



Criminological study on historical overview of capital punishment/death penalty

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Abstract

Throughout the eighteenth century, Great Britain experienced a dramatic swell in capital offenses. This swell was the result not of an increase in crime, or even of an increase in violent crime; it was the result, rather, of Parliament's continued enlargement of the long list of offenses punishable by death. In the "illogical chaos" of British law, petty crimes such as pick pocketing were capital offenses while attempted murder remained outside the capital code (Trevelyan 348). Still, by 1770, the seeds of the capital code's demise had been planted. It was in that year that Sir William Meredith suggested that Parliament consider "more proportionate punishments". His proposal, predictably, fell flat, but it began the long string of events that would lead to the eventual abolition of the 'bloody code' of English law nearly two hundred years later. However in Sri Lanka recently there is an argument regarding the implementation of capital punishment and through this paper it has discussed what kind of deterrence approaches were used as the punishment for crime control in history. For this purpose this paper developed through literature base analysis in background on death penalty and has explained how does it evolution as the contemporary society.

Keywords: capital punishment, death penalty, history, Sri Lanka

1. Introduction

"Capital punishment, also referred to as the Death penalty, is the judicially ordered execution of a prisoner as a punishment for a serious crime, often called a capital offence or a capital crime. In those jurisdictions that practice capital punishment, its use is usually restricted to a small number of criminal offences, principally, treason and murder, that is, the deliberate premeditated killing of another person. Prisoners who have been sentenced to death are usually kept segregated from other prisoners in a special part of the prison, pending their execution. In some places this segregated area is known as Death Row. The term capital comes from the Indo-European kaput, meaning "head", through the Latin capitalis. Thus, capital punishment is the penalty for a crime so severe that it deserves decapitation (losing one's head).

2. Objectives

The main objective of this paper is to identify historical overview on capital punishment and also following specific objectives were achieved.

To study the nature of capital punishment and its historical evolution in the world

To identify Sri Lankan historical overview on capital punishment through secondary sources

3. Literature Review

Capital Punishment/Death Penalty in history many people support the death penalty, and a lot of them use the defense that comes from the Bible: an eye for eye, and a limb for a limb. I on the other hand believe otherwise. Punishment by death, in my opinion, is a very barbaric way of penalization. In the world, it is known that at least 2500 prisoners are executed in at least 37 different countries, on an annual basis. There will be various

statistics, opinions, history, and background information discussed throughout the residuum of this thesis. The history of the death penalty, dates back to the days of Hammurabi and his code to the days of the present. (<http://encyclopedia.thefreedictionary.com>). The methods now a days are certainly different, but the objective and goal has remained the same. The earliest known date of any form of organized capital punishment was in 1750 B.C., with Hammurabi and his code.

The Bible prescribed death for more than 30 different crimes, including: murder, treason, theft, arson, and rape, to name a few. In the Medieval Times, treason (grand and petty) murder, larceny, rape, and arson were all crimes recognized as punishable by death. During the reigns of King Canute and William the Conqueror (William I the Conqueror 1066-87 Became ruler by conquest), it was not used at all. By 1800, though, more than 200 crimes were construed as punishable by death, but most were commuted by a royal pardon. In the American Colonies, in the years before the Revolution, it was commonly for a wide variety of offences. Near the end of the 18th century, though, efforts to abolish it arose in Europe. It was led mainly by the Quakers, who believed in non-violence all together. Then when influential documents arose, it prompted and inspired the great French philosopher, Voltaire, to oppose it publicly (Encyclopedia Capital punishment htm).

At the present there are many fundamental questions raised pertaining to the fact that with the death penalty intact and fully operational, isn't the government condoning killing. Also, isn't the government being kind of hypocritical when they say taking a human life is bad, but then they go ahead and do exactly the opposite of what they are saying? One of the axiomatic questions erected is, Whether the death penalty is more effective than life-

time imprisonment?. Also, is it an effective deterrent to future violent crimes? Defenders point out that since taking a life is more severe than any sentence imaginable, it must be the right and just thing to do. Public opinion in the United States supports it by more than a 2 to 1 ratio. They, also, point out that there is no other adequate hindrance in life imprisonment that is effective for those who commit heinous crimes inside or outside of the prison walls (<http://pages.britishlibrary.net>).

On the flip side of the coin, the opposers say that in adjacent states in which one has it and one doesn't, there is no long term significant differences in murder rates and amplitude. Also, and this seems hard to believe, but states that use the death penalty actually show higher murder numbers than states that do not (<http://pages.britishlibrary.net>). When a local execution occurs, the murder rates do not fluctuate at all, they stay the same. There are literally thousands of ways to kill someone or something. But only about 10 of those are used in conjunction with the death penalty, itself. Many of those thousand are considered barbaric and uncivilized by today's standards. There are usually specific procedures for each execution method, to ensure a quick and painless death. There are nine methods of execution that I will now discuss shortly. The first is crucifixion (<http://pages.britishlibrary.net>). Crucifixion was most likely first used in the 6th century B.C. and was last used in approximately the 4th century A.D. Most notably, it was used on Jesus Christ in the year 33 A.D. It is where the person is nailed to a cross for as many hours as it takes them to die from loss of blood.

The second is boiling in oil. Boiling in oil usually occurs after a severe beating has been administered. It burns the cuts and open wounds, it is truly a very painful way of death. Death by boiling in oil is considered savage by today's society (<http://www.nationmaster.com>). The third is death by beheading. It was used commonly during the Medieval days. Usually some form of torture is performed beforehand. Some tortuous acts include: partial hanging, taking out and destroying of the innards, and incinerating. It can be carried out with either an axe or a guillotine. For an example, watch the movie, Brave heart starring Mel Gibson. The fourth is death by drowning. He/she is usually weighted down with something of a metal nature. The fifth is curtains by hanging. It is the traditional method of execution throughout the English speaking world. It has to be done with very specific measurements that is why the prisoner is weighed prior to the execution. The "drop" is based on the prisoner's weight to deliver 1260 foot pounds of force to the neck (<http://www.nationmaster.com>).

The most prized possession of a sentient being is his or her own continued existence; without which one cannot do anything and so becomes nothing. Because of the ultimate value that is stored in a human life, that person may choose to sacrifice his life for a cause in order to prove that there are values beyond the physical and material plane. In contradistinction, for someone else to deprive them of this essential principle is to commit the worst possible injury against them. Since life, and the inherent value of life, is central to our existence, the removal of one's life is a dehumanising act. Capital punishment, though, has been the ancient penalty for crimes against religion and the State throughout the history of mankind.

The State, essentially a community organized for its own defence, has historically proven itself willing to employ the most drastic measures to ensure its protection; and the death penalty

has often been the method of choice (<http://www.nationmaster.com>).

Joyce writes that the nation-State exacts its pound of flesh in the name of justice, and calls it freedom. Likewise, religions since time immemorial have sought to control the populace through uniformity of community values. To ensure compliance with their laws, religions have also fallen back on the ultimate penalty: the forfeiture of life. Until quite recent times, the line between Church and State has been a nebulous one, with the penalties and procedure toward and treason being one and the same. In the modern age there is no longer the same widespread division of power between Church and State (<http://www.nationmaster.com>). With the exception perhaps of Islamic nations, the seat of power now tends to rest firmly in the State to the exclusion of religious authority.

In the process capital punishment is no longer applied for religious transgressions, but only for crimes against the State (e.g., treason) or ordinary crimes (e.g. murder). Another result of this development is the temptation to look at capital punishment in isolation, as an independent State function (<http://www.nationmaster.com>). Yet the sordid history of capital punishment in religious and State histories the mass executions of Ancient Rome, the heresy trials throughout the Dark and middle Ages, and the countless crusades in the name of religion may "serve to remind us that the roots of violence run deep in individual psychology and social custom. Joyce argues that in "lopping off a few branches here and there from the Hangman's Tree, the tree itself remains unfilled and continues to poison all life beneath its awesome shadow (<http://www.nationmaster.com>).

Perhaps the practice of capital punishment within the State today cannot be isolated from the practice of violence by the State in the days of old. There are many examples of how the death penalty deters murder, most haven't even been listed on this web page. But here is an example of how the use of consistent executions have dramatically improved certain societies. In the 1800s, in English occupied India, there was one of the worst gangs of murdering thieves the world has ever known, the Indian hoodlum band known as the Thuggees (<http://encyclopedia.thefreedictionary.com>). Through the course of their existence, dating back to the 1550s, the Thuggees were credited with murdering more than 2,000,000 people, mostly wealthy travellers (<http://www.nationmaster.com>). The killer secret society plagued India for more than 350 years.

The Thuggees traveled in gangs, sometimes disguised as poor beggars or religious mendicants. Sometimes they wore the garb of rich merchants to get closer to unsuspecting victims. One of their principles was never to spill blood, so they always strangled their victims. Each member was required to kill at least once a year in order to maintain membership in the cult (<http://encyclopedia.thefreedictionary.com>). But they killed in the name of religion. The deaths were conceived of as human sacrifices to Kali, the bloodthirsty Hindustani goddess of destruction. It came to pass that the Thuggees began to kill using pickaxes and knives. According to legend, the Thuggees believed that Kali devoured the bodies of their victims.

The story goes that once a member of the society hid behind a tree in order to spy on the goddess. The angry goddess punished the Thuggees by making them bury their victims from then on (<http://encyclopedia.thefreedictionary.com>). The ruling British

government worked very hard to stop the Thuggee religion and its murderous practices (<http://www.nationmaster.com>). Between 1829 and 1848, the British managed to suppress the Thuggees by means of mass arrests and speedy executions. Indeed, rows and rows of Thuggees were left hanging from the gallows along the roads by the dozens. This not only established a zero recidivism rate, but it also greatly discouraged new membership into the cult. The most lethal practitioner of the cult of Thuggee was Buhram. At his trial it was established that he had murdered 931 people between 1790 and 1840. All had been strangled with his waistcloth. Burham was executed in 1840. Appropriately enough, he was hanged until he strangled (<http://encyclopedia.thefreedictionary.com>). In 1882, the British government deemed the problem solved with the hanging death of the last known. Back then, the British weren't as morally confused as they are now (<http://encyclopedia.thefreedictionary.com>).

Not only had they the insight to tell the difference between crime and punishment, but they also respected their moral responsibility to defend public safety by diligently countering barbarism, even in their colonies (<http://www.nationmaster.com>). If the British were anything back then like they are now, they would have been content to sit around on their hands reveling on how "civilized" they are to allow such and evil cult like the Thuggees to exist and terrorize the public. Gladly sacrificing public safety and social tranquility for some self-absorbed sense of delicacy. Most likely, the Thuggees would still be around today and for many centuries more to plague India. The Indians have a lot to be thankful for since the British eliminated that scourge over a century ago (<http://www.nationmaster.com>). They wouldn't have the nerve to effectively counter such barbarism these days. The death penalty is a sentence that has come under growing international attention in the last few decades. It has become a point of interest for liberal nations, and has forced many countries to question their attitudes toward punishment. While it may seem like a dead issue for many centers it is worth discussing the pros and cons of capital punishment for a number of reasons (<http://www.nationmaster.com>).

1. It makes us question our own criminal system and penal institutes.
It makes us question the interaction between morality and law.
2. It makes us question the purposes of punishment and imprisonment.
3. It is preferable to fully understand the arguments behind abolition so that our condemnation of capital punishment is not empty, and done out of habit.
4. It is preferable to fully understand the arguments involved because many nations (including our own) have vacillated over abolition (abolished then reinstated the sentence).

The point I aim to make with this dissertation is that capital punishment is not the black and white matter many exponents and abolitionists say it is. The death penalty is a loaded issue with many grey areas, and to make an intelligent statement on behalf of abolition or retention requires a thorough grasp of the various issues involved. This dissertation is intended to promote thought on the issue, and to arm the individual with reasoned arguments in support of their own beliefs.

4. Results and Discussions

Historical background capital punishment/death penalty.

Grave crime and heinous crime are everywhere. In our neighbourhood, in the neighbouring state, wherever we look, we find criminals and crime. Criminals have become a part of our daily lives. Does this mean we let them be the darkness of our society? No, definitely not. Eliminating crime and criminals is our duty, and we cannot ignore it. Getting the rightly accused to a just punishment is very important. Some criminals commit a crime because they have no other option to survive, but some do it for fun. People do not advocate death penalty for everybody. A person, who stole bread from a grocery store, definitely does not deserve death penalty. However, a serial killer, who kills people for fun or for his personal gain, definitely deserves death penalty. These chapter refer to the classical school (Cesare Beccaria and Jeremy Bentham), subsequent revisions of this model (frequently referred to as the neo-classical school), and contemporary versions of classical thought (rational choice models). Before preceding to discuss Beccaria it may be important to discuss the state of criminal justice in Europe to which the classical school was responding.

Europe was leaving behind its long history of feudalism and absolute monarchy and turning toward the development of modern nation states that ruled based on rational decision-making powers. However, criminal justice was one of the areas that needed to be updated. Throughout Europe (except in England) the use of torture to secure confessions and force self-incriminating testimony had been widespread. Michel Foucault's description of the execution of Damien's for attempted regicide shows just how brutal traditional justice could be in France. In England, the standard penalty for conviction of a felony was death. In addition, capital punishment had been combined with estate forfeiture, leaving the felon's widow and children penniless. The "corruption of blood" made it legally impossible for the convict's parents to pass on their wealth to their own grandchildren. Many accused Englishmen allowed themselves to be crushed to death (*piene forte et dure*) rather than risk a trial and leave their families destitute.

It was with knowledge of such history that Beccaria developed his ideas concerning criminal behavior and how best to control it. However, Beccaria and other utilitarians did not develop their ideas in a vacuum. There were other Enlightenment thinkers such as Hobbes, Locke, and Rousseau who helped to create the intellectual climate in which Beccaria worked. There were a number of beliefs about human behavior that most "reasoned" intellectuals shared. These included:

1. The belief that pain and suffering were a natural part of the human condition.
2. Humankind is a rational species.
3. What controls behavior is the human will.
4. Although supernatural (and natural) forces might influence the will, in regard to specific actions the will was free to choose.
5. The principal means of controlling behavior is fear, particularly fear of pain or punishment. In this way the will could be directed to make correct choices.
6. Since the state had the right to punish behavior, it ought to do so in an organized manner which included the centralized administration of law enforcement, courts, and correctional practices.

Important points to be made about Beccaria

1. Beccaria did not develop a new explanation for criminal behavior. He merely accepted the taken-for granted beliefs of his era. He sought solely to rationalize punishments.
2. Beccaria opposed allowing judges the type of broad discretion they then enjoyed.
3. The ultimate source of law must be the legislature, not the judiciary. Beccaria is here attacking the common law tradition. Today's conservatives attack judicial activism.
4. The principal role of the judiciary is in determining guilt, not deciding on punishments.
5. A truly rational system of criminal justice would be based on a scale of crimes and punishments: e.g. first, second, and third degree felonies. Each would be assigned a specific punishment that included ascending severity based the level of seriousness of the offense.
6. The severity of the crime for which one is ultimately punished must be based upon the actual act committed, not the level of intent involved. If you only intended to maim someone but they died as a result of the injuries inflicted, the perpetrator must be charged with murder.

For a rational system of criminal justice to work, punishment must be certain, swift, and proportional. The ultimate goal was to insure that the benefits of crime never outweighed the potential pain from punishments the offender would receive. As rational, calculating human beings, most would avoid crime under such a system. Certainty required that all offenders be punished; the more criminals who escaped punishment the less the impact on the minds of others contemplating such behaviour. Swiftness was also important. If too long a time lapsed between the crime and its punishment, this would also lessen the deterrent effect on future criminality. Beccaria's emphasis on proportionality led him to oppose the use of the death penalty for all but the some serious crime. Capital punishment would have no impact if its use were for minor offenses. A number of criminal justice historians have noticed the pendulum like nature of criminological theory. Once a particular model becomes "dominant" its antithesis is argued by "reformers. The neo-classical approach is criminology is not a true anti-thesis but a form of revisionism. Neo-classical criminologists recognized that the free will approach had a number of shortcomings. Among them was the English jurist William Blackstone.

Neo-classical criminologists considered the types of criminal behavior best explained by the classical model and what types of criminal behavior the model is inadequate to explain. Some of the objections pointed out by neo-classical thinkers included exceptions long accepted by criminal justice systems. These included classic criminal defences such as self-defence or mistake of fact. Also, long recognized was the fact that not all persons were completely responsible for their own actions. For example, should children be expected to behave with the same level of responsibility as adults? When does a child become fully responsible for their own actions? Also noted was the fact that same people appeared to be compelled by forces beyond their rational control. While a supernatural "possession" model had previously accounted for some of this behaviour, the decline in belief in supernatural forces was matched by an increasingly positive treatment toward "mental illness" type explanations.

There were some who behaved "irrationally." Separating the rational from the irrational has become a continuing problem for modern criminal justice systems. Another area of long legal concern was whether individuals can be influenced by others to do things they would not normally do, and whether they should be exonerated by the courts in such instances. Duress and entrapment are criminal defenses based on this premise. Within criminology the classical school's importance diminished as positivist explanations of criminal behavior emerged and became dominant. However, most modern criminal justice systems have never rejected free will explanations of criminal behavior. In the United States and some other constitutional democracies, the classical model has been thwarted more by the system in which it is implanted (one requiring an adversarial procedure and due process) than by positivism. The classical model has re-emerged in criminology and American jurisprudence as the "justice model" and rational choice explanations. These approaches are advocated by theorists such as David Fogel, Ernest van den Haag, James Q. Wilson, and Ronald Clarke. Collectively they would favor the following:

1. Doing away with indeterminate sentencing and its replacement with various forms of determinate sentencing, including sentencing guidelines, mandatory sentences, habitual offender statutes, etc.
2. Truth in sentencing. One should serve one's full sentence and not receive an early release through parole or prison overflow control policies.
3. The use of the death penalty. Most favor decreasing the amount of time between sentencing and execution by limiting the appeals process. (Bentham and Beccaria both opposed the death penalty as a punishment so severe it would have no deterrent effect.)
4. Doing away with the exclusionary rule altogether or the allowing of additional "good faith" exceptions for law enforcement infringements an defendants' due process rights.

Continued research on criminal behavior predicated an the idea of free will. It examines phenomenon such as criminal career choices. For example, why would an offender choose to shoplift rather than commit robberies? Why do some career criminals finally decide to stop and become honest productive citizens? Death penalty should continue in order to eliminate the garbage of our society. Not everybody deserves to die, but some people definitely do. I support death penalty because of several reasons. Firstly, I believe that death penalty serves as a deterrent and helps in reducing crime. Secondly, it is true that death penalty is irreversible, but it is hard to kill a wrongly convicted person due to the several chances given to the convicted to prove his innocence (Bentham, Jeremy 1789) ^[6].

Thirdly, death penalty assures safety of the society by eliminating these criminals. Finally, I believe in "lex tallionis" - a life for a life. Deterrence means to punish somebody as an example and to create fear in other people for the punishment. Death penalty is one of those extreme punishments that would create fear in the mind of any sane person. Ernest van den Haag, in his article "On Deterrence and the Death Penalty" mentions, "One abstains from dangerous acts because of vague, inchoate, habitual and, above all, preconscious fears" (Bedau, Hugo Adam 1982) ^[9]. Everybody

fears death, even animals. Most criminals would think twice if they knew their own lives were at stake.

Although there is no statistical evidence that death penalty deters crime, but we have to agree that most of us fear death. Suppose there is no death penalty in a state and life imprisonment without parole is the maximum punishment. What is stopping a prisoner who is facing a life imprisonment without parole to commit another murder in the prison? According to Paul Van Slambrouck, "Assaults in prisons all over US, both against fellow inmates and against staff, have more than doubled in the past decade, according to statistics gathered by the Criminal Justice Institute in Middletown, Connecticut" There is no stopping these inmates from committing further crimes within the prison, if they are already facing the maximum punishment. Anti-death penalty advocates argue that imprisonment itself could deter criminals (Bentham, Jeremy 1789)^[6].

They believe that we do not need to go to the extreme measure of killing the criminals to deter crime. Hugo Adam Bedau in his article, Capital Punishment and Social Defense mentions, "Crimes can be deterred only by making would-be criminals frightened of being arrested, convicted, and punished for crimes" (Bedau, Hugo Adam 1982)^[9]. Unfortunately, the ever-increasing population in the prisons proves otherwise. Somehow, just imprisonment is not enough for some people to stop them from committing a crime. The number of criminals is increasing every year. In 1990, there were 42,733 prisoners in Alaska, whereas in 1999 it increased to 68,599 Some criminals may think that they would never be (<http://justice.uaa.alaska.edu>). caught, and just keep committing crimes. The perfect example for this would be serial killers. For such people, death penalty should be there, so that others, who even think about committing such crimes, learn a lesson that every criminal is eventually caught.

Anti-death penalty advocates believe that death penalty is irreversible and may become a cause of irreversible mistakes. Once a person has been sentenced to death and thus death penalty practiced, there is nothing that can be done to undo the punishment if the accused turns out to be innocent. I think that death penalty is irreversible, but the chance of making a mistake in death penalty is extremely low. Death penalty is considered an extreme punishment and the judicial system takes a lot of care in finalizing the decision. There are several safeguards guaranteeing protection of the rights of those facing the death penalty. For example, "Capital punishment may be imposed only when guilt is determined by clear and convincing evidence leaving no room for an alternative explanation of the facts", "Anyone sentenced to death shall receive the right to appeal to a court of higher jurisdiction", etc (Bentham, Jeremy 1789)^[6]. There are several other privileges provided to the convicted that assure that death penalty is given to the rightly accused person.

According to Haag, "Trials are more likely to be fair when life is at stake - the death penalty is probably less often unjustly inflicted than others" (Bedau, Hugo Adam 1982)^[9]. Statistics reveal that there is far less number of death sentences than life imprisonment sentences without parole given out every year. According to Federal Justice Statistics, in 1998, there were approximately 5000 criminals sentenced to life imprisonment as opposed to 74 criminals sentenced to death (<http://justice.uaa.alaska.edu>). This shows that judicial system itself is very careful with death sentences. Even if we assume that there are chances that an innocent person is executed, it is the problem with the trial, not

the punishment. "It is not the penalty - whether death or prison, which is unjust when inflicted on the innocent, but its imposition on the innocent", writes Haag (Bedau, Hugo Adam 1982)^[9]. When an innocent person is sentenced to death, it is not the fault of the punishment itself, but the trial that led to this punishment. There have been cases in which a person has been sentenced to life imprisonment without parole, and then after several years, it was revealed that the person was innocent.

No court or compensation in this world can return the horrifying years spent in the prison by that innocent person. If we stop giving life imprisonment sentences to criminals on this ground, then probably most of the criminals would be walking around free on the streets within ten to fifteen years. The fear and trust that the society has in the judicial system would be lost. The judicial system has minimized the chances of mistakes (Bentham, Jeremy 1789)^[6]. It is almost impossible to sentence a wrongly accused person. Then, why cause death of several innocent victims just on the bleak assumption that someday we might make a mistake? Incapacitating a person is "depriving s/he of the physical or intellectual power of natural illegal qualifications" (Encyclopaedia Capital punishment.htm).

Death penalty is not advocated for all criminals. Those criminals, who commit murders during self-defence or during times of passion, do not deserve death penalty. However, those people who just do not seem to learn the lesson the first time, or those who kill for fun, definitely deserve death penalty (Encyclopaedia Capital punishment.htm). Defendants (murderers) are allowed to shield themselves from justice by pleading insanity. Insanity means a failure to respond to the usual sort of incentives in the usual ways. If insane people are completely unresponsive to incentives, then their profits serve no social purpose, thus leading to another beneficial factor of the death penalty. People who have no social purpose do not benefit society, culture of mankind, or the basic rules of humanity.

For example: This drug related brain-damaged killer barely knew his own identity when he murdered a mother and her daughter in front of a 3 year old boy. When he was finished raping the females and performed their deaths, he move on to sexually molest the boy in which he then left him to die. The retarded man then pled insanity, got to stay in jail for 22 years, eating three square meals a day, sleeping on a mattress with a blanket in air conditioned comfort and having a roof over his head (Encyclopedia Capital punishment). Where do we draw the line between mentally incapable and criminally insane? When are they going to learn to resume the responsibility for their actions? I am not saying that all mentally disabled people should be subject to death penalty because they are no good to the society. However, some people pose a great fatal danger to the society in such a cruel way as seen in the above example. In such cases, death penalty becomes crucial for the benefit of the society. I believe every criminal, no matter how cruel he is, should be given at least one chance to change himself/herself (<http://justice.uaa.alaska.edu>). Thus, I do not advocate death penalty for people who have performed only one murder. However, there have been cases in which people have committed several murders (serial killers), or have committed crime even after imprisonment. For such people, I advocate death penalty. There needs to be a limit to which society should put up to. If somebody does not understand that going around killing people

is wrong, then I believe, that letting such people live is not only a great threat to the society, but also a great burden.

Advocate of anti-death penalty, Adam Bedau, wrote, "Prevention by means of incapacitation occurs only if the executed criminal would have committed other crimes if he or she had not been executed and had been punished only in some less incapacitate way (by imprisonment)" If people commit a crime while facing an imprisonment sentence, then their sentence should be changed to death sentence, since it is evident that they are just habitual to committing crimes and are a constant threat to the society, including the other inmates. Some people might think that death penalty is inhuman and barbarous, but ask those people who have lost their beloved or whose lives have been tied to a hospital bed because of some barbarous person (<http://justice.uaa.alaska.edu>). I am sure they would be very unhappy to see the person who ruined their lives just getting a few years of imprisonment or mere rehabilitation.

Consider the example of the rapist and killer given above. Now, suppose the woman raped was your wife, sister, or daughter. How would you feel knowing that the person who ruined your family is calmly enjoying the benefits of an asylum and an air-conditioned room? Anti-death penalty supporters believe that death penalty is barbarous. Well! So is murder. Death penalty is not revenge. Rather, it is a matter of putting an end to a life that has no value for other human lives. Sentencing a murderer to death is in fact a favour to the society. Despite the moral argument concerning the inhumane treatment of the criminal, we return to the "nature" of the crime committed. Can society place an unequal weight on the tragically lost lives of murder victims and the criminal? Punishment is meted out because of the nature of the crime, devoid of any reference to the social identity of the victim.

In "The Death Penalty in America", Adam Bedau wrote, "even in the tragedy of human death there are degrees, and that it is much more tragic for the innocent to lose his life than for the State to take the life of a criminal convicted of a capital offences". I believe that if one cannot value the life of another human being, then one's own life has no value (<http://justice.uaa.alaska.edu>).

Death penalty is good and serves a definite purpose of reducing crime as well as bringing justice to the criminals and innocent. In order to serve its purpose, it must be adjusted and made more effective and efficient. The justice system has changed dramatically in the past thirty years in order to make sure that the rightly accused is brought to justice. Our society believe that death penalty should not be abolished, as it ensures the safety of the society, brings justice to those who have suffered and most importantly helps in reducing crime and criminals in our society (<http://justice.uaa.alaska.edu>). Death penalty is important to keep the brightness of justice and public safety shining brightly on our society.

Background of death penalty laws in England and their colonies

By this term is now meant the infliction of the penalty of death for crime under the sentence of some properly constituted authority. As distinguished from killing the offender as a matter of self-defense or private vengeance, or under the order of some self-constituted or irregular tribunal unknown to the law, such as that of the Vigilantes of California, or of lynch law (<http://www.nationmaster.com>). In the early stages of society a

man-slayer was killed by the avenger of blood on behalf of the family of the man killed, and not as representing the authority of the state (www.directessays.com). This mode of dealing with homicide survives in the vendetta of Corsica and of the Mainotes in Greece, and in certain of the southern states of North America (<http://www.nationmaster.com>).

The obligation or inclination to take vengeance depends on. The fact of homicide, and not on the circumstances in which it was committed. The mischief of this system was alleviated under the Levitical law by the creation of cities of refuge, and in Greece and Italy, both in Pagan and Christian. Times, by the recognition of the right of sanctuary in temples and churches. A second mode of dealing with homicide was that known to early Teutonic and early Celtic law, where the relatives of the deceased, instead of the life of the slayer, received the were of the deceased, i.e. a payment in proportion to the rank of the slain, and the king received the blood-write for the loss of his man. But even under this system certain crimes were in Anglo-Saxon law boot-less, i.e. no compensation could be paid, and the offender must suffer the penalty of death. In the laws of Hammurabi, king of Babylon (2285-2242 B.C.), the death penalty is imposed for many offences. The modes for executing it specially named are burning, drowning and impalement (<http://www.wsu.edu>). Under the Roman law, capital punishment also included punishments which deprived the offender of the status of Roman citizen.

United Kingdom. The modes of capital punishment in England under the Saxon and Danish kings were various: British and hanging, beheading, burning, drowning, stoning, and foreign precipitation from rocks (<http://www.probertencyclopaedia.com>). The principle on which this laws and variety depended was that where an offence was methods, such as to entitle the king to outlaw the offender, he forfeited all, life and limb, lands and goods, and that the king might take his life and choose the mode of death (<http://www.isle-of-man.com>). William the Conqueror would not allow judgment of death to be executed by hanging and substituted mutilation; but his successors varied somewhat in their Policy as to capital punishment, and by the 13th century the penalty of death became by usage (without legislation) the usual punishment for high and petty treason and for all felonies (except mayhem and petty larceny, i.e. theft of property worth less than 1s (<http://www.britannia.com>)).

It therefore included all the more serious forms of crime against person or property, such as murder, manslaughter, arson, highway robbery, burglary and larceny; and when statutory felonies were created they were also punishable by death unless the statute otherwise provided. The death penalty was also extended to heretics under the writ de heretic coinsured, which was lawfully is suitable under statute from 1382 (<http://www.navpooh.com>). For this purpose the legislature had adopted the civil law of the Roman Empire, which was not a part of the English common law (<http://www.scaruffi.com>). The methods of execution by crucifixion (as under the Roman law), or breaking on the wheel (<http://www.scaruffi.com>) were never recognized by the common law, and would fall within the term cruel and unusual punishments in the English Bill of Rights, and in the United States would seem to be unconstitutional.

The severity of barbarian and feudal laws was mitigated, so far as common-law offences were concerned, by the influence of the Church as the inheritor of Christian traditions and Roman

jurisprudence. The Roman law under the empire did not allow the execution of citizens except under the Lex Porcia. But the right of the emperors to legislate per rescriptum principal enabled them to disregard the ordinary law when so disposed. The 83rd novel of Justinian provided that criminal causes against cleric. should be tried by the judges, and that the convicted cleric should be degraded by his bishop before his condemnation by the secular power, and other novels gave the bishops considerable influence, if not authority, over the lay judiciary (<http://www.canadianlawsite.com>). In western Europe the right given by imperial legislation in the Eastern Empire was utilized by the Papacy to claim privilege of clergy, i.e. that clerks must be remitted to the bishop for canonical punishment, and not subjected to civil condemnation at all. The history of benefit of clergy is given in Pollock and Maitland, *Mist. English Law* (<http://www.blupete.com>).

By degrees the privilege was extended not only to persons who could prove ordination or show a genuine tonsure, but all persons who had sufficient learning to be able to read the neck-verse. Before the Reformation the ecclesiastical courts had ceased to take any effective action with respect to clerks accused of offences against the kings laws; and by the time of Henry VII burning on the hand under the order of the kings judges was substituted for the old process of compurgation in use in the spiritual courts. The effect of the claim of benefit of clergy is said to have been to increase the number of convictions, though it mitigated the punishment; and it became, in fact, a means of showing mercy to certain classes of individuals convicted of crime as a kind of privilege to the educated, i.e. to all clerks whether and secular or religious (<http://royalhistory.com>); and it was allowed only in case of a first conviction, except in the case of clerks who could produce their letters of orders or certificate of ordination to prevent a second claim it was the practice to brand murderers with the letter M, and other felons with the Tyburn T, and Ben Jonson was in 1598 So marked for manslaughter.

The reign of Henry VIII. Was marked by extreme severity in the execution of criminals as during this time 72,000 persons are said to have been hanged. After the formation of English settlements in America the severity of the law was mitigated by the practice of reprieving persons sentenced to death on condition of their consenting to be transported to the American colonies, and to enter into bond service there. The practice seems to have been borrowed from Spain, and to have been begun in 1597 (<http://royalhistory.com>).

It was applied by Cromwell after his campaign in Ireland, and was in full force immediately after the Restoration, and is recognized in the Habeas Corpus Act 1677, and was used for the Cameroonians during Claver houses campaign in south-west Scotland (<http://www.bartleby.com>). In the 18th century the courts were empowered to sentence felons to transportation instead of to execution, and this state of the law continued until 1857 (<http://royalhistory.com>). This power to sentence to transportation at first applied only to felonies with benefit of clergy; but in 1705, on the abolition of the necessity of proving capacity to read, all criminals alike became entitled to the benefit previously reserved to clerks. Benefit of clergy was finally abolished in 1827 as to all persons not having privilege of peerage, and in 1841 as to peers and peeresses. Its beneficial

effect had now been exhausted, since no clergy able offences remained capital crimes.

At the end of the 18th century the criminal law of all Europe was ferocious and indiscriminate in its administration of capital punishment for almost all forms of grave crime; and yet owing to poverty, social conditions, and the inefficiency of the police, such forms of crime were far more numerous than they now are (<http://www.loc.gov>). The policy and righteousness of the English law were questioned as early as 1766 by Goldsmith through the mouth of the vicar of Wakefield: Nor can I avoid even questioning the validity of that right which social combinations have assumed of capital punishing offences of a slight nature (<http://www.umich.edu>). In cases of murder their right is obvious, as it is the duty of us all from the law of self reface to cut off that mar. who has shown a disregard for the life of another. Against such all nature rises in arms; but it is not so against him who steals my property. He adds later: When by indiscriminate penal laws the nation beholds the same punishment affixed to dissimilar degrees of guilt, the people are led to lose all sense of distinction in the crime, and this distinction is the bulwark of all morality.

The opinion expressed by Goldsmith was strongly supported by Bentham, Romilly, Basil Montagu and Mackintosh in England, and resulted in considerable mitigation of the severity of the law (<http://www.umich.edu>). In 1800 over 200 and in 1819 about 180 crimes were capital. As the result of the labour of these eminent men and their disciples, and of Sir Robert Peel, there are now only four crimes (other than offences against military law or naval discipline) capital punishable in England high treason, murder, piracy with violence, and destruction of public arsenals and dockyards (<http://www.isle-of-man.com>). An attempt to abolish the death penalty for this last offence was made in 1837, but failed, and has not since been renewed. In the case of the last two offences sentence of death need not be pronounced, but may be recorded. Since 1838 it has in practice been executed only for murder; the method being by hanging. The change in the severity of the law is best illustrated by the following statistics: Death Sentences. Sentences Executed.

Table 1

Years.	For all For Crimes.	Murder.	Crimes.	Murder.
1831	1601	14	52	12
1833	931	9	33	6
1838	666	25	6	5
1862	29	28	15	15

During the twelve years from 1893 to 1904, 788 persons were committed for trial for murder, being an. average of 65.

The highest number was in 1893 and the lowest in. 1900. Of those tried in 1904, 28 (26 males and 2 females) were convicted of murder, 16 (all males) were executed; 9 males and 2 females had their sentences commuted to penal servitude for life (<http://www.newadvent.org>). In Scotland capital punishment can be imposed only for treason, murder and offences against 10 Geo. IV. C. 38, i.e. willful shooting, stabbing, strangling or throwing corrosives with intent to murder, maim, disfigure, disable, or do grievous bodily harm, in all cases where if death had ensued the offence would have been murder. Prior to 1887 rape, robbery, willful fire-raising and incest, and many other crimes, were also

capital offences; but in Crimes Punishable by practice the pains of law were re- Death (<http://www.newadvent.org>).

Offences under Military Law

Thus far only crimes against the ordinary law of the land have been dealt with. But both the Naval Discipline Act of 1866 and the Army Act empower courts-martial to pass sentence for a number of offences against military and naval laws. Such sentences are rarely if ever passed where an ordinary court is within reach, or except in time of war (<http://www.wsu.edu>). The offences extend from traitorous communication with the enemy and cowardice on the field to falling asleep while acting as a sentinel on active service. It is for the authority confirming a sentence of death by court-martial to direct the mode of execution, which both in the British and United States armies is usually by shooting or hanging. During the Indian Mutiny some mutineers were executed by being blown from the mouth of cannon (<http://www.wsu.edu>). Each of these years followed upon legislation mitigating severity of punishment British Colonies and Possessions.

Indian Penal Code sentence of death may be passed for waging war against the king and for murder. If the murder is committed by a man under sentence of transportation for life the death penalty must be imposed (<http://www.mlj.com>). In other cases it is alternative. This code has been in substance adopted in Ceylon, in Straits Settlements and Hong-Kong, and in the Sudan. In most of the British colonies and possessions the death penalty may be imposed only in the case of high treason, wilful murder and piracy with violence (<http://www.legaldirectory.ws>). But in New South Wales and Victoria sentence of death may be passed for rape and criminal abuse of girls under ten. In Queens land the law was the same until the passing of the Criminal Code of 1899. Under the Californian Criminal Code of 1892 the death sentence may be imposed for treason (<http://www.wsu.edu>), rape piracy with violence and upon subjects of a friendly power who levy war on the king in Canada. But the judge is bound by statute to report on all death sentences, and the date of execution is fixed so as to give time for considering the report. The sentence is executed by hanging (<http://www.legaldirectory.ws>). In South Africa the criminal law is based on the Roman-Dutch law, under which capital punishment is liable for treason murder and rape (<http://www.wsu.edu>).

Though the Roman-Dutch modes of executing the sentence by decapitation or breaking on the wheel have not been formally abolished, in practice the sentence in the Cape Colony is, executed by hanging. In the Transvaal hanging is now the sole mode of executing capital punishment. The Roman-Dutch law as to crime and punishments has been superseded in Ceylon and British Guiana by ordinance (<http://www.wsu.edu>). With the mitigation of the law as to punishment, agitation against the theory of capital punishment has lost much of its force. But many European and American writers, and some English writers and associations, advocate the total abolition of the death punishment (<http://www.legaldirectory.ws>).

The ultimate abolition. Argument of the opponents of capital punishment is that society has no right to take the life of any one of its members on any ground. But they also object to capital punishment;

1. Oil religious grounds, because it may deprive the sinner of his full time for repentance.

2. On medical grounds, because homicide is usually if not always evidence of mental disease or irresponsibility;
3. On utilitarian grounds, because capital punishment is not really deterrent, and is actually inflicted in so few stances that criminals discount the risks of undergoing it.
4. On legal grounds, i.e. that the sentence being irrevocable and the evidence often circumstantial only, there is great risk of gross injustice in executing a person convicted of murder.
5. On moral grounds, that the punishment does not fit the case nor effect the reformation of the offender. It is to be noted that the English Children Act 1908 expressly forbids the pronouncing or recording the sentence of death against any person under the age of sixteen.

The punishment is probably retained, partly from ingrained habit, partly from a sense of its appropriateness for certain crimes, but also that the ultimate ratio may be available in cases of sufficient gravity to the commonweal. The apparent discrepancy between the number of trials and convictions for murder is not in England any evidence of hostility on (<http://www.legaldirectory.ws>). the part of juries to capital punishment, which has on the whole lessened rather than increased since the middle of the 19th century. It is rarely if ever necessary in England, though common in America, to question the jurors as to their views on capital punishment.

The reasons for the comparatively small number of convictions for murder seem to be

1. That court and jury in a capital case lean in favor vitae, and if the offence falls short of the full gravity of murder, conviction for manslaughter only results.
2. That in the absence of a statutory classification of the degrees of murder, the prerogative of mercy is exercised in cases falling short of the highest degree of gravity recognized by lawyers and by public opinion.
3. That where the conviction rests on circumstantial evidence the sentence is not executed unless the circumstantial evidence is conclusive.
4. That charges of infanticide against the mothers of illegitimate children are treated mercifully by judge and jury, and usually terminate in acquittal, or in a conviction of concealment of birth.
5. That many persons tried as murderers are obviously insane.
6. That coroners juries are somewhat recklessly free in returning inquisitions of murder without any evidence which would warrant the conviction of the person accused.

The medical doctrine, and that of Lombroso with respect to criminal atavism and irresponsibility, have probably tended to incline the public mind in favour of capital punishment, and Sir James Stephen and other eminent jurists have even been thereby tempted to advocate the execution of habitual criminals.

5. Conclusions

It certainly seems strange that the community should feel bound carefully to preserve and tend a class of dangerous lunatics, and to give them, as Charles Kingsley says, the finest air in England and the right to kill two gaolers a week (<http://www.constitution.org>). The whole question of capital punishment in the United Kingdom was considered by a royal

commission appointed in 1864, which reported in 1866 (<http://www.constitution.org>). The commission took the opinions of all the judges of the supreme courts in the United Kingdom and of many other eminent persons, and collected the laws of other countries so far as this was ascertainable. The commissioners differed on the question of the expediency of abolishing or retaining capital punishment, and did not report thereon. But they recommended;

1. That it should be restricted throughout the United Kingdom to high treason and murder.
2. Alteration of the law of homicide so as to classify homicides according to their gravity, and to confine capital punishment to murder in the first degree.
3. Modification of the law as to child murder so as to punish certain cases of infanticide as misdemeanors.
4. Authorizing judges to direct sentence of death to be recorded.
5. The abolition-since carried out of public executions.

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93. The below verse refers to sexual misconduct or adultery, as the prophet Jeremiah (3:1) says, "Saying (laymor), if a man divorces his wife..."
94. The following verse implies that there are things which may not be eaten (the limbs of a live animal): "You must not, however, eat flesh with its life- blood in it." (Genesis 9:4)
95. The following verse is a reference to the prohibition against idolatry; for it says in Exodus 20:3, "You shall have no other gods before me."
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106. 'The Prevention of Crime (First Article)', International Journal of Ethics. 1891b; 2:51-77.
107. 'Jugendliche Kriminalität und Verwahrlosung in Großbritannien', Zeitschrift für die gesamte Strafrechtswissenschaften. 1893a; 13:894-905.
108. (Review of C. Lombroso, Nouvelles Recherches de Psychiatrie et d'Anthropologie Criminelle). Zeitschrift für Psychologie und Physiologie der Sinnesorgane. 1893b; 4:156-158.
109. United Nations General Assembly. Universal Declaration of Human Rights, 1948.
110. Trevelyan George Macaulay. English Social History. New York: Logman's, Green, and Co, 1942.
111. William Mary. Bill of Rights Journal. "Symposium: Religion's Role in the Administration of the Death Penalty. 2000; 9(1):29-246.
112. What follows is a reference to laws of justice for it says in Genesis 18:19, "For I have known him so he will command (Yitzaveh) his children after him to keep the way of the Lord and righteousness and justice."

The following Search Engine are used in this Dissertation;

1. <http://www.sodomylaws.org/index.htm>
2. <http://www.amnestyusa.org/abolish/aboutdp.html>
3. <http://www.amnestyusa.org/abolish/>
4. <http://www.amnestyusa.org/abolish/abret2.html>
5. <http://www.amnesty.org/ailib/intcam/saudi/issues/dp.html>
6. <http://www.constitution.org/cmt/wf/hjtj.htm>
7. http://www.legaldirectory.ws/Criminal_Law/default.aspx
8. <http://www.wsu.edu:8080/~dee/MA/ENGLAND.HTM>
9. <http://www.isle-of-man.com/manxnotebook/manxsoc/msvol11/notes4.htm>
10. <http://www.probertencyclopaedia.com>
11. <http://www.la.utexas.edu/labyrinth/rp/index.html>
12. www.directessays.com
13. <http://www.cwrl.utexas.edu/~tonya/spring/cap/pro1.htm>
14. <http://www.fordham.edu/halsall/mod/modsbook.html>
15. <http://encyclopedia.thefreedictionary.com>
16. <http://encyclopedia.thefreedictionary.com/December%2016>
17. <http://justice.uaa.alaska.edu/death/stats.html>
18. <http://cepa.newschoo.edu/het/profiles/hume.htm>
19. <http://bjc.oupjournals.org/>
20. <http://www.tandf.co.uk/journals/titles/10282580.asp>
21. <http://www.asc41.com/publications.html>