously prescribed in the Babylonian Code of Hammurabi.⁴ As we move further in history we reach Rome. 5th Century BC, the Roman law codified the death penalty in the twelve tablets.⁵ Again, the death penalty was unique to the nobles, commoners, and enslaved. Punishment for crimes that include defamatory remarks against others and offensive music, perjury, night

city riot, wilful murder of a citizen or parent or theft by a slave, treason, murder, adultery, robbery, rape, and arson.

The list of crimes eligible for the death penalty for the duration of the Roman Empire was even larger for non-residents, outsiders, and slaves. For instance, for forgery, slaves could be executed, while residents, and especially the elite, were usually punished more leniently than non-residents and slaves. Yet there existed certain instances where even the elite suffered the death penalty those being for treason and murders of certain individuals. Indeed, the maximum of the brutally punished capital violations in historical Rome had been treason and parricide (murder of one's parents or closest circle of relatives), which reflected the cultural concept of the Romans within the primacy of the nation and one's circle of relatives in cases of treason a Roman can be crucified, whipped to death, or burned alive. Execution methods included decapitation, suffocation, and dropping an incredible height, buried alive. Drowning, destruction by wild beasts, and crucifixion.

In the case of elites, suicide has often been chosen as a more honorable substitute option than facing execution and public embarrassment. However, the elite equestrian and senatorial classes had been in command of politics, and the courts generally obtained much less excessive consequences. Unless they were imposed through the government. Emperor or a few different very effective Romans; instead, exile

⁴Roger Hood, more on history of capital punishment on Britannica <https://www.britannica.com/topic/capital-punishment#ref224694>

⁵ Michael H. Reggio, more on death penalty on PBS <https://www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/>

came to be used frequently, starting from brief to permanent; As an alternative for the execution of slaves and the lower classes, they would be sent to the mines or forced to participate in the gladiatorial games for the amusement of the wealthy, however, there was a chance it has not always resulted in death or disappearance. In Britain, hanging became a common method of execution in the 10th century. Hanging on the gallows was the most common method of execution. In the 11th century, William the Conqueror did not allow anyone to be hanged for a crime or to be executed in any other except in times of war. Up to 72,000 people were executed in the 16th century during the tyrannical reign of Henry VIII⁶. The methods of execution used during this period included cooking, burning at the stake, hanging, beheading, drawing and housing, and marriage. In the next two centuries, more than 200 crimes in Britain were punishable by death, including robbery, cutting a tree, robbery of a house worth forty shillings and shoplifting worth five shillings, robbery of a rabbit hole, and forgery of tax stamps, and due to the severity of the death penalty, however, it was a well-conceived notion that the juries tended to fail the convictions when the penalty was great and the crime was not.

These acts led to an early reform of UK death penalty laws. Between the years 1832 and 1837, many capital crimes were swept away. In 1840 the public rallied together to attempt to get rid of this system, but it was deemed to be a failed attempt to abolish all death penalty laws.

⁶ Find law editors, more at find law
<https://criminal.findlaw.com/criminal->

Throughout the 19th and 20th centuries, capital punishment was increasingly abolished, not only in Great Britain but also throughout Europe, to this day only a few European countries maintain the death penalty.

While India continued to abide by the Capital Penalty even after being freed from Britain, they have made several changes in recent years regarding the use of the 'rarest among rare' doctrine and has greatly reduced the number of times it is invoked. There are only about a dozen crimes in the Indian Penal Code which define the death penalty as a penalty. Those being –

- Waging War against the Government (Section 121)
- Abetment of Mutiny (Section 132)
- Submitting/fabricating false evidence to procure one's conviction for Capital offense (Section 194)
- Murder (Section 302)
- Abetment of suicide of a Child or Insane person (Section 305)
- Attempt to Murder by a life convict, if hurt is caused (Section 307)
- Dacoity with Murder (Section 396)
- Kidnapping for Ransom (Section 364A)
- Abandonment of duties as a Defence officer, and acting against national security.

Drug offenses Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985

[procedure/history-of-death-penalty-laws.html](https://www.findlaw.com/criminal-procedure/history-of-death-penalty-laws.html)

Bombay Prohibition (Gujarat Amendment) Act, 2009 – The Act holds a provision for death sentence or life imprisonment for those found guilty of attempting to or manufacture and selling false or fake liquor

POCSO Act – Section 6 for Aggravated Penetrative Sexual Assault on a child below 12 years⁷

III. PROBLEMS FACED DURING TRIAL

Discrimination within the administration of justice, whether in policing, prosecution, trial, conviction, or imprisonment, can cause extraordinary harm to individuals and society, and have lasting consequences for future generations. Members of racial, ethnic, and other minorities or vulnerable groups are often harassed, arbitrarily detained, and abused by the enforcement apparatus, and unequal treatment by prosecutors and courts. Police in many countries disproportionately target members of marginalized groups for arrest.⁸ Members of those groups may additionally face disproportionate enforcement, unfair trial, and ill-treatment. Disproportionately severe penalties for criminal charges. Humiliating treatment, beatings, statutory offense, and shooting of deaths of members of marginalized groups are often in stark contrast to the treatment of others, and members of those groups have little recourse to legal remedies for abuse. Discriminatory effects could even be particularly devastating within the employment of the executing. A basis

for discrimination apart from the underlying crime that the sentence is allegedly being applied is routinely incorporated into determining which individuals are visiting be executed and which individuals. The inherent fallibility of all criminal justice systems ensures that innocent people are sometimes executed, whether or not an accurate process is followed. Since execution is irreversible, such errors of justice can never be corrected.

Discrimination faced during the trial

Research has shown that when the type of homicide is controlled for, race can give some thought to the prosecutor's decision to hunt the execution and in its imposition. It appears that the race of the victim, together with the race of the offender, plays a major influence on the prosecutor's willingness to pursue the execution and on the willingness of judges and jurors to impose the punishment. Black offenders convicted of murdering white victims are at the most effective risk for receiving the sentence of execution, and offenders, whether black or white, convicted of murdering black victims are least likely to receive corporal punishment. Some argue that racial prejudice plays an enormous role in white support for the execution, and style of other studies have found such racial prejudice combined with a punitory approach among whites analysis supported the 1992 American National Election Survey (ANES) finished that "for White people living in an exceedingly white county, racial prejudice emerges because of the

⁷ Mahalakshmi Pavani, more at India legal <https://www.indialegalive.com/special-story/capital-punishment-a-roving-ethical-conundrum>

⁸ https://www.sagepub.com/sites/default/files/upm-binaries/46946_CH_3.pdf

strongest predictor of white support for the execution. Within the foremost racially integrated counties this impact is over double". The results of this study are confirmed by similar research conducted by the 1992 ANES and 1990 U Census data (Soss et al., 2003). The researchers conjointly found that whites with higher family incomes were additional doubtless to support the penalty than whites in lower-income groups. Victims of the death penalty are not only discriminated against based on their race. People living in poverty are also disproportionately affected by the death penalty for many reasons: they are easy targets for the police, they cannot afford a lawyer, and the free legal assistance they can receive is of low quality, obtaining Expert evidence is beyond your means. Finding witnesses is too costly and access to appeals is often dependent on being able to afford an additional attorney. Many are unable to post bail and thus are held in custody before their trials, further hampering their efforts and opportunities to prepare an effective defense. Some legal aid systems are only activated at the trial stage, which means that defendants from low socioeconomic backgrounds are often questioned and investigated without an attorney. By the time the case reaches court, it's going to already be too late to ensure a good trial. Corruption by law enforcement officials is another damaging factor. Poverty also compounds the obstacles already faced by vulnerable and disadvantaged groups in society.

This especially includes people of African descent, as well as other people who are discriminated against based on gender, ethnicity, and race or immigration status. Meanwhile, migrants who are trapped in the criminal justice system face multiple obstacles in challenging the charges against them, including unfamiliarity with legal language and procedures, limited knowledge of their rights, financial limitations, and possible lack of a supportive social network. They may also face prejudice for part of judges, police, and investigators, which can influence the verdict against them, leaving them at greater risk of receiving the death penalty.⁹ The socio-economic slowness of those sentenced to death collectively prevents access to legal resources and quality legal representation and consequently violates their right to a fair trial the effects of not having good lawyers and not meeting with the lawyers who represent the prisoners have a noticeable impact on their right to a fair trial. They neither know the status of their cases nor can they participate in their proceedings.

Jury Bleaching

As support for the death penalty has waned in the United States, the "death grading" process, which selects potential jurors in death penalty cases based on their views on the death penalty, produces juries every less representative of which African Americans are disproportionately excluded¹⁰ and, according to a new study by researchers at the University of California, juries

⁹ United Nations Human Rights, 10 Oct 2017 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22208&LangID=E>

¹⁰ Mona Lynch and Craig Haney, more at death

penalty information center (may 18 2018) <https://deathpenaltyinfo.org/news/studies-death-penalty-jury-selection-whitewashes-juries-and-is-biased-towards-death>

increasingly skew in favor of conviction and the death penalty.

The death rating, say the Investigators, "systematically 'launder' the eligible equity fund and leave behind a subset of jurors who do not represent the views of their community."

The death qualification process also contributed to the fact that the public prosecutor's office used discretionary jury strikes in different racist terms by providing a neutral reason for disproportionately excluding African American jurors. It found that the majority of white juries, and especially white male jurors, ignored most of the mitigating evidence that would be offered to save a defendant's life and that a significant minority of those jurors considered many of these mitigating factors inappropriately grounds for looking at the imposition. They also found that white respondents were "significantly more receptive to" aggravating evidence and were more inclined to weigh these specific elements in favor of a death sentence, compared to African-American respondents. The death qualification process, they said, also contributed to the racially disparate use of discretionary jury strikes by the prosecution by providing a facially neutral reason to disproportionately exclude African-American jurors. , found that the majority of white juries, and in particular the white male jurors, ignored most of the mitigating evidence that would be offered to save a defendant's life and that a significant minority of these jurors inappropriately viewed many of the mitigating factors as reasons for imposing they also found that white respondents "were significantly more receptive to aggravating evidence and were more

inclined to weigh these specific elements in favor of a death sentence compared to African American respondents."

IV. CONCLUSION

The death penalty is an intolerable denial of civil liberties and runs counter to the fundamental values of our democratic system. The death penalty is uncivilized in theory and partial and unreasonable in practice. Through litigation, laws, and advocacy against this barbaric and brutal institution, we are trying to stop executions and demand an end to the death penalty. Innocent people can be killed because of errors or deficiencies in the judicial system. Witnesses, prosecutors, and juries will all make mistakes. This can happen in addition to deficiencies in the judicial system, innocent people will inevitably be convicted of crimes. Wherever the death penalty is used, such errors cannot be properly placed. The death penalty legitimizes an irreversible act of violence by the state and inevitably claims innocent victims. As long as human justice remains fallible, the danger of the innocent being executed can never be removed. There is ample evidence that such errors are possible: within the United States, one hundred and thirty people sentenced to death have been found innocent and death row free since 1973. The usual time on death row before these exonerations were eleven years. The constant threat of execution makes the ordeal of these unjustly convicted people particularly terrible. Some lawyers argue that the death penalty is not actually used in retaliation for murder or even consistently for a particular species. They argue that at least in the US, only a small minority of

murderers are executed and that the death penalty is against a "capriciously selected." "A random handful of offenders" does not constitute a consistent program of retaliation. Since the death penalty is not used in retaliation. It is inappropriate to use retaliation to justify the death penalty.

"The death penalty remains fraught with arbitrariness, discrimination, caprice, and mistakes. Experience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death can never be achieved without compromising an equally essential component of fundamental fairness - individualized sentencing."¹¹

- Justice Harry Blackmun, United States Supreme Court, 1994

¹¹ *Callins V. Collins*, 510 U.S. 1141 (1994)

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