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## **THE PUNISHMENT FOR MURDER: IS CAPITAL PUNISHMENT THE ONLY APPROACH?**

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### **ABSTRACT**

Murder is a crime that is condemned by almost everyone in society, from the ancient civilizations to the modern era of humans. However, the true question that has been contested is that how do we punish a murderer? The issue with determining the punishment of murder arises is in the final judgment, most recognize that the act must carry a penalty but in what form? Even when given the context of the circumstances its quite difficult to come to a solution. Simply put death penalty or solitary confinement isn't enough to truly serve justice for all involved, in fact could that not be simply called as a call for revenge and not true justice? However, we observe that society leans to the side of violence for violence, calling for the death of the one who carries out such a crime with many even arguing that such approach will instil 'fear' in their mind, making sure that they never commit such an offence ever. Yet despite such common approaches' crime remains high in several nations in fact higher with ones having capital punishment for murder. What we must keep in mind is that for the sentencing for crimes the law at times can clearly be unfair, but in relation to murder such blunder is disastrous and destroys the faith in law the people have. Therefore, this paper attempts to analyse the different arguments for the types of punishment for murder across the world and come with a solution to resolve the same.

## **Punishment for Murder: Fair or Unfair**

The punishment for murder across the world has been quite evolving as observed from the above part ancient times there was almost no leniency, and the fate of the offender was death by execution- a decree passed by the king or monarch of the state a final sentence with no other say<sup>1</sup>. Such punishment now seems quite reactive but even now some would agree with this outcome, murder itself is a crime with such ‘hefty price’ that it makes it easier to set a high and severe sentence for the offence<sup>2</sup>. In fact, if we look at countries like that of America where states such as Colorado, Texas still have capital punishment; around 60% of adult Americans support death penalty for such severe offences despite eight in one of the supporters (78%) still acknowledging the risk of an innocent person being punished<sup>3</sup>.

In the modern-day law system, there is no supreme monarch or king, rather a system of courts that allow for a fair trial for the accused to ensure that the judgement passed is fair and ensures that justice is served. For example, India having a sophisticated system of hierarchy of courts allowing for appeals for the case to be continued in a fair and free manner while to some it may seem disadvantageous as it keeps on dragging the length of certain cases its overall beneficiary for the society. The courts in general are our tools of justice in the modern system of law allowing for them to carry out justice for each individual cases, each judgment is supposed to be carried based on an objective principle with no prejudice or biases by this system- it must be just by its very nature. But this is far from the truth as courts are human institutions, they are subject to the hubris and failure of man himself however, we can excuse such flaw by pointing out the necessary steps taken to ‘prevent’ any failures in casting judgement and making sure that everything is fair. But with recent times many would consider that the justice system of courts is perhaps too flawed- some have suggested that the judgements that are passed are dominated by the political, economic, and social interests of the ‘influential’ people causing for a corrupted system.

The public is society incarnate its faith in judiciary, its ability to bestow proper judgement is a core concept of democracy recently only about 25% of Americans truly trust their court

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<sup>1</sup> Rollin M. Perkins, A Re-Examination of Malice Aforethought, 43 YALE L. J. 537, 539–40 (1934)

<sup>2</sup> Daniel Kahneman, Reference Points, Anchors, Norms, and Mixed Feelings, 51 ORG. BEHAV. & HUM. DECISION PROCESSES 296, 297–300 (1992).

<sup>3</sup> Pew Research Center, June 2021, “Most Americans Favor the Death Penalty Despite Concerns About Its Administration

systems a down from the last reported 36%<sup>4</sup>, but on understanding why the public has lost faith in its own judiciary is quite complex involving several political elements as well. Polls also are not the perfect tools to measure data as the data sample may be too small to represent a population well over millions and an essential point that arises with having ‘faith’ in the judicial system is that even if law was made to maintain order in society and to aid the people it cannot ‘bend its knee’ to blindly serve the populus. Chief Judge **Jeffrey S. Sutton** of the United States Court of Appeals said *“The Court sometimes rightly does exactly what the public does not want. You could imagine a horrible murder in which the U.S. Supreme Court correctly reverses a conviction on legitimate constitutional grounds. In that setting, the public understandably would be agitated that the crime went unpunished. But I suspect the four of us would agree that that is a setting in which public disapproval would not legitimately undermine the Court’s credibility and reputation for principled decision-making.”*<sup>5</sup>

Therefore in determining how we should punish murder we should not heed towards what the ‘mob’ thinks, more than not people are largely irrational and in large numbers would push for harsh punishments that in short term would satisfy the appetite of the people for ‘justice’ served but in the long run in retrospect would be looked as a misstep by the court system, the September Massacre of the French Revolution<sup>6</sup> where the French citizens broke into the prisons and after ‘trials’ carried out the deaths of several prisoners- around 1400 with swords or pikes even women and adolescent children were executed, with 2/3<sup>rd</sup> of prisoners were simple inmates who had committed minor to few major offences rest were all political prisoners mainly the nobility. Such an act could only be labelled that of barbarism, this cannot be called true justice at all, Edmund Burke a British philosopher described the state of such affairs *“When they smile, I see blood trickling down their faces. I see their insidious purposes. I see that the object of all their cajoling is blood! I now warn my countrymen to beware of these execrable philosophers, whose only object it is to destroy everything that is good here, and to establish immorality and murder by precept and example.”*<sup>7</sup>

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<sup>4</sup> Jeffrey M. Jones, Confidence in U.S. Supreme Court Sinks to Historic Low. Gallup. June 23, 2022. Available at: <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx>

<sup>5</sup> David F. Levi, Raymond J. Lohier Jr., Diane P. Wood and Jeffrey S. Sutton, Losing Faith: Why Public Trust in the Judiciary Matters, *Judicature*. Vol. 106 No. 2 (2022)

<sup>6</sup> Timothy Tackett, Rumor and Revolution: The Case of the September Massacres, *French History & Civilization*, 2011, Vol 4, p54. ISSN 1832-9683

<sup>7</sup> John C. Nimmo, *The Works Of The Right Honourable Edmund Burke In Twelve Volumes, (Twelfth Volume)*, May 5, 2006.

If we now closely look at the punishment that is given for murder is in the form of life imprisonment or capital punishments, the act is justified as that of justice to safeguard the society from the threat of such offenders another reasoning is of fear that setting up such harsh penalty would deter the commons from commission of such offences- yet if we look deep into the facts around the rate of crimes a surprising opposing finding can be found as well. The main issue that death penalty produces is that can it truly be considered as ‘just’? what marks the difference between a righteous execution and revenge? If we look in context of history the act of death penalty has always been of revenge since the days of Hammurabi although legally revenge is never a legitimate reason for ‘justice’ but several cases of capital punishment can be traced to the objective of appropriating the suffering of the offender rather than the transmission of justice, in *Bucklew v. Precythe*<sup>8</sup> a case where the offender was tried to death for the act of murder and rape stated that due to his mental ailment he would not be able to receive a ‘painless’ death via lethal injection, but the court rejected his appeal and carried out his sentence regardless, Justice Gorsuch even gave a remark in writing against the offender stating **“The people of Missouri, the surviving victims of Mr. Bucklew’s crimes, and others like them deserve better”** which can be seen as a noble sentiment to serve ‘justice’ but how can this be justified if not as revenge? In fact, the reason for lethal injection is to be a painless and more ‘humane’ form of execution where in here it made the offenders fate worse, even if we say he ‘deserved it’ that cannot qualify for justice at all but revenge.

The idea has also been popularised that the revenge for such offence is for the better interest of the victims and society, Attorney General Barr has justified acts of federal executions by stating **“the Justice Department upholds the rule of law—and we owe it to the victims and their families to carry forward the sentence imposed by the justice system.”**<sup>9</sup> But this is further from the truth for there have been cases where even the family does not seek for the death penalty for the offender an example is the case of Christopher Young who had murdered a store owner Hasmukh Patel under influence of drugs and alcohol in a failed robbery, the victims family actively opposed the execution of Young going so far as to showing disappointment in the Texas Board of Pardons and Paroles decision, **“It’s really unfortunate that the board didn’t**

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<sup>8</sup> 139 S. Ct. 1112 (2019).

<sup>9</sup> Press Release, U.S. DEP’T OF JUSTICE, Federal Government to Resume Capital Punishment After Nearly Two Decades Lapse (July 25, 2019). Available at: <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse#:~:text=of%20Murdering%20Children,Attorney%20General%20William%20P.,of%20the%20most%20horrific%20crimes>.

*hear our request for clemency, I feel sadness for his family. They're going to be walking down the same path my family has been on the last 14 years.*"<sup>10</sup> It is inconsistent to have such idealism if the end-goal isn't to heed to the request of the family or 'owe' the honour to the victims. In jurisprudence utilitarians<sup>11</sup> and fundamentalists have rejected the notion of revenge being a part of justice because it does not fulfil the goal of deterring the crime nor rehabilitating the criminals, retributionists also reject revenge as the notion for the punishment for the offence is not against the person but society itself- if allowed to ensure the act then it simply becomes impulsive, predominantly personal, emotional as well as an act of vindictiveness all anthesis to justice- rather revenge serves as a mould for pleasure for the persons in the face of law<sup>12</sup>. Sir Francis Bacon perfectly reiterates why the concept of revenge no matter how righteous or noble it seems has no place in justice, *"Revenge is a kind of wild justice; which the more man's nature runs to the more ought law to weed it out. For as far as the first wrong, it doth but offend the law; but the revenge of that wrong putteth the law out of office. Certainly, in taking revenge, a man is but even with his enemy; but in passing it over, he is superior for it is a prince's part to pardon"*<sup>13</sup>

Thus, the vindictive act of death penalty ensues into a paradox, a person of the victim himself cannot hunt down the offender as an act of 'revenge', but the state can do so as a collective action to reaffirm the justification of fundamental values in society and balance the morality in the public's eye. But then why even have such a system? Even if we restrict such capital punishments to only serial murders it still fails to serve the point of justice due to the danger of human flaw in the justice system- in 1980s<sup>14</sup> from 200-300 murders only 2% received the death penalty but the criteria to determine them as truly 'deserving' of such punishment is not understood was it economic levels, race, their gender, etc. The issue that arises now is the accuracy of death penalty- once a person has been executed even if he was innocent the reversal cannot be done. The justice system truly is not perfect, judges are susceptible to their own biases which has a severe affect on the capital punishment sentencing such as the fact that

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<sup>10</sup> Michael Graczyk, Texas Executes Christopher Young Despite Victim's Family's Pleas for Clemency, Equal Justice Initiative. (July 2018) Available at: <https://eji.org/news/texas-executes-christopher-young-over-plea-of-victim-family/>

<sup>11</sup> Steven Eisenstat, Revenge, Justice and Law: Recognizing the Victim's Desire for Vengeance as a Justification for Punishment, 50 WAYNE L. REV. 1115 (2005).

<sup>12</sup> Jonathon Jacobs, The Retributive Theory of Punishment, in WHEN YOUNG PEOPLE BREAK THE LAW: DEBATING ISSUES ON PUNISHMENT FOR JUVENILES 53, 53-54 (Karsten J. Struhl & Kimora, 2015).

<sup>13</sup> Francis Bacon, Of Revenge, Essays or Counsels (1625). Available at: [https://www.gutenberg.org/files/575/575-h/575-h.htm#link2H\\_4\\_0004](https://www.gutenberg.org/files/575/575-h/575-h.htm#link2H_4_0004).

<sup>14</sup> NAACP Legal Defense & Educational Fund, Death Row U.S.A., Spring 1993 ("Death Row U.S.A.").

African Americans are more likely to receive a death penalty than their white counterparts, this bias was well seen in *McCleskey vs. Kemp*<sup>15</sup> where even after a well cited argument of racial discrimination in capital punishments the court rejected the defendants plea on its reasoning that he had failed to bring up any evidence of racial discrimination from his 'own' trial. Prosecutors often use this bias even before the trial aware of the jurors biases prosecuting mostly African Americans, the police in America frequently prosecute the areas of black-neighbourhood and 'arrest' offenders from this neighbourhood leading to their justification of applying more 'force' within these regions. Moreover, this discrimination starts before the trial itself but with the biases of the jurors the sentences given are harsher and more unfair- the mechanisms of the court created in the case of *McCleskey vs. Kemp* to prevent any racial discrimination if the 'evidence' is present has failed to prevent such unfair punishments- as trials for capital murder even recently fail to present any actual evidences of discrimination such as the racist language of police officer Mark Fuhrman in OJ Simpson murder case<sup>16</sup>. This means that its entirely possible that the victims of death penalty here may be innocent and be victims of the discriminatory system or the sentence itself maybe unfairly provided, even after the Furman reforms these issues persists as noted by Justice Blackmun ***"We may not be capable of devising procedural or substantive rules to prevent the more subtle and often unconscious forms of racism from creeping into the system."***<sup>17</sup> The racial biases in the courtroom setting is a result of the own mental process<sup>18</sup> occurring without any awareness therefore associating stereotypes to a particular group of people- in this case that minorities are more likely to commit crimes and whites are more often innocent<sup>19</sup> in given circumstances, and this is not a recent phenomena there is almost 60 years of documented history regarding this. Thus, the harsher sentences that is given for crimes such as murder becomes unfair under the guise of implicit biases that is prevalent in our courtroom system, i.e. minority would be given far longer sentences or prevalent death penalties- which may be due to the 'empathy gap'<sup>20</sup>.

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<sup>15</sup> *McCleskey vs. Kemp* 481 U.S. 279 (1987)

<sup>16</sup> Walker, Spohn, and Delone, *The Color of Justice*, 268.

<sup>17</sup> *Callins vs. Collins* 510 U.S. 1141, 1154–1155 (1994).

<sup>18</sup> John A. Bargh, *The Four Horsemen of Automaticity: Awareness, Intention, Efficiency, and Control in Social Cognition*, in 1 *HANDBOOK OF SOCIAL COGNITION* 1 (Robert S. Wyer, Jr. & Thomas K. Srull eds., Psychology Press 2014) (1994).

<sup>19</sup> Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 *J. PERSONALITY & SOC. PSYCHOL.* 876, 876 (2004).

<sup>20</sup> James D. Johnson et al., *Rodney King and O.J. Revisited: The Impact of Race and Defendant Empathy Induction on Judicial Decisions*, 32 *J. APPLIED SOC. PSYCHOL.* 1208, 1215 (2002). (Jurors were more likely to give lenient sentences to 'white' defendants than black in same factual cases.)

Another justification of such sentences is that it would deter people from committing such offences, although on paper it seems to be correct there isn't any actual empirical data to suggest such an outcome<sup>21</sup> in fact some studies suggest the opposite to be true<sup>22</sup>. The offenders of crime often do not consider the actual sanction for their offence<sup>23</sup>, although they do know that their actions carry a heavy consequence- increasing penalties would have no effect on them; a study showed even when being aware of the sanctions a harsher penalty did not provide a greater 'deterrence' meaning increasing the maximum sentence from 2 years to 5 was only seen 'slightly' severe sentence. More than that a review of 50 studies have concluded that harsher and longer sentences are more likely to create re offenders with prisoners who spend around 30 months<sup>24</sup> in prison committing an offence again just after release- as per US Department of Justice<sup>25</sup> violent offences such as murder only have a 30.4% release rate after spending 20+ years in prison and yet there are more cases of re-offending murderers with harsher sentencing. These harsher policies of severe, certainty, and celerity of punishments for crime does nothing to deter it, increasing the speed of punishment produces no deterrent effect at all but misjudgements could also lead to delayed sentences which is worse in the long run<sup>26</sup>. Even if the increased punishment for murder is justified on the ground of its threat to society and disproportional presence in media- it will not deter crime in any manner but will have an inflationary effect on punishments for all other types of offences making it so that- harsher sentences are levied upon even the smallest of offences such as vandalism, minor theft, drug possession may be seen as a potentially 'escalating' towards crimes of murder and violence thus punishment would be bought on all levels<sup>27</sup>. Such instance would produce a 'flat' murder curve but at the cost of a high mass incarceration, it was observed in US post 1990s policy to tackle crime with an increase in police officers patrols, certainty of sever sentences states such as Minnesota saw a peak rise from 90s to 2015 in the rate of mass incarceration with the National average per 100,000 being approximately 500 yet the crime rate increased rather than

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<sup>21</sup> Hood, R. 1989. *The Death Penalty: A World-wide Perspective*. Oxford: Clarendon Press.

<sup>22</sup> Bowers, W.J., and G.L. Pierce. 1980. "Deterrence or Brutalization: What is the Effect of Executions?" *Crime and Delinquency* 26: 453-484.

<sup>23</sup> 7 Raymond Paternoster, "How Much Do We Really Know About Criminal Deterrence," *Journal of Criminal Law and Criminology* 100, no. 765 (2010).

<sup>24</sup> Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment," *The Sentencing Project*, November 2010.

<sup>25</sup> Danielle Kaeble, *Time Served in State Prison, 2016*, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, November 2018, NCJ 252205.

<sup>26</sup> Kelli D. Tomlinson, "An Examination of Deterrence Theory: Where Do We Stand?" *Federal Probation* 80, no. 3 (December 2016): 33-38.

<sup>27</sup> Jonathan Simon, *How Should We Punish Murder?*, 94 *Marq. L. Rev.* 1241 (2011).

decreasing<sup>28</sup>. Amnesty International published in one of its reports that when compared to the states in US that allow death penalty in 2004 the average murder rate per 100,000 population was 5.71 compared to the states with no such penalty having a rate of 4.02. The report claimed that harsh sentences do not stop crime- these state sanctioned punishments simply keep the 'cycle' of violence active; further individuals who commit crime are in such circumstances that even if being aware that their actions may carry out their death it does not deter them from committing such crimes.<sup>29</sup>

Lastly what can be argued to be the main issue with such punishments carried out for murder is that more than often they are delayed over a long period of time. It is said that justice delayed is justice denied- if justice is not served timely, it is justice denied. For sentences of murder in form of imprisonment and death penalty it can be delayed for a very long period of time. The Trial Courts in India<sup>30</sup> sentenced approximately around 165 people to death row in the year 2022 an increase from 146 in 2021- in total around 539 persons are in death row awaiting their execution dates the number has seen a total increase of 40% of prisoners. But this means that most don't even go through their executions date as the rate of disposal between the trial courts and supreme court is quite slow and lengthy process in 2018 out of the 162 death row sentences only around 6 were confirmed by the Supreme Court often the others either remain in session going back and forth or being lost or get commuted to life imprisonment. In most circumstances the execution of the person is delayed to the point that after some time the courts acquit them of their sentence in many circumstances this is a result of faulty investigation or improper evidence collection in India 216 death row convicts have given reports that they were tortured under the custody of the Indian police as a way to get confession for the offence- the methods of torture described are barbaric ranging from electrocution to being immersed in boiling water<sup>31</sup>; many of these prisoners were not given the right to their reason of arrest or being produced before a magistrate- something that the Indian Constitution<sup>32</sup> provides. This delay is a complete injustice as this systematic flaw does not deliver justice at all, these inmates may

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<sup>28</sup> Raymond Paternoster, "How Much Do We Really Know About Criminal Deterrence," *Journal of Criminal Law and Criminology* 100, no. 765 (2010).

<sup>29</sup> Campaigning Toolkit, *Death Penalty The Ultimate Punishment*, Amnesty International, Index: Act/015/2008,

<sup>30</sup> Himanshi Dhawan, 165 sentenced to death in 2022, highest in 2 decades, *The Times of India*, Jan 30<sup>th</sup> 2023. Available at: <https://timesofindia.indiatimes.com/india/165-sentenced-to-death-in-2022-highest-in-2-decades/articleshow/97424728.cms?from=mdr>

<sup>31</sup> Harry Stevens, Aparna Alluri, Justice Delayed, Far too many people spend years on death row before they are told they won't be hanged, *Hindustan Times*, May 6<sup>th</sup> 2016. Available at: <https://www.hindustantimes.com/static/deaths-door/justice-delayed-death-penalty.html>

<sup>32</sup> Article 22 of the Indian Constitution.



be innocent or framed for the crime or even be guilty of the offence but this lack of care by the system towards them simply prolongs their suffering, such as Clarence Ray Allen who was a blind inmate in death row for 23 years before being executed under the California Death penalty via a lethal injection. Its even more horrific in the cases of innocent people becoming the victims of delay or administration of the death penalty. In a report<sup>33</sup> by the Death Penalty Information Center has stated that since 1976 out of the 1,532 death row executions 185 were innocent and were exonerated after their conviction. Such cases are unfortunately quite common with innocent people being convicted for several years in death row prisons such as Anthony Hinton who on a false charge was convicted in 1985 and was released as recently as 2015 from death row, or the case of the 'Birmingham Six' six Irish convicted in 1974 for a crime they did not commit and were let go only in 1991. Delaying of such sentences causes sever mental and physiological harms to these individuals as they are treated brutally by the system, society and law enforcement. Hugh Callaghan one of the innocents convicted talked about his experience ***"I got some beatings in there from the screws. The other prisoners didn't like you because they knew what you were in for. I couldn't believe what the police did. They lied. They told things that I didn't say."*** Even after 50 years from their false conviction the perception of people does not go away in the eyes of many Callaghan was still a 'bad boy'; the media also drums up such false narratives with the Sun even supporting the then false sentence by stating ***"We would have been tempted to string 'em up years ago."*** Meanwhile, the police till to this date has failed to solve the actual case and the criminal case against three of the officers involved were dropped in 1993 where Dept Supt George Reade had the audacity to still proclaim in ***"our eyes their guilt is beyond doubt."*** to the Sunday Telegraph<sup>34</sup>.

The system is severely flawed such wrongful sentences are quite common with lack of proper legal representation, official misconduct, false or misleading evidence, fabricated or forced confessions are just some of the many reasons for it- worst of all by the time a proper exoneration is undertaken almost decades have passed by; its injustice to the innocent who serve the same or if not more time than actual convicts. Even if 4%<sup>35</sup> of people convicted are

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<sup>33</sup> DPIC Analysis: Causes of Wrongful Convictions, The Most Common Causes of Wrongful Death Penalty Convictions: Official Misconduct and Perjury or False Accusation, Death Penalty Information Center. Available at: <https://deathpenaltyinfo.org/stories/dpic-analysis-causes-of-wrongful-convictions>

<sup>34</sup>Rowan Moore, Why the Birmingham Six's story must not be forgotten, The Guardian. March 26<sup>th</sup>, 2022. Available at: <https://www.theguardian.com/uk-news/2022/mar/26/why-the-birmingham-six-story-must-not-be-forgotten>

<sup>35</sup> Samuel R. Gross, Barbara O'Brien, Chen Hu, and Edward H. Kennedy, Rate of false conviction of criminal defendants who are sentenced to death. Proceedings of the National Academy of Sciences of the United States of America, 111 (20) 7230-7235. (April 28, 2014) Available at: <https://doi.org/10.1073/pnas.1306417111>

innocent it's still a complete act of injustice, even after exonerated their horrors will follow them for the rest of their lives, thus its too great of a risk to have such a harsh system in place.

### **The solution: How do we punish murder?**

Within the previous segments we have described that murder to its core is such a crime that's abhorrent to the integrity of society its an act that threatens the scared life of everyone in society- thus there must be some legislation to prevent such acts from occurring again. The most common punishment that comes in the mind for murder is in the form of death penalty or a long-time imprisonment, but the former is far more common. Death as a consequence for killing someone is quite attractive, is it not justice to take the life of a person who does not value the life of other? As per a poll by Gallup 7 in 10 Americas support capital punishment for murder with almost 37% supporting it on the philosophy of 'eye for an eye'. But what most don't realize is that this method of punishment is not 'justice' rather revenge- and as established early revenge has no place in modern day law, if in progressive society laws still sway to one's emotions in short term outbursts would be irrational rather law serves a position of morality. Even the argument that the victim's family would have wanted this should hold no ground at all, its simply put an emotional fallacy historically in courts the victims are entitled to compensation but not to offer their say for the appropriateness of the punishment that lays in the hand of the court. As aptly put in the case of *Robinson v Maynard*<sup>36</sup> ***"because the offense [of murder] was committed not against the victim but against the community as a whole . . . only the community, speaking through the jury, has the right to determine what punishment should be administered."*** Therefore our first attempt in search for the correct punishment should be to not sway to the 'irrational public' especially for sensationalized cases, this does not mean that law should be made without the public in mind as it is its duty to serve the people but rather we need to acknowledge that the public is quick to angry, outbursts and paranoia their decisions would be short term not for the long term.

Our focus should be on targeting what causes crimes like murder to take place in the first place. Punishing the offence is not enough we also have to structure our prison system to offer rehabilitation, the ideal perspective is to create policies that focus on the socio-economic issues that are responsible for such offences no person is simply born a murderer it's the circumstances that change and shape a man into becoming a killer, family dynamics, peer

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<sup>36</sup> 829 F.2d 1501, 1505 (10th Cir. 1987).

influence, addiction to substances, abusive households, etc. it's also been commonly reported that these 'anti-social' behaviours that they exhibit are often as a result of their household dynamics often a neglectful or abusive parent<sup>37</sup>. Even with some given exceptions the main aim should be to prevent the occurrence of murder we need to attack the roots of such issue- to develop policies that aid poorer families, provide institutional support system to the youth as well as the single parent to gradually break the cycle of abuse.

But when it comes to punish murder, we must not make haste to our emotions, rather our goal should be that of rehabilitation. If we look at the EU it does not have a death penalty since 1996 (except Belarus and Russia) and its rate of crime especially murder is low to countries where the penalty is still applicable such as America and India. But the point of our solution is rather the prison system most of the Nordic nations have installed in their countries- they all focus on rehabilitation for the crimes, and if we compare the rate of second-time offences we can clearly observe that this system is far more effective. Such as the prison system of Norway, in the country the rate of murder per 100,000 is only 0.54 which is quite low when compared to a similar economic country the USA where the rate is much higher 6.0<sup>38</sup>. The Kriminalomsorgen system operates to safeguard the citizens as well as allow for the rehabilitation of the criminals to prevent recidivism, these prisons focus on correction ensuring that no one should serve stricter sentence than the one that is necessary to ensure public safety- the maximum sentence in Norway is around 21 years and in the most extreme circumstances where the person is at a risk to reoffend it is extended by 5 years. The system ensures that no prisoner is treated in inhumane conditions no matter how heinous their crimes were such as Anders Breivi the infamous supremacist responsible for the deaths of 77 persons has not been released nor given death but is still under detention for 30 years. One of the greatest strengths of such model is that its objective is to integrate rehabilitees in society, local organizations often are allowed to offer employment opportunities at no cost to the prisoner or the state; this system has proved itself to be effective with Norway having one of the world's lowest incarceration rates as well as lowest re-offending rates<sup>39</sup>.

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<sup>37</sup> Patrick Fagan, *The Real Root Causes of Violent Crime: The Breakdown of Marriage, Family, and Community*. The Heritage Foundation. (March 17 1995) Available at: <https://www.heritage.org/crime-and-justice/report/the-real-root-causes-violent-crime-the-breakdown-marriage-family-and>

<sup>38</sup> Katharina Buchholz, *U.S. Homicide Rate Comes Down From Pandemic Peak*. Available at: <https://www.statista.com/chart/31062/us-homicide-rate/>

<sup>39</sup> Berger, Ryan, *Kriminalomsorgen: A Look at the World's Most Humane Prison System in Norway* (December 10, 2016). Available at SSRN: <https://ssrn.com/abstract=2883512> or <http://dx.doi.org/10.2139/ssrn.2883512>

While it is easy to suggest for such systems to exist in every country, we must also consider that Norway and other Nordic nations have a relatively small homogenous population spread quite close to one another as well as them having a higher per capita GDP, thus allowing them to implement such system without any leeway. But in the same guise society must evolve to meet such problems one of the most effective methods would be to slowly make prisons more habitable and humane, the prisoners punishment must not be retributive them being in prison is their punishment- they should still be treated humanely, because even in case of murder or homicides we must consider that the background of these individuals; from poorer family, abusive households, etc the only way to eliminate their anti-social behaviours and thoughts would be to rehabilitate them. Harsher sentences as established earlier do not correlate to deterring crimes, historically capital punishments have always been responsible for creating a penal 'heat' it has been grounded in the idea of 'revenge' or 'vengeance' and it allows for a very negative and hateful beliefs to foster not only among the people but among law enforcement as well leading to biases in judgements. Unfortunately most modern prisons system still run by the logic of incapacitation<sup>40</sup> to keep the murders locked away forever as means to safeguard the society by 'preventing' and 'predicting' crime; which is a futile effort as most murder like crime is committed by people not caught by the law not only that this just creates more financial burden on the state and people to run these prisons- and when not able to do so they reduce the funding increasing inhumane conditions.

Our purpose to find the best approach for punishment for murder, it should be to treat prisoners from a more humane dignity and rehabilitative perspective, in the current day we have international human right laws attempting their best to fix the prison system such as the Universal Declaration of Human Rights, European Convention of Human Rights and Torture Convention with in England the Law Commission in 2005 charted a book titled "A New Homicide Act for England and Wales"<sup>41</sup> where it sought to reform the prisons and law of murder- which shows the willingness that even the state shows to be against capital punishments. But the entire world system cannot just expel the death penalty without improving the prison system if we were to do so it would create a huge issue, mainly the punishment for murder would become a politically charged demand to increase the sentences,

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<sup>40</sup> Franklin E. Zimring, *The Great American Crime Decline* 76–81 (2007).

<sup>41</sup> Great Britain. (2005). *A new homicide act for England and Wales?: A consultation paper*. Norwich: TSO.

the level of punishments entirely as well as the scale of penal sections.<sup>42</sup> Particularly we have to acknowledge that punishment for the crime of murder must exist but it must not be life diminishing- the condition to keep a person in prison should be to improve their deviant actions at the same time we ought to keep the person within as a way to keep society safe in either case we must keep it separate from any populist political institution and allow for a more periodically review board to prevent any risks such as that of European Court of Human Rights<sup>43</sup>. The voices of the victims are essential to the judgement of the cases but when we try to limit the punishment for murder we must also realize that the victims participation must also be changed in some way, the proposal I put forward is to allow the victims voices to be heard but not play the main role in determining the punishment- rather we should look at it as a reference point for punishment for e.g. we can determine from the victims brutal death or the harm it has caused to the family to determine the level of rehabilitation to be provided to ensure that the criminal is truly reformed and serves his punishment within the prison.

The optimistic belief that “capital punishment shall be frowned by our future generations” or “it’s a thing of the barbaric past” is naïve and should not be considered as a part of the solution because it leads to irrational, and unsubstantiated assumptions as it starts to assume that the current trends are all but irreversible<sup>44</sup>. Another thing we must keep in mind is that the abolition of death penalty must become a gradual process, the world’s most populated nations- India, China, USA still have death penalty<sup>45</sup> it is only in recent times that the US has started to gradually adapt away from capital punishments<sup>46</sup>, but the prison system has yet to be improved. The threat against the state or political violence still to this day illicit harsher sentence Iran still punishes terrorism with death penalty<sup>47</sup>, in fact the threat of terrorism allows for the justification of death penalty especially amongst the people<sup>48</sup> allowing the state to kill- but it

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<sup>42</sup> Jonathan Simon, How Should We Punish Murder?, 94 Marq. L. Rev. 1241 (2011). Available at: <http://scholarship.law.marquette.edu/mulr/vol94/iss4/7>

<sup>43</sup> Dirk Van Zyl Smit & Sonja Snacken, Principles Of European Prison Law And Policy 332 (2009).

<sup>44</sup> Hirschman A (1991) *The Rhetoric of Reaction*. Cambridge, MA: Harvard University Press.

<sup>45</sup> Dieter RC (2019) Introduction: international perspectives on the death penalty. In: Steiker CS and Steiker JM (eds) *Comparative Capital Punishment*. Cheltenham: Edward Elgar Publishing, 2–27.

<sup>46</sup> Jonathan Simon, How Should We Punish Murder?, 94 Marq. L. Rev. 1241 (2011). Available at: <http://scholarship.law.marquette.edu/mulr/vol94/iss4/7>

<sup>47</sup> BBC (2022) Iran protests: 100 detainees facing death penalty—rights group, 29 December.

<sup>48</sup> Johnson D (2019) A factual perspective on capital punishment. *Journal of Human Rights Practice* 11(2): 334–345.

also leads to the prosecution or the law to misuse it as a method<sup>49</sup>, especially because of how hard it is to truly refute such a judgement<sup>50</sup>.

What this means is that article proposes that for punishment for murder- rehabilitation of the criminals should be our main motto besides punishing for their offence, for this to be successful we must focus on developing a prison system that allows for a more humane approach respecting the rights of the criminals. Before capital punishment is abolished, when the death penalty was abolished in the UK, Canada, France, and Germany the public still supported it but with gradual time and prison reforms people started to become more accepting of the decision. Therefore, we must realize that the public will have its outcry for a harsher punishment when a heinous sensationalist crime occurs, but majorly the public is more often than not showing signs of abandoning harsher sentence for criminals and putting more incentives for their rehabilitation. This does not mean that exceptional cases of punishment must not exist as it's quite naïve to expect every nation to embrace a death penalty free approach, especially for some of the more outrageous heinous crimes that of rape, murder, human trafficking, etc. however a humane prison system is a correct step towards criminal law reform which over a gradual period of time would 'soften' the public's approach to something as drastic as capital punishment.

## Conclusion

The paper has analysed the different perspectives that have been commonly cited for the purpose of justifying capital punishment for murder, from ones that base it around the moral obligation to 'avenge' the victims or for the 'vengeance' of the victim's family to justifying that harsher sentences will create an 'example' for other criminals who under fear wouldn't dare committing such heinous offences. But as given in the paper this is relatively false as countries that have encouraged the usage of capital punishment still find themselves under the whims of seriously high crime rates with murder being a major contributor, then it's more accurate to state that associating harsher punishment with less murder is factually false. The approach of our prison system is based around a punishment system of incapacitation not rehabilitation- if individuals are deemed to exhibit characteristics that are 'deviant' to society the goal of any

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<sup>49</sup> Dudai R (2021) Exception, symbolism and compromise: The resilience of treason as a capital offence. *British Journal of Criminology* 61(6): 1435–1451.

<sup>50</sup> Seal L (2014) *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory*. Abingdon: Routledge.

institution should be to aim rehabilitate the person back into the society or if that is deemed to be risky to keep them from the confines of society however, the latter does not mean we treat the individuals without human dignity and respect. To put forward a moral argument it is us inherit obligation to not 'fall' to the levels of the criminal, more than that our main focus should be to create more humane conditions for these offenders regardless of their ability to integrate into society. The main conflict that arises in such reforms is the human feeling of 'unfairness', we as humans are collectively moral beings often conforming to the norms of society the field of philosophy and psychology have cited a numerous number of reasons for why people act in a 'moral' manner but primarily when observing such crimes people act on their emotions leading to massive 'irrational' outcry calling for the culling of the ones accused of the crime- even if they have no plausible way to verify if the accused truly committed the offence. Its naïve to believe that such beliefs would simply fade away with time- as history suggests even in the days of Europe's revolutions people are moral animals susceptible to their emotional reactions thus policymakers need to ensure that their duty on reform of such system must not be influenced by pressure from the public instead, they should seek aid from advance researchers in field of criminology, sociology, psychology, and many more to address the issue for why murders even commit such an heinous offence- this will be able to gradually solve the issue of the offence, even allowing policymakers of government institutions to lower the rates of such offences further and solve other issues that plague the communities.