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Book Review: The Death Penalty: Perspectives from India & Beyond

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The use of violence, even lethal violence, to establish, protect, defend and impose one's rights, dominion and power over others has been part of human history since its beginning. According to the 17th Century English philosopher Thomas Hobbes, widely regarded as one of a few truly great political philosophers as his master work Leviathan rivals in significance the political writings of Plato, Aristotle, Locke, Rousseau, Kant, and Rawls, the "state of nature" for humans is one of widespread violence to defend oneself from the dominion and depredations of others, affirm one's possessions and interests and ensure one's self preservation. Life for humans entails the "natural right to do anything one thinks necessary for preserving one's own life." Thus the human condition per se is one of constant war and life is "solitary, poor, nasty, brutish, and short" (Leviathan, Chapters XIII–XIV). According to Hobbes, humans finally entered into a "social contract" limiting one's rights to power, possessions and unlimited freedom to act as each wished, in exchange for the tranquil enjoyment of what one has and has been able to build and for assurances that it cannot be taken from him or her by someone else simply because he is more powerful and better able to defeat others. To escape from this constantly uncertain, violent and menacing situation, humans accepted limits on themselves and agreed to give their government even absolute power. Punishment, including the death penalty, became then the needed and justified mechanism for the government to protect and enforce the social contract governing human relations. The first written death penalty laws date as far back as the eighteenth century BC in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes. There is no question that the death penalty was widely used throughout human history in all parts of the world and often delivered in cruel and debasing ways, stripping the condemned of their human dignity and subjecting them to torture and amplepain.

The use of the death penalty for an ever increasing list of crimes was justified as not being a violation of the offender's right to life because he or she had forfeited that right by perpetrating the crime and breaking the "social contract". Thus, the death penalty was and is considered justifiable as a morally permissible way to respond forcefully to criminal behavior and discourages others from engaging in it, thus protecting society's interests. An important principle governing how to respond to criminal victimization is the "lex talionis" that specifies defined penalties for specific crimes, mostly based on full reciprocity. In the Hammurabilegal code, the principle of exact reciprocity is very clearly stated and operationalized. For example, if a person caused the death of another person, the killer would be put to death. Often a religious justification has been invoked to justify the adoption and imposition of the death penalty and to formulate

penalties for specific crimes. Some propose that this was at least in part intended to prevent excessive punishment at the hands of either an avenging private party or the state. The most common expression of lex talionis is "an eye for an eye", but other interpretations have been given as well. Legal codes following the principle of lex talion is have one thing in common: they prescribe 'fitting' counter punishment for a felony. In the legal code written by Hammurabi, the principle of exact reciprocity is very clearly used. The simplest example is the "eye for an eye" principle. In that case, the rule is that punishment must be exactly equal to the crime. This is clearly expressed in the book of Leviticus in the Hebrew Bible: "And a man who injures his countryman – as he has done, so it shall be done to him [namely,] fracture for fracture, eye for eye, tooth for tooth. Just as another person has received injury from him, so it will be given to him" (Lev. 24:19–21). The principle is also mentioned in Deuteronomy and Exodus. This norm has been interpreted by some as actually softening and limiting the excesses that feuds and vendettas did generate when retribution was carried out. Even further, the Talmud interprets the verses referring to "an eye for an eye" and similar expressions as requiring monetary compensation in tort cases, contradicting a different interpretation by the Sadducees that the Bible verses refer only to physical retaliation in kind. Throughout history, the lex talion is or "Law of Retaliation" has also been presented as actually a quite benign and positive development, requiring that the law establish and the offender provide equitable retribution.

In Islam the Qu'ran (5:45) mentions the "eye for an eye" concept as mandatory for the Children of Israel. The principle of Lextalion is in Islam is Qiṣāṣ (Qur'an, 2:178). Muslim countries that apply Islamic Sharia law, such as Iran or Saudi Arabia, apply the "eye for an eye" rule literally.

However, in Christianity, in the Sermon on the Mount, Jesus actually urges his followers to turn the other cheek: "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also" (Matthew 5:38–39). However, in reality, since it is also part of Christianity's holy books, the Hebrew Bible's mandate has had a preponderant practical influence. It was not until the 18th century that the Enlightenment in Europe began to underline the value of human beings, started to talk about human rights, and demanded limits against the excessive authority of kings. It eventually inspired the French Revolution that also stressed freedom, equality and fraternity. It was at that time that challenges to the excessive punishments imposed by the criminal justice system of the time began to appear. One of the most talented jurist and greatest thinkers of the Age of Enlightenment, Cesare Beccaria (1738-1794), wrote his manifesto "On Crimes and Punishments". This slim book, initially published anonymously for fear of repercussions, strongly criticized and rejected arbitrary and cruel punishment which was the most common tool the state used at that time to terrorize people into submission, especially to prevent and discourage any rebellion challenging the hierarchical structure of the society.

The fundamental questions that Beccaria asked were: "What is the function of punishment?" and "If a person perpetrates a crime, how should we punish him or her?" He replied to the first by rejecting revenge and retribution and stressing instead prevention and dissuasion from committing the crime. As to punishment, referring to the social contract, he stated that punishment is justified only to protect and defend the social contract and to motivate everyone to abide by it. He stressed that it should be swift, as opposed to long detention awaiting trial, to build a clear connection between crime and its punishment; certain, so as to have dissuading and preventative value; and most of all proportional to the crime committed to avoid excessive and cruel punishment. He cogently argued that crimes "are more effectually prevented by the certainty than by the severity of the punishment." Moreover, Beccaria was definitely against torture, arguing that it may torment the criminal but not deter future offenders, and against the death penalty. He was one of the first thinkers to write a logical and sustained critique of the use of the death penalty. While the death penalty has been used worldwide in history, Beccaria stated that "the ultimate punishment has never deterred men determined to harm society". As a matter of fact he pointed out that the state uses its most draconian measures when crime is at its highest levels. He also reasoned that replying to savagery with state-sponsored savagery negates the "general humaneness of civil society." Overall, Beccaria maintained that the state

has little legitimacy when imposing the death penalty and that doing so is really not an especially useful policy. Beccaria's approach was very influential at the time, including in the newly formed United States, and it continued being so throughout the centuries since his death. Recent policies he impacted include, but are not limited to, truth in sentencing, swift punishment and the abolition of the death penalty in some states in the United States. For example, the state of Michigan abolished it as early as 1846 (except for treason).

The death penalty continues to be applied in a number of countries and the debate over its use has increased, especially after the middle of the XX century when important legal, social, and humane principles were enshrined in international declarations and conventions under the auspices of international organizations like the United Nations, the Organization of American States and the Council of Europe. Examples are the Universal Declaration of Human Rights (1948), the American Declaration on the Rights and Duties of Man (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Covenant on Civil and Political Rights (1966), and the American Convention on Human Rights (1968). The establishment of the European Court of Human Rights (1959) and of the Inter American Court of Human Rights (1979) greatly strengthened the recognition and application of human rights and among them, the right to life. Thus, the argument that the death penalty is a violation of the most fundamental human right– the right to life. It represents the ultimate cruel, inhuman and degrading punishment. Another powerful argument is that the death penalty is imposed in a discriminatory way. For example, in the United States and others, the death penalty was often utilized in rape cases, but especially when the defendant was African-American and the victim white. Poor people without the financial means to defend themselves effectively, and especially members of minority groups, received the death penalty disproportionately when compared to white people. This also because when in 1976 the Supreme Court reinstated the death penalty in the United States, it allowed the possibility of using it not only for murder but also for rape and armed robbery, thus multiplying the situations when it could be meted out.

Another serious objection to the death penalty is based on its finality. Someone who is innocent can be released from prison if there is evidence to overturn the conviction. However, an execution cannot be reversed. The often touted deterrent effect of the death penalty has also been seriously and empirically disputed. However powerful beliefs and stereotypes persist, strengthened by racial prejudice and class status. Opposing the death penalty is still a risky move. On November 8, 1988 the governor of Massachusetts USA, Michael Dukakis, was defeated in the presidential election by George W. Bush in part because Dukakis opposed the death penalty and supported a prison furlough program meant to be rehabilitative. Unfortunately, an inmate incarcerated for murder did commit a series of crimes, including rape, right after he was furloughed. Another argument against the death penalty often mentioned is its cost especially in countries like the United States where lengthy appeals are understandings are common, costing the taxpayer considerably. Currently, a major point of debate and opposition to the death penalty is on how it is carried out. Hanging, the electric chair, the firing squad have been discontinued in many jurisdictions in favour of the use of a cocktail of medicines that induces death. Because of the refusal of the medical profession to participate in executions since it would violate the Hippocratic oath governing the practice of medicine, executions using drugs are carried out by prison employees, resulting at times in botched executions that violate the human right against cruel and unusual punishment. Moreover, many drug suppliers under pressure by opponents of the death penalty are refusing to supply the needed drugs. Thus, many executions have been placed on hold. Recently, the state of Oklahoma in the United States has announced the resumption of executions because it has reportedly secured a reliable source of the chemicals needed.

This volume, The Death Penalty: Perspectives from India and Beyond, authored by Sanjeev P. Sahni and Mohita Junnarkar, represents a substantial and needed contribution to the international debate about the death penalty. First it places the discourse on the death penalty within a global context. In a useful way it offers an overview of the current use, debate, and application of the death penalty in Africa, the Americas, the Asia Pacific, the Middle East, and Europe and, finally, in the area of major

focus of this book, India. This is a very valuable update on the status of the death penalty and related developments worldwide, a much-needed global summary that provides context and analysis and builds the foundation for a clear and well-founded understanding of the main focus of the book: the status and application of the death penalty in India. The authors and their team deserve to be strongly congratulated for mastering a large amount of material and information; for their judicious selection of the central and most cogent points; the clarity and readability of the exposition; the major effort and care with which they undertook their research and writing; the accuracy and clarity with which they reported their findings; and the authoritative guidance offered to the readers in understanding the complexity of the subject matter against the background of diverse cultures and settings. The book then offers a full report on the situation and application of the death penalty in India. The role and influence of different religions and politics on maintaining and applying the death penalty are addressed with considerable sensitivity and depth.

The book then moves into a very important area that strongly influences continuing the death penalty's justification and application in the various regions of the world: public opinion. The authors and their team provide a very informative and well summarized overview of public opinion in various parts of the world. This offers a unique panorama of the variety of view points on this sensitive subject matter nuanced by the impact of different religious, cultural and legal traditions. As the previous overview section, this part of the book constitutes a valuable summary of helpful perspectives and information of a global nature, an element especially important these days when globalization and instant communications impact all aspects of our lives and lead to a stronger awareness and also a growing convergence of laws, legal decisions, criminal justice practices and standards of acceptable reactions to and punishment of crime.

The next section, chapter 5, delves into a delicate and profound aspect of the sentencing to and application of the death penalty: the psychosocial consequences that affect the victim of the crime being sanctioned and his/her family, the condemned's family and those of others involved in the procedure from the jurors to the prison guards to the executioners. Then the chapter examines some theoretical models used to explain the experiences of the victim's family in death penalty cases. Examples of models discussed are grief theory, PTSD, and the concept of closure.

This literature survey offers a synopsis of very useful and current information that no doubt will be quite useful to anyone in the justice system and also in the therapeutic professions offering the victim's family their support and assistance. The volume then delves into the key point: Public opinion in India. This chapter 6 constitutes the key contribution and the core value of this book. It is based on a survey with 25, 210 participants that were asked to respond to a questionnaire especially developed for this study. Since the support of public opinion is key to the perceived legitimacy and validity of the imposition and carrying out of the execution of the condemned, this chapter represents an original contribution to the public and legal discourse in India on the death penalty. It is a chapter rich in information, data, and nuanced analysis, providing a picture of the status of this key question in India. Reading it will offer a contemporary snapshot of where Indian public opinion is and of the reasoning, values, religious influences, and personal understandings in relation to this controversial theme. Thus the contribution of this book to the dialogue on the death penalty in India is firmly anchored in empirical data and in its accurate analysis that takes into account the rich tapestry of Indian culture, laws, religions and traditions. The data are presented in a readily understandable manner with illustrations and tables easy to follow and capture. The conclusion of the study is that in India the death penalty has strong support across various strata of society.

In conclusion, this is an important work that provides a credible empirical basis for an informed debate in India about the death penalty against the rich backdrop of the global understanding and acceptance or not of this form of punishment and the universal call for recognition and respect of human life and truly impartial justice. It will no doubt enrich and guide the continuing debate on the issue and act as a reliable compass guiding it and helping maintain it in the realm of rationality in order to obtain are a sonable, credible and well founded outcome.