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## THE DETERRENCE EFFECT OF DEATH SENTENCE

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### ABSTRACT

The most commonly stated reason for the capital punishment is deterrence. The concept is that the danger of being executed in the upcoming years will deter a significant number of people from committing a heinous crime that they would otherwise commit. Deterrence is not primarily concerned with preventing additional killings by a previously convicted death-penalty defendant. The definition of incapacity includes that. Deterrence cannot be regarded in an isolation. The key question is not about whether defendants will be deterred from killing because they will face the death penalty instead of receiving no punishment at all. Other punishments, such as life without the possibility of parole, may provide the same deterrence at a much lower cost and without the risk of executing an innocent person. Many studies have been conducted over many decades to determine whether the capital punishment is a proven method of reducing the murder rate. While deterrence problems are central to penal policy, previous research of deterrence effects have failed to generate anything resembling a scholarly consensus in a number of important contexts. Capital punishment laws are a prime example of this. Proponents argue that such laws deter potential criminals because they fear such harsh punishment. Opponents argue that deterrence arguments are inapplicable in these circumstances and/or that the statistical analyses are flawed. Both sides can cite numerous statistical studies to back up their claims. This paper tries to throw light on the concept of deterrence effect of death penalty.

### I. Introduction:

The word "justice" has many different meanings in society, and it has been interpreted in every creative way that suits a person's conscience. Justice and punishment go hand in hand as means of preserving social order. The prospect of any type of justice is eliminated when a wrongdoer escapes punishment because retribution is a necessary corollary to justice. Punishment has predominantly been used by society to deter potential offenders from acting illegally. The death sentence is the toughest punishment available to discourage murder because society has the greatest interest in doing so. Potential murderers won't commit crimes out of dread of being killed if murderers are given death sentences and put to death. Taking someone's life was not acceptable, though when it comes to doing it under the authority of the law, then it takes careful consideration.

Simply put, the death penalty is an act by which the State takes away a person's life in retaliation for a heinous crime they committed by following the correct legal proceedings. Proponents of the death penalty argue that it is necessary to deter crime and protect society from dangerous individuals who pose a threat to public safety. They believe that the death penalty is a just and appropriate punishment for those who commit the most heinous crimes, such as murder, rape, or terrorism. Opponents of the death penalty, however, argue that it is not an effective deterrent to crime and that its use is inhumane and violates human rights. They point to studies that suggest that the death penalty does not significantly reduce crime rates and that it may even be applied unfairly, with minorities and the poor more likely to receive the death penalty than other groups.

The debate over the effectiveness of the death penalty as a deterrent continues, with proponents and opponents presenting different viewpoints and evidence. However, the death sentence as a concept date back to ancient times and is not a fresh invention in the modern world. Throughout all of human history, it was observed to be practised. This article tries to throw light on the death sentence and its deterrence effect with the relevant provisions and landmark cases.

## **II. Deterrence theory:**

According to the deterrent theory, when a felony is committed, the punishment must be sufficient given the nature of the crime. However, there are times when justice conveys in a way that sends a strong message to the community that certain actions are prohibited and that the consequences can be severe if someone engages in them while disregarding the law of the land. The deterrent idea basically holds that punishment ought to be of a kind that can discourage society from committing that specific illegal act of crime. It may be said that the death penalty serves the social deterrent function as well.

According to deterrence theory, the severity, certainty, and swiftness of punishment are key factors in deterring crime. The theory suggests that if punishment is severe, certain, and swift, potential offenders will be less likely to commit crimes because the expected costs outweigh the expected benefits.

Deterrence can be classified in two types: specific deterrence and general deterrence. Specific deterrence refers to the idea that punishing an individual will deter that individual from committing future crimes. General deterrence, on the other hand, suggests that punishing an individual will deter other people from committing crimes by serving as an example or warning.

## **III. Offences where death penalty can be given in India:**

As mentioned above in India, the death penalty can be given in cases of the most serious

offenses, which are considered to be the rarest of rare cases. These offenses include:

**A. Murder:** Murder is the most common offense for which the death penalty is given in India. It refers to the intentional killing of another person, and the offense is defined under Section 302 of the Indian Penal Code.

**B. Terrorist Activities:** The death penalty can be given to those involved in terrorist activities that result in the death of innocent people. Such offenses are defined under the Unlawful Activities Prevention Act.

**C. Treason:** The death penalty can be given to those convicted of committing treason, which involves levying war against the country or attempting to overthrow the government. This offense is defined under Section 121 of the Indian Penal Code.

**D. Waging War:** The death penalty can be given to those convicted of waging war against the government of India. This offense is defined under Section 121A of the Indian Penal Code.

**E. Rape:** In rare cases, the death penalty can also be given for the most serious cases of rape, where the victim is a child or the offense results in the victim's death. This was added as an amendment to the Indian Penal Code in 2018.

These are some major offences for which death penalty can be given and it is important to note that the death penalty is awarded only in the rarest of rare cases where the alternative punishment is unquestionably inadequate, and where the courts are satisfied that the offense is so heinous that the offender deserves the maximum punishment under the law.

## **IV. Statutes concerning death penalty:**

The laws and statutes concerning the death penalty vary by country and jurisdiction. Here are some examples of the statutes and laws concerning the death penalty in different parts of the world:

### **A. United States:**

In the United States death penalty is legal in 27 states. However, the Supreme Court has ruled that the execution of individuals who are intellectually disabled, under the age of 18 at the

time of the crime, or who were sentenced to death for a non-homicide offense is unconstitutional. Moreover, the death sentence has been completely abolished in some states.

#### **B. Europe:**

The death penalty has been abolished in every member state of the European Union. The use of the death penalty has also been prohibited by the Council of Europe, an separate organisation that includes nations outside of the EU.

#### **C. Middle East:**

Several countries in the Middle East, including Iran, Saudi Arabia, and Yemen, have laws that allow for the death penalty for a variety of crimes, including murder, drug trafficking, and political offenses.

#### **D. Asia:**

Several countries in Asia, including China, Japan, and Vietnam, have laws that allow for the death penalty for a variety of crimes, including murder, drug trafficking, and political offenses.

It's important to note that laws and statutes concerning the death penalty can change over time and may differ from one jurisdiction to another.

#### **V. DOCTRINE OF RAREST OF RAREST CASE:**

Understanding the principle of the rarest of rare cases is the main body of this research, which will only conclude the research objective. The following cases will help to comprehend the rarest of the rare doctrine in the case of *Rooper v. Simmons*<sup>76</sup>, the Supreme Court prohibited the imposition of the death penalty on anyone under the age of 18 and established a minimum age for the death penalty.

In *Utrecht v. Brown*<sup>77</sup>, the US Supreme Court's death sentence proved exceptional. In its ruling, the Supreme Court ordered the formation of his two-stage trial on the death penalty. At the first trial, the jurist decides whether the accused is guilty of murder, and at another trial, the jurist decides, only if the first trial proves the defendant guilty then the court decide if a

death sentence is appropriate in the second trial.

Similarly in *Lockhart v. McCrea*<sup>78</sup>, the Supreme Court decision ruled that lawyers involved in trials involving the death penalty are responsible for determining guilt or innocence and whether the death penalty is imposed, and the state's decision on death penalty lawyers It upholds the constitutionality of the procedure. No, must not be ideologically or religiously opposed to the death penalty. These jurists should find the aggravating and displacing factors in this case and impose only the death penalty on that basis.

The above-mentioned cases are based on the US, but when we look into some of the Indian cases, we will find that Section 302 of the Indian Penal Code, 1860 provides death penalty or life imprisonment as punishment for murder. The death penalty as an alternative to murder is not contemplated inappropriate and contrary to the public interest. Conviction and deprivation of liberty as a result of conviction are merely collateral to conviction rather than an urgent and inevitable legal consequence, and conviction is an order rather than an urgent and inevitable consequence of criminal law. In other words, who is sanctioned or not imposed. Therefore, Section 302 of the Indian Penal Code is not required to withstand the test of Article 19(1) of the 1950 Indian Constitution.

The *Bachchan Singh V High Court of Punjab*<sup>79</sup> improved the law by ruling that only the rarest crimes would be subject to the death penalty if other remedies were out of question. Until 1970, the Constitutional Court sought to state the reasons for imposing life imprisonment instead of the death penalty.

In *Jagmohan Singh v. Uttar Pradesh State case*<sup>80</sup>, the Supreme Court ruled that by upholding the constitutionality of the death penalty, it prevents not only crime but also society. The Supreme Court also ruled that India could not bet on attempts to abolish the death penalty, but clarified the standard that the

<sup>76</sup> *Roopers v. Simmons* 543 US 551, 578 app. 579, 580 (2005).

<sup>77</sup> *Uttecht v. Brown* 127 S.Ct. 2218 (2007).

<sup>78</sup> *Lockhart v. Mccree*476, US 162, 164, 173 (1986).

<sup>79</sup> *Bacchan Singh v. State of Punjab* AIR 1980 Sc 898.

<sup>80</sup> *Jagmohan Singh v. State of U.P* AIR 1973 SC 947.

death penalty was the exception and not the rule of sentencing. The circumstances of individual cases determine the application of the death penalty, which serves only to protect national security, public order and interests. From the landmark ruling of the Court of Honor Macchi Singh and Ors v State of Punjab<sup>81</sup>, we clarify the doctrine of the rarest cases. This case reflects the brutality of the crime. This is a case of extraordinary brutality, in which Maxine, along with eleven others of his, raided numerous homes without reason over family strife, and in one night he murdered seventeen people. The court itself was in a supportive public position, and their reaction was so shocking that they wanted the death penalty imposed on the accused by those in power in the judiciary, regardless of their personal opinions.

#### **VI. Conclusion:**

The argument over whether or not the death penalty deters crime is likely to continue for many years to come. Supporters will attempt to provide evidence for and support their theory that each execution lowers homicide rates or, at the very least, reduces the number of potential victims. Public executions were often regarded to have the greatest potential for deterring crime by serving as a warning to the populace that those who murder others will face the death penalty. Supporters contend that since many offenders are capable of understanding the repercussions of their actions, the death penalty can deter criminals from killing. Though the execution of a person is a heinous and inhumane act which violates their most fundamental right to life and puts an end to their very existence. When a person is falsely charged in the intricate legal process, it occasionally has the potential to take away their life. It decreases the prospect of a good transformation in today's generation, which once participated in criminal activities but does not find the path and support to get out of that and therefore becomes habitual offenders. It robs the accused of the chance to be rehabilitated and reformed. Even though it is an

extremely harsh act of punishment, it has some benefits in that it serves as a deterrence to other criminals since the consequences of such an act of punishment dissuade criminals from committing crimes because it is uncommon for a person to risk his life in such a way. Additionally, by lowering the fear of crime, it serves as a way to get away from dangerous individuals and ensure society's safety. The death penalty is the highest and harshest punishment which the country's legal system can impose, to put it simply. Even though it is heinous and a violation of the most fundamental right of a person, it is nonetheless significant since it is equally vital to have an exceptional punishment when an exceptional offence is committed.

#### **VII. Reference:**

1. Roopers v. Simmons 543 US 551, 578 app. 579, 580 (2005).
2. Uttecht v. Brown 127 S.Ct. 2218 (2007).
3. Lockhart v. Mccree 476, US 162, 164, 173 (1986).
4. Bacchan Singh v. State of Punjab AIR 1980 Sc 898.
5. Jagmohan Singh v. State of U.P AIR 1973 SC 947.
6. Macchi Singh and ors v. State of Punjab AIR 1983 SC 957.
7. Indian penal code, 1860
8. <https://www.sconline.com/>
9. "The death penalty: A Worldwide perspective" by roger hood and Carolyn hoyle

<sup>81</sup> Macchi Singh and ors v. State of Punjab AIR 1983 SC 957.