ISSN: 2582-6433

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions ofthe authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce. Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ANALYSIS OF CAPITAL PUNISHMENT FROM HUMAN RIGHTS PERSPECTIVE

AUTHORED BY - MAYANK GUPTA
LLM (Human Rights)
Enrolment No.: A0310122001
Batch 2022-23
Amity Institute of Advanced Legal Studies
Amity University, Noida, Uttar Pradesh.

Declaration

I, Mayank Gupta, declare that the dissertation titled "Analysis of 'Capital Punishment' from human-rights prospective" submitted for the degree of LL.M at Amity University, is entirely my own work, and that all sources used or referred to in this dissertation has been acknowledged and properly cited. I confirm that the work contained in this dissertation has not been submitted, in part or in full, for any other degree, diploma, or qualification in any institution, nor has it been submitted to any other academic institution for assessment or examination. I further declare that any data, information, or material taken from other sources has been clearly identified and acknowledged by providing appropriate references and citations.

I acknowledge that any breach of academic integrity, including plagiarism or misrepresentation of work, may result in severe penalties, including the cancellation of my degree, and may also have legal consequences. I certify that the dissertation has been written in compliance with the regulations and guidelines set by the academic institution, and that I have adhered to ethical principles and standards in conducting research and reporting the findings. Finally, I affirm that I have read and understood the regulations and guidelines of the academic institution regarding academic integrity and plagiarism, and that I have adhered to them in completing this dissertation.

Mayank Gupta

KNOWLEDGEMENT

Without the unwavering support and encouragement of my supervisor, participants, friends and family, and the wider academic community, this project would not has been possible. I cannot overstate the invaluable guidance and feedback provided by my supervisor Prof. Arun Upadhyay. Their expertise,

encouragement, and constructive criticism were crucial in shaping my ideas, improving my writing, and keeping me motivated during the often-challenging process of writing a dissertation. I am very grateful to the participants who took the time to share their experience and insights with me. Their contributions were essential in adding depth and nuance to my research, and I appreciate their willingness to engage with a topic that can be sensitive and difficult to discuss.

My friends have been my constant source of encouragement throughout this journey. Their belief in me, even during moments of self-doubt, has been a powerful motivator, and I am deeply grateful for their unwavering support. I would also like to acknowledge the contributions of various organizations and individuals who provided me with access to resources and information. In particular, I am grateful to Amity University, that provided me with invaluable assistance in data collection and analysis. Lastly, I would like to extend my appreciation to academic community for providing an environment of intellectual rigor and stimulating discourse. I am grateful for the opportunity to engage with scholars and experts in my field, and for the feedback and guidance provided by my colleagues and peers.

In closing, I would like to express my heartfelt thanks to everyone who has supported me throughout the process of writing my dissertation. Your contributions has been immeasurable, and I am deeply grateful for your support, guidance, and encouragement.

Mayank Gupta

CERTIFICATE

This is to certify that this dissertation named“ Analysis of capital punishment from Human Rights Perspective” which is submitted by Mr. Mayank Gupta for awarding of Degree of Masters in Law is a Bonafide research. He has worked on these topics under my constant supervision and guidance to my entire satisfaction and her dissertation is complete and ready for submission. I'm satisfied that this dissertation is credit worthy for the award of the Degree of Masters in Law. As this report satisfies the requirements laid down by Amity University, Noida for awarding the Degree of Masters in Law, I recommend that this dissertation may be accepted for evaluation by the University.

Date:

Prof. Arun Upadhyay

Place: Noida

TABLE OF CONTENTS

Chapter	Particulars
	Preliminary Pages List of abbreviations List of cases List of charts Preface
1	**Introduction**
2	**The Ethics and Morality of 'Capital Punishment': Examining Human-rights Principles**
2.1	The Right of life: Is the Penalty of death a Violation of Human-rights?
2.2	Retribution vs. Rehabilitation: Evaluating the Justifications for 'Capital Punishment'
2.3	human-rights Standards and the Usage of 'Capital Punishment’
3	**The Historical Context and Global Trends of 'Capital Punishment’**
3.1	The Evolution of 'Capital Punishment': From Ancient Times to the Present Day
3.2	'Capital Punishment' Around the World: A Comparative Analysis of Policies and Practices
3.3	The Role of Public Opinion and Political Will in Shaping 'Capital Punishment' Policy
3.4	Political Will and 'Capital Punishment'
3.5	The Role of Advocacy and Education
4	**The Disproportionate Impact of 'Capital Punishment' on Marginalised Communities**

4.1	Race, Class, and 'Capital Punishment'
4.2	The Impact of 'Capital Punishment' on Women and Juveniles: A Human-rights Perspective
4.3	The Penalty of death and Mental Health
5	**Alternates to 'Capital Punishment': A Human-rights Approach to Criminal-Justice Reform**
5.1	Restorative-Justice
5.2	The Role of Education and Prevention in Reducing Crime
5.3	The Importance of Fair Trials and Effective Legal Representation in Cases of capital nature
6	**Indian Perspective**
6.1	Constitutional and legal framework for the penalty of death in India
6.2	Methods for execution in India and their human-rights implications
6.3	Human-rights concerns with the usage of the penalty of death in India
6.4	Critical Analysis
7	**Conclusion and Suggestions**
8	**Reference material** Bibliography

LIST OF ABBREVIATIONS

CP	Capital Punishment
ECHR	Europe Convention on Human-right
CERD	Comittee on the Elimination of Racial Discrimination
DRC	Death Row Convicts
HRC	Human-rights Comittee
HR	Human-rights
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the former Yougoslavia
ICTR	International Criminal Tribunal for Rawanda
NGO	Non-Governmental Organization
UN	United Nations

LIST OF CASES

S.NO	CASE	Page
1	Bachaan Singh vs State Of Punjab on 9 May, 1980 AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145 Bench: Y Chandrachud	41
2	Machhi Singh And Others Vs The State Of Punjab Case Number: Criminal Appeal No 78-79, 80-84, 85-86, 87 And 88-89 Of 1981 And 419 Of 1982 Bench: M.P. Thakkar.	43

3	Jagmohan Singh vs. State of Uttar Pradesh, A.I.R. 1973, S.C 947.	60
4	Rajendra Prasad And Others vs State Of U.P. And Others on 24 June, 1998 1999 (1) AWC 357, (1999) 1 UPLBEC 454	68
5	Santosh Kumar Sataisbhushan vs The State Of Maharashtra And Anr on 27 February, 2019 Bench: S.S. Shinde	74

LIST OF CHARTS

S.No.	Topic	Page.No.
1	**Chart 2.1 (How Penalty of death supporters and opponents view it)**	7
2	**Chart 3.1 (Death Sentences in India 1998-2013)**	38
3	**Chart 3.2 (Top 10 countries by no of Execution)**	41
4	**Chart 4.1 (Execution in India in categories)**	47

PREFACE

This dissertation is an analysis of 'sanctions' from a human-rights perspective. The viability of this is to study the impact of the usage of the penalty of death for the preservation and promotion of human-rights, with a focus on international legal standards and the experiences of countries that have abolished or retained the penalty of death. The topic of 'Capital-Punishment' has been a controversial and highly debated issue for centuries, with proponents and opponents holding strong and often conflicting opinions. While people say that the penalty a necessary tool for deterrence and justice, others contend that it is an inhumane and ineffective practice that violates basic values. As a student of human-rights law, I have always been interested in exploring the intersection of law, policy, and human-rights. This dissertation represents the culmination of my academic journey and the result of my passion for human-rights research.

The process of writing this dissertation has been both challenging and rewarding. It required extensive research, analysis, and critical thinking, and involved the review of numerous legal and scholarly sources. Additionally, conducting interviews with stakeholders and experts added valuable insights and perspectives to the study. I would like to express my gratitude to my supervisor, Professor Arun Upadhyay, for their guidance and support throughout the writing process. Their feedback and encouragement were instrumental in shaping and refining my ideas. Whenever there is a need for any strict law then the pressure comes form society in order to create a force that changes the law itself and old laws become redundant. Our society has shown such arrangements from time to time and there are many examples of how this can be achieved. After all past is the best teacher for present in order to achieve a better future. Such is the order of things when we talk about leniency in the word and this gives rise to the diplomacy of human rights in an unprecedented manner. Especially in the world where we live which is comparatively peaceful than the previous centuries.

KEYWORDS: Sanctions, Capital Punishment, Death Penalty, Social Justice.

ISSN: 2582-6433

CHAPTER 1

INTRODUCTION

Whenever there is a need for law, there arises a need for sanctions. This has been the case since times immemorial. The motive behind sanctions relies on two aspects, first one is that the offender should need to suffer and second is to discourage others from doing wrong by imposing a penalty on wrongdoers. Although Death penalty is awarded by the court in the rarest of rare cases. Such sanctions has always been a point of contradiction not only in the Indian Judiciary however also in most developed and underdeveloped nations.

This is a very sensitive issue. It is also important to understand the mindset of the person. Committing the crime in order to provide them the correct course of action two that they come back on there path of redemption without going away and special not losing their life. Noe the major responsibility of doing so lies on the shoulders of the state. This also provides a lot of think prank's top work on. tvartious issues retaliated to sanctions. Whenever there is a need to define a certain sort of sanction it needs to be curated very carefully. This theory believes that Preventive Theory, which says 'Prevention is better than cure. It's better to take prevention before the commitment of a crime. This theory aims at preventing crime by disabling crime by putting such harsh sanctions.

Review Of Literature

Law and Literature is a field of slow progress and it has much in common with other kinds of studies. But while talking about the issue at hand it becomes imperative to closely monitor the issue discussed here and make it suitable for the vicarious options This paper, that begins with various different thoughts is concerned with the literature and films depicting differing perspectives on the cruelty and accessibility, including its impact on individuals, its importance to state authority and its relationship to man and woman. Initially the work will focus on the topic in general then it will delve into the aspects of international concerns and then we can safely move onto the Indian scenario. The works included are fictional; but still functional ideology to figure out best course of action for any authority

ISSN: 2582-6433

in any circumstances. Also, literature can help to solve various problems that are undermined by other aspects of the society that shape the vey system, which depends solely on truth and justice.

- **"Debating the Death Penalty: Should America Have Capital Punishment?" by Hugo A. Bedau and Paul G. Cassell (2018):** In this comprehensive and balanced book, Bedau and Cassell engage in a thought-provoking debate on the merits and drawbacks of capital punishment in the American context. They explore various arguments from both proponents and opponents of the death penalty, providing readers with a clear understanding of the diverse perspectives. The book offers an in-depth analysis of legal frameworks, historical trends, and empirical research to inform the ongoing capital punishment discourse.

- **"Cruel and Unusual: The American Death Penalty and the Founders' Eighth Amendment" by John D. Bessler (2018):** Bessler's work delves into the constitutional dimension of capital punishment by examining the Eighth Amendment and its interpretation by the Founding Fathers. Through extensive historical research, Bessler argues that the original intent of the Eighth Amendment prohibits cruel and unusual punishment, including the death penalty. He presents compelling evidence to challenge the constitutionality and morality of capital punishment, contributing to the broader discourse on human rights and legal interpretation.

- **"Peculiar Institution: America's Death Penalty in an Age of Abolition" by David Garland (2010):** Garland's seminal work provides a comprehensive exploration of the American death penalty system, examining its origins, development, and contemporary challenges. The author situates capital punishment within the broader context of American society, politics, and culture, shedding light on the complex factors that have shaped its persistence or abolition. Garland's analysis of the racial, socioeconomic, and geographical disparities inherent in the application of the death penalty exposes the deep-rooted issues plaguing the system.

- **"Cruel and Unusual: The Supreme Court and Capital Punishment"** by Michael Meltsner (2018): Meltsner's work focuses on the role of the Supreme Court in shaping the American death penalty system. By analyzing key Supreme Court cases, the author explores the evolving jurisprudence surrounding capital punishment, examining shifts in legal reasoning, standards of

cruel and unusual punishment, and the impact on constitutional interpretation. Meltsner's meticulous examination of Supreme Court decisions and their implications offers critical insights into the complexities and controversies of the death penalty within the U.S.

Statement of the problem

Throughout history people have been put to all kinds of atrocities. Death is just a conscequence of life but when it is decided by a normal being who is not an almighty then the issue becomes bit serious. There have been various methods of putting someone to death. These methods include crucification, stoning to death, hanging, poisoning or even other barbaric means.

In the majority of countries, to the control of crime, the nations of the world are split on the issue of capital punishment. Almost all nations have at one point thought of abolishing this cruel practice but still majority of them including developed nations still follow it. Hence we need to examine its impact on human lives and hence this report.

Objectives of Study

The objective of the study is to figure out if the conventional methods of punishments still viable or are there any better ways of treating sick mentality of someone. Research Questions

- What determines who shall be given the punishment of highest cadre?
- Whether the sanctions currently imposed worthwhile for the society.?
- What are the arguments prevailing in India about this topic?

Research Methodology

The research methodology used in this paper is first hand gathering of evidence and then justifying it by rethinking its sources with the help of already available material and also in the process finalising the ways in which innovation in this field can be made the will be useful to the mankind. All the data used from established sources is fairly marked and reflected. Rest of the other work is done with sincere supervision.

ISSN: 2582-6433

All the research material has been stored back in my library in case of any clarifications in this regard. Some of the ideas contained here are my personal views and may not have research backing.

Expected Outcome of Study

At the end of this study we shall find out what is the correct source of action while evaluating just sanctions on someone who has committed some serious mistakes and still not piercing the fabric of human values.

his just does not provide a full fledged view into the topic but also it should be able to create in insight in the mind of reader. All the work done here is to ultimately find out weather the current situation in the field of study the apt situation or not. If not then what are the changes that can bring about the positive change in this regard. A comprehensive study of comparative laws has led to the possibility of multiple outcomes.

Research Design

1. The first chapter Introduction starts with the basic idea of the topic and what shall be the process of research. The expected outcomes, methodology used and the design are provided in this chapter.

2. The second chapter The Ethics and Morality of 'Capital Punishment': Examining Human-rights Principles explains these principles in the sense with right to life. Then it goes on to compare various other means of punishment. Ultimately describes the human rights scenario in this regard.

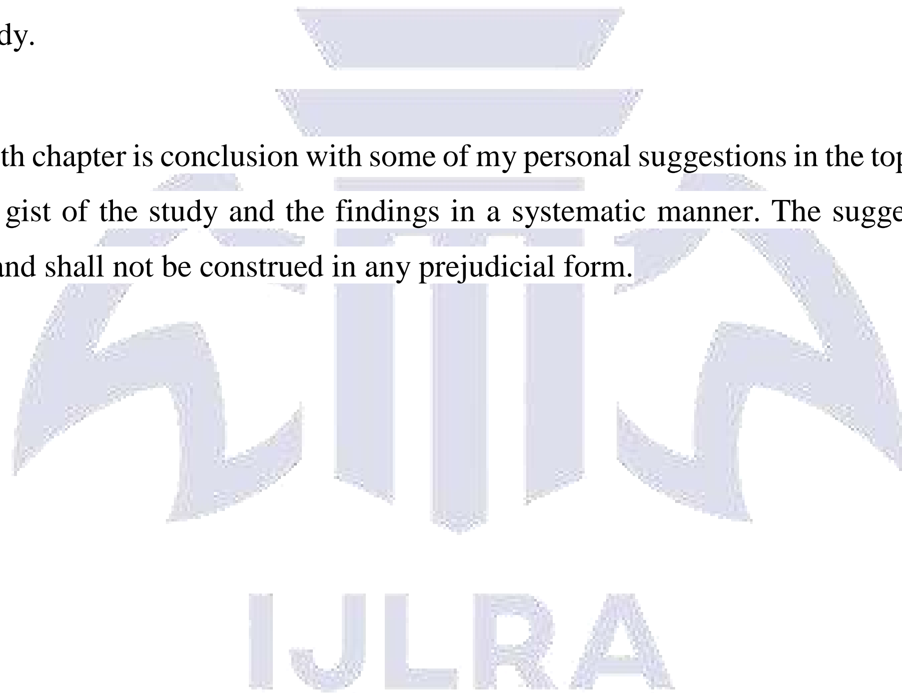
3. The third chapter The Historical Context and Global Trends of 'Capital Punishment' explains the origin of capital punishment. It describes how it evolved during a period and all around the world. Then it goes on to explain the role of politics in this regard.

www.ijlra.com
Volume 2 Issue 7 | June 2023
ISSN: 2582-6433

4. The fourth chapter The Disproportionate Impact of 'Capital Punishment' on Marginalised Communities describes the distribution of capital punishment among different classes of people. It emboldens the idea of discrimination in this regard.
5. The fifth chapter Alternates to 'Capital Punishment': A Human-rights Approach to Criminal-Justice Reform goes on to show different approaches of sanctions in order to remove capital punishment as the first resort.

6. The sixth chapter explains the scenario in the Indian subcontinent. How it evolved here and how does it affect different classes. It is rather a whole topic in itself. But it has been sufficed crisply in this study.

7. The seventh chapter is conclusion with some of my personal suggestions in the topic. It envisages the entire gist of the study and the findings in a systematic manner. The suggestions are only opinions and shall not be construed in any prejudicial form.



ISSN: 2582-6433

CHAPTER 2

THE ETHICS AND MORALITY OF 'CAPITAL PUNISHMENT': EXAMINING HUMAN-RIGHTS PRINCIPLES

'Capital punishment'[1], that is also known as the penalty of death, has been a controversial issue since long. While some people support penalty of death as a means to deter crime and provide justice for the victims, others argue that is basicaly wrong due to the reason that every individual has the basic right of life[2]. The ethics and morality of 'capital punishment' from a human-rights perspective is an important issue. Considering international law on human-rights, and evaluating how penalty impacts individuals and society shows what it really mean from a human-rights view, the right of life is considered one of the most basic of all rights. This means that every person has the right of live and not be killed, except in certain situations, such as in self-defense or during times of war as the case may be. Proponents of ‘capital-punishment' on other hand believe that it is a just punishment for persons who have done serious crimes, such as, rape and that it serves as a deterent to others who may consider to commit similar crimes. Law on human-rights procedures play an important role in shaping the debate on ‘certain issues in unga in 1948, recognizes the right of life as a basic right that must be protected by law in all circumstances. The penalty of death should only be used for the most worst crimes, such as those involving intentional killing etc. Furthermore, views on human-rights law prohibit the usage of the penalty against certain vulnerable groups, such as children and pregnant women as the case may be. The usage of 'capital punishment' has quite significant impacts on individuals, children, and the society as a wholefor those who are given death senctence, the experience can be extremely traumatic and dehumanizing, as they are stripped of their dignity and subjected to intense emotional and psychological distress no matter what their crime is. The families of those who are executed also

[1] Capital Punishment'," Stanford Encyclopedia of Philolophy, accessed April 23, 2023, https://plato.stnford.edu/entries/capital-punishment/.
[2] Universal Declaeration of Human-rights," Unite Nation, https://wwwun.org/en/universal-declaration-human-rights/

ISSN: 2582-6433
suffer tremendous pain, as they must deal with the loss of their loved one as well as the stigma and social isolation even by the close

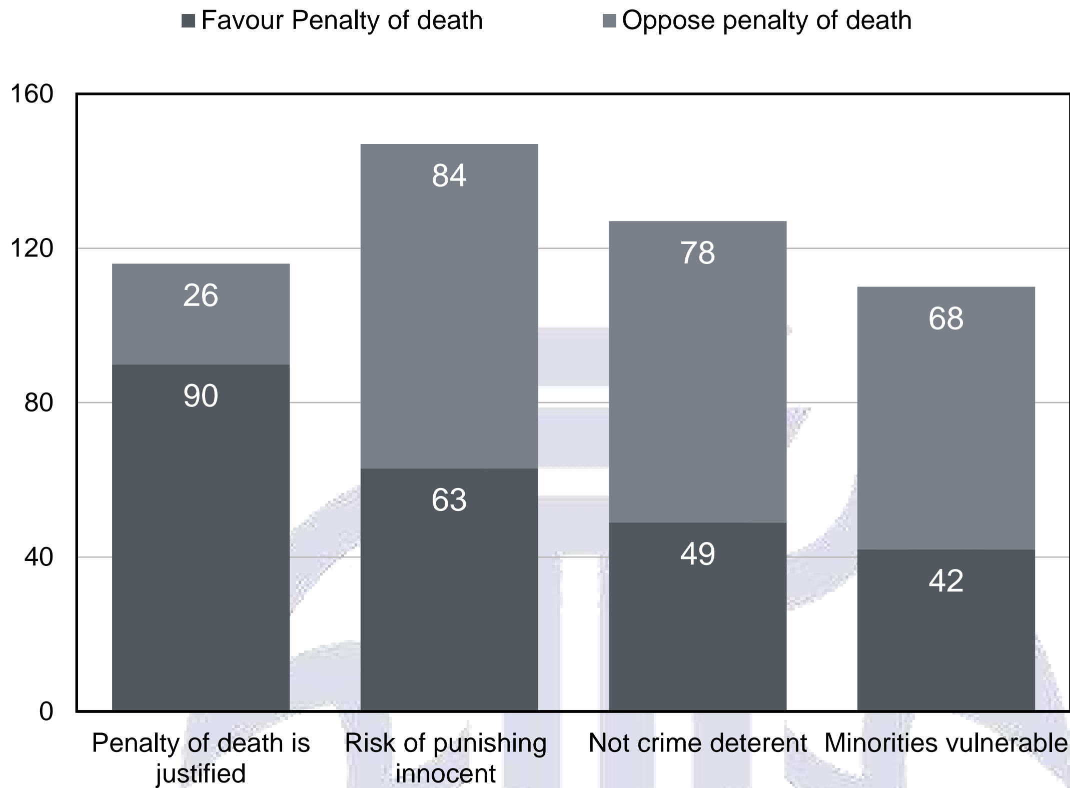


Chart 2.1 (Source: McAdams, John C. "Psychological perspectives on the penalty of death.")

ONES THAT OFTEN ACCOMPANIES SUCH A SENTENCE.

In a recent Research conducted by Pew Research Centre in March 2015 upon a group of people who were in favour and against penalty of death respectively, revealed some interesting facts (Chart 1.1). 90% of people who favour the penalty of death consider it to be a justified form of punishment. Whereas 84% of people who are against penalty think that there is a prominent risk of putting an innocent person to death. Additionally, studies have shown that this penalty is not an effective deterent to crime. In fact, countries that have removed sanctions have not seen an increase in crime rates. Furthermore, the penalty of death3 has been shown to be applied unfairly, with marginalised

[3]Global Overview of the Penalty of death," Amnesty International, April 20, 2021, https://www.amknesty.org/en/what-we-do/death-penalty/death-penalty-what-you-need-to-know/global-overview-of-the-death-penalty/.

communities that are different and the poor, being disproportionately affected in most cases. This raises serious concerns about the impartielity of the followed Justice system in most parts of the world. In purview of these concerns, have placed a moratorium on its use. Some have even sought to replace it with alternate4 forms of this punishment that are more in line with human-rights principles. These alternates include Restorative-Justice programs, which prioritize repairing harm and promoting healing rather than punishment, and rehabilitation programs that aim to address the very root cause of such crime and prevent reoffending and thus creating new practices.

It doesn't truly seem ethical to put someone to death for delivery of justice to someone else. For once Gandhi said that an eye for an eye will make the whole world blind. It is similar to being uncivilised in a ultra civilised manner. But such kinds of ironies exist all around us. For example ion you see nuclear weapons. These are build to maintain peace. For gods sake these are the weapons that can destroy humanity and they are called the weapons of peace. But then you have to understand that the weak is afraid of the strong because the strong possess some kind of upper hand over the weak. This is the case in every scenario. In that case the nuclear weapons are the tools in the hands of powerful nations to keep weak nations at bay. And the capital punishment is the tool in the hands of judiciary to keep their power exerted over the subjects of the state.

Punishment is the imposition of an undesirable outcome on a group or individual. The practice of the punishment of crimes is known as penology. The authority may be a single person, and punishment will be carried out formally under a law system or informally in other social settings such as within a family. The reason for punishment includes deterrence, rehabilitation, incapacitation, etc. Although there has been a move away from the comprehensive, multilateral economic sanctions of the sort that devastated Iraq, states still engage in unilateral or bilateral broad sanctions (e.g., the ongoing US embargo on Cuba) and multilateral, 'targeted 'sanctions. The latter, sometimes called 'smart sanctions, 'have been developed since the 1990s and include measures such as asset freezes, travel bans, and smart trade sanctions. Economic sanctions are also widely seen as a tool to implement the responsibility to protect (R2P) doctrine. They are included in the report by the International

[4] Alternates to the Penalty of death," Penalty of Information Center, accessed April 23, 2023, https://deathpjenaltyinfo.org/facts-and-research/deterrence-and-retribution/alternates-to-the-death-penalty.

ISSN: 2582-6433
Commission on Intervention and State Sovereignty as a measure to realize the 'responsibility to react. As the R2P has evolved, sanctions have continued to be seen as an important measure to realize the goals of the tackling and prevention of mass atrocities. For instance, the UN Secretary-General's report in 2012 on R2P sees sanctions as a central element of the toolbox to implement 'pillar three.

Yet, in the literature on economic sanctions, they have been subject to extensive criticism. Their use has been widely criticized for failing to realize any change in policy in the political community subject to the sanctions.They are also often criticized for being indiscriminate and for leading to widespread suffering, as well as for being disastrous for civil and political rights in the target state.The comprehensive sanctions regime against Saddam Hussein's Iraq, in particular, was widely seen as morally reprehensible, given the reported deaths of 500,000 children under the age of five.Such is the degree of criticism that it is often suggested that war may be morally preferable to sanctions. The point is often made in the context of the discussion of the principle of last resort in Just War Theory (JWT). It is claimed that we should avoid a literal understanding of last resort, since war may be better than the alternatives and, in particular, economic sanctions.

On what I will call the 'Prevailing View 'on the morality of economic sanctions, which can be found in much of (relatively small) body of literature on the ethics of sanctions, broader sanctions (and potentially smart sanctions) are highly objectionable.For proponents of the Prevailing View, this is largely because sanctions are seen as (i) indiscriminate, (ii) intending the harms that they inflict, and/or (iii) using the suffering of the innocent as a means to enact policy change. For some, sanctions are morally impermissible or highly problematic, regardless of the merits and demerits of the alternatives (and sometimes even if there are exceptions in the sanctions regime for the provision of humanitarian necessities).Indeed, proponents of the Prevailing View sometimes reject outright the permissibility of broader sanctions.Others argue that it is conceivable that sanctions may be permissible if they meet certain conditions (particularly when they take the form of smart sanctions), but generally hold that they tend to be objectionable because of their alleged indiscriminateness, wrongful intentions, and/or use of innocents as a means.

By contrast, in this article, I (partially) defend the case for economic sanctions. I argue that sanctions are not necessarily morally problematic and, in doing so, argue that sanctions are less morally

ISSN: 2582-6433
problematic than is often claimed by proponents of the Prevailing View. This is because several of the noninstrumental objections to sanctions are largely unpersuasive. Thus, I argue that, although sanctions may still sometimes be morally impermissible, this is less likely to be the case than depicted by the Prevailing View. I go on to argue that, on the contrary, sanctions may sometimes be morally preferable to the leading alternatives and, in particular, to war and doing nothing.

More specifically, the article will proceed as follows. In the first part of the article, I will reply to (i) what I call the 'Liability Objection, 'which asserts that sanctions are impermissible because of their apparent indiscriminateness. I will then consider and largely repudiate the claims that sanctions are highly problematic because they (ii) involve means that intend harms—the 'Intending-the-Harm Objection'—and (iii) wrongly use the suffering of innocents as a means—the 'Instrumentalization Objection. 'In the second part of the article, I will argue that sanctions are more likely to distribute fairly the currently inevitable harms to innocents of tackling aggression and mass atrocities. In doing so, I will argue, more broadly, that we should often favor a 'Harm-Distribution Approach 'when considering issues, such as sanctions, in the ethics of war and peace.

Before beginning, some clarifications are necessary. First, as already noted, my focus will be on the noninstrumental reasons for and against sanctions. Instrumental considerations concern how efficacious sanctions are in tackling aggression and mass atrocities (measured by their effects on the promotion of the enjoyment of basic human rights) and the costs that they impose when doing so. Such considerations are likely to carry significant moral weight in an overall assessment of the case for sanctions, compared to the leading alternatives[5]. However, there is little grounding for making strong conclusions in this regard. There is significant contestation about how effective sanctions are, often mired in methodological debates about measures of effectiveness, case selection, and time comparison. There is therefore little consensus on whether sanctions tend to address effectively aggression and mass atrocities. The empirical literature on the efficacy of sanctions also tends not to be comparative (or at least not comparative with robust supporting evidence).As such, there is currently little empirical evidence on which to base comparative moral claims about the efficacy of sanctions and the leading alternatives, such as war. The lack of robust comparative evidence also affects the strength of my noninstrumental, comparative claims in defense of sanctions to the extent

[5] This insight has been inserted in the later stage of research. As it was the latest finding

ISSN: 2582-6433

that these draw on contingent features of sanctions and war. These will therefore be tentative: I will present only presumptive, rather than definite, reasons in favor of sanctions, based on what we can reasonably expect of sanctions given their features and the nature of the international system.

Second, my account of the noninstrumental case for and against sanctions will be only partial. This is because a full account of the noninstrumental case for and against sanctions would need to consider in detail the various noninstrumental features of all of the alternatives as well, such as wars, international criminal prosecutions, peace operations, nonviolent resistance, and diplomatic criticism. There may be noninstrumental reasons particular to these alternatives to oppose or favor them; for reasons of space, I simply focus on the considerations relevant to sanctions and compare them to war and doing nothing—perhaps the leading alternatives. Similarly, I cannot consider the symbolic arguments for the importance of sanctions, which may also have noninstrumental import.Space also precludes considering the potential for sanctions[6] to be a form of punishment.

Third, I define economic sanctions as "coercive economic measures by one state or several states in order to realize political change in the target". This definition coheres with the widely held view in the literature that sanctions are authorized by states and statist organizations, such as by the United Nations Security Council, but not by nonstate actors. Of course, nonstate actors may also instigate economic harms, such as by boycotting the produce of various regimes, but these should not be viewed as economic sanctions. It is also worth noting that, on this definition, the target of the sanctions regime need not be states; for instance, smart sanctions may target particular individuals through asset freezes, travel bans, and smart trade sanctions.

II. Objections to Sanctions

(i) The Liability Objection

The central objection to sanctions by those who endorse the Prevailing View is what I will call the 'Liability Objection.'In short, this holds that sanctions are impermissible because they are indiscriminate in that they impose significant harms on those who are not liable. Accordingly, on this objection, sanctions are morally problematic because, as Joy Gordon argues, they "are inconsistent

[6] https://www.google.com/search?client=safari&rls=en&q=morality+of+sanction&ie=UTF-8&oe=UTF-8

ISSN: 2582-6433

with the principle of discrimination from just war doctrine."More specifically, they appear to violate the principle of noncombatant immunity, which asserts that civilians should not be intentionally targeted in war. This is most obvious for comprehensive, multilateral sanctions, such as those against Iraq, where many of those who bore the brunt of the sanctions regime were children and the vulnerable. In fact, such is the apparent lack of discrimination in sanctions that various scholars claim that they are similar or analogous to sieges, since they undermine the economy of a society and, in doing so, prevent the production or importation of necessities.

In what follows, I will not completely reject the Liability Objection. Rather, I will argue that, although it may sometimes give us reason to oppose sanctions, it does not establish that sanctions are necessarily impermissible. This is because any of the potential responses to aggression and mass atrocities, even doing nothing, may involve harms to those who are not liable. In the case of doing nothing, innocents who are currently subject to the threat of aggression and mass atrocities will have to continue to bear harms for which they are not liable. Similarly, war also almost always involves the imposition of harms on those who are not liable to them. To start with, combatants may not be liable to attack. On 'revisionist 'JWT, a combatant's liability is not determined by their status as a combatant, but rather by their individual moral responsibility and the justifiability of the war in which they participate.Accordingly, many combatants fighting on the just side may be morally innocent, since in helping in the pursuit of a just cause, they have done nothing morally wrong that abrogates their right not to be subject to potentially lethal force. Moreover, combatants fighting on the unjust side may also not be liable to attack. This is because they may not be morally responsible for their being combatants (e.g., because they are conscripted) or because they are pursuing just causes within an all-things-considered unjust war and, in doing so, are not contributing to the overall unjust war. In addition, war also typically harms many noncombatants, who may also not be liable to attack. To that extent, even if one rejects revisionist JWT, war would still typically be subject to the Liability Objection. This is because almost all accounts of JWT hold that noncombatants are generally not liable to the harms of war. Furthermore, there are huge practical difficulties in determining who is liable to attack and, even when this can be reliably determined, there are problems in ensuring that only liable agents are harmed.

It might be thought that smart sanctions avoid the Liability Objection since they target only those liable. But smart sanctions can also impose harms on those who are innocent.First, travel bans and

ISSN: 2582-6433

asset freezes can be mistakenly imposed on those who are innocent. Second, as Gordon argues, aviation bans "can undermine a major component of a nation's transportation sector, adversely affecting the civilian populationgenerally."An example was the ban on aviation on Gaddafi's Libya, which Gordon argues reduced the availability of food since it jeopardized crop dusting and the importation of agricultural and veterinary supplies.Third, arms embargoes may prevent the victims of aggression from being able to defend themselves. For instance, the arms embargo on the former Yugoslavia in 1991 denied Bosnia the means to defenditself agains tmuch better equipped forces.Fourth,smarttradesanctions on particular industries, such as on timber or oil (which are often viewed as benefiting political elites), can damage an important sector of the economy and undermine the exports of the state and, as a result, weaken its ability to fulfill basic governmental functions.Moreover, smart sanctions are widely held to be even more ineffective than broader sanctions. They may therefore be little better than doing nothing; innocents currently facing the threat of aggression or mass atrocities will still have to continue to face this threat.

The problem, then, is that, when responding to aggression and mass atrocities, all the various options, such as war, sanctions, and doing nothing, will typically lead to harm to innocents, either directly if the agent harms innocents when responding to the situation or indirectly if there is an insufficient response to the situation which means that those currently bearing the harms still have to bear them. As such, all options are subject to the Liability[7] Objection. It follows that there may be a lesser-evil justification for sanctions: given that no option can avoid the Liability Objection, we need to look to the option that will impose the least harm on innocents, and sanctions may sometimes impose less harm than the alternatives. This depends, of course, on sanctions being sometimes the lesser evil, that is, on whether sanctions are in fact sometimes likely to impose less harm on innocents. This will depend in turn on the efficacy of sanctions at addressing the situation, compared to all the alternatives, including doing nothing, and the incidental harms that sanctions will cause. I have already indicated that there is little consensus in the empirical literature on such matters. Notwithstanding, both broader and smart sanctions seem at least sometimes likely to be better than the alternatives in reducing the overall amount of harm that innocents face. To reiterate, this is not to deny that the Liability Objection may still apply to economic sanctions or to hold that sanctions are often likely to be justified as a

[7] https://www.google.com/search?client=safari&rls=en&q=liability&ie=UTF-8&oe=UTF-8

lesser evil. The point, rather, is that the Liability Objection does not provide an indefeasible objection to economic sanctions; it depends on the efficacy of sanctions.

In fact, there is reason to hold that sanctions are likely to be preferable on the Liability Objection[8]. My reasoning is as follows. First, numerous individuals are culpable for performing small wrongs that in part cause aggression and mass atrocities.For instance, they recklessly or negligently contribute to a foreseeable harm, such as by negligently participating in a manufacturing sector that helps to uphold an aggressive regime or to an economy that foreseeably upholds the unjust global economic order. They may therefore be liable to small amounts of harm to address aggression and mass atrocities, in proportion to their small degree of wrongdoing. Second, broader sanctions seem likely to be preferable since they are more likely to involve the imposition of small harms on a large number of people (even if the overall amount of harm is the same or currently unknowable). By contrast, war and doing nothing seem more likely to involve a significant concentration of harms whereby few individuals (such as soldiers and those currently suffering in the face of mass atrocities) bear larger harms that are disproportionate to their wrongdoing. To help see this, suppose that the UK is trying to prevent Indonesia from obtaining nuclear weapons. Suppose further that British citizens generally make it politically impossible for the UK government to disarm their own nuclear weapons. The British possession of nuclear weapons foreseeably increases the desire of other states, such as Indonesia, to possess nuclear weapons. British citizens generally act with reckless disregard for the interests of those affected by their strong support for maintaining British nuclear weapons. Suppose further that Indonesians widely support both materially and politically their government's attempt to obtain nuclear weapons, again with reckless disregard for those affected. Both many of those in Britain and in Indonesia are liable to some harm, given their reckless but minor contribution to an unjust nuclear threat (let us assume that nuclear threats are unjust). If the options chosen in response to this threat are to go to war or to do nothing, there will be a significant concentration of harms. In the case of war, this will be on British and Indonesian combatants and noncombatants. In the case of doing nothing, it will be on those threatened, such as the citizens in the Indonesia's neighboring states that are threatened by its nuclear weapons. With these two options, it seems very likely that some individuals will have to bear disproportionate costs—much greater costs than for which they are liable. By contrast, if economic sanctions are chosen, the costs on the sanctioning

[8] https://www.google.com/search?client=safari&rls=en&q=objection&ie=UTF-8&oe=UTF-8

ISSN: 2582-6433

state (the UK) and the sanctioned state (Indonesia) in terms of loss of trade and material wealth might still be proportionate to the degree to which many British and Indonesians are liable. Thus, the overall amount of harm may be the same, but sanctions more likely to impose smaller, proportionate harms on a much greater number of individuals.

This is, of course, not to adopt a collectivized view of responsibility. Nor is it to deny outright the Liability Objection. Certain sanctions regimes, such as the sanctions on Iraq, impose disproportionate costs on a large number of individuals. Even less egregious sanctions are still likely to impose costs on those who are not liable for any harm (e.g., young children). My point, then, is not that sanctions are exempt from the Liability Objection because they always impose smaller costs on a larger number of individuals. Rather, it is that there is a reason to hold that, other things being equal, sanctions are likely to be preferable to the alternatives of war and doing nothing because they seem more likely (but not certainly) to impose smaller, proportionate costs on a larger number of individuals.

(ii) The Intending-the-Harm Objection

A second major objection to sanctions is that, as a means, they intentionally target innocents. I will call this the 'Intending-the-Harm Objection. 'That is, it is alleged by critics of sanctions that sanctions intentionally target innocents so that their suffering will persuade the target state to change its policy.This may appear to contravene a central premise of the Doctrine of Double Effect that, when promoting a good end, any bad effects must be incidental side effects rather than intended. For instance, in Michael Walzer's formulation, it is a condition that "[t]he intention of the actor is good, that is, he aims only at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends."

This objection is mistaken. To start with, it should be noted that most sanctions regimes do not rely on the suffering of innocents in the target state to push the government to change its policy (as proponents of this objection may well admit). For example, some instead involve bans of transfers of weapons (i.e., the arms embargo on the Democratic Republic of Congo) or material used for the production of nuclear weapons (e.g., sanctions on Iran). The objection, at best, then applies only to certain types of sanctions regimes; most sanctions regimes do not follow this logic.

Furthermore, the objection also applies to both wars and doing nothing. Wars may use the suffering of innocent soldiers or of civilians in cases such as those involving terror bombing, where innocents soldiers or civilians are targeted in order to demoralize the opposing forces and to persuade the opposing side to cease its efforts. Perhaps less obvious is that doing nothing may also use the suffering of innocents as a means. States may make the calculation that letting innocent civilians in another state suffer will lead to a rebellion or to severe international opprobrium of the aggressor, and so be the means by which the aggressor changes its policy[9].

Moreover, the objection does not have any purchase against even sanctions regimes that do rely on the suffering of innocents in the target state to push the government to change its policy. The central issue with it is that the suffering of the innocents should not be viewed as wrong because it is intended. In other words, I am skeptical of the DDE on the issue of means (the ensuing discussion will, in effect, briefly present an objection to the DDE in the context of sanctions).Consider the following cases:

Angola 1: Angola has been sending its troops into the civil war in the Democratic Republic of Congo[10] (DRC) in order to gain favorable access to natural resources. The US imposes sanctions on Angola, knowing that the harm inflicted will cause a certain amount of suffering of innocent Angolans. But it also knows that the pressure of this suffering will (e.g., by internal uprisings) lead to the Angolan government ceasing its interference in the DRC, which is the US's central objective. Overall, much more good will be achieved.

Angola 2: Again, the US imposes sanctions on Angola[11], knowing that the harm inflicted will cause a certain amount of suffering on innocent Angolans. This time it knows that the embarrassment of being sanctioned will mean that the Angolan government ceases its interference in the DRC (again, the main reason for the US's action). The policy will be as effective and lead to the same amount of suffering as in Angola 1.

It seems that both cases are equally permissible. It would be odd to hold that Angola 2 is permissible, but Angola 1 is not because the harm in Angola 1 is intentional. To see this, it helps to consider the

[9] https://www.google.com/search?client=safari&rls=en&q=policy&ie=UTF-8&oe=UTF-8
[10] https://www.google.com/search?client=safari&rls=en&q=congo&ie=UTF-8&oe=UTF-8
[11] https://www.google.com/search?client=safari&rls=en&q=angola&ie=UTF-8&oe=UTF-8

objection in terms of motives and intentions. An agent's intentions are their objectives or purposes of their more immediate action, whereas their motives are their underlying reasons for acting (or their ultimate goal). Although I cannot argue for this fully here, it is an agent's motives, and not their intentions, that seem to matter noninstrumentally.This is because what seems morally important is an agent's ultimate goals; as far as is possible, these are what should be assessed noninstrumentally, given that they ultimately determine the agent's actions, rather than their intentions, which are simply the objectives or purposes of an agent's immediate action, designed to bring about their motives. In the case of sanctions, agents need to be motivated, for instance, by concern to reduce the suffering of innocents (such as in a humanitarian crisis); the sanctioning agent should be assessed according to whether they have this concern. If the agents possess such motives, it is unclear why it matters that some of their intentions are nefarious when considered in isolation (such as when they intentionally target innocents so that their suffering will persuade the target state to change its policy), but ultimately are formed in order to realize their rightful motives (such as tackling the crisis).For instance, in Angola 1, the motive is good: to help those in the DRC. The central intent is designed to achieve this motive: a sanctions regime to help those in the DRC. The imposition of the harms on the innocent is a subsidiary intent in that it is used in order to achieve the main intent and ultimately to fulfill the motive. But why should this subsidiary intent mean that the overall policy is impermissible? This becomes even clearer if we add that there is no other reasonable option to achieve this end. If this objective could be reasonably achieved without such harms, it might well be. When this is the case, Angola 1 seems permissible.

We may think differently when there is a variety of means and an agent chooses a suboptimal means. For instance, suppose that the US's imposition of sanctions in Angola 1 leads to a much higher number of deaths than other feasible means. Even then, it still is odd to object that it is wrong since it intends to harm those affected by its choice. Rather, it would be acting wrongly because it acts recklessly by failing to adopt a reasonable option that would have reduced the harm. (Another way of framing this point is to argue that the agent'saction would fail to meet the requirement of necessity, that is, it would fail to avoid inflicting harms that are not necessary to achieve the proportionate end.) What seems wrong with the reckless failure to adopt a reasonable option is not the desire or will to inflict harm on innocent others, but rather the failure to be sufficiently motivated to give proper weight to the interests of others in one's deliberations by avoiding unnecessary harm. This is not to

deny that sanctions may be wrong because of the recklessness or negligence of decision-makers. On the contrary, I suspect that this will often be the case. Yet, war and doing nothing also often involve reckless or negligent decision-making, when leaders fail to be sufficiently motivated by the interests of those beyond their borders (or within their borders). Thus, although sanctions sometimes might be wrong since they are often reckless or negligent, this is not unique to sanctions, and, contra the Intending-the-Harm Objection, they are not wrong because they intend the harm that they inflict. Not only does it seem unlikely that sanctions would intend harm, even if they did sanctions should be not objected to for this reason.

(iii) The Instrumentalization Objection

The third, related major objection to sanctions on the Prevailing View is what I will call the 'Instrumentalization Objection': they involve the instrumental use of the suffering of nonliable agents to achieve the greater good.For instance, Gordon claims that "sanctions reduce individuals to nothing more than means to an end by using the suffering of innocents as a means of persuasion, thereby violating the Kantian principle that human beings are 'ends in themselves. The Instrumentalization Objection isseparate to(or in additionto)the concern that the sanctioning agent intends harm to the sanctioned party. It applies even when the sanctioning agent foreseeably harms the sanctioned party, using them as a means to an end, regardless of the intent of the sanctioning agent.

This objection is subject to notable limitations. First, as for the Intending-the-Harm Objection, it will apply, at most, to only certain types of sanctions regimes—where the suffering of innocents in the target state is used to push the government to change its policy. For instance, the harms of the measures of smart sanctions such as asset freezes and travel bans are often unintended side-effects of the coercive use of force against liable agents (with the aim of affecting the agents 'actions), rather than the harms being a means to affect the agents 'actions. The objection may also often not apply to broader sanctions. The broader sanctions policy may clearly not use the suffering imposed as a means. For instance, the sanctioning agent may launch sanctions because it does not want to be complicit in the target state's behavior.

Second, as for the Intending-the-Harm Objection, it will also apply to war and doing nothing. These options may involve the unintentional but foreseeable uses of the harms of the suffering as a means,

ISSN: 2582-6433

such as when doing nothing will harm innocents that will foreseeably lead to an insurrection and a subsequent shift in an aggressive state's policy.

Third, the instrumental use of the suffering of nonliable agents to achieve the greater good per se does not appear to be wrong. This is because what appears to be wrong when agents are used instrumentally is that they are shown disrespect. They are not viewed in the agent's deliberations as separate persons worthy of respect. In other words, they are treated as a mere means, since their interests do not figure sufficiently in agent's deliberations. But the instrumental use of the suffering of innocents may not always treat innocents as a mere means. For this, there needs to be a denial of respect. And sanctions may often not involve such a denial of respect; that is, they will not use innocents as a mere means. To start[12] with, the sanctioning agent may be concerned by the interests of the agent and with the interests of others; the import of the agent's interests—although figuring in the agent's deliberations—may be outweighed by the greater weight it gives to the interests of the others (e.g., it is motivated to save the greater number who will be saved by a sanctions regime). Indeed, the sanctioning agent may lament that there is not a way of avoiding having to impose the costs on the innocent party in order to help others. In other words, the sanctions policy may not be reckless or negligent, since there is not a reasonable alternative that would achieve the same end without causing such harm. Moreover, it is also conceivable—and perhaps sometimes likely—that a sanctions regime uses the suffering of those used as a means in order to assist these same individuals. For example, a state may inflict some suffering on the people of an authoritarian state in order to pressure the government to change its policy towards these people. In such cases, it may be that the sanctions policy that uses the citizens as a means is in fact motivated by respect for these citizens.

This is not to deny that states do sometimes use innocents as a mere means. They sometimes use the suffering of innocents recklessly or negligently by failing to put in place an option that reduces the suffering on innocents because, for instance, sanctions are more politically convenient for the government of the state and they use the suffering of the sanctions regime in order to attempt to achieve policy change in the target. In such cases, the state's reckless or negligent, instrumental imposition of harm shows insufficient attention to the interests of those affected. The Instrumentalization Objection may therefore still sometimes apply. My point is that

[12] The clarification for this argument is still doubtful but it is still added here due to its importance

ISSN: 2582-6433

1) sanctions will not always instrumentalize others;
2) the Instrumentalization Objection will also apply to other options; and
3) using someone as a means per se is not wrong—what is wrong is using someone as a mere means—and sanctions may not involve the use of others as a mere means. As such, the force of the Instrumentalization Objection to economic sanctions is heavily circumscribed.
4) III. In Favor of Sanctions

Thus far, I have largely rejected three potential objections to sanctions and so much of the case for the Prevailing View. In this section, I will present a reason to favor sanctions. This is that they are likely to distribute harms more fairly. This is compared to both war and doing nothing.

But, before doing so, it is worth replying to an immediate worry: considering fairness in detail is redundant in the ethics of war and peace since liable agents should bear all the costs. More precisely, one might think that what is a fair distribution of the costs is that those who are liable bear all of the costs. Their wrongful action means that they should bear the costs. In reply (and as argued above), with all of the various options, there are likely to be some who have to bear the costs for which they are not liable. Thus, although an option that places all the burdens on liable agents should be chosen first, this is not currently feasible. With all the options, there will still be some currently unavoidable harm to those not liable. How should we distribute these harms—the remainder?

I have already suggested that we should look at the option that will be the lesser evil[13]. I have also suggested that, even when not the lesser evil and the overall amount of harm may be the same (or unknowable), sanctions are preferable to the alternatives since they are more likely to involve the imposition of smaller, proportionate costs on several individuals, rather than the disproportionate costs on the few. I will now present a further consideration in favor of sanctions: fairness in the distribution of costs to innocents. That is to say, fairness in the distribution of costs to innocents should also influence, in addition to concerns about minimizing overall harm and the infliction of proportionate harms, which policy is favored.

In what follows, I will consider three leading ways of distributing fairly the remainder, that is, of the unavoidable harms to innocents of aggression and mass atrocities. My aim is not to defend one of

[13] If only there were **evil** people somewhere insidiously committing **evil** deeds, and it were necessary only to separate them from the rest of us and destroy them.

ISSN: 2582-6433

these ways over the others in general; I think that all are plausible[14] (all are widely cited in the relevant literatures as ways of distributing costs to innocents). My focus is on the relevance of these ways of assigning the harms of tackling mass atrocities and unjust aggression and their relevance for the case for and against sanctions vis-à-vis the alternatives. I will suggest that some—but not all—favor economic sanctions.

a. Consent

The first way of distributing costs is to assign them to those innocents who consent to them. Indeed, consent is sometimes held to be relevant in the context of the permissibility of placing the burdens of sanctions on individuals. For instance, Lori Damrosch argues that, when the objective is the empowerment of the civilian population, the international community should defer to the views of authentic judgments of leaders about the degree of hardship that the population is willing to suffer in a sanctions policy. If the leaders judge that the population is willing to suffer the burdens of sanctions, they can be permissibly assigned these burdens.

Consent to burdens is relevant in general. It matters that, for instance, in the choice of whether to distribute unavoidable costs to Anna (who gives her informed, express, and free consent) or to Brenda (who does not), we should distribute the costs to Anna. Anna's preference to take on the costs should be respected by others. However, consent of the innocent is not typically relevant in the context of economic sanctions. This is because, in practice, those in the sanctioned state do not typically give their informed, express, and free consent to the sanctions regime.

George Lopez replies that there need not be express consent: there would be hypothetical consent, he argues, since we can reasonably expect that repressed populations would consent to take on the burdens of sanctions. In his words,"we can morally argue for sanctions on some countries because history supports the contention that repressed people will consent to such."However, this reply falters. Even if there were express consent to the policy, it is doubtful whether innocents who consent should be distributed the burdens. It is important here to consider to what it is that individuals are (or would be) consenting. In the case of sanctions, it is consent to the sanctions regime, compared to not having the sanctions regime and continuing in the prevailing situation (e.g., state aggression). Yet,

[14] that you can believe; reasonable

ISSN: 2582-6433
given the sorts of situations that sanctions typically address—such as state repression—the consent of individuals is not fully free. They are faced with a Hobson's choice: (1) a potentially very burdensome sanctions regime or (2) the suffering of the status quo. As such, their express or hypothetical consent lacks a reasonable alternative. It therefore does not provide a strong enough reason to burden them. Although when in the position of having to choose between two egregious harms, they may choose the lesser harm (or can be expected to), this does not mean that they should be the ones to bear the burdens of the situation. There may be further options or policies which would not burden them at all (or burden them far less), such as a peace operation, and to which they would be likely to give their express, tacit, or hypothetical consent, instead of the two much more burdensome alternatives.

On the contrary, it may appear that the import of distributing harms to innocents who consent to them provides a major reason in favor of war over economic sanctions. This is because when they sign up soldiers consent to the burdens of tackling aggression and mass atrocities as part of their military-covenant whereby they agree to take on risks. Yet, there are three worries with this suggestion. First, and most obvious, many soldiers are conscripted and so do not sign up to take on these burdens. Second, even if they do consent, it is questionable whether this consent meets the standards required for free consent. Volunteer soldiers may have been subjected to significant socio-economic pressures that mean that their consent has been coerced. Moreover, it is unclear that informed consent is given by soldiers; recruitment officers can manipulate and mislead potential recruits. For example, the US Army has allegedly targeted children in a way that resembles 'predatory grooming 'and lied to student Recruits. Third,noncombatants (who do not clearly consent to burdens) typicallymakeupthe majority of casualties in wars and so war is still likely to impose significant costs on those who do not consent to them. Consent therefore does not seem to provide a reason to favor war either.

b. Benefiting

A second way of distributing costs is to look to those who are seemingly benefited by the action. Jeff McMahan defends a form of this principle when considering the just distribution of harms between combatants and noncombatants in cases of humanitarian intervention. He argues that, other things being equal, those who are the subject of humanitarian intervention should bear greater costs than bystanders or just intervening soldiers, since they benefit from intervention.Similarly, it might seem

ISSN: 2582-6433

that this provides a reason to favor sanctions since those in the sanctioned political community will be benefited by the removal of their authoritarian leader or the halting of the mass atrocities. By contrast, the costs of war will also be significant for those who do not clearly benefit (i.e., the intervener). The costs of doing nothing will be borne by those facing the current situation (e.g., those facing mass atrocities) rather than those who benefit from doing nothing (e.g., bystander states not fulfilling their duties to assist).

Of course, it is questionable whether sanctions do in fact improve the situation of most of those in the political community. Yet, even if they do, being benefited in this way is not typically morally relevant, at least in the context of economic sanctions. The problem is that those being 'benefited ' might still be significantly disadvantaged. The sanctioned party is often in a very bad situation to start with, such as being under an authoritarian leader or the threat of aggression by another state. Although their situation may improve, it will have often started at a very low level. Those who have not been 'benefited 'by the sanctions regime may often be far better off. Consider, for instance, the case of those who have in fact had treatment to tackle a genetic disorder. They may seem to have been benefited by the treatment, but they would have been in a much worse situation to start with. Their treatment only brings them back up to the level of equality. They should not be the ones to pay for all of their treatment. In fact, the converse may be true: if the treatment is itself burdensome (e.g., requires chemotherapy), it may be that others should bear the burdens of paying for the treatment since those 'benefited 'have already had the significant misfortune of having to bear the costs of having a genetic disorder. Similarly, if we hold that many of those who have to bear the burdens of mass atrocities or an authoritarian leader are not morally responsible for this situation, then, given that these individuals have already had to bear the costs of the mass atrocities or their authoritarian leader, others should bear the costs of tackling the situation.

To be sure, being benefited by a potential policy is morally relevant to the distribution of costs when the starting point is equality of opportunity or when those who are benefited are those who are already in an unequal, better position. In such cases, when those who are benefited bear the costs, this may decrease the unequal effects of their being benefited. However, it does not seem that benefiting will generally be relevant to the context of economic sanctions since the sanctioned party will typically be relatively badly off, compared to other states. For instance, at the time of writing, states subject to financial sanctions by the UK include Belarus, the Democratic Republic of Congo, Egypt, Eritrea,

Guinea, Guinea-Bissau, Iran, Ivory Coast, Liberia, North Korea, Somalia, Sudan, Syria, Tunisia, and Zimbabwe.

That said, although being benefited generally does not seem to be relevant to sanctions, there are some instances when it may be. First, being benefited may be morally relevant when considering the internal costs to the economies of rich sanctioning states that benefit from, for instance, the removal of an aggressive regime in a neighboring state. Second, benefitting may also be relevant for smart sanctions. As noted above, measures such as asset freezes and restrictions on travel potentially harm innocents, since those directly targeted may be in fact innocent and, even if not, their families will be affected. Nevertheless, smart sanctions may still be preferable because those burdened, even if innocent, are typically those (i.e., the elite) who do very well out of the current system. This is providing that the measures are efficacious and proportionate to the amount which the affected individuals are benefited by their elite position.

c. Sharing the Costs

A third way of distributing the remainder is the equal sharing of reasonable and unreasonable the costs amongst nonliable agents (by costs, I mean the currently inevitable harms of the situation). Why should reasonable costs be shared equally between nonliable agents?[39] Most obviously, costs should be shared so that no one has to bear unreasonable costs, that is, costs for which they are not duty-bound to bear (nor liable to bear). By sharing costs, the amount that each has to bear will be lowered and so potentially each will have to bear only the amount of costs that they can be reasonably asked to bear in their general duty to tackle aggression and mass atrocities. In addition, by sharing even otherwise reasonable costs (i.e., the costs that they are not liable to bear because of their previous wrongdoing but can be reasonably asked to bear in the fulfillment of their duties), the overall burden that one individual has to bear will be lower. This may mean that their lives are much less likely to be affected by taking on the currently inevitable (but reasonable) costs of the situation. If one individual is required to bear all of the (otherwise reasonable) costs of the situation, they will be potentially disadvantaged compared to others, who do not have to pay these costs. To see this, suppose that, in order to save a child drowning in a pond, it would cost an individual $1,000, which would be within the parameters of a reasonable cost for the individual to bear. If others cannot share in these costs, the individual can be reasonably asked to pay the entire amount. But now suppose that

it is possible to share the costs between 1,000 agents so that each pays $1. The costs should be shared, even though it would be otherwise reasonable to require of the one individual to pay $1,000. This is because, by sharing in the costs, the effect on one particular agent is massively reduced. They are not disadvantaged relative to others by, for instance, their random proximity to the pond. Their brute bad luck of being in this situation is, in effect, shared across all parties, so that the agent is not unluckily $1,000 worse off. For instance, assume that bearing the $1,000 means that the agent would have to go to a less prestigious university compared to the others, with the result that their future opportunities, although still good, are not as good as those who do not have to pay. By everyone paying $1, everyone's future opportunities, relative to each other, are unaffected.

There may be cases where the overall burden of the situation is such that some innocents will inevitably have to bear unreasonable costs (i.e., the costs that they are not liable to bear because of previous wrongdoing and cannot be reasonably asked to bear in the fulfillment of their duties). Like reasonable costs, unreasonable costs should also be shared in order to reduce the burdens on particular individuals. For instance, suppose that, to defeat an aggressor, it is necessary to resort to the compulsory acquisition of private property. It is better that the unreasonable burdens of the compulsory acquisition (such as the amount seized) be shared, as far as possible (such as by increasing the number of those who are subject to the compulsory acquisition of private property and by reducing the amount seized from each individual). The reasoning is the same: spreading the costs will mean that their lives are less negatively affected by taking on the currently inevitable costs of the awful situation. If one individual is required to bear all of the unreasonable costs of the situation, they will potentially be disadvantaged compared to others.

Sanctions are likely to be preferable to both war and intervention and doing nothing since they better spread harm, other things being equal (i.e., the aggregate harm being of equal magnitude). More precisely, sanctions are more likely to spread the costs of the policy so that no one is asked to bear more than reasonable costs or the degree of unreasonable costs that nonliable individuals have to bear is lower.

First, broader sanctions are preferable partly because they seem to share the internal costs of the response to the situation, that is, the costs that the party responding to the situation bears.In the cases of military intervention and war, these costs are often borne almost fully by soldiers. By contrast, as

ISSN: 2582-6433

far as the sanctioning state goes, the harm of banning trade in certain goods with another state, for instance, would often not seem to be unreasonable[15] for those in the sanctioning state. And if the burdens do seem to be unreasonable for a particular sector of society (e.g., those who work in the arms industry), they could be compensated, and the costs of compensation shared amongst those in the society. This is obviously much harder for soldiers who will suffer significant injury or even death tackling the situation.

Broader sanctions[16] are also likely to better spread costs externally, that is, amongst those in the target state and those in third parties. (It is important to reiterate that this is other things being equal: when the overall amount of harm of war or sanctions is the same (i.e., not when wars will be less costly aggregately than sanctions).) As noted above, wars often involve the concentration of harms, with particular individuals and groups having to bear much greater costs (often physical injury or death) than others do. Similarly, doing nothing will typically lead to a concentration of harms, such as the persecution of those from certain ethnic, religious or socio-economic groups. By contrast, again as noted above, the more diffuse nature of sanctions, particularly broader sanctions—given that they involve general economic burdens—means that they are more likely to (although will not always) spread the costs amongst the whole society. Of course, those working in particular parts in the economy (e.g., in the extraction of natural resources) may be more affected but, again, compensation may also be more easily realizable than wars or doing nothing in such scenarios, and the costs of such compensation spread.

It is worth linking this argument to the related argument in section II. I argued above that sanctions should be favored because they are likely to impose more but smaller costs that are proportionate to the liability of many. My point here is that, even when these costs will be imposed on those who are not liable, or these costs will be disproportionate to amount to which the burdened are liable, the fact that sanctions seem likely to impose more but smaller costs on innocents provides reason to favor them.

[15] Why named. I have left unaltered the name of this ... have seemed equally appropriate. [Back to:] Practical, Essay 9 **Unreasonable** Action.
[16] 1 to Part 774 of the EAR) (CCL) and the Entity List impose license requirements on exports, reexports and transfers (in-country) of items subject to the EAR.

Against my defense of the import of sanctions for reasons of fairness, it might be argued that we should not redistribute harms to those who are not liable to these harms since this involves doing harm. The standard response to cases in mass atrocities and aggression should therefore be to fail to react, since at least then the state is not doing the harm itself, even if it allows a much greater harm.

This view implies that the distinction between doing and allowing has overwhelming weight, which seems counterintuitive and out of kilter with the mainstream view in moral philosophy that the doing and allowing distinction is not of absolute moral import. That is, it can still sometimes be permissible to do harm, in particular when countervailing considerations in favor of doing harm (e.g., achieving very beneficial consequences) outweigh the import of the distinction. Notwithstanding, a less extreme version of the objection runs as follows: it is permissible to do harm to nonliable agents only in exceptional cases, where there are hugely beneficial consequences at stake (e.g., the tackling of 100,000 impending deaths by doing harm to 10 innocents). In other cases, where doing harm will be likely to achieve only very beneficial consequences (e.g., the tackling of 1,000 impending deaths by doing harm to 10 innocents), it is better to allow harm.

This less extreme version of the objection is also implausible. This is because, first, the distinction between doing and allowing does, I think, matter, but it can be outweighed not simply by hugely beneficial consequences, but also by very beneficial consequences, other things being equal. In other words, a significant decrease (and not only by huge degrees) in the overall amount of harm can mean that considerations of doing harm are outweighed. It the case above, it seems more important to tackle the 1,000 impending deaths, even if this involves doing harm to 10 innocents, other things being equal. This is simply because achieving very beneficial consequences in terms of the overall reduction in unjust harm is of huge moral significance.

Second, in addition to decreasing the overall amount of harm, securing a fairer distribution of harm may also outweigh the import of the difference between doing and allowing. That is to say, on occasion it may be justifiable for an agent to bring about a fairer distribution of harms even if, when doing so, it does some harm itself (but still achieves the same overall amount of harm). For instance, suppose that 10,000 nonliable citizens in the south of Gabon are being repressed by the Gabonese government. France launches a successful sanctions policy that halts this repression but, in doing so, harms 10,000 nonliable citizens in the north of Gabon. Unlike those in the south, those in the north

ISSN: 2582-6433
clearly and freely consent to such harms. Such a redistribution—the doing of harm to those in the north—is permissible because it is a fairer distribution, even though the overall amount of harm to nonliable agents is the same in both cases.

This is relevant for thinking more broadly about the ethics of war and peace, and in particular lesser-evil justifications. Most admit that lesser-evil justifications can play a role in the justification of the imposition of harms on those who are not liable in certain cases. Nevertheless, the bar for lesser-evil justifications is typically held to be very high, largely because they involve doing harm. They are often implied (1) to involve only a straightforward consequentialist judgment (e.g., the minimization of overall harm) and (2) to apply only when there is an alternative, terrible catastrophe at stake (e.g., supreme emergency). By contrast, it seems to me that the bar for lesser-evil justifications to apply should be lowered. This is because, first, reducing overall harm is, I think, intuitively more weighty than often thought and so reduces some of the concern about doing harm and, second, the worry about doing harm is reduced further by countervailing considerations of fairness. That is to say, if lesser-evil justifications consider not only the amount of harm, but also the fairness in the distribution of harm of the various options, they may be much more likely to be relevant, since there need not be extreme bads that will be achieved for lesser-evil justifications to apply. There need be only a significant decrease in unjust harm and a better distribution of harm.

In fact, rather than focusing on whether it is permissible to launch a response to mass atrocities and aggression that will do harm to nonliable agents, I think it often would be preferable to focus on matters of fairness in distribution much more (as well as decreasing the overall aggregate harm). That is, when there is bound to be a remainder to be distributed, we should focus much more on how to distribute this harm as fairly as possible (and to decrease its overall size), rather than the fact that the agent will impose harms on those who are not liable. To that extent, we should adopt what I will call a 'Harm-Distribution Approach'.

The Harm-Distribution Approach holds that rather than viewing cases, such as the 13 imposition of sanctions, as primarily about the permissibility of launching a particular action, we should instead see them more as matters of distribution and, in particular, the distribution of currently inevitable burdens. On this approach, the central issue is this: how should the currently inevitable burdens of the situation (for instance, state repression or mass atrocities) be distributed to be fair and to minimize

the overall harm? And which policy best enacts this distribution? Would sanctions be best or would an alternative be better? This differs from the framing of such issues in terms of the permissibility of launching a response (e.g., "Is it permissible to undertake sanctions in order to avoid the likely harms of the current situation?"). Such framings are widely used in the discussions of the ethics of war, humanitarian intervention, and self-defense. For instance, one of the most frequently discussed issues in the literature on the ethics of humanitarian intervention is whether it is permissible to undertake military intervention in order to tackle mass atrocities[17].

What the Harm-Distribution Approach takes seriously, then, is the current inevitability of someone facing burdens for which they are not liable and the need to distribute the remainder as fairly as possible (and to decrease the overall amount of harm). As we have seen, even doing nothing will mean that the burdens will necessarily be distributed to a certain group or individual. To that extent, the Harm-Distribution Approach can be seen as often appropriate for matters of Nonideal Theory[18] since it is concerned with the distribution of the burdens of noncompliance with moral principles on the part of other agents. (It may also be relevant for Ideal Theory, where there is an unavoidable harm (e.g., a natural disaster or an accident such as an innocent fat man falling on someone).) Given mass atrocities, state aggression, and so on, which involve certain actors creating burdens that someone has to bear, who should bear them?

Many discussions in the morality of self-defense[19] at least implicitly consider the distribution of unavoidable harms (e.g., trolley problems where it is impossible not to do or allow harm to some innocents). My point is that we should adopt this distributive approach more widely and more explicitly. This is in order to emphasis the issue of fairness in the distribution of harms and in order not to overemphasize the import of avoiding doing harm. Adopting the Harm-Distribution Approach would bring the ethics of war and peace more in line with other fields in international political philosophy, such as the ethics of climate change. For instance, on the literature on the burdens of responding to climate change (adapting or mitigating), there is much less of a concern that those deciding how to allocate the costs of climate change might do harm in that they will impose some

[17] it is the endeavour of mostly draconian states such as islamic nations etc.
[18] It states that "the need to prevent harm (private or public) to parties other than the actor is always an appropriate reason for legal coercion
[19] **Self**-defensive responses to attacks by NSAs, due to their specific characteristics, may contain a combination of elements of anticipatory

ISSN: 2582-6433

costs on nonliable agents. The focus is much more on the fact that (1) there are bound to be costs that some nonliable agents will have to bear (because the huge costs of tackling climate change are greater than that which could be borne by liable agents since, for instance, the previous polluters have died or were reasonably unaware of climate change) and, given (1), we need (2) to distribute the remainder—the costs of tackling climate change—as fairly as possible. In response to this issue,there is a vibrant debate on how the costs should be distributed.The issue is not framed as "Is it permissible for State A to take on the burdens of tackling climate change and, if so, why?", but rather "How should the inevitable burdens of tackling climate change be distributed?"

Similarly, in cases of aggression and mass atrocities—the sorts of situations that war and sanctions respond to—we should be concerned more with how to deal with the remainder by focusing on how to minimize and to distribute fairly the overall harms of aggression and mass atrocities, rather than on whether it is permissible to launch a policy that may do harm to nonliable agents. These burdens are currently unavoidable or inevitable, to the extent that these issues are likely to continue to arise for the foreseeable future whilst there is widespread noncompliance with the demands of Ideal Theory.

Could the import of fairness in the distribution of harms to nonliable agents be captured by the standard permissibility frameworks? In short, yes. One could simply add a condition of fair distribution to the standard list of Just War conditions. Or, one could reject a narrow account of discrimination, that is, an account that is too focused on (individual) responsibility. One could instead have an account of discrimination that does not appeal simply to responsibility, but rather includes a variety of considerations, including distributive ones. Indeed, in its most fundamental sense, discrimination requires us to discriminate between those to whom the costs should be distributed and those to whom they should not. The worry, though, with these solutions is that the import of fairness will be missed, as the additional distributive condition is overlooked or a standard account of discrimination is adopted. This is because this concern can involve complex moral judgments, requiring a detailed account of distributive considerations. The assessment of the permissibility of launching a response would, then, become much more involved, and the issue of distribution often overlooked. By contrast, the concerns of this principle will be taken into account if the Harm-Distribution Approach is adopted, given its focus on how we should distribute costs (such as between civilians and soldiers) in response to currently inevitable harms. Thus, the Harm-Distribution

Approach is preferable since it highlights an important consideration not easily captured and potentially missed by standard framings.

2.1 The Right of life: Is the Penalty of death a Violation of Human rights?

It is implied to say that penalty of death is highly debatable and one of the main contention is that it is strictly the violation of rights of the ones who are punished. The general idea that even the criminals are human beings and they also have human-rights is the main force driving this argument. Some people argue that the penalty is justified for very serious crimes while others believe that everyone, even those who have committed serious offenses, should be given the chance to live for the reasons stated above.One of the concerns with the penalty of death is that it is irreversible. Once a person is put to death, there is no way to undo the punishment if it later turns out that they were innocent. This is why some people argue that it is better to error on the side of caution and abolish the penalty altogether. International law on human-rights laws and conventions also recognize the right of life and place limits on the usage of the penalty of death in their own way. These laws state that the penalty of death should only be used for the more serious crimes, such as those involving intentional killing, and not for less serious offenses. They also prohibit the against children, pregnant women, children, and people with mental or intellectual disabilities. Furthermore, international law on human-rights laws require that this penalty should only be imposed after a fair and transparent trial, with adequate legal representation and the right ofappeal. This means that anyone facing should have access to competent legal counsel, a fair-trial, and the opportunity to appeal till the level of last resort of the sentence if there are grounds to do so. There are five types of punishments awarded to criminals according to the Indian Penal Code. We have discussed different punishments imposed differently in multiple offences; the term, nature, etc., varies in every case and offence and according to courts. All penalties are reformative and deterrent. A reformative approach to punishment should be an essential topic of criminal law.

2.2 Retribution vs. Rehabilitation: Evaluating the Justifications for 'Capital-Punishment'

One of the main arguments is that it provides retribution for the crime committed. Retribution means that the punishment should fit deserves to be punished for what they've done in order to send a

ISSN: 2582-6433
message to others. However, others believe that the penalty of death isnt an effective form of retribution, and that rehabilitation is a better approach. Rehabilitation means that instead of punishing the offender, we should try to help them change their behavior and become productive members of society through other non violent means.

Arguers of the argue that rehabilitation is not a realistic option for certain crimes. They believe that some crimes are so henious that only accurate punishment can only be. They also argue that the serves as , preventing others from committing similar crimes. Opposers of the argue that rehabilitation is a better option for several reasons. First, they argue that the is not applied fairly and is often used against marginalised groups. They also point out that the does not actually deter crime. Finally, they argue that rehabilitation is a more humane approach and can actually help reduce crime rates in much more humane ways.

Theories of distributive justice study what is to be distributed, between whom they are to be distributed, and what is the proper distribution. Egalitarians have said that justice can only exist within the coordinates of equality.

John Rawls used a social contract theory to say that justice, and especially distributive justice, is a form of fairness. Robert Nozick and others said that property rights, also within the realm of distributive justice and natural law, maximizes the overall wealth of an economic system. Theories of retributive justice say that wrongdoing should be punished to ensure justice. The closely related restorative justice (also sometimes called "reparative justice") is an approach to justice that focuses on the needs of victims and offenders.

2.3 Law on human-rights Standards and the Usage of 'Capital Punishment'

Human-rights are universal, meaning they apply to everyone, everywhere ie they apply to every human being. The usage of 'Capital Punishment', therefore, is subject to international law on human-rights standards and must be evaluated to ensure that it complies with relevant standards. The usage of the penalty of death is controversial and subject to much debate. Some countries use it for a wide range of crimes, while others have abolished it altogether whereas some may use it freely. The organizations have established human-rights standards that should guide the usage of the for all

nations.The Universal-Declaration for example, states that "everyone has the right of life, liberty and security of person." The Political-Rights20 further elaborates on this right, stating that the should only be used for the most serious crimes, and that it should not be applied to children pregnant-women as mentioned earlier. Additionally, the usage of the penalty of death must be subject to strict procedural safeguards for ensuring that it is not applied arbitrarily or capriciously just for political vendetta. Despite these international standards, some countries such as islamic countries still use the for a wide range of offenses, including non-violent crimes. This has led to criticisms from human-rights organizations, who argue that the usage of the penalty in these cases is a violation of human-rights standards but to no avail.

Restorative justice (also sometimes called "reparative justice") is an approach to justice that focuses on the needs of victims and offenders, instead of satisfying abstract legal principles or punishing the offender. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, "to repair the harm they've done – by apologizing, returning stolen money, or community service". It is based on a theory of justice that considers crime and wrongdoing to be an offense against an individual or community rather than the state. Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountabilities.

IJLRA

[20]Second Protocol to the Internation venant on Rights, aiming at the abolition," United Nations, 1989, https://www.ohrf.org/en/professionalinterest/pages/2ndopccpr.aspx

www.ijlra.com
Volume 2 Issue 7 | June 2023
ISSN: 2582-6433

CHAPTER 3

THE HISTORICAL CONTEXT AND GLOBAL TRENDS OF 'CAPITAL PUNISHMENT'

Sanctions have been practiced in different forms throughout history and is still used today in some parts of the world. It has a long history and an indefinite future. Historically, the usage of 'Capital Punishment' has been tied to religious, cultural, and political beliefs. In ancient times, societies used various methods for execution, such as crucifixion, beheading, and stoning, to punish crimes ranging from theft to treason. Over time, some societies began to restrict the usage of such as murder but countries that still follow religious methods use such forms of punishments even now.

Today, the usage of the varies thoroughly as of 2020, 108 countries have already removed the for all crimes, while 55 countries still keep it in the past decade. 26 countries continue to use the in practice, and some have even increased the no. of executions in the past years. There are also global trends towards the abolition of the organizations. The United Nations has adopted several resolution calling for a the usage of the random words, and international law on human-rights organizations continue to advocate for its abolition. In recent years, some countries that have traditionally used the penalty of death[21], such as the United States and Japan, have reduced their usage of it.

In Context of India, although the practice of awarding has been considerably reduced now but analysis of an old data shows that the number of Death sentences were quite high. Specifically in the year 2007, 186 people were given death senctence (Chart 2.1). According to Sec 194 of IPC, fabricating evidence is punishable by the if it is done to obtain a capital conviction for a crime. If someone commits such a crime then they can face the. Here for reference Sec. 302 of the IPC imposes the for a person who commits murder The history of 'Capital Punishment' dates back to ancient civilizations, where it was used as punishment for a different variety of crimes. In ancient Egypt, for example, the punishment for murder was often death, and criminals were executed by beheading, hanging, or impalement. Similarly, the ancient Greeks and Romans also used 'punishment for wrongs such as

[21] India: Execution of Death Sentences," Amnesty International, May 2013, https://www.amergnesty.org/download/Documents/8000/asa200042013en.pdf

ISSN: 2582-6433

murder, treason, and rebellion. In medieval Europe, 'Capital Punishment' became more widely accepted as a form of punishment, with the introduction of new methods such as the usage of the guillotine and burning at the stake.

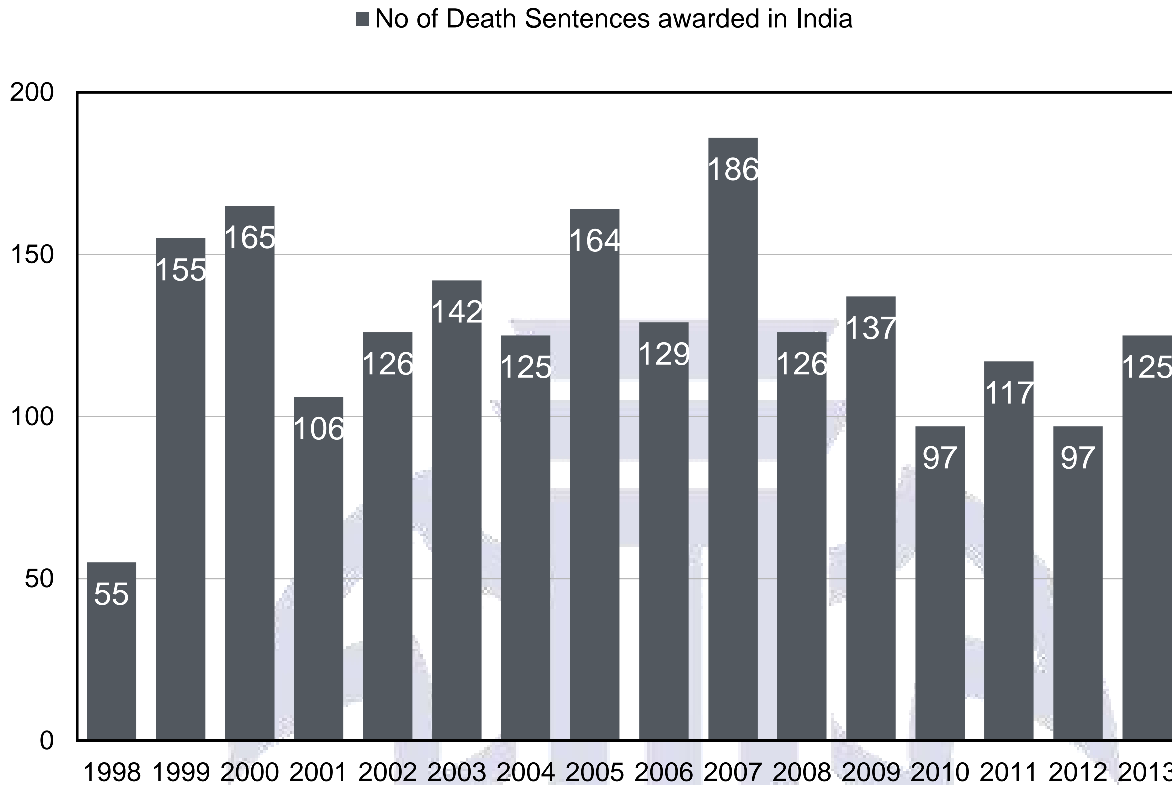


Chart 3.1 (Source: National Law University, Delhi. "Penalty of death India Report." National Law University, Delhi, 2016)

The usage of 'Capital Punishment' was often seen as a way of maintaining law and order, as well as a way of deterring others from committing similar types of crimes. As societies and civilizations developed over time, attitudes towards the 18th and 19th centuries, the usage of 'Capital Punishment' was continuously questioned by philosophers[22] and scholars, who argued that it was a cruel and inhumane practice.

This led to the abolition of this practice' in some countries, such as Portugal, in mid-19th century. However, the usage of 'Capital Punishment' continued in other countries, and in the 20th century, the practice became even more controversial.

[22] an extensive collection of quotations by famous authors, celebrities, and newsmakers.

ISSN: 2582-6433

In the United-States, for example, the usage of the became a highly contentious issue, with many arguing that it was discriminatory and applied unfairly to marginalised communities such as black community. with many countries still using the as a means of penalties for such crimes. However, there is a growing movement towards abolition, with many countries and organizations advocating for an end to the usage of 'Capital Punishment'. There is a strong consensus of views on what constitutes the All the parties to the discussion agree that it is not a pony of discussion at all in the basic structure doctrine new of the constutuion in inis.

Or Any One of the key arguments against 'this penalty is that it is a violation. People who argue in favour of such kind of laws argue that it serves as a eight different words can replace this text and their families. They also argue that it is a necessary punishment for certain types of wrongs, such as terrorism.

Despite these arguments, there is growing evidence that 'current topic' to crime. We must adhere to the main content and not he new one of death have not experienced an increase in crime rates, and that the usage of the penalty of death is not a reliable way of preventing crime. In addition, the usage of 'Capital Punishment' can have a range of negative impacts[23] on society, including perpetuating a culture of violence, traumatizing families of those executed, and eroding trust in the justice system. As attitudes towards 'Capital Punishment' continue to evolve, there has been a growing movement towards alternate forms of punishment[24] that focus on rehabilitation

3.1 'Capital Punishment' Around the World: A Comparative-Analysis of Policies and Practices

'Capital Punishment' policies and practices vary widely around the world. Some countries use it as a form of sanction for a wide range of crimes, while others have abolished it altogether. In this article, we'll look at the different approaches countries take towards the penalty of death, and explore the arguments for and against it. Countries that still use the include China, Iraq, Iran, Egypt, and the United States, the is used in some states but not in others. The countries that use the tend to have different criteria for when it can be used.

[23]Amnesty International, "The and Violence," Amnesty, https://www.amneefvsty.org/en/what-we-do/death-penalty/death-penalty-and-violence/.
[24]Impact of n Families of the Accused," Project, 2018, https://www.deefathpenaltyproject.org/impact-of-the-death-penalty-on-families-of-the-accused/.

For example, in China, the can be used for non-violent crimes like corruption and drug trafficking[25], while in Saudi Arabia, it's used for crimes like murder, drug trafficking, and even apostasy (renouncing Islam).There are also many countries that have abolished the These include most countries in Europe, Canada, Australia, and New Zealand.

The reasons for abolishing , but they often include concerns about human-rights and the potential for executing innocent people. Some countries have also found that the penalty of death does not effectively deter crime. One points in favor of the is that it serves a sense of justice for the victims and their family. People who support the believe that certain acts are so henious that the only correct sanction is this kind of penalty. They also argue that the organizations serves as a deterent, preventing others from committing similar crimes.

On the other hand, those who oppose the organizations speak that it is not an effective form of deterrence and that there are better ways to prevent crime. They also argue that the is often applied unfairly, with marginalised groups more likely to receive the organizations. Additionally, they point out that the possibility of sanctioning an innocent person is a real concarn. International law on human-rights standards have also weighed in on the usage of the punishment. states that "everyone has the right of life, liberty and security of person."

The International-Political Rights further elaborates on this right, stating that the should only be used for the most serious crimes, and that it should not be applied to minors or pregnant women. Additionally, the usage of the organizations must be subject to strict procedural safeguards for ensuring that it is not applied arbitrarily or capriciously.

Despite these international standards, some countries still use the penalty of death for a range of offenses, including non-violent crimes. China is a country where more than 1000 executions in the year 2013 (chart 2.2). This has led to criticisms from human-rights organizations, who argue that the

[25]Restorative-Justice," National Institute of Justice, 2021, https://nij.ojp.gov/topics/articles/restorative-justice

ISSN: 2582-6433

usage of the penalty of death in these cases is a violation of certain law on human laws. Bachaan Singh v. State of Punjab - In this, court of India upheld the constitutionality of the penalty of death and laid down guidelines for imposing it, stating it should only be awarded in the "rarest of rare" cases.

Chart 3.2 (Source: Amnesty International, "Death Sentences and Executions in 2020," Amnesty International, 2021.)

3.2 The Role of Public Opinion and Political Will in Shaping 'Capital Punishment' Policy

Public often plays a significant role in shaping ‘such legal' policies. Polls and surveys conducted over the years have shown that favour for the in States has fluctuated. While the majority of Americans have historically supported 'Capital Punishment', support has declined in recent years.

In 2021, a poll by Gallup has found that 55% of Americans supported the penalty of death, while 43% were in opposition. This represents a significant decline in support compared to 1994 when 80%

of Americans supported Public opinion is influenced by a variety of factors, including personal beliefs, values, and experiences. People who has been victims of violent crimes or have lost loved ones to murder may be more likely to support the organizations. On the other-hand, those who oppose the may do so because of concerns about wrongful convictions, racial disparities in sentencing, or moral objections to state-sanctioned killing. Politicians and policymakers often take public opinion into account when deciding on 'Capital Punishment' policy. Elected officials may support or oppose the based on the views of their constituents. In some cases, politicians may even change their position on 'Capital Punishment' if they believe it will help them win elections.

So, the reason for punishment is the maximization of welfare, and punishment should be of whomever, and of whatever form and severity, are needed to meet that goal. This may sometimes justify punishing the innocent, or inflicting disproportionately severe punishments, when that will have the best consequences overall (perhaps executing a few suspected shoplifters live on television would be an effective deterrent to shoplifting, for instance). It also suggests that punishment might turn out *never* to be right, depending on the facts about what actual consequences it has.

3.3 Political Will and 'Capital Punishment'

Political will also plays a critical role in shaping 'Capital Punishment' policy. Elected officials, particularly those in positions of power, have the ability to shape policies and laws related to The level of political will for 'Capital Punishment' can vary on the basis of a difference of factors, including the perceived effectiveness of the in reducing crime rates, concerns about wrongful convictions, and moral objections to state-sanctioned killing. In some cases, elected officials may push for harsher penalties, including the convictions, to demonstrate their commitment to law and order.

For example, during the 2020 presidential campaign of the US, then-President Donald Trump advocated for the convictions for drug traffickers as part of his administration's response to the opioid epidemic. On the other hand, political will for 'Capital Punishment' can also decline in response to concerns about its effectiveness and fairness. In past years, some states in the UnitedStates have abolished the penalty of death, while others have placed moratoriums on its use. These changes has

been driven, in part, by concerns about wrongful convictions and racial disparities in sentencing. Machhi Singh v. StateofPunjab (1983) - This case further clarified the "rarest of rare" doctrine and provided factors to be considered while determining the appropriateness of the penalty of death.

Relational justice seeks to examine the connections between individuals and focuses on their relations in societies, with respect to how these relationships are established and configured. In a normative view, this focus includes an understanding of what these relations should be. In a political view, this focus includes the method of organizing persons in society. Rawls 'theory of justice stakes out the task of justice as equalizing the distribution of primary social goods to benefit the worst-off in society. However, his distributive scheme, and other distributive accounts of justice do not directly consider power relations between and among individuals. Nor do they address such political considerations as various structures of decision-making, such as divisions of labor culture, or the construction of social meanings. Even Rawls 'own basic value of self-respect cannot be said to be amenable to distribution.

3.4 The Role of Advocacy and Education

Advocacy and education can also play a critical role in shaping public opinion and political will related to Organization such as research organisations26 and the American Civil Liberties Union27 have long been vocal opponents of the penalty of death, advocating for its abolition both in the States and round the world. In addition, educational28 efforts aimed at informing the public about the realities of the penalty of death, including the risk of wrongful convictions and racial disparities in sentencing, can also impact public opinion and political will. These efforts can include documentaries, books, and other forms of media that shed light on the complexities. In a world where people are interconnected but they disagree, institutions are required to instantiate ideals of justice. These institutions may be justified by their approximate instantiation of justice, or they may be deeply unjust when compared with ideal standards – consider the institution of slavery. Justice is an ideal the world fails to live up to, sometimes due to deliberate opposition to justice despite understanding, which could be disastrous. The question of institutive justice raises issues of legitimacy, procedure, codification and interpretation, which are considered by legal theorists and by philosophers of law.

[26] Amnesty International. (2022). Abolish the. Retrieved from https://wr\ww.amnesty.org/en/what-we-do/death-penalty/
[27] American Civil Union. (2022).. Retrieved from https://www.acluer.org/issues/capital-punishment.
[28] Equal Initiative. (2022). ". Retrieved from https://eji.rgorg/issues/capital-punishment/

ISSN: 2582-6433

The United Nations Sustainable Development Goal 16 emphasizes the need for strong institutions in order to uphold justice.

Pemberton et al propose a "Big 2" model of justice in terms agency and communion, membership in a society. Victims experience a loss of perception of agency due to a loss of control as well as a loss of communion if the offender is a member of their social group, but may also lose trust in others or institutions. It can shatter an individual's trust that they live in a just and moral world. This suggests that a sense of justice can be restored by increasing a sense of communion and agency rather than through retribution of restoration.

ISSN: 2582-6433

CHAPTER 4

THE DISPROPORTIONATE IMPACT OF 'CAPITAL PUNISHMENT' ON MARGINALISED COMMUNITIES

Marginalised communities are those that are disadvantaged and face social, economic, and political barriers. These communities are often made up of people of color, low-income individuals, and those with limited access to education and resources. In India, the usage has been a controversial issue due to its disproportionate impact on marginalised communities. The same is awarded in cases of murder, terrorism, and certain other serious offenses, and studies have shown that these sentences has been disproportionately imposed on individuals from lower socio-economic backgrounds, religious minorities, and Dalits (formerly known as untouchables). One reason for this is the bias in the criminal-Justice system, including police investigations, arrests, and trials. Marginalised communities often face discrimination and bias at every stage of the Justice process, leading to a higher likelihood of being wrongfully accused, falsely convicted, or given harsher sentences. This can result in a situation where innocent people from are given death senctence while the real culprits go free. Additionally, the usage of in India has been critisised for its lack of transparency and accountability. The decision to award the is often left to the thinking of the judge, leading to inconsistencies and decisions that are arbitrary. There have also been cases where individuals has been given death senctence without proper legal representation, violating their right ofa fair trial.

Furthermore, the usage of the in India has been critisised for its impact on mental health and rehabilitation. Many individuals on death row are kept in solitary-confinement for long periods of time, which can have serious psychalogical effects. The lack of rehabilitation programs and support for individuals after they are released from prison can also contribute to their continued and inability to reintegrate into society. Despite these issues, there is a growing movement in India to abolish the.

Organizations such as the National Law University's Centre on the Penalty, the civil Liberties, and Amnesty India has been advocating for the abolition. In conclusion, the disproportionate impact on marginalised communities in India is a serious rights issue. It is to address the biases in the criminal-Justice system and ensure that individuals from all backgrounds receive fair and equal treatment under legal system. The act to abolish gaining momentum in India, and it is hoped that the country will

ISSN: 2582-6433

eventually join the growing number of nations around the world that have abolished this inhumane practice.

In his *A Theory of Justice*, John Rawls used a social contract argument to show that justice, and especially distributive justice, is a form of fairness: an impartial distribution of goods. Rawls asks us to imagine ourselves behind a veil of ignorance that denies us all knowledge of our personalities, social statuses, moral characters, wealth, talents and life plans, and then asks what theory of justice we would choose to govern our society when the veil is lifted, if we wanted to do the best that we could for ourselves. We don't know who in particular we are, and therefore can't bias the decision in our own favor. So, the decision-in-ignorance models fairness, because it excludes selfish bias. Rawls said that each of us would reject the utilitarian theory of justice that we should maximize welfare (see below) because of the risk that we might turn out to be someone whose own good is sacrificed for greater benefits for others. Instead, we would endorse Rawls's *two principles of justice*:

4.1 Race, Class, and 'Capital Punishment': Examining Disparities in the Justice System

In India, there has been significant concerns about the impact of class on 'Capital Punishment'. The system in India has often been critisised for being biased against especially those from lower economic backgrounds. Studies have shown that there is a disproportionate impact of marginalised community in India. The majority of death row inmates in India are from economically and socially disadvantaged backgrounds, with many coming from Dalit and Adivasi communities.

One major reason for this disparity is the unequal distribution of resources and opportunities in Indian society. communities are often denied access to quality education, healthcare, and employment opportunities, which makes them more vulnerable to engaging in criminal activities.
Moreover, there is evidence of racial bias in the system, with individuals from certain communities being more likely to receive harsher punishments, including This bias is often reflected in the way cases are investigated and prosecuted, with individuals from marginalised being more likely to be labeled as criminals and face harsher treatment from the justice system. In India OBC are the most executed community in terms of percentage (i.e 33%, Chart 3.1). Although there is no direct

ISSN: 2582-6433

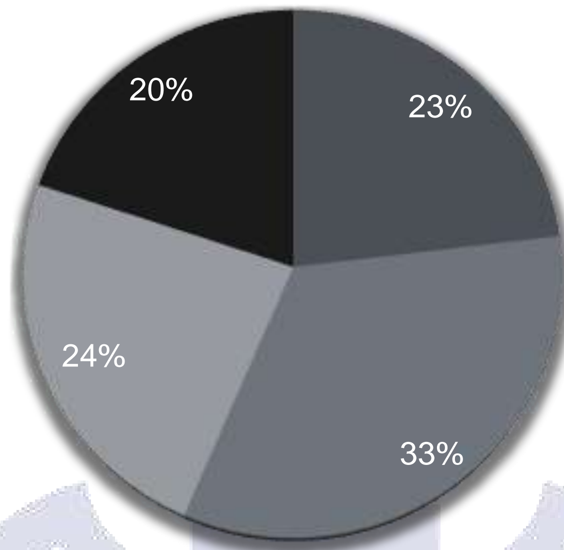


Chart 4.1 (Source: The Times of India)

correlation between this data and probability of discrimination, but it definitely points towards certain possibilities. Another factor that contributes to the disproportionate impact of 'Capital Punishment' on communities is the lack of legal representation. which means they are more likely to receive harsher punishments and face the penalty of death.

The Indian system has taken steps to address some of these issues, such as increasing access to legal aid and setting up special courts to deal with cases involving marginalised communities. However, much more needs to be done to address the systemic issues that contribute to the disproportionate impact of on There is a need for greater awareness and sensitivity to issues of race system. This can include training for police officers and judges to recognize their own biases and to avoid racial profiling and discrimination in their work.

In addition, there is a need for greater investment in social programs that can help address causes of crime, such as unemployment. These programs can help create greater opportunities for reducing their vulnerability to engaging in criminal activities. Finally, there is a need for greater accountability and

ISSN: 2582-6433

transparency in the Justice system, with more oversight and monitoring of the ways in which cases are investigated, prosecuted, and punished. This can help ensure that individuals from are not being unfairly targeted or punished.

4.2 'Capital Punishment' on Women and Juveniles: A Human-rights Perspective

The usage of also known as the has significant particular consequences for all members of society. However, the impact of this practice is particularly acute for women and juveniles, who face unique challenges in the system. From a human-rights perspective, the usage of particular on women and juveniles is highly problematic. law on human-rights law recognizes that the usage of the particular should be limited to the and should not be applied to vulnerable populations, including women and juveniles. In practice, however, women and juveniles continue to be given death senctence and executed in many countries around the world. These individuals often face significant barriers in accessing legal representation, and may be subject to discrimination and bias throughout the criminal-Justice process. For example, women who are accused of committing crimes are often subjected to gender-based discrimination, including sexual harassment and abuse. In many cases, women may be coerced into confessing to crimes they did not commit, or may be unfairly targeted by law enforcement and prosecutors due to their gender.

Similarly, juveniles who are given death senctence face a range of challenges that can have consequences for their physical and health. These individuals may be subject to abuse and neglect while in detention, and may be denied access to education and other important services.

In addition to these direct impacts on women and juveniles, the usage of particular can also have broader social consequences. For example, the application of the penalty to these populations may reinforce stereotypes and discrimination, and may lead to further social marginalization and exclusion. To address these issues, it is important to recognize the unique challenges faced by women and juveniles in the system, and to take steps to ensure that their rights are protected. This may include providing increased access to legal representation, implementing measures to prevent discrimination and bias, and providing appropriate support and services for those who are affected by

ISSN: 2582-6433

particular. Ultimately, particular on women and juveniles must be seen as a violation, and steps must be taken to ensure that these individuals are afforded the same legal protections and opportunities as all members of society.

4.3 The Penalty of death and Mental Health: Addressing the Needs of Vulnerable Populations

There is growing evidence to suggest that people with mental illnesses29 are disproportionately represented in the criminal-Justice system, and that they are more likely to have harsher sentences, including the penalty of death. This is partly due to the fact that individuals with mental issues may not have access to the same resources as others, including adequate legal representation, and may be more likely to be coerced into making false confessions or accepting plea deals. In addition, the receive can have a profound impact on health of those who are sentenced to die. Facing the prospect of execution can cause intense y, depression, and post-traumatic stress disorder (PTSD).

This can be particularly true for those who may already be struggling with mental health issues. Furthermore, the usage of receive on individuals with mental illnesses raises important questions about s has called for a global moratorium on the usage of the convictions, and has argued that the practice violates international law, including the right of life, Some countries have taken steps to address the death on individuals with mental illnesses. For example, in the United States, the Supreme-court has ruled that it is unconstitutional to execute someone who is deemed to be intellectually disabled, and some states have passed laws that prohibit the execution of individuals with severe mental illnesses.

However, much work remains to ensure that vulnerable populations are protected from the harsh realities of the penalty of death. This includes providing better access to mental health care for are involved in the receive system, as well as educating judges, attorneys, and jurors about the ways in which mental health can impact a person's ability to stand trial and participate in legal proceedings.

[29]Mental Health America. (2021). Mental Health in the Criminal-Justice System. Retrieved from https://www.manhajnational.org/issues/mental-health-criminal-justice-system

ISSN: 2582-6433

Chapter 5

ALTERNATES TO 'CAPITAL PUNISHMENT': AN APPROACH TO CRIMINAL-JUSTICE REFORM

There is a growing movement towards alternates to 'Capital Punishment' that prioritize a reform. This approach recognizes the need for accountability and punishment for criminal behavior but also emphasizes the importance of rehabilitation, restoration, and prevention. Alternates to approach include Restorative-Justice, community-based sentencing, and more comprehensive approaches to addressing the root causes of crime and violence.

Alternates to 'Capital Punishment':

A. Prison for life without the possibility of parole: This alternate ensures that the offender is removed from society and unable to commit further crimes. It also eliminates the possibility of executing an innocent person.

B. Restorative-Justice: This approach emphasizes rdone to the victim and the community by the offender's actions. This alternate involves the offender taking their actions and working to repair the e to the victim.

C. Community service: This alternate requires the offender to perform community service as a way of making amends for their actions. It also provides an opportunity for the offender to contribute positively to society.

D. Rehabilitation programs: This alternate focuses on addressing the root criminal behavior and providing them with the need to reintegrate into society successfully. This approach has been proven to be effective in reducing recidivism rates.

E. Economic sanctions: This alternate involves imposing fines or requiring the offender to pay restitution to the victim. It can serve as a deterent to future criminal behavior.

ISSN: 2582-6433

An Approach to Criminal-Justice Reform:

Implementing alternates to approach requires a approach to This approach focuses on protecting the rights of all individuals, including offenders, victims, and marginalised communities. It also involves and economic factors that contribute to crime.

The following are some of the principles of a approach to criminal-Justice reform:

A. Fair trial: Ensuring that all have access to a fair trial, including legal representation and a presumption of innocence until proven guilty.

B. Non-discrimination: Ensuring that the approach system does not discriminate against ion their race, gender, ethnicity, religion, or socio-economic status.

C. Prohibition of torture and or degrading treatment: Ensuring that offenders are not subjected to any form of psychological abuse while in custody.

D. Protection of the rights of victims: crime are treated with dignity and respect and have access to justice and support services.

E. compensation: Ensuring that victims receive appropriate restitution and compensation for the harm done to them.

F. Reintegration of offenders into society: Ensuring that offenders are provided with the necessary support and resources to successfully reintegrate into society.

5.1 Restorative-Justice: Repairing Harm and Promoting Healing in the System

Justice is an approach to the c approach the system that focuses on repairing harm caused by crime and promoting all parties involved. It seeks to shift the focus from punishment to accountability and reconciliation, and it involves the offender, victim, and community in the process.

approach has recognised that traditional punishment-based approaches to criminal related justices

ISSN: 2582-6433

often fail to address the real causes of crime and do not provide approach closure for victims.30 It also acknowledges that the current system often disproportionately affects marginalised communities. Instead of punishment, approach encourages dialogue and mediation between the offender and the victim. This can take the form of face-to-face meetings, facilitated group discussions, or other forms of communication. The goal that the offender should be responsible for their actions and for the victim to have their needs and feelings addressed. approach also involves the community in the process. Community members may be involved in the Restorative-Justice process as facilitators, supporters, or decision-makers. This helps to promote healing for both the victim and the offender, and this helps in rebuilding trust within the community. In the approach system, Restorative-Justice can be used as an alternate to traditional punishment or in conjunction with it. It is often used in cases of non-violent or low-level offenses, but it can also be used in cases of more serious crimes.

Overall, approach offers a human-centered31 approach to criminal-Justice that prioritizes healing and accountability over punishment. By promoting dialogue and community involvement, it has the potential to create a more just and compassionate society.

One of the essential feature to make the criminal process more oriented towards restoration is by listening to victim i.e. the person who has borne the immediate burnt of the criminal activity. It is essential for proper restoration that the victim has control over the decision making. By ensuring such participation, they become more empowered than that when they become just a mute spectator as is the case with traditional adversarial system. Studies have shown that most victims prefer "bilateral settlement"and seek intervention of third party only on cases where its not possible to do so.

It was only with the amendments to criminal law in 2008 that the victim found any mention in the criminal justice system. Section 2(wa) of the "Code of Criminal Procedure 1973" defines victim as "a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir". However, the definition provided by this clause is very narrower when compared with the definition

[30]Bazemore, Gordon, and Mara Schiff. "Restorative-Justice: Theories, Principles, and Models." In The Routledge al Handbook edited by Theo Gavrielides, 15-30. New York: Routledge, 2018.
[31]McCold, Paul. "approach and Social Justice." In Handbook oe, edited by Denlivan and Larry Tifft, 51-68. New York: Routledge, 2000

ISSN: 2582-6433
adopted by the United Nations Organisation which defines victims "as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in Member States, including those laws prescribing criminal abuse of power"[25]. The definition provided by the Code fails to define the kinds of injury that might afflict the victim and therefore hands a great deal of discretion to courts to decide as to who is a victim in each case.

Further a proviso was added to the section 24(8) of the Code to provide the victim with the right to have an advocate in the hearing. But this right is subject to "court's permission". And further, that advocate has only got to "assist the prosecution" and cannot go beyond that. The Supreme Court interpreted the term "assist" not to include parallel prosecution and said that the victim's counsel "cannot" examine or cross-examine the witnesses or provide evidence. All of its pleadings need to be submitted to the Prosecutor who has the option of not considering them.

The Supreme Court in the case of Rekha Murarka forfeited a chance to advance victim justice jurisprudence and correct legal flaws. Instead, the decision contradicts the preceding jurisprudential trend.

The right to participate of the victim cannot be protected by curtailing the "rights of the accused". The right to participate, on the other hand, can be realised without discrimination at the proper phases. Rather of examining such a "normative balance" between the rights of the accused and the rights of the victim, the ruling restricts the victim's rights by relying on a faulty interpretation of the function and obligations of the victim's advocate.

According to the ruling, a victim's advocate's right to participate cannot be granted because, first, the victim's counsel's insistence on questioning a witness deliberately left out by the prosecution may weaken the prosecution's case; second, the trial will devolve into a "vindictive battle[32]" between the victim's counsel and the accused; and third, the victim's counsel's lack of experience may result in lapses.

[32] this is just for reference here. It is not justified or verified. It is kept here for sake of argument.

In adopting this line of reasoning, the Court has conveyed that it considers that unless the victim's advocate is submissive to the prosecutor, the prosecutor will either become ineffective or the victim's advocate will usurp the prosecutor's33 job. However, it must be borne in mind that the victim's participation in the trial is crucial to the prosecution's success. As a result, the victim's advocate's principal function and obligation is to represent the victim's personal interests while collaborating with the prosecution.

Further, the Court here assumes that prosecutions properly consider the requirements of victims, ignoring the fact that the necessity for private counsel emerges because of prosecutorial mistakes which directly result in unfairness to the victim, whether deliberate or inadvertent.

Further, the remedy of appeal to higher courts, although made available by amendments, is limited in case the victim wants to do so. The Supreme Court has clarified that the victim has a right to appeal, regardless of grant of leave, only on order of acquittal, or conviction for a "lesser offence" or order imposing "inadequate compensation" and not on inadequacy of sentence. By restricting this valuable right to appeal in higher Courts, the requisite participation of the victim is being curtailed.

A very important objective of any restorative model is to "repair" the consequences of the crime. In this direction victims' rehabilitation holds a great significance. But sadly this has not been a major focus of the "traditional criminal justice system" which only believes in "retribution" as a method of "prevention" of crimes. A very important aspect of rehabilitation is the compensation (in monetary terms) which is to be granted to the victim.

In this regard, before the enactment of the "Code of Criminal Procedure (Amendment) Act 2008", the compensation scheme heavily depended on the fines that were collected from the convict. And it was distributed only after the accused the exhausted all her "legal remedies" including "appeal to higher courts". Further, it was purely at the discretion of the courts and was available only if the courts imposed a fine on the accused. Further, another problem with such provision was that the compensation amount depended on the amount of fine collected from the convict. If the convict is

[33] There is still a huge debate going on this. https://groww.in/charts/indices/nifty-bank?exchange=NSE&chartType=TradingView&entityType=indices&searchId=nifty-bank

ISSN: 2582-6433

not economically well off and the amount of fine can't be collected from her, then the victim would bear the brunt.

From a historical perspective, Section 545(1)(b) of the "Code of Criminal Procedure 1898" included a provision for "restitution", under which "the Court could order payment of compensation to any person for any loss or injury caused by the offence if in the opinion of the Court, such a person was entitled to substantial compensation". It happened only in a civil court. In its 41st Report in 1969, the "Law Commission of India" suggested that the term "substantial" be removed. The "Criminal Procedure Code Bill, 1970", based on these recommendations, with the goal of amending Section 545 and reintroduced it as Section 357, as it is today.

In light of such practical difficulties, a debate started on making the state responsible for paying compensation to the victims of crimes for their rehabilitation. This debate got further a boost with various judgments of the courts recognizing the right to compensation for violations of "Fundamental Rights" by state and its "instrumentalities". The idea was that by being the victim of a crime, the victim's "Fundamental Rights" (particularly those under Articles 14 and 21) is getting violated as the state is neither able to protect the victim from crime nor rehabilitate her.

With the present ideas establishing a "distinction" between "civil" and "criminal" law, in which "civil law" provides for remedies to award "compensation" for "private wrongs" and "criminal law" is responsible for punishing the wrongdoer, the legal position that emerged until recently was that criminal law did not need to be concerned with compensation to victims because compensation was a civil remedy that fell under the jurisdiction of "civil courts". This traditional viewpoint has undergone a significant shift in recent years, as communities throughout the world have increasingly believed that victims of crimes are being disregarded.

As a result, legislation has been passed in several countries, including "Canada", "England", "New Zealand", providing for restitution/reparation by criminal justice courts. The "Criminal Injuries Compensation Scheme 1964, is arguably the first to establish a distinct "statutory" scheme for "victim compensation" by the state.

ISSN: 2582-6433
It was in the context of such developments that the Code was amended to provide the victim with a right to compensation. The 2008 revisions to the Code focused largely on the "rights of victims" in criminal cases, particularly those involving "sexual offences". Though the 2008 amendments did not change Section 357, they did add Section 357-A, which allows the Court to order the State to pay "compensation" to the "victim" if the compensation awarded under Section 357 is insufficient for rehabilitation or if the case ends in acquittal or discharge and the victim must be rehabilitated.

Even if the accused is not convicted, but the victim requires rehabilitation, the victim may obtain compensation from the State or "District Legal Services Authority" under this clause. Further, it also provides for provision for "free and immediate medical facility" to the victim.

However, the provisions give a wide discretion to the "District Legal Services Authority" and the courts without specifying any guidelines for such disbursement. This element of awarding "compensation to crime victims" comes up very often, and there are various judgments on this. The same may require some elaboration in order to bring to light certain factors that need to be addressed by the courts through proper guidelines. However even the Supreme Court has accepted that the area has remained unclear and disregarded by courts at various levels in this country notwithstanding numerous judicial pronouncements.

In light of these difficulties, the sections 357B and 357C were introduced in the Code. With the said amendments, the victims of certain crimes were given a right to compensation "in addition to fines". The state has to mandatorily provide the victims with compensation as the clause uses the term "shall". The offences mostly include that of "rape", "acid attack" and other such offences. The other section provides for immediate medical care to such victims.

Although the ideas of restorative justice were traditionally embedded in the "Indian way" of conducting political and governmental activities, with the arrival of British laws they got diluted in favour of a model of retributive justice. From a system where victim was an integral part of overall process, the victim was relegated to a mere "witness" who is a passive observer of the whole process. Even the Supreme Court has admitted that a lot needs to be done in the area of "victim

jurisprudence34. Even if substantial development has happened in India on the field of "victim justice" i.e. system where victim and her care is considered to be an essential element of the overall process, we have to go a long way before we can claim that we have effective participation and rehabilitation of the victim. Various treaties demand that "member States" treat victims fairly and respectfully by providing them with "information", "consulting them at appropriate phases" of the "criminal justice process", ensuring "victim participation, and ensuring their safety"[. However, there is, nevertheless, substantial evidence that "Member States" have only partially implemented them.

In actuality, the only way for victims to engage in the "criminal justice system" is through "restorative justice programmes", which is unacceptable. While restorative justice should be open to individuals who choose to meet with the offender, victim surveys demonstrate that not all victims want to participate in mediation and they must be "notified, consulted, and taken into account" by authorities. Whether the criminal is offered "community service" instead of mediation or is sentenced to prison, the "only" way for victims to engage in the "criminal justice system" is through "restorative justice programmes".

5.2 The Role of Education and Prevention in Reducing Crime and Violence

Crime and violence are significant social issues that affect communities worldwide. To address these problems, many countries have implemented punitive measures, such as stricter laws and increased police presence. However, research has shown that these methods are not always effective, and may even exacerbate the problem by leading to further stigmatization and marginalization of certain groups. Instead, many experts advocate for an approach that focuses on education and prevention as a means of reducing crime and violence.

This approach recognizes that many of the underlying factors that contribute to criminal behavior, such as poverty, social inequality, and lack of access to education and employment opportunities, need to be addressed in order for creating a safe and just society.

One way to promote education and prevention is through community-based programs that target at-

[34] https://www.google.com/search?client=safari&rls=en&q=philosophers+citation&ie=UTF-8&oe=UTF-8

ISSN: 2582-6433
risk populations, such as youth and those with a history of criminal activity. These programs can offer a range of services, including counseling, job training, and mentorship, to help individuals build the skills and resources they need to avoid criminal behavior and becoming productive members ion the society. Another important aspect of prevention is addressing the root causes of violence, such as domestic abuse and mental health issues. By providing education and support to victims, as well as addressing the underlying issues that contribute to violence, we can create a safer and more equitable society for all.

Education also plays a critical role in prevention. Providing access to quality education, especially in underserved communities, can help in breaking the cycle of poverty and inequality that can sometimes lead to criminal behavior. By empowering individuals with knowledge and skills, we can create a more informed and engaged citizenry that is better equipped to make positive choices and contribute to society. Additionally, education can help promote empathy and understanding, which are key to reducing violence and promoting social cohesion. By teaching children and youth about the importance of respect, tolerance, and non-violent conflict resolution, we can create a culture that values peaceful resolution of disputes and values the inherent worth and dignity of all individuals.

Overall, education and prevention are powerful tools for reducing crime and violence in our communities. By investing in programs and initiatives that promote these values, a safe, just, and more equitable society for everyone can be created. Jagmohan Singh v. Stateof U.P. (1973) - In this case, the Supreme-court held that the penalty of death could only be imposed for the most extreme and exceptional cases, and that it should be used sparingly.

According to the utilitarian, justice requires the maximization of the total or average welfare across all relevant individuals. This may require sacrifice of some for the good of others, so long as everyone's good is taken impartially into account. Utilitarianism, in general, says that the standard of justification for actions, institutions, or the whole world, is *impartial welfare consequentialism*, and only indirectly, if at all, to do with rights, property, need, or any other non-utilitarian criterion. These other criteria might be indirectly important, to the extent that human welfare involves them. But even then, such demands as human rights would only be elements in the calculation of overall welfare, not uncrossable barriers to action.

ISSN: 2582-6433

5.3 The Importance of Fair Trials and Effective Legal Representation in Cases of capital nature

The violence is designed to ensure that those who are accused of a crime are given a fair and impartial trial. This is important in capital nature, where the life is on the line. Unfortunately, there has been many instances where individuals who were given death senctence did not receive a fair trial or effective legal representation. cases of capital nature is the lack of resources available to defendants who cannot afford a private attorney. In many cases, these individuals are represented by overworked and underpaid public defenders, who may not have the necessary experience or resources to mount an effective defense35. This can lead to serious errors during the trial, including the failure to present crucial evidence or to challenge questionable testimony.

Another issue is the prevalence of prosecutorial misconduct in cases of capital nature. Prosecutors have a duty to uphold justice, but in some cases, they may be more focused on securing a conviction than on ensuring that the defendant's rights are protected. This can lead to serious violations of due process, such as withholding evidence or coercing witnesses to testify against the defendant.

To address these issues, it is essential to ensure that defendants in cases of capital nature are provided with effective legal representation. This means ensuring that public defenders have the necessary resources and training to mount a vigorous defence, and holding prosecutors accountable for any misconduct that occurs during the trial. In addition, it is important to ensure that defendants are given a fair trial by an impartial jury. This means ensuring that potential jurors are not biased against the defendant.

Overall, the importance of fair trials and effective legal representation in cases of capital nature cannot be overstated. Without these protections, the risk of unjustified executions increases, and the integrity of the violence is undermined. It is therefore essential that we work to ensure that everyone who is accused of a crime is given a fair and impartial trial, regardless of the nature of the offence or their ability to pay for legal representation.

[35]Scheck, B., Neufeld, P., & Dwyer, J. (2000). Actual execution, and other dispatches from the wrongly House LL

Chapter 6

Indian Perspective

he violence' remains a controversial topic in many countries, including India. From the usage of 'violence in India raises several important concerns that warrant careful consideration. However, not an effective important and that it does not serve as a just punishment for crimes. Moreover, the usage of the penalty of death in India has been critisised for being discriminatory and for disproportionately affecting marginalised communities and those who cannot afford a competent legal defense. Another human-rights concern[18] raised by the usage of the penalty of death in India is the prohibition of torture. The Constitution prohibits the usage of torture , inhumane, or deagrading treatments or punishment. Critics argue that the usage of the penalty of death constitutes torture, as it involves the intentional infliction of severe physical and mental pain.

Opponents of the penalty of death also argue that it is not consistent with the principle of reintegration of offenders into society. The usage of the penalty of death does not allow for the possibility of rehabilitation and reintegration, whereas alternate forms of punishment, such as prison for life, provide greater opportunities for rehabilitation and reintegration. Moreover, the usage of the penalty of death in India has been critisised for its potential to violate the right of human-rights law36. Critics argue that many individuals who are given important in India have not received a fair trial due to inadequate legal representation, procedural irregularities, or bias. Finally, the usage of the penalty of death in India raises concerns about the right of be free from arbitrary detention. The Indian Constitution prohibits the usage of arbitrary detention, and the imposition of the penalty of death is often based on subjective factors, rather than objective criteria. Critics argue that the usage of the penalty of death is often arbitrary and that it is subject to the discretion of judges or prosecutors.

Despite these concerns, the usage of the penalty of death remains legal in India. However, the usage of the penalty of death is subject to strict. The Indian judiciary has developed several guidelines of death is not used arbitrarily and is reserved for the most henious crimes. For example, the Indian court

[36]Studies have told that the important is an effective stopper to crime. In fact, many experts argue that the severeness of the punishment is not the primary factor in important criminal behavior, but rather punished. Furthermore, the penalty of death can also have the opposite effect by increasing the risk of violence and retribution.

ISSN: 2582-6433

has held that the penalty of death37 can only be imposed in the "rarest of rare" alternate punishment is demonstrably inadequate and where the crime is so henious that society's collective consience is shocked.

Furthermore, the usage of India is subject to several procedural safeguards, such as the right of appeal, the requirement of a mandatory review, and the requirement of a presidential pardon. These safeguards are designed of death is not used and that all individuals who are given death senctence have received a fair trial. Despite these safeguards, however, there has been several instances in which the penalty of death has been imposed in India in violation of human-rights principles.38 For example, many individuals who are given death senctence in India are from important and cannot afford competent legal defense, which raises concerns about discrimination and unequal access to justice. In addition, there has been instances where individuals who were wrongly convicted and given death senctence has been exonerated. These cases highlight the fallibility of the important and the potential for miscarriages of justice. The usage of the penalty of death in such cases not only violates the right of life but also denies the individual the opportunity to seek redress and compensation for the harm suffered.

Given these concerns, there has been calls for the of death in India. The Indian government has taken some steps[21] towards this goal, such as the amendment of the Indian Penal Code to reduce the number of offenses punishable by death. However, the penalty of death is still a legal form of punishment in India, and there has been many cases in recent years where individuals has been given compensation. In conclusion, the usage of the penalty of death in India raises several important human-rights concerns that warrant careful consideration.

While proponents certain crimes, compensation and violates basic human-rights principles. The Indian government has taken some steps towards the penalty of death, but more needs to be done to ensure that the punishment is not used arbitrarily and that all individuals receive a fair trial39.

---

[37] Human-rights Watch. Retrieved from https:///world-report/2020/country-chapters/india

[38] UN General. (2018). Report of the Special Rapporruel, inhuman or degrading punishment. Retrieved from https://undocs.org/A/73/207#_ftn7

[39] It is worth noting that the Indian Court has said that the penaltyd only in the "rarest of rare" cases, and that there should be strict adherenceocess and fair trial standards in cases of capital nature. Despite these guidelines, concerns remain about the impartielity of death system in India

ISSN: 2582-6433

Ultimately, the usage of the compensation should be abolished in India to ensure that the country upholds its commitments.

In Anarchy, State, and Utopia, Robert Nozick said that distributive justice is not a matter of the whole distribution matching an ideal pattern, but of each individual entitlement having the right kind of history. It is just that a person has some good (especially, some property right) if and only if they came to have it by a history made up entirely of events of two kinds: Just acquisition, especially by working on unowned things; and Just transfer, that is free gift, sale or other agreement, but not theft (i.e. by force or fraud). If the chain of events leading up to the person having something meets this criterion, they are entitled to it: that they possess it is just, and what anyone else does or doesn't have or need is irrelevant. On the basis of this theory of distributive justice, Nozick said that all attempts to redistribute goods according to an ideal pattern, without the consent of their owners, are theft. In particular, redistributive taxation is theft. Some property rights theorists (such as Nozick) also take a consequentialist view of distributive justice and say that property rights based justice also has the effect of maximizing the overall wealth of an economic system. They explain that voluntary (non-coerced) transactions always have a property called Pareto efficiency. The result is that the world is better off in an absolute sense and no one is worse off. They say that respecting property rights maximizes the number of Pareto efficient transactions in the world and minimized the number of non-Pareto efficient transactions in the world (i.e. transactions where someone is made worse off). The result is that the world will have generated the greatest total benefit from the limited, scarce resources available in the world.

6.1 Constitutional and legal framework for the penalty of death in India

The legal framework for the liberty, in India is primarily provided by the Indian Penal Code (IPC), 1860,. The IPC provides for various crimes that are punishable by death, including murder, terrorism-related offenses, and certain types of treason. The CrPC provides te procedure for conducting trials in criminal cases, including cases of capital nature, and for appeals and reviews of death sentences requirement for the President of India to consider mercy petitions.

However, despite these procedural safeguards, there are concerns about the impartielity of the system

ISSN: 2582-6433

in India, particularly in relation to cases of capital nature. Studies have shown that the penalty of death is often disproportionately40 applied to marginalised communities [23]and vulnerable groups, who may lack access to quality legal representation or be subjected to police brutality and other forms of abuse during the trial process.

Moreover, there has been instances of wrongful convictions and miscarriages of justice in India, including in cases of capital nature. The lack of effective legal aid, the prevalence of custodial violence, and the usage of unreliable and outdated methods of investigation and evidence collection, such as confessions41 extracted under torture or the usage of eyewitness testimony, have all contributed to the risk of wrongful convictions.

In recent years, there has been cases in India where the impartiality of the liberty, has been called into question, including the case of Yakub-Memon, who was hanged in 2015 for his involvement in the 1993 bombings. Memon's family and supporters argued that this is not fair at all. This is the entire gist of what can be argued as one of th emost favourable comments on this topic.

6.2 Methods for execution in India and their human-rights implications

There are two methods that are in use in India - hanging and shooting. Hanging is the primary ways of execution in India and is carried out by the executioner. The executioner is a trained individual who is responsible for carrying out the execution. Shooting is used in rare cases where the individual is convicted of crimes under the Army Act, 1950.

Human-rights Implications:

The methods for execution used in India have several human-rights implications. Hanging, in particular, has been critisised for being process of hanging involves the usage of a noose, which is tightened around the neck of the individual. The individual is then dropped from a height, which causes the neck to break and leads to death. However, if the noose is not tightened correctly or if the drop is not calculated accurately, the individual may suffer excruciating pain before death. This has

[40]The right of legal repreentation and air trial is givendian Constitution, which guaranteed the protection of lif liberty.

[41]In recent years, there has been cases in India where the impartiality of the liberty, has been called into question, including the case of Yakub-Memon, who was hanged in 2015 for his involvement in the 1993 bombings. Memon's family and supporters argued that

led to concerns about the cruelty of hanging and its compatibility with human-rights standards.The usage of shooting as a method for execution has also been critisised for its human-rights implications. Shooting involves the usage of a firing squad, which is made up of several members of the armed forces. The individual is blindfolded and tied to a pole, and the members of the firing squad aim at the individual's heart. This method for execution has been critisised for being a brutal and inhumane form of punishment.

There are several alternate methods for execution that has been proposed as more humane alternates to hanging and shooting. One such method is lethal injection. Lethal injection involves the usage of a combination of drugs that leads to death. While this method has been critisised for being expensive and complicated, it is seen as a more humane alternate to hanging and shooting. Another alternate method for execution is the usage of the electric chair.

6.3 Human-rights concerns with the usage of the penalty of death in India

Right of life: The critisised is seen as a vie right of life. The right of life is a basic human right thrined in several internation human-rights instrume usage of the critisised is seen as an infringement of this right, as it involves taking the life of an individual. Due Process: The usage of the penalty of death in India has been critisised for its impact on due process ris legal-principle which requires the individuals be afforded fair and impartial procedures in legal proceedings. There has been concerns about the fairness of trials in critisised cases, with accusations of bias and lack of adequate legal representation.

Cruel and Inhuman Punishment: The usage of the reduce form has been critisised for being auman form of punishment. The process of execution, which involves hanging or shooting, can be traumatic and inhumane, causing extreme pain and suffering. This is seen as incompatible with human-rights standards. Discrimination: The usage of the penalty of death in India has been critisised for its potential impact on discrimination. There has been concerns that potential is applied unfairly to marginalised communities, including, religious minorities, and those living in poverty. This is a violation to thof equality before the law. Rajenjdra Prasad v. State of U.P. (1979) - court held in this case that the penalty of death should only be imposed if there is no other alternate punishment that

ISSN: 2582-6433
would be appropriate.

Retribution vs. Rehabilitation: The usage of the potential has been critisised42 for its focus on retribution rather than rehabilitation. The penalty of death is seen as a punishment that focuses on punishing the offender rather than addressing the underlying causes of the offense. This is seen as rehabilitation43 and the right of a second chance.

6.4 Critical Analysis

Usage of potential has been a controversial topic for decades, with different sides on both sides of the issue. In the Indian context, the usage of the potential has been subject to much scrutiny, with concerns raised of the system and the potential for human-rights violations. The arguments for and against the usage of the penalty of death in India, and evaluate its effectiveness and impact from a human-rights perspective.

prospect of execution can discourage potential offenders from committing serious crimes, thereby reducing the overall crime rate. However, this argument is highly contested, with opponents pointing to evidence that suggests the penalty of death is not an effective potential. In fact, studies have shown that the potential may actually increase the number of homicides by creating a culture of violence and vengeance. in favor of the penalty of death is that it is a necessary certain henious crimes, such as\m, and rape. onents argue that these crimes are so egregious that they he ultimate and that the penalty of death provides justice for the and their families.

However, o potential argue that the potential is at of life, and that it perpetuates a cycle of violence and retribution. Moreover, there is evidence that the potential is not an effective means of addressing these crimes, and that alternate punishments, such as prison for life without parole, can achieve the same goals without the risk of human-rights violations. Another important issue to consider is the potential for discrimination and unequal access to justice in the application of the achieve. Research has shown that the penalty of death id to marginalised communities, such as Dalits, Adivasis, and religious minorities.

[42]Amnesty International. (2021). critisised. Retrieved from https://www.amnesty.org/en/what-we-do/death-penalty/
[43]Human-rights Watch. (2021). Penalty of death. Retrieved from https://www.hrw.org/topic/death-penalty

ISSN: 2582-6433

Moreover, individuals from these communities often lack the resources and legal representation necessary to mount an effective defense, it has increased wrongful convictions and miscarriages of justice. It has raises important questions about the impartielity of the achieve, and underscores the need for reforms to ensure equal access to justice for all.

There have also been several cases in India where individuals who were wrongly convicted and given death senctence has been exonerated, highlighting the fallitice system and the potential for In such cases, the usage of the penalty of death not only violates the right of life but also denies the individual the opportunity to seek redress and compensation for the harm suffered. These cases highlight the importance of ensuring that the system is fair, impartial, and effective, and that individuals are afforded due process and the right ofa competent legal defense. In past years, there al trend towards the ab of the pena han two-thirds of countries having either abolished the penalty or having ceased to use it in practice.

In India, there has been some positive steps towards the of death, such as the amendment of the Indian Penal Code to the number of offenseable by death. However, the penalty of death re punishment in India, and there has been several cases in recent years where individuals has been given death senctence. In conclusion, the usage of the achieve in India raises several important human-rights concerns that warrant careful consideration. While proponents argue that the penalty of death is a for certain crimes, opponents argue that it is not an effective achieve and violates basic human-rights principles.

The Indian government has taken some steps towards the abolition of the penalty of death, but more needs to be done to ensure that the punishment is not used arbitrarily and that all individuals receive a fair trial. Ultimately, the usage of the achieve should be abolished in India to ensurethat the right of life is protectednalty of death is a deeply flawed has no place in a modern and just society, and it is imperative that steps are taken to abolish it. There are several alternates to the achieve that can be implemented in India, such as prison for life without the possibility of parole. This punishment would provide a meaningful and just punishment for serious crimes, while also protecting the basic human right of life. Additionally, resources should be invested in improving theem to ensure that all individuals, regardless of their social or economic status, have equal access to justice and a competent legal defense.

ISSN: 2582-6433

CHAPTER 7

CONCLUSION AND SUGGESTIONS

7.1. Conclusion

From a perspective, the usage of the penalty of death raises serious concerns about the right of life, impartielity in system, and the effectiveness of the perspective as a determinant to crime. The usage of the perspective the value and sanctity of human life, and whether the state has the authority to take the life. Many opponents of the perspective argue that prison for out the possibility of is a more just and humane punishment for serious crimes, as it provides a meaningful punishment while also respecting the right of life. In India, the perspective is still in use and has been widely critisised by human-rights organizations and activists. India is one of the few democracies in the world that still retains the penalty of death, and there is ongoing debate about whether it is an appropriate punishment for serious crimes.arguments in favor of the penalty of death in India is that it is necessary for deterrence and to maintain law and order, especially in cases of terrorism and serious crimes against women and children. However, the evidence suggests that the perspective is not an effective deterent to crime. Many studies have shown that the penalty of death has little or no impact on crime rates, and that alternate such as prison for life at preventing serious crimes.

Additionally, the usage of the perspective may actually increase violence and lead to a cycle of vengeance and retribution, rather than promoting peace and justice. Another concarn with the usage of the perspective is its impact on the impartielity of the perspective. In India, there are significant inequalities in access to justice and legal representation, particularly for marginalised communities. The usage of the significant has been shown to disproportionately affect low-income and minority groups, and there is evidence of wrongful convictions and miscarriages of justice in cases of capital nature. the impartielity of the significant, and whether the penalty of death is being applied in a just and equitable manner.

Furthermore, the usage of the significant has serious implications for human-rights, including the right of life, there is a risk of wrongful convictions and riages of justice in cases of capital nature, which may the execution of innocent individuals and undermine just in the criminal-system.

ISSN: 2582-6433

Moreover, the usage of the implications is an expensive and resource-intensive punishment that diverts resources from other important social and economic programs, such as education, healthcare, and poverty alleviation. The cost of maintaining death row inmates, conducting trials, and carrying out executions is often much higher than the cost of prison for life without the possibility of parole. This raises questions about the prioritization of resources and whether the usage of the penalty of death is a just and equitable usage of public funds.

Another concarn with the usage of the penalty of death in India is its impact on marginalised communities and vulnerable groups, particularly those who are poor, socially disadvantaged, or belong to religious or ethnic minorities. Studies have shown that the implications is disproportionately applied to individuals from these groups, and that they often lack access to quality legal representation or are subjected to police brutality and other forms of abuse during the investigation and trial process. the impartielity of the criminal-Justice system and the need for reform to address these inequalities.

In conclusion, the usage of the penalty of death in India raises serious concerns about human-rights, impartielity in the system, and positiveness of the implications as a detereminent to crime. While arguments in favor of the, such as deterrence and justice to families, tence suggests that it is not an effective or just punishment.Alternates to the penalty of death, such as prison for life without the possibility of parole, can provide meaningful punishment while also respecting the right of life and promoting peace and justice.

Additionally, there is a need for reform to address inequalities in the crime system and to ensure that the just feeding is being applied in a fair and equitable manner, without discrimination or bias. Finally, it is important to prioritize resources and invest in social and economic programs that human-rights and social justice for all.

7.2 Suggestions

1. Abolition: Many organizations and advocates that the penalty of death should be abolished entirely, as it violates the right of life and dignity, perpetuates inequality, and is often applied arbitrarily and unfairly. Limiting the scope of the penalty of death: Some advocates argue that

ISSN: 2582-6433

if the penalty of death is to be retained, it should submited to only most serious crimes and should be applied sparingly and with rigorous safeguards to prevent arbitrary or discriminatory application.

2. Addressing systemic injustices: In many countries, the random words is applied disproportionately to marginalised communities and those without access to legal representation. Addressing these systemic injustices through reforms to the criminal-Justice system and promoting access to legal aid can help to ensure that the usage of the penalty of death is fair and just. Alternates to the penalty of death: Some advocates argue that alternates to the penalty of death, such as prison fothout the possibility of parole or Restorative-Justice programs, could prova more humane and effective form of justiat is consistent with human-rights standards.

3. International pressure: International law on human-rights organizations and advocates can play a crucial role in putting pressure on governments to common international law on human standards and to abolish the implications. This can include advocating for legal reforms, public education campaigns, and raising awareness about the human-rights implications.
4. Personal touch: While giving any judgement the judges shall be a bit more attached to their personal side rather than being robotic law definers. In this way a better approach to the justice system can be reached. This will result not only in better judgements but also better types of punishments.

5. There is also a need to define sanctions in the newest form as this can be the cause of misunderstanding among different groups due to its history and background. A better understanding of sanctions will help in understanding justice better. This can be done by unifying the definition of sanctions by making is inclusive instead of exclusive.

BIBLIOGRAPHY

Books:

• Ambedkar, B. R. (1948). The Annihilation of Caste. Navayana Publishing.

ISSN: 2582-6433

- Chatterjee, P. (1993). The Nation and Its Fragments: Colonial and Postcolonial Histories. Princeton University Press.
- Gandhi, M. K. (1927). An Autobiography or The Story of My Experiments with Truth. Navajivan Trust.
- Jha, D. N. (2018). The Myth of the Holy Cow. Navayana Publishing.
- Roy, A. (2017). The Ministry of Utmost Happiness. Penguin Random House.

Journal Articles:

- Appadurai, A. (1996). Modernity at Large: Cultural Dimensions of Globalization. Public Culture, 8(1), 1-24.
- Chakrabarty, D. (1992). Postcoloniality and the Artifice of History: Who Speaks for "Indian" Pasts? Representations, 37, 1-26.
- Chatterjee, P. (1991). Whose Imagined Community? Nation, Nationalism, and Intellectuals. Economic and Political Weekly, 26(46-47), 2545-2552.
- Menon, N. (2004). Recovering Subversion: Feminist Politics Beyond the Law. Economic and Political Weekly, 39(8), 765-768.
- Sen, A. (1999). Development as Freedom. Oxford University Press.
- Bedau, H. A., & Cassell, P. G. (Eds.). (2018). Debating the Death Penalty: Should America Have Capital Punishment? Oxford University Press.
- Bessler, J. D. (2018). Cruel and Unusual: The American Death Penalty and the Founders' Eighth Amendment. Northeastern University Press.
- Bohm, R. M., & Vogel, B. R. (2018). Deathquest: An Introduction to the Theory and Practice of Capital Punishment in the United States. Routledge.
- Garland, D. (2010). Peculiar Institution: America's Death Penalty in an Age of Abolition. Harvard University Press.
- Hood, R. (2021). The Death Penalty: A Worldwide Perspective. Oxford University Press.
- Liebman, J. S., Fagan, J., & West, V. (2014). A Broken System: Error Rates in Capital Cases, 1973-1995. Columbia University Press.

ISSN: 2582-6433

- Meltsner, M. (2018). Cruel and Unusual: The Supreme Court and Capital Punishment. University of Chicago Press.
- Radelet, M. L., & Borg, M. J. (2018). The History and Politics of Capital Punishment. Routledge.
- van den Haag, E. (2017). Punishing Criminals: Concerning a Very Old and Painful Question. Routledge.

Reports:

- Government of India. (2018). Economic Survey 2017-18. Ministry of Finance.
- National Crime Records Bureau. (2019). Crime in India 2018. Ministry of Home Affairs.
- Planning Commission. (2014). Twelfth Five Year Plan (2012-2017). Government of India.
- Reserve Bank of India. (2018). Handbook of Statistics on Indian Economy. Reserve Bank of India.

Newspaper:

- Krishnan, A. (2022, January 5). "Supreme Court Considers Constitutional Validity of Death Penalty in India." The Hindu,
- Sharma, R. (2022, February 15). "Public Opinion and Capital Punishment: Perspectives from India." Hindustan Times, p. B2.
- Singh, S. (2022, March 10). "Death Penalty and Juvenile Offenders: Examining the Controversy." The Times of India, p. C3.
- Menon, N. (2022, April 20). "Lethal Injection as a Mode of Execution: Prospects and Challenges in India." Indian Express, p. D1.
- Ranganathan, M. (2022, May 12). "The Death Penalty Debate: Balancing Justice and Human Rights." Deccan Chronicle, p. A3.
- Joshi, P. (2022, June 8). "Wrongful Convictions and the Death Penalty: Lessons from Indian Cases." The Telegraph, p. B4.
- Dasgupta, S. (2022, July 17). "Victims' Families and the Death Penalty: Exploring the Indian Context." Business Standard, p. C2.

ISSN: 2582-6433

- Patel, A. (2022, August 25). "International Perspectives on Capital Punishment: Relevance for India." The Economic Times, p. A4.
- Gupta, R. (2022, September 14). "Mental Illness and the Death Penalty: A Critical Analysis in the Indian Context." The Statesman, p. B3.SSSS