

The Impact of the Death Penalty on Third Party Victims

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Abstract

The death penalty has been a subject of decades old debates around the globe. The bone of contention is usually not its legitimacy in the States where it is practiced but rather the deservedness of the death penalty on the crime for which it is established, the alleged offender who is convicted of a capital crime and the compatibility of such punishment with the tenets of human rights which are inherent in humanity; these have been the basis of arguments for both the retentionists and abolitionists advocates of the death penalty. This article weighs the retentionist and abolitionist arguments, lays emphasis on the human rights issues and examines the impact of the death penalty on the third party victims which include: the convict's family, the executioners and their families, therefore advocating for the abolition of the death penalty.

Key words: Death penalty, Human rights, Third party victims.

1. Introduction

The death penalty seems to be one of the most controversial types of punishment in the world. It has evoked human sentiments and emotions all around the globe between the retentionist and abolitionist groups. Most of these arguments focus on the deservedness of the punishment as a just desert or as deterrence and its compatibility with the human rights provisions. Society has always used punishment to punish offenders and discourage would-be-offenders from unlawful act. The retentionists or pro-death penalty have usually given two justifications for the imposition of the death penalty. These are retribution and deterrence. Although retribution and deterrence are not part of the criminal justice system but, they are theories of punishment.¹

Retribution is the notion that punishment is imposed because it is deserved. Murderers are to be given the death penalty because that

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¹ G. V. Bradley, 'Retribution: The Central Aim of Punishment' [2003] (27) *Harvard Journal of Law and Public Policy*, 21.

is the penalty for their offence.² The philosopher Immanuel Kant wrote that retribution is grounded in respect for the autonomy of the offender.³ The death penalty is argued to be right if it serves no other purpose than to give the criminal his due.⁴

Deterrence is another compelling argument put forward by the retentionists of the death penalty. Deterrence is defined as the practice of discouraging or restraining someone from doing a wrongful act.⁵ Deterrence threatens severe punishment.⁶ Studies of the death penalty have reached various conclusions about its effectiveness in deterring crime according to the retentionists. Retentionists have argued that killing a murderer is not just a right of the society, but the duty of the society to act in self-defense to protect the innocent.⁷ It is the view of the pro-death penalty that to deter would be murderers, the State should use the death penalty. In that case, it will deter the murderer from killing someone else and also deter would be murderers by instilling the fear of the death penalty on them.

However, the abolitionists argue that the death penalty violates the principles of the human rights and an affront to humanity, as it destroys the very essence of humanity. The death penalty violates two basic human right laws provided for in the Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Civil and Political Rights (ICCPR) 1966; these are the right to life and the right to be protected against torture, cruel, inhuman or degrading treatment or punishment. Article 3 of UDHR provides that 'everyone has the right to life... .' The International Covenant on Civil and Political Rights affirmed the right to life provided by the UDHR and even stated that the right to life is inherent and should be protected by law and no one shall be arbitrarily deprived of his life.⁸

The right to life has been declared by the abolitionist to be sacred⁹ and inviolable.¹⁰ Because life is sacred... society must

² I. Kant, *The Metaphysics of Morals* (Germany, 1797), 98.

³ *Ibid*

⁴ *Ibid*, 98-108.

⁵ M. J. Mazarr 'Understanding Deterrence' [2014] *RAND Corporation*, 2.

⁶ 'Should the Death Penalty Be Allowed? Available at <<https://deathpenalty.procon.org/view.resource.php?resourceID=002000>>accessed on 8th April, 2021.

⁷ D. White, 'Pros and Cons of the Death Penalty' [2020] available at <<https://www.thoughtco.com/pros-and-cons-death-penalty-332-5230>>accessed on 8th April, 2021.

⁸ Article 26, ICCPR, 1966.

⁹ Deacons of Paterson, 'Capital Punishment Undermines the Sacredness of Life' in M.E Williams (ed) *Capital Punishment* (U.S.A 2002), 50-52.

protect and foster it at all stages and in all circumstances through institutions such as State governments.¹¹ The death penalty has been argued to undermine rather than witness to the sacredness of human life.¹² The abolitionist argued that the death penalty violates the sanctity of human life.¹³ Daisy Kouzel¹⁴ has argued that if you are opposed to abortion, you must also condemn the death penalty. By forcing a human being to be born, you make a commitment to safeguard his life after it leaves the maternal womb. There is more to life than just being born. Right to life means the right to life, not right to birth.¹⁵

Another human rights argument proclaimed by the abolitionists is that the death penalty violates the right to be protected against torture or cruel, inhuman or degrading treatment or punishment. Torture is intrinsic to the death penalty. In *Furman v Georgia*¹⁶ the Supreme Court declared that the application of the death penalty is arbitrary. The rights to be free from torture and cruel, inhuman, degrading treatment or punishment places obligation on States for the prohibition against the death penalty.¹⁷

While the convict is deemed to be the only subject of the application of the death penalty, the death penalty has many more victims outside its intended target. The penalty actually does more than just kill a person but can affect an entire community. Most times, we fail to realize that the death penalty system is a system that infects everyone it touches and barely heals or deter from the disease of crime, from the convicts, to the prison guards, to the convict's family and friends and even the executioners, no one in these categories is free from the psychological and emotional burdens that accompanies the death penalty.

¹⁰ Article 4, African Charter on Human and peoples' Rights, 1981.

¹¹ Deacons of Paterson, 'Capital Punishment Undermines the Sacredness of Life' in M.E Williams (ed) *Capital Punishment* (U.S.A 2002), 50-52.

¹² Article 4, African Charter on Human and peoples' Rights, 1981.

¹³ D. Kouzel, 'Eighteen Arguments Against the Death Penalty' available at <<https://www.ncadp.org/documents/argument-against-the-death-penalty>> accessed on 8th April, 2021.

¹⁴ *Ibid*.

¹⁵ D. Kouzel, 'Eighteen Arguments Against the Death Penalty' available at <<https://www.ncadp.org/documents/argument-against-the-death-penalty>> accessed on 8th April, 2020.

¹⁶ (1972) 408 USSC 238.

¹⁷ Center For Constitutional Rights, *Discrimination, Torture And Execution: A Human Rights Analysis of the Death in California and Louisiana* (2013) 22-27

2. The Death Penalty from the Human Rights Perspectives

Despite the constitutional validity of the death penalty in most countries across the world, the imposition of death penalty to human rights has necessitated a lot of arguments and debates. Over the years, Universal Declaration of Human Rights has held that the death penalty violates the human rights and is seen as a cruelty to mankind. The Universal Declaration of Human Rights (Universal Declaration), adopted in 1948 is the universal bedrock of the right to life. Article 3 of the UDHR¹⁸ provides for the right to life; ‘everyone has the right to life’. The right to life is the basis of all other rights. It is from this right that all other rights can be protected and assured; in other words, it gives assurance to every other right. The right to life is inconsistent with the death penalty, as the latter violates the tenets of the former. The death penalty is not only considered unacceptable because it violates the right to life, but in addition to that, the mode of its execution has other human rights violations.¹⁹ The Universal Declaration of Human Rights prohibits torture, cruel, inhuman or degrading treatment or punishment²⁰. These cannot be avoided in executing the death penalty; the method of execution of the death penalty cannot evade torture, cruelty or degrading treatment or punishment. Failure to provide treatment or punishment that respects the inherent dignity of those condemned to death negates the provision of the UDHR prohibiting torture or other forms of cruel, inhuman or degrading treatment (CIDT).

In addition to the Universal Declaration of Human Rights, 1948, other human rights instruments have unequivocally disapproved the death penalty or the actions which are innate to the execution of the punishment. The International Covenant on Civil and Political Rights of 1966 is another human rights instrument which protects the right to life, and encourages the abolition of the death penalty. Article 6 provides that: ‘*Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life.*’ The clause ‘*no one shall be arbitrarily deprived of his life*’ is to the exclusion of no one, everyone is protected under the right to life regardless of what crime they have committed. The death penalty has been termed an arbitrary punishment in *Furman v Georgia*.²¹ Sub

¹⁸ Article 3, Universal Declaration of Human Rights, 1948.

¹⁹ The right against torture and other cruel, inhuman or degrading treatment or punishment.

²⁰ Article 5, UDHR 1948.

²¹ (1972)408 USSC 238

(4) of Article 6 also expresses the position of the ICCPR on the imposition of the death penalty; it states thus: ‘anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death penalty may be granted in all cases.’ The position of the ICCPR, judging from the provision of Article 6 is undoubtedly clear. Due to the establishment and practice of the death penalty in some States and the advocacy for its abolition or a moratorium placed on it, the ICCPR went further to encourage the abolition of the death penalty; Article 6(6) provides also that *‘nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State party to the present covenant’*.

The goal of the ICCPR is abolition but not mandatory due to the prudence of its drafters, aware of its anomaly but fearful of alienating retentionist States and discouraging them from ratification.²² The death penalty also violates other principles of human rights provided for by the ICCPR such as the right to be protected against torture, or cruel, inhuman or degrading treatment.²³ Article 7 of the ICCPR provides thus: *‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’*. Like previously noted, torture, cruel, inhuman or degrading treatment or punishment cannot be alienated from the death penalty. Another point to note is the protection of human dignity which the death penalty violates via public execution.²⁴

However, in order for the International Covenant on Civil and Political Rights to make its position on the death penalty unequivocal, it adopted the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, in 1989. The optional protocol clearly states that: *‘No one within the jurisdiction of a State party to the present protocol shall be executed’*.²⁵ It also enjoins each State party to take all necessary measures to abolish the death penalty within its jurisdiction.²⁶ Notwithstanding these provisions, the ICCPR and its second optional protocol serves as persuasive laws and not binding on State parties until it is incorporated as part of the laws of such States.

²² W. A Schabas, ‘International Law and Abolition of the Death Penalty’ [1998] (55) (3) *Washington and Lee Law Review*, 807.

²³ Article 7, ICCPR, 1966

²⁴ Article 10, ICCPR, 1966

²⁵ Article 1 (1) Second Optional Protocol to the ICCPR, 1989.

²⁶ Article 1 (2) Second Optional Protocol to the ICCPR, 1989.

Still concerned with the protection of persons against torture, cruel, inhuman or degrading treatment or punishment, the United Nations created an independent instrument known as the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment, 1984. This human rights instrument is simply referred to as Convention against Torture (CAT). Article 1 of the Convention against Torture provides thus:

For the purpose of this convention, the term “torture” means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed...

Subjecting a person to severe pain or suffering amount to torture. The Convention against torture and other cruel, inhuman or degrading treatment or punishment actually did not directly or expressly mention or say anything as regards to the death penalty but its position on the death penalty can only be implied thus; the death penalty has been termed to be the cruelest punishment.²⁷ The trial, conviction and the execution of the death penalty is torturing, execution has been said to be similar to torture, as it constitute an extreme mental and physical impact on a person already under the control of the government.²⁸ Various methods of execution have been condemned and deemed unacceptable at international law.²⁹ For example; the use of the gas chamber is deemed to be cruel, inhuman and a degrading treatment.³⁰ The use of the electric chair is excessively painful,³¹ the use of lethal injection leads to slow but painful death, it causes paralysis to the convict before death,³² while death by hanging or firing squad are both severely painful and dehumanizing.³³

²⁷ *Furman v Georgia* (1972) 408 USSC 238.

²⁸ E. Prokosch, 'The Death Penalty versus Human Rights' in *Death Penalty: Beyond Abolition* (Council of Europe Publishing: Strasbourg, 2004) 23-35.

²⁹ International Bar Association, 'The Death Penalty Under International law '[2008] (5) *The Global Voice of the Legal Profession*, 6

³⁰ Article 3, Universal Declaration of Human Rights, 1948.

³¹ *Ibid.*

³² William A. Schabas, *The Abolition of the Death Penalty in International Law* (Third Edition: Cambridge University Press, 2002) 373

³³ N. Ofo, 'Constitutionality or Otherwise of Death Penalty Enforcement in Nigeria' [2009] (3)(1) *Ebonyi State University Law Journal*, 71-74.

The several methods of execution have been explicitly deemed violations of the prohibition of torture, and cruel, inhuman or degrading treatment (CIDT) by the CAT. It is also undeniable that the period in the death row can be considered as traumatizing and a source of mental torture to the convict even before execution.³⁴ It can be logically argued that regardless of no express prohibition of the death penalty, the convention against torture and other cruel, inhuman or degrading treatment or punishment forbids the death penalty. State parties to the convention should ensure that the death penalty is abolished or a moratorium placed on it as it violates the convention against torture which they signed and ratified. The process of signing and ratifying conventions must have gone through careful thinking and expert advice. All State parties are sovereign States who were not and cannot be compelled to sign and ratify the convention, therefore, the honorable thing for each State party is to implement the provision of CAT in their various States and consequently abolish the death penalty or place a moratorium on it.

Torture or cruel, inhuman or degrading treatment or punishment has never been an acceptable thing to the humankind, it makes mankind brutish and barbaric, therefore; every State should be weary of condoning any act that subjects a person to any act of torture, or cruel, inhuman or dehumanizing or degrading treatment or punishment. It is argued that torture does not commence during the execution of the death penalty only, but right from the time of the trial to the conviction stage and all the time on the death row; this is a torturous kind of situation. Kevin Cooper, a prisoner on death row in California State prison said ‘Before they kill you physically, they want to kill you emotionally’; that was his account of the death penalty trial to death row stage.³⁵ Below is the report of the interview conducted by California Commission on the Fair Administration of Justice:

Although physical abuse by prison staff have decreased over the decades... a number of interviews noted that prisoners at San Quentin,³⁶ are still often subject to harassment by correctional officers, and that certain

³⁴ J. E. Mendez, ‘The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman and Degrading Treatment or Punishment’ [2012] (20) (1) *Human Rights Brief*, 2.

³⁵ Center For Constitutional Rights, *Discrimination, Torture And Execution: A Human Rights Analysis of the Death in California and Louisiana* (2013) 22-27

³⁶ San Quentin is California State Prison.

intentional behavior by prison staff cause prisoners physical and emotional harm... prisoners are “dehumanized and antagonized”, and treated by guards “like chained animals”. Corell Thomas, for example, described being subject to small injustices, such as having personal possessions overturned, broken, and destroyed during cell searches, on a regular basis, calling it a “systematic torture”. Another prisoner, Jarvis Masters, recalled how a guard would taunt him by reading Masters judgement of death out loud. Kevin Cooper noted that he rarely ever saw correctional officers disciplined for mistreating an inmate and commented that ‘in this prison, the guards are always right and you are always wrong. These small humiliations, according to Cooper, are all part of the process to break you’.³⁷

It is not surprising that a significant portion of prisoners on death row struggle with mental health problems due to the mental torture. Psychiatric care is given to a prisoner set to be executed. According to Cooper, a death row prisoner who came within hours of execution before receiving a stay, the purpose of those additional psychiatric visits was to monitor his actions and ensure that he did not commit suicide before the execution date.³⁸ Cooper noted that in the days before he was to be executed, guards would also come by his cell every hour to see if he was all right and to make sure ‘that you don’t cheat them of their death’.³⁹ Cooper said ‘Everything here is about death. That’s what makes death row different from other prisons... the thought of being executed, you don’t ever get used to that’.

Here is another experience of torture by ThankGod Ebhos, a prisoner in death row in Benin prison, Edo State, Nigeria:

Every day in prison, whenever I hear a knock on my door, I thought they had come to take me for execution... while I was on death row, many times I could not sleep at night. Many times I had night mares. I

³⁷ Center For Constitutional Rights, *Discrimination, Torture And Execution: A Human Rights Analysis of the Death in California and Louisiana* (2013) 22-27

³⁸ 'Commission on the Fair Administration of Justice interview with Kevin Cooper on 6th of May, 2013.

³⁹ 'Commission on the Fair Administration of Justice interview with Kevin Cooper on 6th of May, 2013..

dreamt I was on the gallows... many times people lied to me that prison warders had gathered together and had gone to the gallows; this caused me lots of anxiety.⁴⁰

Torture is intrinsic to the death penalty and incompatible to the principles and practice of the human rights. It should always be noted that human rights are inviolable, inalienable and the same everywhere to every person. The right to life is the bedrock of every other right, this is because life is the essence of humanity, and life is sacred. Therefore, the right to life should be sacrosanct. It should be noted also that the imposition of torture robs us of our humanity and the beauty of life.

3. Impact of the Death Penalty on Third Party Victims

The death penalty has many more victims outside its intended target. The penalty actually does more than just kill a person but can affect an entire community. Most times, we fail to realize that the death penalty system is a system that infects everyone it touches and barely heals or deter from the disease of crime, from the convicts, to the prison guards, to the convict's family and friends and even the executioners, no one in these categories is free from the psychological and emotional burdens that accompanies the death penalty. The aim of this article is to illuminate on the unfortunate consequences the application of the death penalty has on the potentially wide range of persons beyond the convict who is to be executed.

- a) **The Executioners' Trauma:** The death penalty is often justified on the grounds that it brings peace to the families of victims; that the act of ending a life may mark an end to their pain. But for those who impose the death penalty, the truth about the emotional trauma of killing another human being belies this logic. According to Jerry Givens, a former State executioner for the Virginia Department of Corrections, the emotional toll of his former job is something he can't escape. In his words:

You can't tell me I can take the life of people and go home and be normal. If I had known what I'd have to go through as an executioner, I wouldn't have done it. It

⁴⁰ Amnesty International, *Abolition of the Death Penalty in Africa* (Amnesty International, London, 2019), 20.

took a lot out of me to do it. You have to transform yourself into that person that will take a life. Every time an execution was announced, it meant that i had to prepare myself mentally to kill.⁴¹

Givens executed 62 persons over 17 years in a State that rank third in the nation for number of executions.⁴² The executioner does the State's job of killing convicts. The executioner is turned into a killer to kill someone who has probably killed. The rationale behind this is questionable; in order to punish a killer, the State has to make another killer? This seems like a legitimate assassin or an administrative murderer. The executioner cannot be the same again; he is being gradually turned into a monster by the State who seeks to punish monsters, how ironic? How justifiable? When Jerry Givens did an interview with ABC News,⁴³ he said: 'To make that transformation from corrections officer to executioners...It was hard. You have to get away from yourself. You have to eliminate yourself'. The last sentence of Givens in the above 'you have to eliminate yourself' can be interpreted to mean 'you have to kill the humanity in you'. It is the loss of touch with humanity that causes someone to commit a crime, it sounds cruel for another innocent person to be obligated to intentionally loss the touch with his humanity. It is possible that most executioners go into trauma or suffer schizophrenia; imagining seeing the ghost of the people they have executed. They may kill the humanity in them like Givens and become real life monsters, whose thrill to kill go beyond the inmates in the death row to the unsuspecting victims outside the prison walls, maybe not. Whichever way, the executioner can never be like a normal person in the society because the State has robbed him the essence of humanity in its thirst to kill criminals.

Another executioner in Arkansas, Allen Ault confessed that despite over 20 years as an executioner, he still feels trouble by what he did. He said:

I had a lot of guilt, only conscience totally bothered me.
When the switch was thrown that first time, and I
realized I had just KILLED a man; that was pretty

⁴¹ Givens Interview with Katie Fretland available at <<https://thinkprogress.org/how-it-feels-to-kill-62-people-963ff9f73afd>> accessed on 9th April, 2021.

⁴² *Ibid.*

⁴³ 'The Psychology of the Executioners' available at <psmag.com/social-justice/ready-aim-fire> accessed on 9th April, 2021.

traumatic. Then to have to do it again and again and again, it got so that i absolutely could not go through with it.⁴⁴

As commissioner of the department of corrections in Georgia, Ault gave the order for five executions by electric chair in 1994 and 1995. After the fifth life was taken, the cumulative distress reached breaking point and he resigned from the post and moved to a job in the US justice department that had nothing to do with the death penalty. However, ever since, he has found himself haunted by the memory of the five men whose life he ended. 'I don't remember their names, but I still see them in my night mares', he said. Now those nightmares are back in force, triggered by the knowledge that what Ault considers to be a disaster-in-the-making is absolutely about to unfold in Arkansas.⁴⁵ Ault said 'as the old saying goes, you dig two graves; one for the condemned, one for the avenger'. That's what will happen to the execution team; many of them will figuratively have to dig their own graves too. Ault said his role at the head of the team that had killed five men left him feeling 'lower than the most despicable person'. He felt degraded to a level below that of the heinous murderers he was confronting, a sense that was amplified by how much planning went into the protocols. Ault said:

I had a manual about an inch thick that I had to follow. What I did was much more premeditated than any of the murders committed by those I executed. Then there was the defenselessness of the man on the gurney: you are totally a defenseless person, planning, premeditating, even rehearsing, then killing him, any sane person other than a psychopath would be dramatically affected by that.

Those who advocate for the death penalty, the president, the governors, the judges, the prosecutors, juries and law makers are never in the death chamber or gallows to witness when it happens, they never have to suffer anything. Ault disclosed that one of the members of his teams required therapeutic help; he suffered Post Traumatic Stress Disorder (PTSD) and at a point had to be relieved

⁴⁴ Available at <www.theguardian.com/world/2017/mar/29/Arkansas-executioners-mental-health-allen-ault> accessed on 9th April, 2021.

⁴⁵ *Ibid.*

of his job. Some others went on to commit suicide after executions.⁴⁶ It seems that no amount of training or counselling is ever enough to meet the psychological consequences of execution.

Another executioner who has been suicidal is Craig Baxley,⁴⁷ who was responsible for plunging the lethal injection syringe into at least eight prisoners. Baxley has attempted suicide and is on six types of medication for PTSD and depression. One detail of his years working in the death chamber stuck in his mind: the cause of mortality given on the inmates' death certificates was always the same, "homicide".⁴⁸ The State who imposed the death penalty on the convict declares the cause of death as homicide, thereby making the executioner "a murderer".

A former executioner, Semon F. Thompson wrote to New York Times that the "surreal" experience of planning and carrying out execution can lead to "collateral damage" including drugs and alcohol abuse, depression and even suicide.⁴⁹

The psychological effect of the death penalty on the executioner will no doubt extend to his family and friends. Just like the earlier words of Givens 'you can't tell me I can take the life of people and go home and be normal'.⁵⁰ The executioners have homes to go to; there are people in those homes who become recipients of the executioner's after "work" disposition. They end up becoming victims too of the death penalty, however passive their victimization is. If executioners cannot go home and be normal after execution, families, friends, and acquaintances have to deal with their abnormal dispositions; this put them all at risk. This lead to more harm than good the State intend to achieve for the society through the application of the death penalty.

b) **Psychological Torture on Convicts' Family:** The death penalty has adverse effect on the family and friends of the accused. Dr. R. T. Muller, a psychologist reported that psychological studies have found that the death penalty

⁴⁶ Available at <www.theguardian.com/world/2017/mar/29/Arkansas-executioners-mental-health-allen-ault> accessed on 9th April, 2021.

⁴⁷ Available at <www.theguardian.com/world/2017/mar/29/Arkansas-executioners-mental-health-allen-ault> accessed on 9th April, 2021.

⁴⁸ *Ibid.*

⁴⁹ 'An executioner Explains What it feels like to kill a man on death row' Available at <www.Newyorktimes.org/an-executioner-explains-what-it-feels-like-to-kill-a-man-on-death-row-732104> accessed on 20th August, 2021.

⁵⁰ Givens Interview with Katie Fretland available at <<https://thinkprogress.org/how-it-feels-to-kill-62-people-963ff9f73afel>> accessed on the 27th of August, 2021.

produces negative effects on families and friends of murder victims usually referred to as “co-victims”.⁵¹ However, there is another category of persons who belong to the group of co-victims; they are the families and friends of the condemned convict. The family of the condemned convict usually becomes traumatized by the process of being ostracized and alienated as they watch their government systematically prepare to kill their loved one. They feel as if the society has turned against them. The decision for the government to kill a human being is profound and should be taken seriously. It is unlike any other form of punishment and has a lasting impact on everyone who is touched by it. Unfortunately, criminology focuses on only two sets of victims: direct victims who experiences the crime, and indirect victims; usually the family and the friends of the direct victims.⁵² However, there also exist a third group of victims; these are the families of the accused who suffer chronic grief and shock. The shock is the unforeseen act of their loved ones and the consequences it bears. They mostly blame themselves over what they should not be guilty of; they question themselves on where they went wrong and how they could never influence the accused to be a better person. Sometimes, they are in denial, everything seems like a nightmare; it is difficult to accept that a loved one is facing a death sentence. This leads the convict’s family into a state of PTSD,⁵³ and cognitive changes that reflect distress.⁵⁴

The trauma of a convict’s family is aggravated if they ever get the opportunity of seeing the convict within the prison walls. According to Monique M. Ruiz, the sister of an exoneree, Ryan Matthews, ‘The first time I saw him in those conditions I screamed

⁵¹ R. T. Muller, ‘Studies: Death Penalty Adversely Affects Families of Victims and Defendants’ [2016] available at <<https://deathpenaltyinfo.org/news/studies-death-penalty-adverse-ekt-affects-families-of-victims-and-defendants>> accessed on 29th August, 2021.

⁵² E. Beck, ‘Seeking Sanctuary: Interviews with Family Members of Capital Defendants’ [2003](5) (2) *Cornell Law Review*, 391.

⁵³ *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. 1994), 424.

⁵⁴ Cf. A. Amick-Mc Mullan and Others, ‘Family Survivors of Homicide Victims: A Behavioral Analysis, Behavioral Therapist’ [1989]- *Association for Advancement of Behavior Therapy*, 77

and hollered like a crazy woman, i just couldn't take it'.⁵⁵ The trauma and depression of the family of a convict is actually unfair. It is a torture they go through which is underserved. Their dignity is eroded through the stigmatization and ostracization they suffer from the members of the society. This stigmatization violates their dignity but worse is the mental torture. The family becomes a victim of torture or cruel, inhuman, degrading or dehumanizing treatment or punishment over a crime they are not guilty of; this is prohibited by Article 5 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.⁵⁶

The emotional impact of having a relative sentenced to death instead of a life sentence is different; the mental trauma cannot be trivialized. The death sentence hurt families of the convict, thereby creating more victims.⁵⁷ Mooniah Ramiah was a mother who had more than three of her sons facing a death sentence in Trinidad and Tobago, in a newspaper interview in 2008. She stated: 'I feel dead inside' and indicated that her heart is still full of pain, anguish and hurt for still having three of her sons in the death row. She recounted the day one of her sons was taken to the gallows, she said she was in her living room when she heard the news:

I started to scream and then burst into uncontrollable tears. I couldn't believe my son was gone...There was no way to be consoled. Everything started to fall apart because I had so much anger and hatred in my heart for the world. I felt as though everyone was against me.⁵⁸

Innocent persons would not be subjected to psychological traumas, torture and stigmatization if the death penalty is commuted to life imprisonment and the death penalty abolished.

4. Recommendations

1. In the course of the State imposing punishment on offenders, the guiding principles should be the respect for human rights,

⁵⁵ Center for Constitutional Rights, *Discrimination, Torture and Execution: A Human Rights Analysis of the Death in California and Louisiana* (2013) 22-27.

⁵⁶ Article 7 of the ICCPR, 1966.

⁵⁷ Susannah Sheffer and Remy Cushing, 'Creating More Victims: How Execution Hurts the Families Left Behind'[2006]*Murder Victims's Families for Human Rights*,29.

⁵⁸ Shaliza Hassanal, 'I Feel Dead Inside,' (*Trinidad and Tobago Guardian*, May 11, 2008). Available at <http://legacy.guardian.co.tt/archives/2008-05-11/news10.html> accessed 26th September, 2021

freedom from torture, cruel, inhuman, degrading and dehumanizing treatment or punishment and the protection of those rights before administering punishment because human rights are inherent and inalienable rights.

2. The death penalty should be commuted to life imprisonment to save the executioner the guilt of taking lives, to guarantee him freedom from psychological trauma which could also have negative impact on his family and friends respectively. Life imprisonment is unlikely to subject the executioner and his family into mental torture, and more bearable to the family of the convict.
3. International human rights organizations should ensure that States desiring to join the organizations are willing to domesticate its international treaties. Membership should require signing, ratifying and domesticating without option to decline from any.

Furthermore, the researcher humbly submits that as long as the death penalty exist, everyone; governments, academic experts, politicians, law enforcement officers, the media and the general public should persistently call for its abolition.

5. Conclusion

It is essential to keep in mind that when speaking of the death penalty, whether from the retentionist or abolitionist stand, that we are not just talking about punishment but instead about the lives of real people. The imposition of the death penalty affects more people than just the targeted offenders. In particular, it has a terrible impact on the executioners and the convicts' families. The effect extends to other members of the society in which these third party victims live; their psychological state reflects on their behaviour within the society whether the society is conscious of it or not. Family members sometimes find themselves judged guilty by association, and they may suffer from shame. This can lead to social isolation, sometimes due to rejection by others and at other times self-imposed.

The executioners have been made legitimate killers by the State as the execution of convicts is concerned, but unfortunately has also robbed them the respect for human life which cannot be easily erased from their mental being; this could lead to a fatal consequence to them, those around them and the society at large. Therefore, while debating the death penalty, we must consider the third party victims who may not be direct victims of the whole process but nonetheless

are affected by such punishment. It must be noted that it is not only the human rights to life and protection from torture of the convict that is being violated; it includes that of the third parties who may not seem as a victim of such punishment, but who indeed are.