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**CRIMINOLOGY AND THE DEATH PENALTY: EXPLORING THE
INFLUENCE OF CRIMINOLOGICAL THEORIES**- Ragini Thareja¹**Abstract**

This research investigates the connection between theories and the implementation of the death penalty to shed light on how these theories impact both the practical application and public perception of capital punishment. The death penalty, a debated topic in the field of justice, has its roots in fundamental criminological principles such as deterrence, retribution, and incapacitation. The study begins by exploring the development of the death penalty and its various implementations within legal frameworks. It then outlines theories and their relevance to the death penalty, highlighting their role in shaping public discourse and legal guidelines that govern this form of punishment. The research examines to understand how criminological theories contribute to justifications for imposing the death penalty. It analyses how these theories form the basis for the reasoning behind punishment, influencing decisions regarding the severity of sentencing and determining which cases are eligible. This analysis uncovers the moral complexities in this practice. Additionally, the study examines the relationship between criminological theories, public opinion, and the death penalty. Doing so clarifies how these ideas affect public opinion, support or oppose policies and shape public opinion. The impact of criminological theories on racial and socioeconomic disparities in sentencing is another area of investigation for this project. To sum up, this study highlights the crucial issues regarding the fundamental function of criminological theories in implementing and developing the death sentence. It demands a closer examination of the fundamental ideas that underpin the application

¹3rd Year BBA LLB student, CHRIST (Deemed to be University), Bangalore.

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of the death penalty and their extensive ramifications for changes and policies about criminal justice. Through a multidimensional analysis, this study enriches our understanding of the intricate interplay between criminology and the death penalty.

Keywords: Capital Punishment, Criminology, Criminal Law, Indian Penal Code

Introduction

Capital punishment, sometimes known as the death penalty, has a long and controversial history that is intricately woven into the criminal justice system around the world. It entails the execution of those who have been found guilty of particular, usually horrible crimes, which frequently involve the taking of human life. This old civilization-based practice has evolved significantly over time regarding the means of implementation and the rationales for its application. The complexity of human society's search for justice, morality, and punishment is demonstrated by the existence of the death sentence.

Recognizing the death penalty's deep historical and societal origins is crucial as we set out on our research quest. This practice is the subject of an ongoing discussion that raises important issues of morality, justice, and human rights, making it a highly significant topic in the modern world. Our investigation into how criminological ideas affect the death penalty seeks to transcend scholarly research and enter the core of modern society discourse, where issues of life and death are frequently at the centre of discussion.

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This research paper addresses the central question: "To what extent have Criminological studies contributed to the ongoing discourse surrounding the death penalty?" By doing this, we hope to shed light on the complex interrelationship between criminological theories and the application of the death penalty, providing an understanding of how these ideas influence the practices, guidelines, and results related to the harshest type of criminal punishment. By analyzing this

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interaction, we seek to further our understanding of the death penalty's role in contemporary society, its significance for the study of criminology, and its effects on the larger fields of justice and human rights.

The Validity of Capital Punishment

Article 2 of the EU Charter of Fundamental Rights prohibits the death penalty in all E.U. member states. The 47-member Council of Europe also prohibits its members from imposing the death penalty. The United Nations General Assembly has adopted non-binding resolutions in recent years which endorse an international freeze on executions with the ultimate objective of their eradication. Even though many nations have outlawed the death penalty, more than 60% of people on Earth reside in nations where it is still used, including China, India, the U.S., and Indonesia—the four most populous nations in the world (though it is rarely used in India and many U.S. states). These four nations have all consistently voted against the United Nations General Assembly.

When discussing India, it is pertinent to note that the Indian Supreme Court struck down Section 303 of the Indian Penal Code,² which required the death penalty for anyone serving a life sentence, in the *Mithu v. State of Punjab* case.³ The number of executions in India since 1947 is a topic of much discussion, while official government statistics indicate that just 52 persons have been put to death in that time. Moreover, no one may be deprived of their life unless it is done in compliance with the law, according to Article 21 of the Indian Constitution.⁴

The Indian Supreme Court ruled in 1983 that the death penalty had to be reserved for the "rarest of circumstances." Although the Supreme Court has stated that honour killings are among the "rarest of the rare," it has also recommended that anyone found guilty of "honour killings," which should be considered capital crimes, be given the death penalty. The Supreme Court also recommended that police officers who commit encounter killings, a type of police brutality, receive the death penalty.

²The Indian Penal Code, 1860 Act No. 45 of 1860.

³*Mithu v. State of Punjab*, AIR 1983 SC 473.

⁴INDIA CONST.art. 21.

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Death Sentence in India

India has two methods for carrying out death sentences: either being shot by a firing squad or hanging from a tree until death.

1. Shot by a firing squad: The death sentence is permissible under both the Army Act and the Air Force Act. According to section 34 of the Air Force Act of 1950, the court-martial can impose the death penalty for the offences specified in sections 34(a) through (o). According to Section 163 of the Act, a death sentence can take the following forms
2. Hang to death: According to the Code of Criminal Procedure (1898), hanging was the method of execution. The Code of Criminal Procedure (1973) followed the exact process. Section 354(5) of the procedure above states, "When any person is sentenced to death, the sentence shall instruct that the neck hang the person until the person is dead."

When deciding on a death sentence, a court-martial may rule that the defendant shall be shot or hanged until he is dead.

Theoretical Framework

Retributivism is a criminological theory that centres around the concept of retribution, which means that individuals who have committed crimes should be punished in proportion to the severity of their offences. This theory is rooted in just deserts, asserting that the punishment should be equivalent to the harm or wrong committed. A criminological theory posits that individuals who commit crimes should be punished as a matter of moral justice, with the punishment's severity related to the offence's severity. It plays a significant role in shaping the philosophical underpinnings of criminal justice systems and sentencing practices. The lex talionis, or "an eye for an eye and a tooth for a tooth," is derived from the Hammurabi Code and is the most conventional form of retributivism.

This idea still holds some weight, even if it is no longer rigorously used anywhere in the world to justify the death penalty. At the beginning of the nineteenth century, Hegel postulated that punishment's goal was to bring the world back into balance by punishing the offender equally. He claims that the criminal ignores the victim's rights and the value of his life while committing the crime. Wrong and injustice will proliferate across society if the crime is not prosecuted. However, the pre-crime situation is returned when the offender is punished. According to H.L.A.

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Hart, a justifiable or appropriate punishment may be utilized as a denunciation rather than just being employed for the sake of denunciation.

He continued by saying that although we may have to condemn our society to survive, we do not live in it to criticize it. In the Dhananjay Chatterjee case,⁵ the Supreme Court decided that to satisfy society's desire for justice, the courts must impose an adequate penalty for the offence committed and represent the general public's disgust.

Deterrence Theory: This theory is a criminological perspective that people can be discouraged from committing crimes by the possibility of punishment, especially if it takes the form of criminal sanctions. It functions under the premise that individuals are logical decision-makers considering the advantages and disadvantages of their choices before committing crimes. It distinguishes between deterrence, which targets individual offenders, and general deterrence, which deters the entire community. It also emphasizes how crucial it is for behaviour to be influenced by punishment's perceived certainty and severity. However, occasionally, justice must intervene to make it abundantly evident to the public that specific behaviours are forbidden and that breaching the law could result in serious repercussions. This is the deterrence idea of punishment. Its foundation is that the severity of a crime's penalty must match the offence's seriousness. The deterrence principle states that penalties need to be designed to deter offenders from committing prohibited behaviour in the first place. According to a different perspective, the death penalty serves as a social deterrent.⁶

Research projects represent presumptions about sufficient data, control variables, model construction, and other topics. This fundamental problem forms the basis of the various conclusions on the death penalty's deterrence effect. These presumptions can significantly affect the findings of data analysis and can provide a tenable deterrence explanation (e.g., employing jail rates as a control). Proponents assert that because of the severe punishments, potential murderers are deterred from committing homicide. Critics argue that the statistical computations need to be revised or that deterrence concerns are unimportant in these circumstances. Numerous statistical studies may be cited by both parties to support their positions. There is still work to be done in changing the policy environment, and policymakers continue to debate how to interpret

⁵Dhananjay Chatterjee v. State of West Bengal, 1994 SCR (1) 37.

⁶UTA Library, <https://rc.library.uta.edu/uta-ir/handle/10106/152?show=full> (1st Nov. 2023).

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conflicting research results. However, these viewpoints were influenced by criminologists' published research, leading one to assume there may be a similar.

Does Criminology Hold a Lasting Effect on the Death Penalty?

To the subject of whether criminological research affects the death penalty, there are a few points that should be made. Two kinds of evidence might be used to address this query: concrete and indirect proof. Direct proof consists of cases when the death penalty has changed for the better, and it is explicitly supported by reference to pertinent criminological research as well as the studies' authors. These trends all point to a decline in the use of the death sentence during the past thirty to forty years, as well as a notable move away from the death penalty. Criminological research on the death penalty has been proliferating in opposition to these downward tendencies. Criminal scientists have been working hard to write books, grant reports, and articles on various subjects linked to the death penalty. These initiatives indicate an increasing trend in criminological research about the death penalty.⁷

There are increasing restrictions on who can be executed and for what crimes, fewer executions, fewer death sentences, and more governments and nations are turning abolitionist. All of these findings suggest that the death penalty is becoming less popular. The trend in criminological research indicates a strong negative correlation between the two trends, which seem to be happening simultaneously. The tendency shows a significant increase in the number of studies and publications by criminologists pointing to unfavourable concerns linked with the death penalty. The use of any of the following techniques to carry out the death penalty has decreased as the quantity of criminological writings about the death sentence has increased. Fair enough, there is a robust negative correlation, but are these drops in the death penalty due to more criminological research? There have been notable advancements in related domains.

Judges are more concerned about executing the innocent, prosecutors are more aware of the costs involved, defence attorneys are better trained, more time and money is spent preparing cases, more money is spent looking for mitigating factors, and more time and money are spent searching for them. Is the expanding corpus of criminological research causing changes in the death penalty, or is it merely a "spurious correlation" brought on by some of these other factors?

⁷Mithu v. State of Punjab, AIR 1983 SC 473.

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Conversely, may there be an "indirect" effect? Is it possible that the developments above are all the product of criminologists' increased attention to the death penalty and that these components are only "intervening variables" in the relationship between the death penalty (dependent variable) and criminological research (independent variable)?

There are four primary areas where criminological study may indirectly or directly influence death penalty judgments. The four domains constitute as follows: Some of the criminological study's results include (a) expert groups' official statements on the death penalty, (b) public opinion polls, (c) government abolition of the death penalty, and (d) Supreme Court opinions on the capital punishment.⁸

The Impact of Criminology upon Institutionalized Actions

Several well-known professional associations have been directly or indirectly influenced by study findings about the death sentence based on their adopted stances. These organizations are professional and cater to diverse people and interests. The groups that have reported on this issue are academic institutions, legal associations, medical associations, religious associations, international organizations, and civil rights organizations.

U.N.

The Organization has vehemently opposed the death penalty."The States Parties to the present Protocol believe that the elimination of the death penalty enhances the steady growth of human rights and the enhancement of human dignity," they wrote in 1989. They have decided to do the following because they are sensible enough to want to commit to an international commitment to end the death penalty and believe that every action taken in that direction should be seen as a step toward the realization of the right to life: 1-1 Article.

No one may be executed while under the authority of a State Party to the current Protocol. Each State Party commits to taking all necessary steps to abolish the death penalty. This document needs to go into more detail about research findings. However, it is stated in another U.N. document that "mindful that any miscarriage or failure of justice in the application of the death

⁸National Institute of Justice, <https://nij.ojp.gov/library/publications/reevaluating-deterrent-effect-capital-punishment-model-and-data-uncertainty> 28th Oct. 2023.

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penalty is irreversible and irreparable... and considering that there is no conclusive evidence of the death penalty's deterrent value."⁹ Ten. This statement is presented clearly and does not cite any sources for its assertions. However, it does 'indirectly' refer to specific studies on defenceless execution and the questionable existence of a deterrent effect.

European Union

The European Union claims to be the most significant contributor and influential institutional player in the global battle against the death sentence. The E.U. opposes the death penalty with firmness and principle in every circumstance and case. The death sentence is senseless, cruel, and dehumanizing. There is not any solid scientific proof that the death penalty works better than other forms of punishment at discouraging crime. Furthermore, no matter how modern a judicial system is, miscarriages of justice can occur, leading to the state's execution of an innocent person. According to the European Union Commission, in 2018.¹⁰ Furthermore, there is no legally binding scientific proof that the death penalty deters crime more effectively than other forms of punishment, and numerous miscarriages of justice that could lead to the intentional murder of innocent people by state government agents suggest a thorough comprehension of specific criminological research findings and an "indirect" effect. The sources for this assertion are lacking, however.

A Comparative Analysis with the United States

A commission to explore capital punishment was formed in New Jersey, and various speakers addressed the death penalty. More so than Scheidegger, Fagan, and Lillquist convinced the Commission with the following conclusions: B.N. The New Jersey Supreme Court recognized the differences between deterrence studies in the early 1990s (1987) in *State v. Ramseur*, 106 N.J. 123. The Court's conclusions still hold today.

Deterrence is a slightly different discussion. Everyone agrees that it is a valid penological goal; the disagreement, however significant, is about an empirical issue. Does the death penalty work to discourage murder? The data, the rationale, and the answers all proliferate and contradict each

⁹U.N. General Assembly,2015.

¹⁰Commission of the European Union, 2018.

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other. New Jersey abolished the death sentence due to the Commission's findings, while it seems that the material presented to the Commission had some impact on the decision.

Courts are increasingly worried about the capital punishment of the innocent; the prosecution is more mindful of the costs involved; lawyers for defence are better ready; and so on. In some cases, more time and cash is spent preparing for the implementation; in other instances, additional funds are spent investigating mitigating factors. Is the legislation about the death penalty being influenced by the increasing amount of criminological study, or is this merely a "false connection" brought about by some of these additional factors? On the other hand, is it feasible that there is an "indirect" influence?¹¹The number of individuals who can be executed has decreased, to be demonstrated by developments in its use, the variety of entities battling it, shifting public sentiment, the methods by which certain jurisdictions have abolished the execution penalty, and rulings by the Supreme Court limiting the enactment of death punishment statutes.

These indications all highlight the necessity of criminological research to address these issues. Even with criminological research having a positive impact on the death penalty, the supply still cannot keep up with the demand. The number of individuals who are eligible for execution has decreased, as evidenced by trends in the use of the death penalty, the range of groups that oppose it, shifting public opinion, the means through which some states have eliminated the death penalty, and rulings by the Supreme Court that limit the implementation of death penalty laws.¹²

Conclusion

The death penalty has remained a focal point of discussion and debate in the field of criminology and the broader sphere of criminal justice. Rooted in ancient practices and perpetually evolving, the death penalty serves as a testament to the complexities of human society's pursuit of justice, ethics, and retribution. This research paper has aimed to investigate the profound influence of criminological studies on the application, administration, and public perception of the death penalty.

¹¹*Jeffrey Abramson*, Death is Different Jurisprudence and the Role of the Capital Jury, Vol 2, No. 1 OHIO STATE JOURNAL OF CRIMINAL LAW, 117.

¹²*Black, L.J. and Levine*, Ethical Prohibition against Physician Participation in Capital Punishment, Vol. 83, No. 1 113-115.

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As we have traversed through the intricate relationship between criminological theories and the death penalty, it has become apparent that the impact of criminological studies on this practice is profound and multidimensional. Criminology has provided us with invaluable insights into the justifications, implications, and ethical considerations surrounding the death penalty, far beyond the realms of academic inquiry. If ignorance is the problem, then education is the solution because it is the most effective way to reduce ignorance. However, we must first identify the "public" that needs to be "educated" to eliminate their "ignorance." Some criminology problems can be solved by teaching to one person or a small group, but others will require much greater effort. Criminologists do research, create books and articles, speak at professional academic conferences (ASC, SCJA, etc.), and, in rare situations, testify before a committee or parliamentary group studying the death sentence and civic or professional bodies.

These situations mainly offer an opportunity to provide the most recent data and look at other sources about the death penalty. News organizations, on the other hand, may be more significant in recognizing and presenting these results to the public in a very simplified manner.¹³ Sensible people can also express their opposition to the death sentence via letters to the editor. Education may be the only option, even though there may be better options. It is a fantastic idea to start with the general public and influential community people who can assist in educating legislators, judges, attorneys, and other authorities. Better still, enlighten the public so that voters may select legislators and judges willing to consider valid criminological research findings and adjust their positions accordingly.

¹³Supra note 10.

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