Lyceum India Journal of Social Sciences || ISSN: 3048-6513 (Online)
Volume: 2 Issue: 7 || December 2025 || DOI: 10.5281/zenodo.18051640

Capital Punishment and the Middle Path: Towards a Madhyamapratipad Framework of Justice

Nameirakpam Clinton Singh[1] & Dr. Mangoljao Maibam[2]

ABSTRACT:

Capital Punishment continues to be a contested and debated issue in the realms of moral, religious, political and legal discourse. This article presents an attempt to critically examine capital punishment through the theoretical lens of the four major theories of justice: deterrence, retributive, restorative, and reformative theories, with the aim of understanding their conceptual foundations, practical applications, and limitations. It is found that no single theory provides a coherent and consistent rationale for the application of the death penalty in modern constitutional democracies. It also brings into light the inherent ambiguity and subjectivity in categorising a crime as 'rarest of the rare' and 'heinous crime', which may result in inconsistency and arbitrariness in sentencing. These challenges call for an in-depth and all-encompassing reflection on the questions of equality before law, natural justice, and the rationale of deterrence associated with capital punishment. In response to these challenges, the article proposes a normative framework called the 'Madhyamapratipad' of capital punishment, which seeks to synthesise the strengths of the aforementioned four major theories of justice, while mitigating their weaknesses. This normative framework calls for the need to limit subjectivity in judicial interpretation while giving greater weight to reformative and restorative justice, alongside a strengthened focus on victim compensation and proportional accountability. *The article concludes by suggesting that a moderate, integrative approach to punishment may provide a more balanced and constitutionally grounded way of engaging with the question of capital punishment.*

KEY WORDS: Retributive, Reformative, Restorative, Deterrence, Madhyamapratipad.

Introduction:

Capital punishment remains one of the most controversial subjects today. It has invoked intense and divisive debates over this issue for years, across philosophical, ethical, religious, social, economic, political and empirical standpoints. Those who oppose the death penalty and those who advocate the death penalty have their stances grounded on the theories of punishment: 'Deterrence', 'Retributive', 'Reformative', and

[1] PhD Research Scholar, Department of Political Science, Manipur University.
[2] Assistant Professor, Department of Political Science, N. G. College.

'Restorative'. To understand the death penalty, we need to clearly dwell on these theories and look into their merits and demerits and find the 'middle path'. We need to analyse when the 'death penalty' is being imposed on a convict and the terms like the 'rarest of the rare' and 'heinous crime', and their ambiguities in meaning and their arbitrariness. The question one needs to really ponder over is whether the execution of a particular death sentence awarded to a convict serves as a deterrent or would it be counterproductive. Also, questions like 'should reformative and restorative justice be given more importance than deterrence and retributive theories?' need to be deliberated in this evolving world.

Theories of Punishment:

First and foremost, we need to discuss the four theories of punishment on which punishment is grounded: (i) Deterrence, (ii) Retributive, (iii) Reformative and (iv) Restorative theories. This discussion will give us the idea of why punishment is being given.

I) Deterrence Theory:

According to deterrence theory, people choose to obey or violate the law after calculating the gains and consequences of their actions.

There are two types of deterrence – 'General' and 'Specific'. General deterrence is to prevent crime in the general population. The state punishes the offenders to serve as an example for others in the general population who have not yet participated in criminal events. This makes the general population aware of the unpleasant experiences of official punishments in order to prevent them from committing crimes. As the general deterrence is to deter those who witness the infliction of pain upon the convicted from committing crimes themselves, corporal punishment and the death penalty were conventionally, and in some places are still carried out in public, so that others can witness the pain.

Specific deterrence is planned to deter only the individual offender from committing the crime in the future. According to this, punishing offenders severely will make them unwilling to commit the same crime in the future. Enough pain to offset the amount of pleasure derived from committing the crime should be imposed by the state.

Classical Philosophers of Deterrence Theory:

We can also trace the deterrence theory of punishment to the early works of classical philosophers such as Thomas Hobbes, Casare Baccaria, and Jeremy Bentham. These thinkers provided the foundation for modern deterrence theory in criminology.

a) Thomas Hobbes:

In Leviathan, published in 1651, Hobbes described men as neither good nor bad. He said in the state of nature, men pursued their self-interests, and this led to inevitable conflict and insecurity. So, men entered into a social contract, which led to the development of the state. The duty of the state is to enforce the social contract, and it has to use force to uphold it. But crimes may still occur. So, Hobbes said that the punishment for crime must be greater than the benefit derived from committing the crime. And the reason for punishing the individuals for violating the social contract is deterrence, and this serves to maintain the social contract.

b) Casare Baccaria:

According to Casare Baccaria, laws should be judged by their inclinations to give the "greatest happiness shared by the greatest number". As the people are rationally self-interested, they will not commit crimes if the costs of committing them are greater than the benefits or pleasures derived from engaging in crimes. Beccaria argued, "Punishments are unjust when their severity exceeds what is necessary to achieve deterrence." (Ihekwoaba etal. 2005, p.234)

In order to have a deterrent value, punishment must be in proportion to the crime committed. He argued that the seriousness of crimes should be measured by the extent of harm done to society. He also maintained that pleasure and pain are the motives of rational people, and the pain of punishment must be greater than the pleasure derived from committing a crime.

c) Jeremy Bentham:

Jeremy Bentham was one of the most prominent 18th-century intellectuals on crime. According to him, the duty of the state was "to promote the happiness of the society, by punishing and rewarding". He did not like the arbitrary imposition of punishment and barbarities in the criminal codes of England during his time. He also said that all punishments are evil unless it is used to avert greater evil or to control the actions of offenders. Excess punishment beyond what is essential to deter people from violating the law is unjustified. And the objective of the law is to bring "greatest happiness to the greatest number" by increasing the pleasure and lessening the pain of the community. (Ihekwoaba et al, 2005, p.233-237)

II) Retributive Theory:

According to Kant's retributive theory of punishment, punishment is not justified by any good results but by the criminal's guilt. Criminals must pay for their crimes, and the punishment given must fit the crime. This theory institutionalises punishment in the structure of law and state in an organised manner, and this replaces private punishment. Kant argued juridicial punishment should never be imposed as a means for promoting another good, either with respect to the criminal himself or to civil society, but must in all cases

be administered only on the ground that the individual on whom it is inflicted has committed a crime. He disregards the imposition of punishment based on utilitarianism: "it is better that one man should die than that the whole people should perish". (Hastie W, 1887, p.144) Justice cannot be bartered away for any consideration, as it would cease to be justice.

Kant used the principle of equality as the principle and standard of public justice. It means the undeserved evil that anyone commits on another should be regarded as perpetrated over him. It means 'If you slander another, you slander yourself; if you steal from another, you steal from yourself; if you kill another, you kill yourself.' (Hastie W, 1887, p.145) According to him, this is called the 'right of retaliation (Jus talionis). And this is the only principle that can assign both the quality and the quantity of a just penalty in regulating a public court. So, Kant asserts, "Whoever has committed a murder must die." (Kant 1797)

III) Reformative Theory:

Reformative theory focuses on the reformation of the criminal. It holds the view that one does not cease to be a human being even if he or she commits a crime. According to this theory, the goal of punishment is to bring about the moral reform of the offender. So, during the period of his incarceration, he would be given education, art, industry, etc., so that he would be a law-abiding member of society after his release. It maintains that a revolutionary transformation may be brought about in the offenders' characters through a sympathetic, tactful, and loving treatment. This theory is against severe punishment as it can merely devalue them. So, it rejects capital punishment and corporal punishment as they destroy the humane qualities of human beings. It only supports mild imprisonment with probation.

The reformative theory emphasises not the crime itself or the harm caused or the deterrence effect of the punishment, but the person and personality of the offender. It says a crime is committed as a result of psychological factors, personality defects, or social pressures, and also of the conflict between the character and the motive of a criminal. So, the reformative theory aims to strengthen the character of the man so that he may not become an easy prey to his own temptation. It wants humane treatment of prisoners inside the prison and facilitation of education, moral training and personality development of the criminals. And this can be attained through the agencies of parole and probation. (Lawctopus' Law Journal Knowledge Cuter 2015, P.1-32)

It can be mentioned that in Natoram Singh Vs State of Punjab, the Supreme Court of India has taken the following stance –

"Reformative approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to secure social justice". (Bench: J Singh, VK lyer 1978).

IV) Restorative Theory:

According to restorative theory, crime destroys the relationship between people. So, there are obligations to restore things right. In the concept, the offender, the victim, and the community are involved in promoting repair, reconciliation and reassurance and secure justice through this. It focuses on the disputants and on accountability, negotiating justiciable make up for the crime, and repair of the harm. As the crime affects the whole community, it advocates promoting people to help in the resolution of criminal conflicts that emerged in the communities to reverse the trend. It gives a special role to the community to address crime. Restorative justice identifies three clients: individual victims, victimised communities, and offenders. As opposed to the legal definition of crime as a violation against the state, this theory understands crime as an offence against people within communities. So, those who are affected by crime are allowed to play an active role in restoring peace between individuals and within communities. (Theo G. 2007, P. 19-30)

'Restorative justice' can refer to the following programs:

1) Victim-Offender Mediation
2) Family Group Conferences
3) Healing and Sentencing Circles
4) Community Restorative Boards.

Critical Evaluation of the Theories of Punishment:

i) Critical evaluation of deterrence theory:

There is now a global consensus that capital punishment and corporal punishment advocated by the deterrence theory do not serve as a deterrent any more than life imprisonment. The question "Does the convict deserve the death penalty?" is not addressed, as punishments are justified based on an outraged society. The punishments advocated by the deterrence theory make the prisoners on death row face extreme anxiety and the agony of an impending execution, and these lead to a situation of near torture. The prisoner does not deserve this. There are problems with arbitrary sentencing also, as there are no principled methods or standards for giving punishment. This theory ignores the scope of reformation and restoration. It also ignores the changing world scenario in terms of development, new codes of criminal procedure, the emergence of constitutional due process standards, etc.

ii) Critical evaluation of Retributive theory:

Some of the merits of retributive theory can be that it regards punishment as an end in itself, unlike the utilitarian's view, which regards it as a means. It is impartial and neutral and is neither cruel nor barbaric but civilised because punishment is given in proportion to the crime. Involuntary acts, like acts of insanity or those of immature persons, are excluded. This theory regards human dignity as it disregards the punishment of a man as a means or purpose of another.

But the very nature of morality is subjective, and this makes it difficult to deliver punishments for crimes. The wickedness of crimes needs to be comparable and so requires a common moral standard for assessing crimes, which is impossible. So, retributive theory faces the problem of unifying morality for punishing evil. Secondly, retributivist theory faces problems in dealing with amoral crimes. Crimes like rape, murder, theft, etc., are both illegal and immoral, but there are crimes like traffic offences, jaywalking, etc., which, although illegal, are not immoral. So, in such crimes, the punishment cannot be given in proportion to the evilness of the crime because of the absence of evilness. Thirdly, retributive theory does not support mercy and pardons. It can also be found that by pardoning a criminal instead of punishment, sometimes a greater good can also be attained.

iii) Critical evaluation of reformative and restorative justice:

It is found that both reformative and restorative justice empower both the offenders and victims to deal with issues and concerns surrounding the crime and its consequences. These concepts provide both parties with a process which could lead to a new insight, and reduces level of anxiety and contribute to therapeutic gains. It also deals with the concerns with respect to the offender's eventual release into the community and gives a chance of restoration and reformation. But these theories lack punitive elements and are therefore opposite to the basic principle of sentencing, which requires infliction of harm on the offender in proportion to his crime. Moreover, the outcome of these theories would depend on the personalities and mindsets of the victim and the offender. Hence, it lacks rationality. It is also being criticised that reformative and restorative justice would almost turn criminal justice into civil justice, as a punitive response is absent.

Madhyamapratipad of Capital Punishment:

After referring to many articles and based on my consultation with Advocate Irom Denning of the Supreme Court, I formulated my moderate approach, i.e. the "Madhyamapratipad of Capital Punishment". This approach will take the middle path as the public views on capital punishment are different from judicial views, and the purpose of jurisprudence is to encompass both of the views and formulate a moderate approach, as jurisprudence can never be one-sided and as jurisprudence, legal judgment, or interpretation

of laws, etc., are done by humans. So, there should always be a moderate approach when it comes to jurisprudence (i.e. jurisprudence should be a balancing scale).

The 'rarest of the rare' case is a subjective term as it depends on the interpretation by individuals, i.e. the judges, and is arbitrary and ambiguous. The imposition of capital punishment on a convict is done by a human, i.e. the judge. So, a question can arise from this: "Can a human, i.e. the judge, give a verdict to kill a human, i.e. the convict?" "Does a human, i.e. the judge, have the right to give the verdict to kill a human who has the same human rights and entitlements?" We need to know on what basis the judge is imposing the capital punishment. Actually, capital punishment is given when the case falls into the "rarest of the rare" category. But "rarest of the rare crime" is associated with "heinous crime", but the term heinous crime itself is used with ambiguity and arbitrariness because sometimes, when the convict belongs to a Muslim community, the crime that he committed is interpreted as "heinous crime" and if he is a Hindu, it is not categorised as heinous.

When a child victim was raped and murdered in the Raju Jagdish Paswan Vs State of Maharashtra case, it was interpreted as a heinous crime, and he was given a death sentence. But in the Tandoor case, the convict is now given a parole.

The Indian Penal Code is very old, and it was enacted on 6 October 1860. It is more than 150 years old. Since the time of its formulation, it was stipulated that capital punishment would be given when the crime is 'rarest of the rare', but gruesome crimes are still prevailing. This shows that the concept of deterrence is no longer effective when imposing capital punishment. In other words, capital punishment does not deter crimes. So, more emphasis should be given to reformative and restorative justice.

In reformative and restorative justice, again, we need to focus on the 'victim-compensation'. One question can be raised on this: "What does the state do when a victim is killed?" The state conducts the trial for the crime. But, again, "why does the state conduct the trial and what is the reason behind the jurisprudence?" The state says the citizens are its subjects, it is a welfare state, and so it has to be concerned about the life and dignity of its subjects. So, when an individual, i.e. a convict, violates the life and dignity of another citizen and is deprived of these rights, then the culprit is given punishment based on these reasons. Again, there is a question that can be raised on this: "What does the victim get even though the culprit is given punishment?" So, more focus should be given to victim compensation. It can hence be said that there is no longer a deterrence effect of capital punishment, and the focus should be given more to victim compensation, restorative and reformative justice.

Now, in relation to the above discussion, we can focus on the lenient views of justice. Leniency is very controversial. When a person commits a crime, if he or she does not have any criminal record earlier, or if he or she highly contributes to society, or if he or she is a person of good character, etc., then there will be lenient views. But there is a question, "Who can have leniency?" In the end, leniency falls to those persons who are rich, who are able to hire good lawyers. So, there is a saying, "Justice is for the rich". The victim is given compensation as the culprit is rich, and the state, too, performs its role of giving punishment (lenient punishment). But is this sufficient for justice? So, all these issues need to be clearly addressed and make sure that provisions of justice in the law are not misused. The solution to this can be given by always adopting a moderate approach to punishment or a moderate approach of jurisprudence, as interpretations of laws are always ambiguous and arbitrary.

Based on these reasons, more emphasis should be given on reformation and restoration of the convicts. In reformative and restorative justice, the convict will be imprisoned in a well-conditioned prison to reform and restore him and bring him back to society based on delinquency. But what is delinquent? This term refers especially to young people and their behavior which shows a tendency to commit crimes. This behaviour is not normal. The convict may not know morality, and it may be possible that he does not have any idea about social norms, conventions, regulations and traditions, and these might have led to the crime. So, the convict with all his full human rights will be imprisoned and will be given moral training and education to enhance his personality. And when the jail authorities or probation officers have found out that the convict has fully reformed, then he can be given probation, parole and reduced jail terms and brought back to society. Hence, it can be said that more emphasis should be given on "Corrective" while giving punishment.

The Court has failed to interpret the laws of punishment without being subjective and by filtering out all personal predilections. For example, if a judge feels that the convict is delinquent, then he needs reformation and correction. But we need to raise a question here, "What does the law say and can a person be above the law?" The answer to this is "No". So, the judge himself is bound by the law. And so, as per the law, if the crime fits the "rarest of the rare" category, then the judge has to impose the death penalty. But after giving the punishment, the judge would mention in the judgment what he thinks of the crime, the circumstances and nature of the crime, and also what he wants or does not want as per his "conscience". Also, at the same time, in the judgment, the judge would point out what the law says or what the law squarely covers of the crime committed, and he would also mention the facts and circumstances of the crime which are squarely covered by the law and the sentence or punishment would be given as dictated by the law. This shows implicitly the differences in the stance of the law and the conscience of the judge.

In the end, we should be clear about whether we want to criticise the law or the followers of the law, like courts, judges and their interpreters, etc. And if we want to criticise the law, then we have to question the law provisions relating to capital punishment. We have to analyse why law provisions relating to capital punishment have been abolished in foreign countries and the judgments that abolished it. And as the concept of deterrence no longer holds, we need to focus more on reformative and restorative paths. We need to have an approach that rests on the strengths of the theories of punishment, such as deterrence, retributive, restorative and reformative theories and which could offset the weakness of each theory. This could be achieved only with the moderate approach. The imposition of capital punishment depends on the interpretation of the law, just like the interpretation of a half-filled glass. So, interpretation should be done based on the strengths of these theories and by following a moderate approach and also by limiting the subjective and personal elements of interpretation of law to a minimum degree in imposing punishment as much as possible. Laws should not be interpreted based on vengeance or "tooth for a tooth" or "eye for an eye" notions. Human beings are really complex, with human emotions, and their thinking cannot be fully explained with theories. Hence, one should not be one-sided in adopting an approach to punishment. But the best would always be the middle path, which, to a certain degree, is free from personal predilections and subjective elements and which encompasses the merits of all the theories of punishment and filters out the weaknesses, and also to a certain degree reduces the ambiguity and arbitrariness in the interpretation of the laws.

Conclusion:

Based on the above theories, arguments and evaluations, the present article would give a modest conclusion that the interpretation of the laws of punishment should not be one-sided and grounded on an extremist stance. The death penalty should be free from personal biases, and it should not be given based on vengeance or to satisfy the social conscience. Retributive justice is important, but it should not be degraded to the level of vengeance. These are the reasons why we should adopt a moderate approach to punishment, which would limit the subjective and personal elements to a minimum degree and which would also reduce the ambiguity and arbitrariness of the concept of capital punishment.

References

Anon. 2015. Why did the Law Commission recommended abolition of death penalty except in cases of terror, 1-7.

Anon.2013. Delhi gang rape: What is a 'rarest of rare crime' inviting the death penalty? First Post, 13 September.

Anon.2015. Critical Analysis of Theories of Punishment, 1-13.

Anon.2015. The Reasons India's Law Commission Says the Death Penalty should be scrapped. India Real Time, 1-3.

Cesare, B., 1764. On Crimes and Punishments.

Diwan, A., 2015. Is death penalty a terror deterrent? The Hindu, 22 August, p.10.

Dutta, S., 2015. Theories of Punishment-A Socio-Legal View. Legal Service India, 1-5.

Hegde, S., 2015. Lethal lottery or just deserts? The Hindu, 5 August, p-10.

Immanuel, K. 1797. The Metaphysics of Morals. Translated from German by William Hastie. Edinburgh (Original published in 1887).

Kumar, D., 2015. Law Commission says abolish death penalty but not for terror cases, 1-5.

Parthasarthy, M., 2015. The case against death penalty. The Hindu, 3 September, P.12.

Rajagopal, K., 2015. Questions that will not die. The Hindu, 8 August, p.11

SAGE, 2005. Deterrence Theory. In Encyclopedia of Prisons and Correctional Facilities 2005. Online SAGE.

Tanu, P., 2015. Reformative Theory of Punishment. Law Octopus' Law journal + Knowledge Centre, 16 September, 1-32.

Theo, G., 2007. Restorative Justice Theory and Practice: Addressing the Discrepancy. Helsinki: Hakapaino Oy.

Venkatesan, V., 2015. Trials of a death row convict. Front line, 21 August, 4-12.