

Death Penalty is An Effective Deterrent for Heinous Crimes - A Critical Study

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Abstract: *Death Penalty can be defined as the lawful infliction of death as a punishment for a wrongful act. It is only applied in cases where the crime is of such nature that it cannot be vitiated without a penalty of death. The trend is most industrialised nations have been first to stop executing prisoners and then to substitute long term of imprisonment for death as the most severe of all criminal penalties. In the recent past, however, many western cultures have abolished this practice, considering it grossly inconsistent with human rights requirements. No society wants to kill a person, but on the other side there are some heinous crimes like Nirbhaya also within the same society. The main aim of the paper is to study the effectiveness and requirements of death penalty in India. The objective of this paper is to know the reason for the requirement of capital punishment, effectiveness of capital punishment in the criminal justice system, the impact on society and the position in India . The sample size covered by the research is 304. The results observed from the analysis of the study is that the death penalty is required and real justice requires people to suffer for their wrongdoings.*

Keywords: Offender, death penalty, conviction, capital punishment, India

I. INTRODUCTION

In colonial India, death was prescribed as one of the punishments within the Indian penal code, 1860 (IPC), which listed variety of capital crimes. It remained in effect after independence in 1947. The first hanging in Independent India was that of Nathuram Godse and Narayan Apte within the Gandhi assassination case on 15 November 1949. Under Article 21 of the Constitution of India, nobody can be deprived of his life except consistent with procedure established by law.¹ The crimes punishable with death penalty in India fall into The Prevention of Child Sexual Offences Act (POCSO) 2012, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Unlawful Activities (Prevention) Act 1967, Information technology act 2000, Narcotic Drugs and Psychotropic Substances (NDPS) 1985 etc. The Indian penal code, 1860 honors capital punishment as a discipline for different offenses. Some of these capital offenses under the IPC are discipline for criminal conspiracy (Section 120B), murder (Section 302), pursuing or endeavoring to take up arms against the govt of India (Section 121), abetment of rebellion (Section 132), dacoity with murder (Section 396) and others. Apart from this, there are arrangements for the execution in different enactments very much like the NDPS Act, hostile to psychological oppression laws and so on². The trend is most industrialised nations have been first to prevent executing prisoners then to substitute life imprisonment for death because it is the most severe of all criminal penalties. August 2015, the Law Commission had suggested abrogation of death sentences besides in instances of psychological warfare and taking up arms against India. Since the matter falls inside the simultaneous rundown of the constitution, the middle had looked for the assessment of states. 90% percent need to hold execution aside from one state. No general public needs to slaughter an individual, however on the contrary side there are some terrible wrongdoings like Nirbhaya likewise inside an identical society. Inside the new past, be that as it may, numerous

¹ Yost, Benjamin S. 2019. "Against Capital Punishment." <https://doi.org/10.1093/oso/9780190901165.001.0001>

² Kumari, Dr Areti Krishna, and Areti Krishna Kumari. n.d. "Capital Punishment and Statutory Framework in India." *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.1015473>.

western societies have canceled this work, considering it terribly conflicting with basic liberties necessities.³ The U.K. also, France have both totally canceled the framework, after different succeeding abolitionist developments. The US, be that as it may, because of a divided legal executive, has contrasting conclusions on the trouble, changing state-by-state. The Federal United States government, notwithstanding, utilizes the execution, albeit just in exceptional cases. The conditions in India, to the assortment of the social childhood of its occupants, to the dissimilarity inside the degree of profound quality and training inside the country, to the immensity of its zone, to variety of its populace and to the foremost requirement for keeping up rule of peace and law inside the country at this point, India can't chance the analysis of nullification of execution. Capital Punishment is presently practiced in 58 nations, including the USA, Japan, Belarus, Cuba, and Singapore. Starting at 2012, there are 97 abolitionist states. reliable with Amnesty International, the most noticeably awful guilty parties in 2012 were China (1000+ passings), Iran (314) and Iraq (129). The association affirmed 1, 722 death penalties and 682 executions (barring China) in 2012. In Europe be that as it may, it's presently an essentially terminated wonder except for the Republic of Belarus.⁴

The aim of the research is to study about the death penalty for heinous crime is an effective deterrent.

OBJECTIVES :

- To know the reason for the requirement of capital punishment,
- To know the effectiveness of capital punishment in the criminal justice system,
- To know the impact of death penalty on society and the position in India .

II. REVIEW OF LITERATURE

Death Penalty is a process where a crime so grievous has been committed that the state condemns the act by sentencing the convicted to death(**Fredman 2018**).

It is only applied in cases where the crime is of such nature that it cannot be vitiated without a penalty of death. It has existed since time immemorial, the first recorded instance being that of Hammurabi in the 18th Century B.C.(**Gupta 1986**).

Death Penalty can be defined as the lawful infliction of death as a punishment for a wrongful act.(**Mohapatra and Mohapatra 2016**)

As a goal for civilized nations, abolition of the death penalty was promoted during the drafting of the Universal Declaration of Human Rights in 1948.(**Bhan 2010**)

According to a study, about two-thirds of the countries have either abolished capital punishment outright or have not actually executed any death sentences in the last ten years.(**Anandavenu et al. 2019**)

article 21 of the Constitution enshrines the Right to Life guaranteed to every individual in India. The constitutional validity of capital punishment has been called into question several times in the India judiciary.(**Kumari and Kumari, n.d.**)

No discussion on the validity of capital punishment in India can be complete without going through the fine details of the Law Commission Report, which was relied upon by the judges in the case of Jagmohan too. (**Gandhi 2016**)

The Law Commission of India, after making an intensive and extensive study of the subject of death penalty in India, published and submitted its 36th Report in 1967 to the Government.(**Jha 2018**)

Indian courts sentenced 1,455 prisoners to death between 2001 and 2011, according to the National Crime Records Bureau. During the same period, sentences for 4,321 prisoners were commuted to life imprisonment.(**Prabha Unnithan 2013**)

³ Mohapatra, Bijoy Chandra, and Sudhansu Ranjan Mohapatra. 2016. *Capital Punishment in India*.

⁴ Sahni, Sanjeev P., and Mohita Junnarkar. 2020. *The Death Penalty: Perspectives from India and Beyond*. Springer Nature.

Capital punishment is a legal penalty in India. It has been carried out in nine instances since 1995, while a total of thirty executions have taken place in India since 1991, the most recent of which were carried out in 2020. **(Indian Law Commission 1967)**

The Supreme Court in *Mithu vs. State of Punjab* struck down Section 303 of the Indian Penal Code, which provided for a mandatory death sentence for offenders who committed murder whilst serving a life sentence. **(Hood and Deva 2013)**

The concept of Curative petition was evolved by the Supreme Court of India in the matter of *Rupa Ashok Hurra vs. Ashok Hurra and Anr.* (2002) where the question was whether an aggrieved person is entitled to any relief against the final judgement/order of the Supreme Court, after dismissal of a review petition. **(“Proponents of Capital Punishment” 2017)**

The Code of Criminal Procedure (1898) called for the method of execution to be hanging. The same method was adopted in the Code of Criminal Procedure (1973). Section 354(5) of the above procedure reads as "When any person is sentenced to death, the sentence shall direct that the person be hanged by the neck till the person is dead." **(Barzun 2017)**

The hanging method is a long drop, the method devised by William Marwood in Britain. The person has their neck snapped as they fall through the trapdoor and is left hanging until they are dead. **(Yost 2019)**

As of 2011, only two people had been hanged over the previous 15 years and there was no longer a professional hangman to be found. 8 men have been hanged so far in the 21st century, most recently in 2020. The convicts of the Nirbhaya case were hanged till death at 5:30 am IST on 20 March 2020. **(Sahni and Junnarkar 2020)**

All punishments are based on the same proposition i.e. there must be a penalty for wrongdoing. There are two main reasons for inflicting the punishment. One is the belief that it is both right and just that a person who has done wrong should suffer for it; the other is the belief that inflicting punishment on wrongdoers discourages other from doing wrong. **(Scherdin 2016)**

The capital punishment debate is the most generally relevant debate, keeping in mind the situation that has been brought about by today. Capital punishment is an integral part of the Indian criminal justice system. **(Mudur 2003)**

the Supreme Court affirmed the constitutional validity of the death penalty. It said that if capital punishment is provided in the law and the procedure is a fair, just and reasonable one, the death sentence can be awarded to a convict. This will, however, only be in the “rarest of rare” cases. **(Gerstein 2017).**

The present day constitutional clemency powers of the President and Governors originate from the Government of India Act 1935 but, unlike the Governor General of India, the President and Governors in independent India do not have any prerogative clemency powers. **(Allen 2017).**

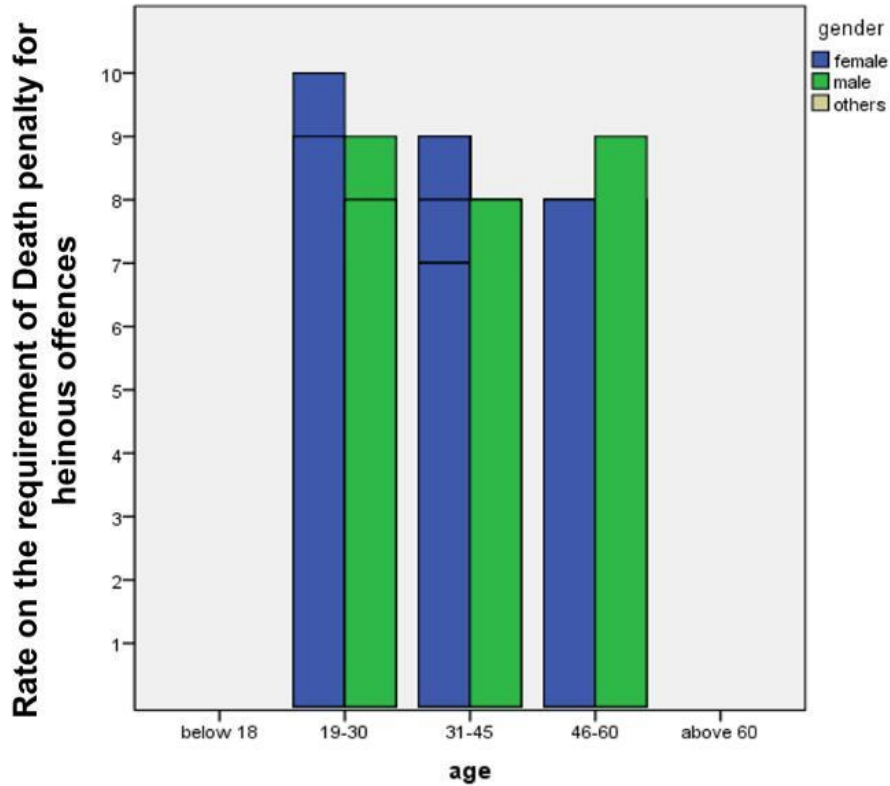
At least 100 people in 2007, 40 in 2006, 77 in 2005, 23 in 2002, and 33 in 2001 were sentenced to death (but not executed), according to Amnesty International figures. No official statistics of those sentenced to death have been released. **(Hochkammer 2017).**

III. METHODOLOGY

The research method followed here is empirical research. A total of 304 samples have been taken out of which is taken through convenient sampling through online using social media. The independent variables are age, gender, occupation and locality. The dependent variables are the rating on the requirement of death penalty for heinous offences and support on the statement that real justice requires people to suffer for their wrongdoing. The statistical tool used by the research is graphical representation.

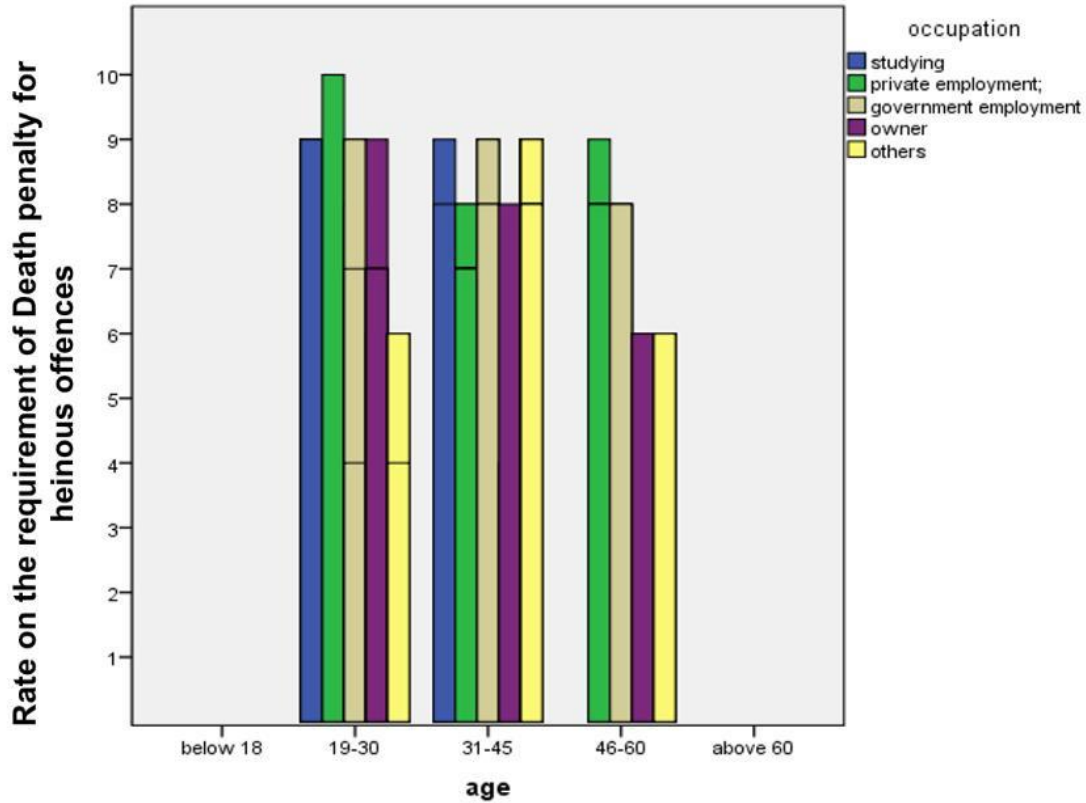
IV. ANALYSIS

Figure 1



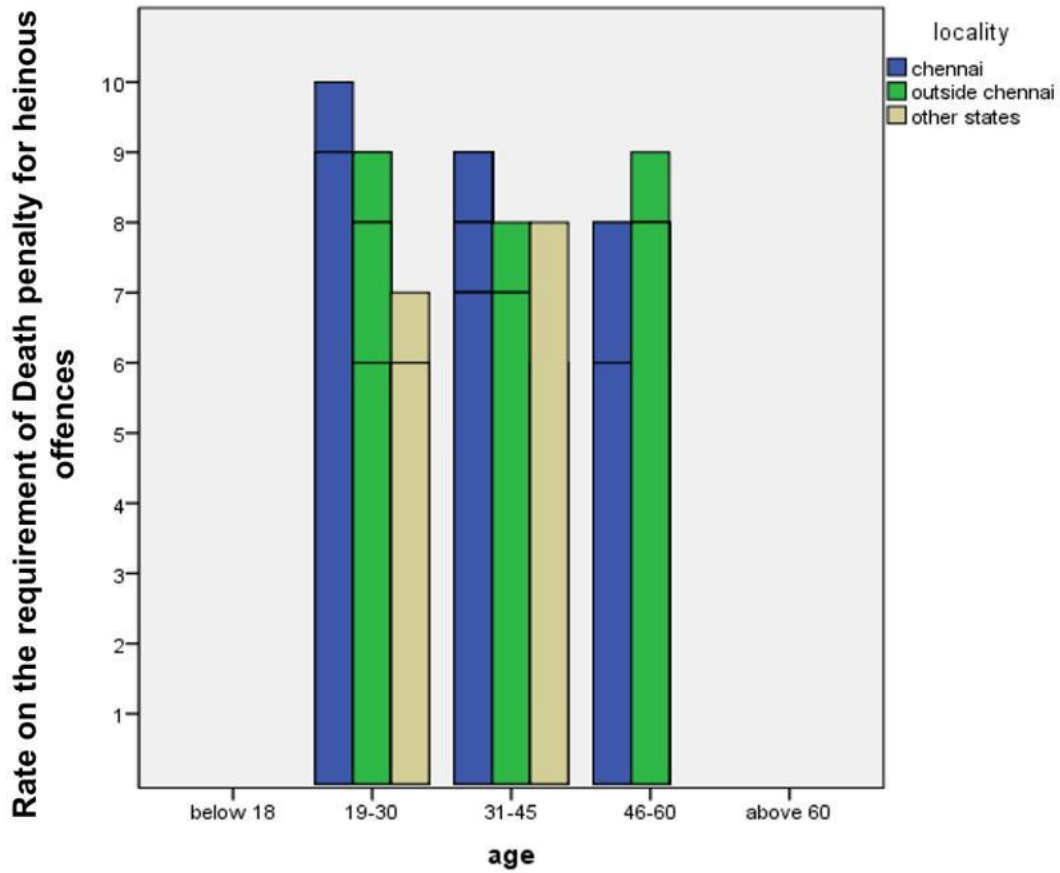
Legend : The **fig.1** shows the gender distribution in various age group and their opinion or rating on the requirement of death penalty for heinous offences.

Figure 2



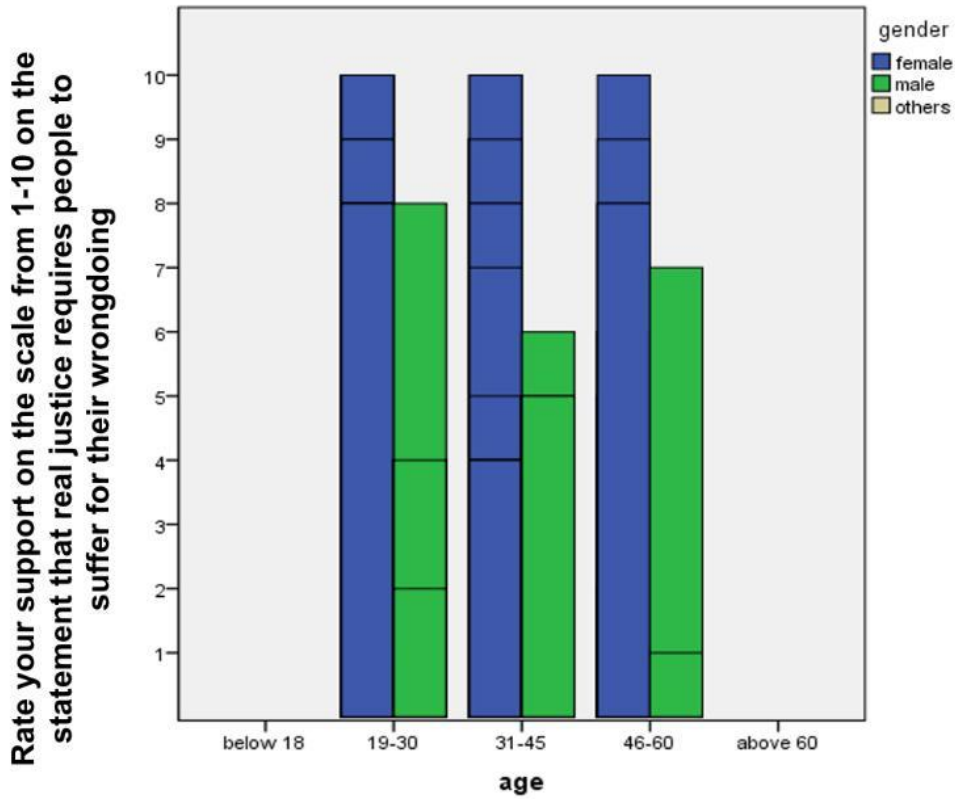
Legend: The fig.2 shows about the various age groups pertaining to the occupation and their opinion about requirement of death penalty for heinous offences.

Figure 3



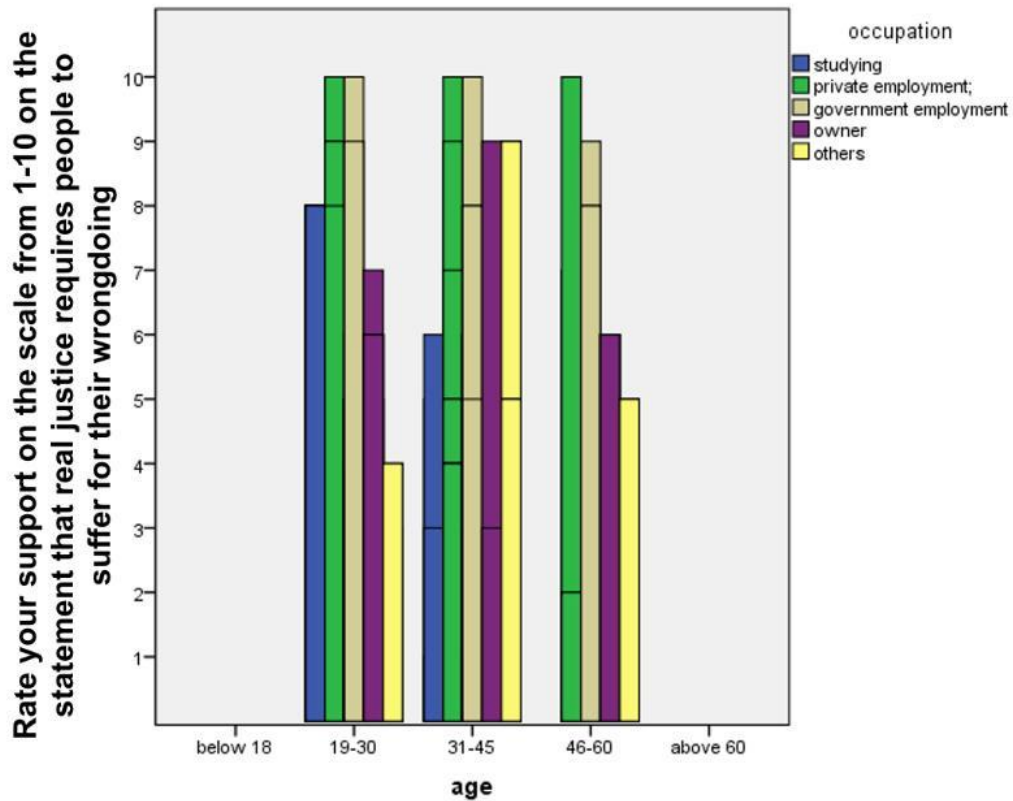
Legend: The fig.3 shows about the various age groups pertaining to the locality and their rating on the requirement of death penalty for heinous offences.

Figure 4



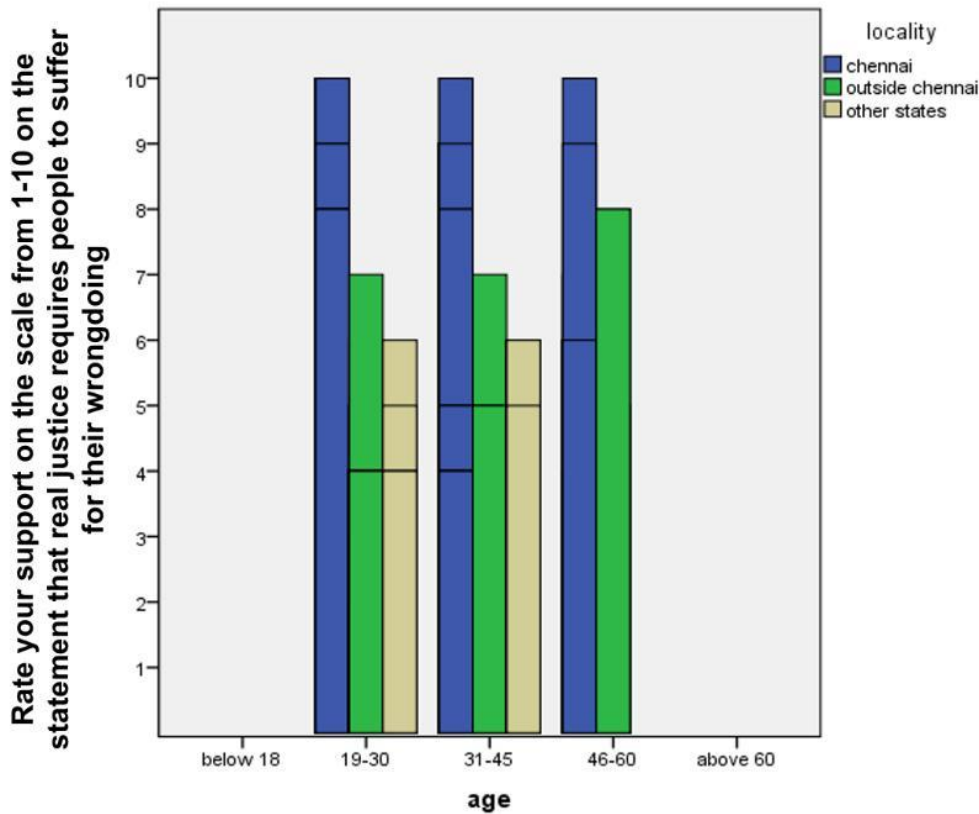
Legend: The **fig.4** shows about the gender distribution in various age groups and their rating on the statement that real justice requires people to suffer for their wrongdoing.

Figure 5 :



Legend: The fig.5 shows about the distribution of various age groups pertaining to their occupation and their Rating on the statement that real justice requires people to suffer for their wrongdoings.

Figure 6 :



Legend: The fig.6 shows about the distribution of various age groups pertaining to their locality and their rating on the statement that real justice requires people to suffer for their wrongdoings.

V. RESULT

In **Figure.1**, the female respondents of age group 19-30 have rated the fullest. (i.e) 10 on the scale which means they strongly say that capital punishment is required for heinous offences and offenders should be punished with death penalty. Almost all respondents have rated 8 and above. In **Figure.2**, the people of private employees between the age group of 19-30 have rated the highest of all. People who are occupied as owners and others have rated the least and belong to the age group of 46-60. In **Figure.3**, people residing in chennai between the age of 19- 30 have rated high to the statement and people belonging to the other state of age 19-30 have rated least when compared to other respondents of all age groups. In **Figure.4**, all the women respondents irrespective of age group have rated '10' for the statement that real justice requires people to suffer for their wrongdoing. People of age group 31-45 rated the least thinking that Killing a person for an offence is not a remedy. In **Figure.5**, private employees of different age groups have rated 10 to the statement which means they think real justice requires people to suffer for their wrongdoings. Others of age group 19-30 have least which means they do not agree with this statement to the fullest. In **Figure.6**, people who belong to chennai irrespective of age group think that real justice requires people to suffer for their wrongdoings. Other state people of few age groups have rated least.

VI. DISCUSSION

From the survey, in **figure 1** is found that the majority of the respondents of all age groups and gender have rated 8 and more than 8. This is due to the reason that they are well aware about the crime that is happening in the modern era. And they strongly think that severe punishments can only prevent such crime as stated in the deterrent theory of punishment. By observing **figure 2** it is found that the private employees of age group 19-30 have rated high this may be due to the fact that they think severe punishment reduces crime rate. The people with occupation as others of the same age group have rated least. This might be due to the reason that those people think reformatory theory is more effective than deterrent or retributive concept. From **figure 3** it is found that people from chennai of age group 19 to 30 gave rated 10 this can be because of the fact that nowadays heinous crimes are very frequently happening. And capital punishment might be a solution to prevent such heinous crimes. It's obscured from **figure 4** that female respondents of all age groups think. People agree to this because they believe that real justice requires severe punishment for wrongdoers. And offences against women are increasing rapidly day by day. This might be the reason for the answer given by women of all age groups. People of age group 31-45 rated the least because they think just killing by hanging is not sufficient instead Life in prison is a worse punishment and a more effective deterrent. Through the observation made in **figure 5** private and government employers of all age groups have rated the highest. Other respondents might think avenging cannot be a remedy for a crime. From **figure 6**, people from the locality of chennai of various age groups are rated highest. They strongly think that real justice is done only when the wrongdoer is punished. Their own opinion and awareness about increasing crime rate, may be the reason for such rating. Other state people have rated least.

VII. LIMITATIONS

The major limitation of my study is the sample frame. The sample frame taken through online and social media. The restrictive area of sample size is also another major impactful and a major limitation to the study.

VIII. SUGGESTIONS

In my view death penalty must be made mandatory for habitual offenders and for people committing heinous crimes like rape and murder.

Severe punishments like death penalty must be given very often rather than giving it in rarest of the rare cases because the more strict the law is the more less the crime rate will be.

Therefore death penalty should not be abolished because abolishing it will create fearlessness among the offender and it will encourage them to do commit more heinous crimes.

X. CONCLUSION

From all the analysis past from the research it is found that death penalty is very much required for heinous offences like murder, rape, offences against women, offences against children etc. And the real justice for the victim will be rendered by making the wrongdoers suffer for their wrongdoings. Thus I conclude that death penalty is an essential part of the criminal justice system and heinous offenders must be given capital punishment.

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