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Ethics of Death Penalty

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ABSTRACT

Given its serious implications, investigating the ethical aspects of the death penalty is imperative. It prompts us to think about concerns such as - What is the value of human life? What is the government's role in imposing the death penalty? Furthermore, the death penalty being a complex and controversial issue raises questions about the criminal justice system's impartiality, fairness, and biases. Understanding these difficulties of justice and human rights in our society requires an examination into its moral intricacies.

The purpose of this study is to critically examine the ethical underpinnings of the death penalty, with particular attention to its justification in light of retributive and deterrent theories, its implications for justice and human rights, and its potential for application in discriminatory ways. The research aims to offer insights into such complexities and investigate alternatives like life in prison and restorative justice ultimately advocating for a fair and equitable justice that focuses on healing, reconciliation, and repairing harm rather than solely punishing offenders.

Keywords: *Ethical Aspects, Death Penalty, Deterrence, Retribution, Restorative Justice.*

I. INTRODUCTION

The death penalty, also known as capital punishment, refers to the act of punishing an individual for a specific crime by putting them to death which is sanctioned by the state.² The sentence that orders that an offender must be punished in such a manner is known as a death sentence, and the act of carrying out the sentence is known as an execution. It is important to distinguish it from extrajudicial killings which is an unlawful way of depriving someone of their right to life.³ Whereas, the death penalty is carried out adhering to the due process of law involving legal proceedings and a fair trial, extrajudicial killings, on the other hand, occur outside the established legal framework, making them unlawful and unauthorized.⁴ The key distinction here lies in the procedures followed to enact them, impacting the integrity of the legal system by safeguarding the rights of individuals despite both resulting in the loss of life.

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² LII, *Death Penalty*, US LAW, https://www.law.cornell.edu/wex/death_penalty.

³ Roger Hood, *Capital punishment | Definition, Debate, Examples, & Facts*, BRITANNICA (Oct. 10, 2023), <https://www.britannica.com/topic/capital-punishment>.

⁴ <https://www.omct.org/en/what-we-do/extrajudicial-killings>.

The death penalty is considered as the most severe form of punishment authorized by the state due to its irreversible nature and is awarded for the most grievous and heinous crimes against humanity such as murder, terrorism, espionage, war crimes, etc.⁵ It is also one of the most debated and criticized forms of punishment as it violates the fundamental human right to live and is widely opposed by human rights activists and organizations who describe it as “ the ultimate cruel, inhuman and degrading punishment”.⁶

II. HISTORY OF DEATH PENALTY

The death penalty is a universal aspect of history that has been implemented in nearly all known cultures and regions. It has had a lengthy historical path spanning across centuries and nations therefore representing many cultural viewpoints on the ideas of retribution and justice. However, execution has not always been the same and has differed in fact, its application, structure, meaning, and purposes which changed significantly depending on the historical setting.⁷

Capital punishment has been established as a form of sanction for crimes as early as the ancient laws of China.⁸ The earliest known execution took place in Egypt in the sixteenth century BC when a nobleman was given the command to commit suicide on being accused of magic. However, the Code of King Hammurabi of Babylon, which outlined the death punishment for 25 different offenses, is the first for having specific rules pertaining to the death penalty. Many other ancient legal codes, such as the Roman Law of the Twelve Tablets, the Hittite Code, and the Draconian Code of Athens also mention the death sentence. The death penalty was applied as a broad form of punishment for a variety of crimes throughout medieval and early modern Europe. After spreading to European settlers in the Americas, the practice was executed for the first time on record in the newly established colonies in 1608.⁹

III. COLONIAL INFLUENCE OF DEATH PENALTY IN INDIA

The influence of the British in spreading the practice of administering the death penalty to the world is significant. As the British saw the death penalty as a way of maintaining law and order, the practice was widely used by the British empire to exert control over its colonies. This

⁵ DR. SUBASH C. GUPTA, CAPITAL PUNISHMENT IN INDIA 1 (1986).

⁶ *The Death Penalty – Your Questions Answered*, <https://www.amnesty.org/en/what-we-do/death-penalty/the-death-penalty-your-questions-answered/>.

⁷ Richard Ward, *Introduction: A Global History of Execution and the Criminal Corpse*, NATIONAL LIBRARY OF MEDICINE (2015), <https://www.ncbi.nlm.nih.gov/books/NBK379343/>.

⁸ Michael H Reggio, *Readings - History Of The Death Penalty*, PBS NEWSHOUR (Oct. 24, 2023), <https://www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/>. <https://www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/>.

⁹ *Early History of the Death Penalty*, <https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty>.

practice began to be used extensively over time to suppress any rebellion against the British authority. As these colonies became free they still retained this colonial practice and incorporated it into their formal legal systems.¹⁰ The same was followed in the newly independent India where the practice was included in the British drafted Indian Penal Code (IPC) of 1860.

Shortly after India gained its freedom from British rule, the Indian Constitution was drafted over the course of two years, from 1947 to 1949. During this period members of the Constituent Assembly discussed and debated over a wide range of topics related to the Constitution which included the topic of the continuation or repeal of the death sentence. Because they believed that life is sacred and that the death penalty is an exemplar of state-sanctioned violence, several members of the assembly made arguments in favor of abolishing it. In the end, the Constituent Assembly chose not to remove the provision of the death penalty in spite of these considerations. This decision was based on a dual belief system. First, they felt that reformation alone would not be effective enough, making the death penalty necessary as a deterrent. Second, they believed that abolishing capital punishment would only be possible once society had reached a certain level of progress, which was not yet the case at that time.¹¹ As a result, the Constitution of India, which came into effect on January 26, 1950, did not include any specific provision for the abolition of the death penalty and it continues to be administered till date¹²

In contrast, the United Kingdom underwent significant legal changes ultimately shedding the death penalty. With the exception of times of war, the United Kingdom abolished the death penalty in the majority of cases when it passed a law in 1998. The 13th protocol of the European Convention on Human Rights, which sought to outlaw the death sentence under all circumstances, was subsequently also adopted by the UK in 2003. All this reflects a change in the United Kingdom's legal landscape with a growing commitment to the protection of human rights and the rejection of capital punishment as a form of state-sanctioned punishment, both domestically and internationally.¹³ However, India continues to hold onto the lingering effects

¹⁰Apala Vatsa, *Death Penalty in India: An Examination of the Historical Discourse.*, 80 Proceedings of the Indian History Congress 1174-1182 (2019).

¹¹ Amruta Patil, *Constituent Assembly Debate on Abolition of Death Penalty - Indian Polity Notes*, COLLEGEDUNIA (Jun. 07, 2024), <https://prepp.in/news/e-492-constituent-assembly-debate-on-abolition-of-death-penalty-indian-polity-notes>.

¹² Shivam Dubey & Pooja Agarwal, *Capital Punishment in India: The Unending Conundrum*, INTERNATIONAL JOURNAL OF LAW AND LEGAL JURISPRUDENCE STUDIES (2014).

¹³ Meera Emmanuel, *Independence Day: The lingering effects of the British Colonial Rule on the Indian Legal System*, BAR AND BENCH (Aug. 15, 2018, 02:37 PM), <https://www.barandbench.com/columns/independence-day-special-legal-system-british-colonial-rule-in-india>.

of the British colonial system.

IV. CONSTITUTIONAL BASIS AND LEGAL EVOLUTION

Let us look now at the death penalty within the framework of the provisions of the Indian Constitution. Article 14 of the Indian Constitution prohibits discrimination and guarantees equality before the law. The argument put up by opponents of the death penalty is that it can be applied arbitrarily and discriminatorily, going against the equality principle. However, Article 21 which protects the right to life and individual liberty says that no person shall be deprived of his life or personal liberty except in accordance with procedure established by law. Therefore the death penalty draws its strength from this provision of the Constitution and is viewed as a fair mechanism to hamper the right to life by lawful procedure.¹⁴

Such a view was reflected in the landmark case of *Jagmohan Singh v. State of Uttar Pradesh*¹⁵ where the constitutional validity of capital punishment was upheld and the Court decided that since judges base their decision to impose the death penalty on the facts and circumstances revealed during the trial, this decision is made in accordance with the procedure established by law.¹⁶ However, in the case of *Rajendra Prasad v. State of UP*¹⁷ Justice Krishna Iyer was of the view that the death penalty is indeed violative of Article 14, 19 and 21, contrary to what was held in the case of Jagmohan Singh. He laid down two prerequisites for the imposition of the last resort sanction: (1) a special reason should be recorded for administering this form of punishment (2) it must be imposed only in extraordinary circumstances.¹⁸

These guidelines were further clarified and firmly established in *Bachan Singh v/s State of Punjab*¹⁹ which serves as a milestone in Indian criminal law. The court in this case held that the death sentence should only be applied in the most extreme circumstances, such as when the crime is incredibly severe and life in prison would not be a sufficient alternative punishment, thus establishing the "rarest of the rare" doctrine which serves as a guiding compass for courts even today.

Therefore, although the irrevocable sanction of the death penalty continues to be followed in

¹⁴ Ankit Singh, *Capital Punishment In India: History, Debate And Its Future*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-12549-capital-punishment-in-india-history-debate-and-its-future.html>.

¹⁵ *Jagmohan Singh v. State of Uttar Pradesh*, 1973 A.I.R. 947 (India).

¹⁶ Gurpreet Kaur Dutta, *Capital Punishment in India: Laws and Cases*, FINOLOGY BLOG, (Sep. 20, 2022), <https://blog.finology.in/Legal-news/capital-punishment-in-india>.

¹⁷ *Rajendra Prasad v. State of UP*, 1979 A.I.R. 916 (India).

¹⁸ Tatheer Fatima, *Constitutionality of Death Penalty*, INDIAN NATIONAL BAR ASSOCIATION, <https://www.indianbarassociation.org/constitutionality-of-death-penalty/#:~:text=In%20Jagmohan%20Singh%20vs.,14%2C%2019%20and%2021%20and%20>.

¹⁹ *Bachan Singh v. State of Punjab*, (1982) 3 S.C.C. 24 (India).

the country due to its constitutional validity, dissenting views from jurists in key cases have ensured that its use is limited to the most extreme situations.

V. WHAT IS ETHICS?

The term "ethic" finds its etymological roots in the Greek word "ethos" which means "way of living" and has been interpreted in a variety of ways. In ancient Greece, "ethos" was believed to be the perceived character of a speaker by thinkers such as Aristotle. The Oxford English Dictionary further refines "ethos" as the characteristic spirit of a culture, era, or community, or as the character of an individual as reflected in their values or beliefs.²⁰ Despite these nuanced understandings, ethical behavior, in a simplistic sense, focuses on an individual's actions and their portrayal within a community. It is concerned with human beings and how they interact with those around them, emphasizing on ideas such as freedom, responsibility and justice.²¹ "Ethos" highlights the complex relationship between an individual's behavior and the norms within their community, which in turn enhances our understanding of ethics.²² Ethics, as the study of human behavior in society, sets forth guidelines of behavior that are collectively acknowledged by society, defining what is considered acceptable or unacceptable conduct.²³ Understanding the complex dynamics of ethics extends its application to contentious issues like the death penalty which often revolves around questions concerning values such as justice, human rights, the sanctity of life, and the role of the state in administering punishment. Therefore, examining its ethics not only deepens our understanding of these fundamental values but also contributes to shaping more just and humane policies and practices in our society.

VI. ADVOCATING DEATH PENALTY: PUNISHMENT THEORY PERSPECTIVES

Theories of punishment lie at the heart of the criminal justice system and shape how societies understand and respond to wrongdoings. These theories are rooted in philosophical, ethical, and practical considerations and reflect diverse perspectives on the purpose and nature of punishment. Each theory offers a unique lens through which we can examine the complexities of crime, justice, and societal harmony. These theories also similarly provide diverse perspectives on the death penalty, reflecting underlying beliefs about justice, morality, and the

²⁰ *Ethos*, OXFORD ENGLISH DICTIONARY (3rd ed. 2000).

²¹ *What is Ethics*, GOVERNMENT OF CANADA, (Jul. 23, 2015), <https://www.canada.ca/en/treasury-board-secretariat/services/values-ethics/code/what-is-ethics.html#A1>.

²² D. Alicia Hickok & J.J. Williamson, *An Inquiry into the Ethics of Capital Punishment*, SYRACUSE JOURNAL OF LAW & CIVIL ENGAGEMENT, <https://slace.syr.edu/issue-2-on-life-and-death/inquiry-into-ethics-of-capital-punishment/>.

²³ Manuel Velasquez et al., *What is Ethics?*, SANTA CLARA UNIVERSITY, (Jan. 01, 2010), <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics/>.

role of the state in addressing crime. The two key schools of thought concerned with the death penalty are retribution and deterrence.

VII. RETRIBUTIVE THEORY

This theory finds its roots in the Code of Hammurabi that mentions the principle of *lex talionis* which stands for ‘an eye for an eye and a tooth for a tooth’.²⁴ Giving people what they deserve, delivering a blow that is similar to the one that was delivered, and treating someone the way that they have treated others is what retribution advocates for.²⁵ To sum it up in one phrase it is ‘Tit for Tat’.

It is important to note that Retribution and revenge however are fundamentally divergent in both their principles and motivations. While retribution aims to administer punishment that is proportional to the severity of the offense and the moral culpability of the wrongdoer and operates within legal or moral frameworks. Revenge on the other hand is driven by personal emotions such as anger, hatred, or the desire for retaliation and often leads to excessive and disproportionate responses that surpass what the wrongdoer deserves.²⁶

Retributivism is based on two core principles which are desert and proportionality.²⁷ In retributive justice, the concept of desert influences the principle of proportionality in punishment. The degree of desert which refers to the moral blameworthiness of an individual's actions serves as the basis for determining the appropriate level of punishment which they deserve. The more morally blameworthy an individual's actions are deemed to be, the more severe the punishment should be in order to be proportional to the wrongdoing.

Retributivism has many forms, but all of them emphasize on the need for a close and necessary connection between the crime that was committed and the type, degree, or style of punishment that was lawfully threatened or administered.²⁸

Among all other theories of punishment, it is the one that places the most importance on not just *actus reus* (the guilty act) but also *mens rea* (the guilty state of mind) when considering the severity of punishment.²⁹ This ensures that individuals are held accountable not only for their actions but also for the intentions or state of mind behind those actions and are punished

²⁴Abhishek Mohanty, *Retributive Theory of Punishment: A Critical Analysis*, ACADEMIKE (Jan. 15, 2015), <https://www.lawctopus.com/academike/retributive-theory-of-punishment-a-critical-analysis/>.

²⁵ *Punishment—Retribution, Rehabilitation, and Deterrence*, (Aug. 3, 2005), <https://web.uncg.edu/dcl/courses/vicetrime/pdf/m7.pdf>.

²⁶ *Id.*

²⁷ FATIMA, *supra* note 17.

²⁸ Robert Hoag, *Capital Punishment*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, <https://iep.utm.edu/death-penalty-capital-punishment/>.

²⁹ Jon’a F. Meyer, *Retributive justice | Penology, Punishment & Restorative Justice*, BRITANNICA (Apr. 8, 2014), <https://www.britannica.com/topic/retributive-justice>.

proportionally.

Since the primary goal of punishment is to reestablish social harmony and peace, it is possible to argue that all forms of punishment are somewhat retributive, however, compared to other theories, this one is more harsh.³⁰

The retributivist argument contends that murderers exhaust their right to life by deliberately taking another's life. In this view, rights inherently impose corresponding duties on others. By forfeiting their right to life through murder, individuals remove the state's obligation to refrain from executing them. Hence, the state's imposition of the death penalty is justified as a means to achieve societal benefit. Proponents further argue that capital punishment does not violate the offender's right to life, as they have already forfeited it through their actions. The death penalty is thus considered a morally permissible means to address murderers and promote the welfare of society.³¹

VIII. DETERRENCE THEORY

This theory was founded by Jeremy Bentham and is rooted in utilitarianism, particularly the principles of hedonism. Utilitarianism emphasizes the greatest happiness or pleasure for the greatest number of people in the society.³² Thus punishment would lead to a net benefit for the society by reducing overall harm. Hedonism on the other hand focuses on maximizing pleasure and minimizing pain and the deterrence theory³³ is in line with this principle by suggesting that the fear of punishment would create an unpleasant consequence for potential offenders therefore discouraging them from committing crimes.³⁴ Hence, this theory believes that if the punishment for a crime is carried out in a swift, certain and severe manner then people would avoid doing the crime altogether.³⁵

Deter means to abstain from carrying out any wrongdoing or discouraging evil minds from engaging in criminal behavior. The main goal of this theory is to deter criminals from committing a crime and not to repeat the same offense twice. It aims to do so by creating fear in the minds of the criminals through the imposition of punishment.³⁶

Thus deterrence can be classified further into two types which are general deterrence and

³⁰ Sucheta Pravin Kudale, *Theories of punishment*, IPLEADERS (Apr. 20, 2023), <https://blog.ipleaders.in/theories-of-punishment/>.

³¹ HOAG, *supra* note 27.

³² *Utilitarianism*, PHILOSOPHYBALL WIKI, (Jun. 10, 2024), <https://philosophyball.miraheze.org/wiki/Utilitarianism>.

³³ *Utilitarianism theory by Jeremy Bentham*, EDDU SAVER, (Apr. 12, 2024), <https://www.eddusaver.com/utilitarianism-theory-by-jeremy-bentham/>.

³⁴ HOAG, *supra* note 27.

³⁵ MOHANTY, *supra* note 23.

³⁶ Mrinal Mukul, *Deterrent theory of punishment*, IPLEADERS (Sept. 6, 2022), <https://blog.ipleaders.in/deterrent-theory-of-punishment/>.

specific deterrence. General deterrence aims to discourage the general population from committing crimes through the punishment of wrongdoers. Its objective is to evoke a sense of apprehension and fear among the public, discouraging them from participating in illegal activities. In contrast, specific deterrence targets individual offenders, aiming to prevent them from repeating their offenses by focusing on the repercussions of their actions. The emphasis lies in influencing the future behavior of the offender and the effectiveness of the punishment in deterring them from engaging in new criminal activities.³⁷

This theory too places emphasis on the nexus between the crime and the severity of punishment administered by taking into account certain considerations. It looks at the seriousness of the crime and believes that the punishment should be proportional to that. Next, the severity of the crime is assessed. This means that when deciding upon the punishment we need to examine its consequences and whether it would help in preventing future wrongdoings and make the person learn from their mistake. Another thing to keep in mind is how the person on whom damage was inflicted feels about the punishment. We need to ensure that he feels satisfied that justice has been served. The most important consideration however is the impact of the punishment on the general public at large.³⁸ It is important to consider how the punishment will be perceived by the society and whether it would set the right message in the society about what behaviour is acceptable and what is not and help prevent further misbehavior.

Hence, we see that the deterrent principle of punishment, which holds that punishment should deter future criminal behaviour, is used to justify the death penalty. The idea states that the death penalty would discourage potential offenders from committing horrible crimes because they would be afraid of the severe consequences of being executed³⁹. They contend that by discouraging future offenders from committing violent crimes, the death sentence ultimately works to protect the society.⁴⁰

Thus we see that the death penalty is supported by both retributive and deterrence theories of punishment, although they offer distinct rationales for its implementation.

IX. ARGUMENTS AGAINST THE DEATH PENALTY

If we go back to the deterrence theory of punishment we see that the death penalty does not perfectly align with it because empirical evidence does not clearly support the assertion that the death penalty reduces crime rates more effectively than other forms of punishment, such as

³⁷ Avi Israel, *Specific Deterrence | Definition, Types & Examples*, STUDY.COM (Nov. 21, 2023), <https://study.com/learn/lesson/specific-deterrence-examples-criminal-justice.html>.

³⁸ MOHANTY, *supra* note 23.

³⁹ FATIMA, *supra* note 17.

⁴⁰ HOAG, *supra* note 27.

long-term imprisonment. Studies have moreover produced contradictory results, with some suggesting that the death penalty may increase homicide rates as the use of state sanctioned violence decreases the public's respect for life⁴¹ due to a phenomenon known as "brutalization".⁴² If we take the case of India, we see that since 2013 (Sec. 376A of IPC), the death penalty has been prescribed in cases of rape. Yet, rapes still occur, and moreover, their severity has increased significantly over the years. Therefore, the death penalty's ability to act as a deterrent is a matter of ongoing debate.⁴³

Another argument against capital punishment is the risk of executing innocent individuals. Proponents believe that the danger of the death penalty is that, sooner or later, mistakes or flaws in the justice system could result in the deaths of innocent people⁴⁴. There will always be a chance of executing the innocent as long as human justice is flawed.⁴⁵ In the United States alone about 8,700 people have been placed on death row since 1973. And at least 182 had their lives turned upside down as they were almost killed despite being innocent.⁴⁶ These figures however do not fully capture the extent to which the death penalty contributes to the issue of erroneous convictions because the threat of death drives some guiltless persons to plead guilty and coerces witnesses into giving false statements.⁴⁷

Further, in the context of the death penalty, the Blackstone ratio is often invoked to argue against its application. The argument goes that because the death penalty is irreversible, any wrongful execution represents a failure of justice that cannot be rectified. Therefore, the risk of executing an innocent person, even if relatively low, is unacceptable in light of the irreversible consequences.⁴⁸ The term "Blackstone ratio" refers to a principle articulated by the English jurist William Blackstone in the 18th century. The Blackstone ratio goes on to say that "It is better that ten guilty persons escape than that one innocent suffer."⁴⁹ This principle

⁴¹ David R. King, *The Brutalization Effect: Execution Publicity and the Incidence of Homicide in South Carolina*, 57 SOCIAL FORCES 683, 693 (1978).

⁴² *A Clear Scientific Consensus that the Death Penalty does NOT Deter*, AMNESTY INTERNATIONAL USA (June 18, 2009), <https://www.amnestyusa.org/updates/a-clear-scientific-consensus-that-the-death-penalty-does-not-deter/>.

⁴³ Vageshwari Deswal, *Does death penalty deter crime?*, THE TIMES OF INDIA (Feb. 11, 2020), <https://timesofindia.indiatimes.com/blogs/legally-speaking/does-death-penalty-deter-crime/>.

⁴⁴ *Id.*

⁴⁵ *The Death Penalty*, AMNESTY INTERNATIONAL USA, <https://www.amnesty.org/en/what-we-do/death-penalty/>.

⁴⁶ Phillip Morris, *Sentenced to death, but innocent: These are stories of justice gone wrong*, NATIONAL GEOGRAPHIC (Feb. 18, 2021), <https://www.nationalgeographic.com/history/article/sentenced-to-death-but-innocent-these-are-stories-of-justice-gone-wrong.0>.

⁴⁷ *Innocence and the Death Penalty*, THE INNOCENCE PROJECT, <https://innocenceproject.org/innocence-and-the-death-penalty/>.

⁴⁸ E Strouse, *Death Penalty: Issues in the Debate*, OFFICE OF JUSTICE PROGRAMS, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/death-penalty-issues-debate>.

⁴⁹ *Blackstone Ratio*, AUSTRALIAN LAW DICTIONARY (1st ed. 201

underscores the idea that in legal proceedings, it is preferable to err on the side of caution to avoid convicting innocent individuals, even if it means some guilty individuals might go free. The death penalty has also been found to be administered in a discriminatory manner reflecting socio-economic barriers. Based on their landholding and occupation, 74.1% of Indian death row inmates are considered economically weak as per official data. Considering their educational profile, of those who were given death sentences, 23% had never attended school. 9.6% further people had only occasionally attended school but had not finished even their primary schooling. Whereas 62% of death row inmates nationwide did not finish secondary school with states like Uttar Pradesh (61%), Delhi (63.3%), Maharashtra (65.7%), Jharkhand (69.2%), Kerala (71.4%), and Gujarat (89.5%). Also, of the 279 convicts serving death sentences in India, 76% belong to the lower social strata and religious minorities. The differential effects of the death sentence on vulnerable and marginalized groups must be prominently discussed in the death penalty debate, even though there might not be a direct discrimination or causative relationship.⁵⁰

X. ALTERNATIVES TO THE DEATH PENALTY

The two major alternatives to the death penalty are variants of life imprisonment and restorative justice.

Let us first discuss the alternative forms of imprisonment. The first form of this is life imprisonment which is considered to be a useful substitute for the death penalty. This includes keeping a prisoner imprisoned without the chance of release, that is, without parole, until their natural death. This is referred to as life without parole (LWP) at times. In a similar vein, life in jail with the potential of release is another option.⁵¹

An alternative to life imprisonment is a lengthy sentence for a predetermined period of time, such as 40 years in Croatia, during which the prisoner may be freed with or without additional conditions (like having to report to the police on a regular basis). Another option is to send a criminal to prison for a minimum of years, after which they may be considered for parole. However, this may not be guaranteed by the review. This implies that inmates are not given a release date and instead remain behind bars until it is deemed safe for them to be released.⁵²

However, restorative justice stands out as a superior alternative to life in prison. Unlike lifelong confinement, it emphasizes healing and reconciliation. Rather than continuing patterns of

⁵⁰ *Death Penalty India Report*, PROJECT 39A, (May. 06, 2016), <https://www.project39a.com/dpir>.

⁵¹ Aksshay Sharma, *Alternatives to capital punishment*, IPLEADERS (Oct. 03, 2020), <https://blog.ipleaders.in/alternatives-capital-punishment/>.

⁵² *Id.*

violence, restorative justice seeks to repair the harm caused by crime through meaningful interaction between victims, offenders, and communities. It promotes accountability, empathy, and the possibility of transformation.

Justice demands healing and growth. Executing criminals delivers punishment, but there is no room for recovery on death row. This necessitates restorative justice, a procedure that attempts to repair the harm that has been done and helps everyone to evolve from their difficult situations.⁵³ Programs such as victim-offender mediation encourage dialogue and responsibility-taking, with the goal of mending harm and preventing subsequent crimes⁵⁴.

Restorative justice, by stressing restoration above revenge, provides a pathway to atonement and rehabilitation. It acknowledges the humanity of both victims and offenders, supporting their potential for healing and growth. This transformative process is based on the notion that every individual, regardless of the harm they have suffered or inflicted, deserves to be treated with dignity and given the opportunity to transform pain and suffering into healing and wholeness. Restorative justice should be an option available to everyone as it establishes the circumstances for actual healing by providing victims with a voice and agency, as well as a chance for those who inflicted harm to accept responsibility and make repairs.⁵⁵

XI. CONCLUSION

In conclusion, the debate over the death penalty highlights important ethical considerations in law and morality. While historically justified under theories of retribution and deterrence, the death penalty faces ethical scrutiny due to concerns about its efficacy, potential for injustice, and discriminatory application. As we saw, arguments against it question its deterrence effect and highlight the risks of executing innocent individuals and the disproportionate impact on marginalized communities. Alternatives like life in prison without the possibility of release, in addition to restorative justice techniques, provide more compassionate and possibly more effective means of dealing with criminal activity while maintaining the principles of rehabilitation, restoration, and community healing. These methods are in line with changing moral principles that put the rights and dignity of every person, victims and perpetrators, alike first.

Therefore, since the death penalty has failed to achieve its intended purpose, reformatory types

⁵³ Jackson Steinmetz, *Capital punishment is 'not justice'*, THE RECORD, (Apr. 9, 2021), <https://record.goshen.edu/opinion/capital-punishment-is-not-justice>.

⁵⁴ Sujal Parikh, *A New Vision of Justice Restorative Justice Is More Effective Than the Death Penalty*, 1 PEACE POWER BERKELEY'S JOURNAL OF NON VIOLENT & CONFLICT TRANSFORMATION (2005)

⁵⁵ Paloma López Campos, *Restorative justice, breaking the cycle of violence*, CATHOLIC MOBILIZING NETWORK, (Jul. 30, 2023), <https://omnesmag.com/en/focus/restorative-justice-interview-cmn/>.

of punishment that encourage accountability, rehabilitation, and prevention of future harm must be given priority as our society develops and we reexamine our legal systems. Because of the complicated ethical issues surrounding the death sentence, we must work to create a justice system that is fair, equitable, and supportive of the creation of a more compassionate and just society in addition to being effective at deterring crime.
