# CONSEQUENCES AFTER EXECUTION OF CAPITAL PUNISHMENT

**DISSERTATION**

**Submitted in the Partial Fulfilment for the Degree of**

**MASTER OF LAW'S (LL.M.)**

**SESSION: 2019-20**

**UNDER SUPERVISION OF:**

**Prof. Dr. Tarak Nath Prasad**
**Head & Dean**
**School of Legal Studies**

**SUBMITTED BY:**

**Vartika Singh**
**LL.M.- II Semester**
**Roll. No. 1190997056**

## SCHOOL OF LEGAL STUDIES

# BABU BANARSI DAS UNIVERSITY

# DECLARATION

Title of Project Report **CONSEQUENCES AFTER EXECUTION OF CAPITAL PUNISHMENT**

I understand what plagiarism is and am aware of the University's policy in this regard.

Vartika Singh

I declare that

(a) The work submitted by me in partial fulfilment of the requirement for the award of degree **LLM** Assessment in this **DISSERTATION**: **CONSEQUENCES AFTER EXECUTION OF CAPITAL PUNISHMENT** is my own, it has not previously been presented for another assessment.

(b) I declare that this **DISSERTATION: CONSEQUENCES AFTER EXECUTION OF CAPITAL PUNISHMENT** is my original work. Wherever work from other source has been used, all debts (for words, data, arguments and ideas) have been appropriately acknowledged.

(c) I have not used this work previously produced by another student or any other person to submit it as my own.

(d) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.

(e) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date : ………………

**VARTIKA SINGH**
**ROLL No.: 1190997056**
LL.M. (2019-20)

# CERTIFICATE

This is to certify that **Ms. Vartika Singh**, student of LL.M. II Semester **Roll No. 1190997056, Babu Banarasi Das University, Lucknow** has worked on topic titled **CONSEQUENCES AFTER EXECUTION OF CAPITAL PUNISHMENT** under my supervision. To the best of my knowledge the dissertation embodies original work of the candidate herself and findings and dissertation put forth in dissertation are her own, formulated after perusal of primary and secondary resources cited in this dissertation.

Date:

Under the supervision of

Prof. Dr. Tarak Nath Prasad

Head & Dean

School of Legal Studies

Babu Banarasi Das University

# ACKNOWLEDGEMENT

As I learned during the past years, writing a dissertation is not only stimulating but also a very challenging undertaking and I have occasionally asked myself whether I would actually be able to complete this project. Now, when the goal finally has been reached, I would like to take this opportunity to express my gratitude to all people who helped me make this possible First and foremost I would like to thank God and thereafter I would like to thank my supervisor **Dr. Prof. Tarak Nath Prasad, Head & Dean, School of Legal Studies** who motivated me to start this project and his comments and recommendations has been invaluable for me to finish this dissertation successfully.

I would also like to thank my parents, sister and brothers without their support it was not possible for me to fulfil dissertation writing and I also express my appreciation for all comments and suggestions from my friends.

**VARTIKA SINGH**
**LL.M.-II Semester**
**Roll. No. 1190997056**

# LIST OF ABBREVIATIONS

| | |
|---|---|
| AD | After Death |
| AIR | All India Reports |
| AP | Andhra Pradesh |
| BC | Before Christ |
| BOM. | Bombay |
| CAD | Constituent Assembly Debates |
| CRPC | Code Of Criminal Procedure |
| ED. | Edited |
| EDN. | Edition |
| GOI | Government of India |
| GOVT. | Government |
| IPC | Indian Penal Code |
| ORS. | Others |
| P. | Page |
| SC | Supreme Court |
| SA | South Africa |
| SCR | Supreme Court Reporter |
| UK | United Kingdom |
| UN | United Nations |
| UOI | Union of India |
| USSR | United States of Soviot Russia |
| UT | UNION TERRITORY |
| V | Versus |
| VOL. | Volume |

# LIST OF CASES

1. Allauddin Mian v. State of Bihar: 1989 Cri.L.J. 1486 S.C.
2. Bachan Singh vs. State of Punjab (1980) (2 SCC 684) 14
3. Balwant Singh v. State: AIR 1976 S.C. 230.
4. Bhupendra Singh v. State of Punjab: 1969 Cri.L.J. 6S.C.
5. Bishnu Deo v. State of West Bengal: AIR 1979 S.C. 964.
6. Chawla v. State of Haryana, AIR 1974 SC 1089
7. Dagdu v.State of Maharashtra: AIR 1977 S.C.1579.
8. Ediga Annamma v. State of Andhra Pradesh: AIR 1974: S.C. 799
9. Guru Swamy v. State of Tamil Nadu , AIR 1979 SC 1177
10. Har Dayal v. State: AIR 1976 S.C. 2055
11. HARIHAR SINGH V. STATE OF U.P. , AIR 1975 SC 1501
12. Hukam Singh v. State of Punjab:1975 Cri.L.J. 902 (P&H)
13. Jopseph Peter v. State of Goa, Daman & Diu: AIR 1977 S.C.1812.
14. Kartar Singh v. Emperor: AIR 1932 Lah. 259
15. Manepragada Ramachandra Rao v. The Revenue Divisional Officer,
16. Mithu v. State of Punjab: AIR 1983 S.C. 473 at 478
17. Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra (2012 SC 3565)
18. Mukesh v. State for NCT of Delhi , (2017) 6 SCC 1,
19. Mukesh & Anr vs State For Nct Of Delhi & Ors CRIMINAL APPEAL NOS. 609-610 OF 2017
20. Muniappan v. State of Tamil Nadu: AIR 1981 S.C. 1220.
21. Nawab v. Emperor: AIR 1932 Lah. 308
22. Pandurang v. State of Hyderabad: AIR 1955 S.C. 216

23. Pawan Kumar Gupta v. State of NCT of Delhi, 2020 SCC OnLine SC 340, decided on 20.03.2020
24. Peter Joseph v. State of Goa: 1977 S.C. 1812
25. Rajendra Prasad v. State of Uttar Pradesh: AIR 1979 S.C. 916.
26. Rajendra Prasad's Case (AIR 1979 SC 916)
27. Ram Nath Iyer,P: Code of Criminal Procedure: 1865 (1994)
28. Sadhu Singh v. State of Punjab: 1968 Cri.L.J. 1183 (P&H).
29. Santa Singh v. State of Punjab: AIR 1976 S.C. 2386
30. Sarveshwar Prasad Sharma v. State of M.P. , AIR 1977 SC 2423
31. Shidagouda Ningappa v. State of Karnataka, AIR 1981 SC 764
32. State vs Mohd. Afzal And Ors. 2003 VIIAD Delhi 1, 107 (2003) DLT 385, 2003 (71) DRJ 178, 2003 (3) JCC 1669
33. State v. Heera: 1985 Cri.L.J. 1153
34. Subhash v. State of Uttar Pradesh: 1976 Cri.L.J. 152 S.C.
35. T.V. Vatheeswaran v. State of Tamil Nadu , 1983 cr lj 481
36. Ummilal v. State of M.P. , AIR 1978
37. Waltair and another v. D. Raja Ram and others: AIR 1960 A.P. 259

# TABLE OF CONTENT

**Declaration**

**Certificate**

**Acknowledgement**

**List of Abbreviations**

**List of Cases**

**Chapter 1 Introduction** **1-12**

1.1 Introduction

1.2 Capital Punishment in India

1.3 Objective of the Research

1.4 Hypothesis

1.5 Research Methodology

**Chapter 2 Historical Background** **13-34**

2.1 Introduction

2.2 Origin of Capital Punishment

2.3 Historical Background

**Chapter 3 Legislative and Constitutional Provision on Capital Punishment** **35-54**

3.1 Introduction

3.2 Capital Offences under the Indian Penal Code

3.3 Provisions under Criminal Procedure Code

**Chapter 4 Consequences of Capital Punishment** **55-72**

4.1 Death Penalty: Contemporary Issues

4.2 Death Penalty in India

4.3 Flaws in The Arguments for Abolition

4.4 Causes of Death Penalty

4.5 Effect of Death Penalty

**Chapter 5 Judicial Views on Capital Punishment** **73-108**

5.1 Judicial Views

5.2 The Court Further Observed

5.3 Delays in Execution of Death Sentence

5.4 Mode of Execution of Death Sentence

**Chapter 6 Conclusion & Suggestions** **109-113**

5.1 Conclusion

5.2 Suggestions

**Bibliography** **114-116**

# Chapter 1

# Introduction

## 1.1 Introduction

The merits of capital punishment continue to be debated as executions, American court decisions, and worldwide efforts to abolish the practice keep the issue before the public. Some proponents feel that death is a just retribution for certain crimes -- that the criminal has forfeited his right to life by his actions; some view it as a deterrent; others have lost faith in the ability and willingness of the criminal justice system to keep demonstrably dangerous people away from the general population. Permanently ridding humanity of the influence of the worst criminals might seem the most obvious effect of the death penalty, but does it really do this? Our evaluation of the practice depends on what we think happens to us after death. In the early part of this century theosophists were among those most active in seeking to abolish capital punishment. What are some of the grounds for their stand, and what light do they throw on today's debate?

Though we occasionally say that "you can kill the body but not the soul," such sentiments have no real meaning to most people today because we identify a person so completely with his physical body. Modern science, the formative factor behind our contemporary outlook, derives all of man's consciousness from his body. Even for most religious believers, the soul has become an unsubstantial abstraction with few practical effects on the world during life, let alone after death. This, however, is at odds with most religious and philosophical traditions. In the theosophical view, every person is rooted in the spiritual reality behind the cosmos rather than being an outgrowth of physical matter. Each entity at its core is an immortal spiritual atom or monad, expressing itself through various forms as it evolves forth its inner potential. Life, consciousness, and substance are everywhere and, far from being abstractions, our spiritual and psychological aspects are as real as the matter we perceive with our senses.

As the expression of a single spiritual source, the universe is fundamentally a oneness: the earth is an integral portion of the solar system, and we are integral parts of the earth. Just as we draw the elements of our physical body from the physical body of our planet, so do our spirit, mind, and emotions originate in corresponding aspects of our living, ensouled earth. Further, these different ranges of our being are sustained by their interactions with corresponding aspects of the earth, in the same way as we are sustained physically by our contact with the earth's physical environment; and our interactions with the psychological aspects of the earth are as substantial as those with the physical world.

Out-of-body experiences of various kinds attest that our psychological elements can and do continue to function when separated from the physical body. Both traditional texts on death, such as the Tibetan "Book of the Dead," and reports of contemporary near-death experiences confirm that when a person dies, his consciousness, feelings, awareness, and sense of self carry on. Perhaps the most essential point these sources make is that *after death we are ourselves*. No magical transformation occurs with the dropping off of the physical form to turn us into an "angel" or "devil" or "nothing." We are exactly what we were when we died: that is, what we made ourselves to be during life by our thoughts, feelings, and acts. Whatever energies we have built up in our being are still there and, like a battery that we have charged or a spring wound to a certain tightness, that stored energy will have to be released before the various human vehicles can be dissolved back into the earth's elements.

After death, then, we meet in our own being the consequences of our life on earth. But to experience the "heavens" and "hells" we have made for ourselves in life, we do not travel to some distant or unreal place. We are inseparable portions of the earth and solar system, and so our afterdeath experiences occur within these realms. At death the physical body returns to the earth, and its elements decompose back into the earth's physical body from which they were drawn. In the same way the more gross or substantial portion of our psychological self,

our lower psychomental consciousness or vehicle, returns to the corresponding range of the earth's organism and there eventually decays completely.

Immediately after death the entire human being, minus only its most physical aspects, exists as an entity -- a person -- in that portion of the earth's being which is sometimes called the kama-loka or "desire-world." Most people, because their consciousness was not focused strongly in these ranges during earth life, have not built up an affinity for that quality of consciousness and pass almost unconsciously through this state. In time the more spiritual and nobly human portions of the person separate from the lower psychological vehicle in order to undergo their own appropriate afterdeath experiences. This "second death" leaves a corpse of lower psychological substance or energy, which also finally decomposes and returns to the corresponding part of the earth just as the physical body does. These lower aspects of dead human beings, either before or after the separation of the lower from the higher human consciousness, may be drawn to seances and other necromantic practices, and also influence the living: because we all participate in the psychomental atmosphere of the earth, the forces and beings acting in that atmosphere affect everyone on the globe.

On the other hand, one who *has* built up the lower psychomental side of himself very strongly, retains more of his conscious awareness in these lower regions of the earth's being, for he is at home in the milieu where his energies were focused while he was alive. Thoughts of hate, selfishness, malice, violence, greed, cruelty, anger, egoism, all make the lower psychological self denser and more vital, and it consequently takes longer to dissipate after death. Such entities have a deleterious effect on the living by strengthening similar elements in the thought-atmosphere; they influence any weak or negative individuals who are attuned to that quality of consciousness. When such a person is suddenly thrown out of his physical body by violent death, he remains for a considerable time in the earth's lower psychomental atmosphere as a complete human being deprived only of his physical and lowest astral

aspects. A few, however, are so attracted to material life and so at home in the lower psychomental atmosphere that they can actually continue their conscious existence as psychological beings of evil, preying on the living who open themselves, consciously or unconsciously, to malevolent energies.

What is the implication of these ideas for the death penalty? Instead of ridding society of unwanted influences, capital punishment gives them wider scope by deliberately throwing the criminal, sans body, into the psychological atmosphere of the earth, creating a focus of hate, malice, and all the destructive force that he brought to his crimes. These psychological energies, rather than being destroyed, are freed from physical limitations: the executed criminal, if truly an evil person, can have a much more devastating effect on mankind as a fully or partly conscious human being existing in the psychomental ranges of the earth, than he would if confined within his physical body. Such people work in the causal realms of mind and emotion, where we cannot count the crimes they contribute to. All this is to say that the cosmos is a spiritual unity and, while we can destroy his form, we cannot destroy any human being or his link with the earth and his fellowmen.

The practical effect on the living, of course, is far from the only issue surrounding capital punishment. We may ask: Can the deliberate taking of a human life ever be justified? What are the long-range consequences to a society that tolerates or encourages legalized murder? How can society be protected from predatory people? What of the criminal, considered as a spiritual as well as a human and material being? Has society the right to deprive him of all possibility of dealing in this life with the wrong he has done? Such questions have many ramifications. In considering our response, it is easy to forget that, in the words of the Bible, "Vengeance is mine, saith the Lord." If the practical results of capital punishment are in fact more injurious to humanity than those of confining the living criminal, perhaps we will be content to leave vengeance to the spiritual realities of the universe, however inhuman the

crimes committed. We may then concentrate on means of adequately protecting society from those individuals too dangerous and irresponsible to live among us, rather than attempting the impossible task of annihilating a human being. For, in truth, we can kill only the body, never the soul.

Capital punishment is one of the harsh punishments which are provided under the Indian Penal Code which involve the taking of life of accused for his wrongful act. The risk of penalty is the cost of crime or wrongful act which the offender has to pay; when this suffering is high as compared to benefit which the crime is expected to yield, it will be useful to deter a considerable number of people. Now the question arises whether a State has right to take the life of a person, and can cross any limit of barbarousness. The people distributed in two group about this question First is Moralists who feel that this penalty is necessary to deter the other like-minded person; Second is Progressive, who argue that this is only a judicial taking of life which court mandated.

Death penalty is a global issue. Some countries are totally against the death penalty and some countries are protecting the death penalty issue why because they think that tit for tat policy and they believe in the deterrent theory of punishment. In this chapter concerned to the effect on death penalty is regarding various laws death penalty should be given but it depends upon the facts and circumstances of that particular case and it is to be given in, only the rarest of rare case laws. If we see the countries with highest rape crimes, countries like Canada, Sweden, Germany, South Africa have abolished capital punishment have abolished and still the rate of crime is very high. Therefore abolition of capital punishment may no help to eradicate the crimes in our country. But now a days death penalty is used for the people who commit what is called capital crime or capital offences. If we see Muslim areas where offences like adultery, blasphemy or sorcery and rape are also considered as capital crimes being punished by execution capital punishment.

Throughout the course of history, the trend of capital punishment has gone from devaluing the life human being. Historically, a completely innocent person was put to death for something as minor as holding a belief where as presently only the most heinous crimes merit such punishment. The best way and the only way to truly make a rational decision regarding capital punishment is to examine the purpose of our criminal justice system. Mahatma Gandhi once said that “an eye for an eye make the whole world blind”. He even exclaimed if the murders are murdered by government, that not hypocrisy? Even at international level, they are not in the favour of capital punishment, some countries voted against death sentence and some countries voted in favour of the capital punishment, India also in favour of the capital punishment so India comes in the list of retentionist countries, in this research the researcher is also in the favour of capital punishment it is not to be completely abolish but to be given in the rarest of rare cases ( e.g when a crime committed by first offender or minor or lunatic) in such cases it is not to be appropriate to award death sentence, whereas a crime committed by a person which creates fear in the mind of society, (e.g. terrorism, repeat rape offender) then death sentence is most appropriate punishment in such cases, because benefit of society is to be considered at large.

In modern time, the need of the time is not for abolition of death sentence, but for prompt and effective enforcement of criminal laws to create better confidence and respect for law in the masses. Time is not yet ripe when complete abolition of capital punishment can be strongly supported without endangering the social security. It is no exaggeration to say, that in the present time the retention of capital punishment seems to be morally and legally justified.

In modem times in almost all countries capital punishment is imposed in rarest of the rare case that to imposition is less painful. Hence, until a suitable solution is discovered to prevent the crimes in the society, the capital punishments should be continued.

At present as many as 122 countries have retained the death penalty but they are continuously making renovations in the method of execution. Before awarding the death sentence the judge gives an opportunity to the condemned person to be heard on the point of sentence, satisfy the rule of natural justice and fair play. It seems that, whenever there is a crime there is ought to be a criminal. Undoubtedly, there are admirable principles which the Judges who have responsibility for passing sentence, should bear in mind while finalizing the sentence of the accused for criminal is tempted to commit the crime in a peculiar circumstance. The objectives of sentences and the range of sentences have widened over the years and this calls for properly previous observation of the results of similar sentences imposed in similar circumstances in the past The sentencing courts should, therefore, keep themselves abreast of the oenological developments, especially when the choice is between 'death' or 'life imprisonment'.

On 31 August 2015, the Law Commission of India submitted a report to the government which recommended the abolition of capital punishment for all crimes in India, excepting the crime of waging war against the nation or for terrorism related offences. The report cited several factors to justify abolishing the death penalty, including its abolition by one hundred forty (140) other nations, its arbitrary and flawed application and its lack of any proven deterring effect on criminals. Latest report of law commission recommends abolition of death penalty, except in terror cases. They said that principal of 'rarest of rare' cannot be operated free of arbitrariness. The Law Commission today recommended "sift" abolition of death penalty except in terror related cases, noting it does not serve the penological goal of deterrence any more than life imprisonment.

## 1.2 Capital Punishment in India

Capital Punishment is a legal death penalty in India. India gives capital punishment for heinous crimes. In India capital punishment is awarded for most heinous and grievous

offence. In India Article 21 of the Indian constitution is “protection of life and personal liberty”. This article says “No person shall be deprived of his life or personal liberty except as according to procedure established by law”, it can be argued that death sentence in the present form violates the citizen’s right to life. This article says right to life is promised to every citizen in India. The constitution of India recognises right to life as inalienable and indispensable right therefore the constitution is evendentiary value that death sentence is not valid in every cases further article-14 of Indian constitution declares “equality before law and equal protection of laws”, which means that no person shall be discriminated against unless the discrimination is required to achieve equality. The concepts of equality incorporated in Article-14 finds echo in the preamble to the constitution. Capital sentence, it seems, is therefore, an anti-thesis of one’s right to life.

It is an indisputable fact that there is nothing in the constitution of India which expressly holds capital punishment as unconstitutional, though there are provisions that suggest that the constitutional scheme accepts the possibility of capital punishment. However, there are several provisions in the constitution such as the Preamble, the Fundamental Rights and Directive Principle which can be relied upon for challenging the constitutionality of capital punishment. It is clear that only a limited category of serious offender visited with capital punishment. That means a person’s life is liable to be extinguished any time after he has extinguished the life of another or committed some other serious offence. The crux of the whole issue is that each one of us has an inherent right to life and none of us can divert anyone of this precious right, and, if he does so it has to be at the cost of his own life.

In India IPC provides death sentence as a punishment for various offences such as criminal conspiracy, murder, waging war against the government, abetment of mutiny, dacoity with murder, and terrorism. Constitutional validity of the capital punishment as provided in the Indian Penal Code has been challenged in many cases and so far as the Supreme Court has

always upheld that the capital punishment as provided in the Indian Penal Code is constitutionally valid. The Constitution Bench judgement of Supreme Court of India in **Bachan Singh vs. State of Punjab (1980) (2 SCC 684)** made it very clear that capital punishment in India can be given only in rarest of rare cases. As we discussed above that Supreme Court also has given judgement that death sentence to be given only in rarest of rare cases, our Indian Constitution has provision that the President of India in all cases and the Governor of States under their respective jurisdiction, have the power to grant pardons reprieves, respites or remission of punishment or, to suspend, remit or commute the sentence of death penalty. Death sentences in India must also be confirmed by a superior court and an accused has the right to appeal to a high court or the supreme court, which has adopted guidelines on clemency and the treatment of death row prisoners. There are twenty two capitals Punishment is taken place in India since 1995. After the independence there are fifty two capital punishment is taken in India In "Mithu vs state of Punjab" the Supreme Court struck down the IPC Section 303 which provide mandatory death sentence for the offenders. India voted against a United Nations General Assembly resolution calling for a prohibition on the death penalty. In November 2012, India again continue its posture on capital punishment by voting against the UN General Assembly draft resolution request to ban death penalty.

In India there is need of death penalty on background of inhuman frequent criminal records and terrorist attacks. In such Case India is unable to abolish the death Penalty. However the rarest of the rare test must be taken seriously to minimize number of executions in India. The retentionist Mode may be transformed with changing norms of society, nature of crime and hence the amendment and modification of laws are bound to happen with such steady change. Historically speaking, India has never witnessed any strong movement for the abolition of death penalty. However, this does not mean that no attempt has been made for its abolition. In fact, a number of attempts have been made to get rid of this extreme penalty. The

constitutional validity of death penalty has mainly been challenged on the ground that it violates the fundamental rights guaranteed in Articles, 14, 19 and 21.

India retained the death penalty as one of the punishments in the Indian Penal Code, 1860 (IPC) after independence. Death penalty is also prescribed in special or local laws for various offences. Presently, death penalty is provided under the IPC for various offences such as Section 121, Section 132, Section 194, Section 195A, Section 302, Section 305, Section 307(2), Section 364A, Section 396, Section 376E, and Section 376A.

The special or local laws which provide for death penalty are the Army Act, 1950; the Air Force Act, 1950; the Navy Act, 1950; the Indo Tibetan Border Police Act, 1992; the Assam Rifles Act, 2006; the Border Security Force Act, 1968; the Sashastra Seema Bal Act, 2007; the Defence and Internal Security Act, 1971; the Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985 as amended in 1988 the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Explosive Substances Act, 1908 as amended in 2001; the Unlawful Activities Prevention Act, 1967, as amended in 2004; the Maharashtra Control of Organised Crime Act, 1999; the Karnataka Control of Organised Crime Act, 2000; the Andhra Pradesh Control of Organised Crime Act, 2001; and the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002, A number of local laws such as the Arunachal Pradesh Control of Organised Crime Act, 2002 providing death penalty have been repealed. Although various laws provides for the death penalty, it is mainly given under Section 302IPC.

The 35th report of the Law Commission of India states that India cannot, risk the experiment of abolition of capital punishment as the paramount need is for maintaining law and order in the country. The Supreme Court observed that death penalty has a deterrent effect and it does serve a social purpose and that the law relating to death sentence need not be re-considered.

The primary duty of the State is to protect innocent and law abiding citizens rather than take the spacious plea on behalf of persons who are not civilized and in human.

## 1.3 Objective of the Research

The objective of this research is:-

- To study about the capital punishment in India.
- To check the consequences of capital punishment.
- To study about the criminological approach of capital punishment.
- To study about the sentencing policy in capital punishment.

## 1.4 Hypothesis

Capital punishment is to be given only in rarest of rare cases.

## 1.5 Research Methodology

This research is based on doctrinal type pattern. Doctrinal research is also known as traditional research. Doctrinal research is divided into different types such as analytical and descriptive method. This research is based on information which has been already available and analysed those facts to make a evolution of this research. This research involves secondary data. In this research the researcher mostly used books, articles, journals, etc.

# Chapter 2

# Historical Background

## 2.1 Introduction

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. Increasing strength of the human rights movement in India, the existence of capital punishment is questioned as immoral. However this is an odd argument as keeping one person alive at the cost of the lives of numerous members or potential victims in the society is unbelievable and in fact, that is morally wrong.

Indian constitution is an amalgam of many constitutions, i.e. the constitution of America, Britain and Japan. It should not surprise anyone, therefore, that the main provisions of the constitution of India guaranteeing the right to life has been lifted from the American and the Japanese constitution. It may be added here that what we have borrowed in the form or style of expression and not the right itself. The right to life is not the something that constitutions create or even confer. The constitution only recognizes this inalienable and indispensable right.

The legal system of many nations of the world contain a written constitution which guarantees fundamental rights against the

Excesses and the apathy of the legislature and the executive. Such constitution after recognize the 'act to life', equal protection of law and 'due process of law'. They prohibit 'cruel and unusual punishment and' degrading treatment or punishment'. The constitutional validity of capital punishment is an issue which has troubled the constitutional courts of the world. It is a question the answer to which provide a litmus test of the spirit in which a supreme court perform its duties. The cases in which the legality of the death penalty has been impugned raise for judicial review a state practice of dubious moral propriety one impinging on the fundamental right to life of the weakest members of society an issue in which the standards of

liberals are in conflict with the standards of conservatives and often with those of the man in the street.

Capital punishment,death penalty or execution is punishment by death. The sentence that someone be punished in this manner is a death sentence. Crimes that can result in a death penalty are known as capital crimes or capital offences. The term capital originates from the Latin capitalis, literally "regarding the head" (referring to execution by beheading). Capital punishment has, in the past, been practiced by most societies, as a punishment for criminals, and political or religious dissidents. Historically, the carrying out of the death sentence was often accompanied by torture, and executions were most often public. 36 countries actively practice capital punishment, 103 countries

have completely abolished it de jure for all crimes, 6 have abolished it for ordinary crimes only (while maintaining it for special circumstances such as war crimes), and 50 have abolished it de facto(have not used it for at least ten years and.or are under moratorium). Nearly all countries in the world prohibit the execution of individuals who were under the age of 18 at the time of their crimes; since 2009, only Iran, Saudi Arabia, and Sudan have carried out such executions. Executions of this kind are prohibited under international law.

### 2.1.1 Meaning of Capital Punishment

Capital punishment, also called death penalty, execution of an offender sentenced to death after conviction by a court of law for a criminal offense. Capital punishment should be distinguished from extrajudicial executions carried out without due process of law. The term death penalty is sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment.

The term "Capital Punishment" stands for most severe form of punishment. It is the punishment which is to be awarded for the most heinous, grievous and detestable crimes

against humanity. While the definition and extent of such crimes vary from country to country, state to state, age to age, the implication of capital punishment has always been the death sentence. By common usage in jurisprudence, criminology and penology, capital sentence means a sentence of death.

## 2.2 Origin of Capital Punishment

The death penalty was prescribed for various crimes in Babylon at least 3700 years ago. Some of the ancient society imposed it only for the most heinous crimes and some imposed it for minor offences. For example, underRome's law in the 5th century B.C., death was the penalty for publishing "insulting songs" and disturbing the peace of the city atNight . Under Greece's Draconian Legal Code in the 7th century B.C., death was the punishment for every crime. Beginning in ancient times the executions were frequently carried out in public. Public executions provided benefits for everyone. For the surviving victims of the condemned criminals, the execution provided the grim satisfaction of witnessing the final punishment of those who had wronged them. For the authorities, executions served as graphic demonstrations of their determination to protect the public safety. Public executions even helped the authorities to do their jobs serving as grisly object lessons for potential wrongdoers.

The extent or the nature of the punishment depended as much on the social standing of the criminal as on the nature of the crime. The commoners were executed much more often than nobles. Minorities and foreigners were treated more harshly than members of the dominant group. The methods of execution were also varied. The common modes of inflicting death sentence on the offender were drowning, burning, boiling, beheading, hurling the offender from rock, stoning, strangling, impelling, amputating, shooting by gun or starving him to death. Hanging and beheading were the most common methods of execution in Europe and Great Britain. At present the common modes of execution of death sentence are asphyxiation,

electrocution, guillotine, shooting and hanging. The method of execution by electrocution was first used at Auburn State Prison, New York on 1890 and is now being extensively used in USA, UK, USSR, Japan and other European countries. The use of Guillotine for execution was introduced in France in 1792. The method of hanging the condemned prisoner till death has been commonly in use in almost all the countries since ages. In India public hanging is now held to be unconstitutional.

**2.2.1 An Effective Deterrent to Crime:**

There is a great deal of debate over how powerful a deterrent capital punishment is. Most of us have an instinctive feeling that the death penalty must deter, at least to some extent. Deterrence is one of the fundamental reasons for punishment of any kind. Since death is considered the harshest punishment available under the law, it seems logical that it must also be the most effective deterrent to crime. The English barrister Sir James Stephen remarked, "No other punishment deters men so effectually from committing crimes as the punishment of death." "In any secondary punishment, however terrible, there is hope; but death is death; its terror cannot be described more forcibly." The federal prisons now have custody of a man sentenced to life imprisonment, who, since he has been in prison, has committed three more murderers on three separate occasions- both of prison guard and inmates. There is no further punishment that he can receive. In effect, he has a license to murder.

**2.2.2 Execution of Death Sentence in India**

The execution of death sentence in India is carried out by two modes, namely hanging by the neck till death and being executed by firing squad.

**a) Hanging**

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."

**b) Shooting**

The Army Act and Air Force Act also provide for the execution of the death sentence. Section 34 of the Air Force Act, 1950 empowers the court martial to impose the death sentence for the offences mentioned in section 34(a) to (o) of The Air Force Act, 1950. Section 163 of the Act provides for the form of the sentence of death as:-

"In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death".

This provides for the discretion of the Court Martial to either provide for the execution of the death sentence by hanging or by being shot to death. The Army Act, 1950, and the Navy Act, 1957 also provide for the similar provisions as in The Air Force Act, 1950.

**2.2.3 Execution of Death Sentence in other country**

(a)Firing squad

Firing squad is the preferred method of execution in Indonesia. Twelve armed executioners shoot the prisoner in the chest. If the prisoner is still not dead, the commander then issues a final bullet to the head

(b)Beheading

Saudi Arabia is the only country in the world where beheadings are used as a method in capital punishment. The beheadings are preformed publicly with a sword.

(c)Lethal injection

Though the end result of death is the same in all methods of executions, lethal injection is often viewed as the least cruel. Injecting a fatal dose of drugs into a death row inmate has become the primary method of execution in the United States.

In 2013, lethal injection was also used in China and Vietnam.

(d)Electrocution

The United States is the only country to exercise capital punishment using electrocution in 2013.In, 2008, the Nebraska Supreme Court declared execution by electrocution illegal for being "cruel and unusual punishment.

## 2.3 Historical Background

For centuries the death penalty, often accompanied by barbarous refinements, has been trying to hold crime in check; yet crime persists.

ALBERT CAMUS, *Resistance, Rebellion and Death*

Capital punishment has in the past been practiced in virtually every society, although currently only 58 nations actively practice it, with 95 countries abolishing it (the remainder having not used it for 10 years or allowing it only in exceptional circumstances such as wartime).[3] It is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union member states, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment.[1]

Today, most countries are considered by Amnesty International as abolitionist.[2] Amnesty International allowed a vote on a nonbinding resolution to the UN to promote the abolition of the death penalty.[3] However, over 60% of the world's population live in countries where executions take place, insofar as the four most populous countries in the world (the People's Republic of China, India, United States and Indonesia) apply the death penalty. All of them

[1] "Charter of Fundamental Rights of the European Union"(PDF).
[2] "Amnesty International". Amnesty.org.
[3] "moratorium on the death penalty". Un.org. 2007-11-15.

voted against the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly in 2008.[4]

Execution of criminals and political opponents has been used by nearly all societies—both to punish crime and to suppress political dissent. In most places that practice capital punishment it is reserved for murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery, incest and sodomy, carry the death penalty, as do religious crimes such as apostasy in Islamic nations (the formal renunciation of the state religion). In many countries that use the death penalty, drug trafficking is also a capital offense. In China, human trafficking and serious cases of corruption are punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offenses such as cowardice, desertion, insubordination, and mutiny.[5]

The use of formal execution extends to the beginning of recorded history. Most historical records and various primitive tribal practices indicate that the death penalty was a part of their justice system. Communal punishment for wrongdoing generally included compensation by the wrongdoer, corporal punishment, shunning, banishment and execution. Usually, compensation and shunning were enough as a form of justice.[6] The response to crime committed by neighbouring tribes or communities included formal apology, compensation or blood feuds.

A blood feud or vendetta occurs when arbitration between families or tribes fails or an arbitration system is non-existent. This form of justice was common before the emergence of an arbitration system based on state or organised religion. It may result from crime, land

[4] "THE DEATH PENALTY IN JAPAN-FIDH > Human Rights for All / Les Droits de l'Homme pour Tous". Fidh.org.

[5] "Shot at Dawn, campaign for pardons for British and Commonwealth soldiers executed in World War I". Shot at Dawn Pardons Campaign.

[6] The "bite" one had to pay was used as a term for the crime itself: "Mordre wol out; that se we day by day." – Geoffrey Chaucer (1340–1400), The Canterbury Tales,*The Nun's Priest's Tale,* l. 4242 (1387–1400), repr. In *The Works of Geoffrey Chaucer*, ed. Alfred W. Pollard, et al. (1898).

disputes or a code of honour. "Acts of retaliation underscore the ability of the social collective to defend itself and demonstrate to enemies (as well as potential allies) that injury to property, rights, or the person will not go unpunished."[7] However, in practice, it is often difficult to distinguish between a war of vendetta and one of conquest.

Elaborations of tribal arbitration of feuds included peace settlements often done in a religious context and compensation system. Compensation was based on the principle of *substitution* which might include material (e.g. cattle, slave) compensation, exchange of brides or grooms, or payment of the blood debt. Settlement rules could allow for animal blood to replace human blood, or transfers of property or blood money or in some case an offer of a person for execution. The person offered for execution did not have to be an original perpetrator of the crime because the system was based on tribes, not individuals. Blood feuds could be regulated at meetings, such as the Viking *things*. Systems deriving from blood feuds may survive alongside more advanced legal systems or be given recognition by courts (e.g. trial by combat). One of the more modern refinements of the blood feud is the duel.

In certain parts of the world, nations in the form of ancient republics, monarchies or tribal oligarchies emerged. These nations were often united by common linguistic, religious or family ties. Moreover, expansion of these nations often occurred by conquest of neighbouring tribes or nations. Consequently, various classes of royalty, nobility, various commoners and slave emerged. Accordingly, the systems of tribal arbitration were submerged into a more unified system of justice which formalised the relation between the different "classes" rather than "tribes".

The earliest and most famous example is Code of Hammurabi which set the different punishment and compensation according to the different class/group of victims and

[7] Translated from Waldmann, op.cit., p.147.

perpetrators. The Torah(Jewish Law), also known as the Pentateuch (the first five books of the Christian Old Testament), lays down the death penalty for murder, kidnapping, magic, violation of the Sabbath, blasphemy, and a wide range of sexual crimes, although evidence suggests that actual executions were rare.[8] A further example comes from Ancient Greece, where the Athenian legal system was first written down by Draco in about 621 BC: the death penalty was applied for a particularly wide range of crimes, though Solon later repealed Draco's code and published new laws, retaining only Draco's homicide statutes.[9] The word draconian derives from Draco's laws. The Romans also used death penalty for a wide range of offenses.[10]

Islam on the whole accepts capital punishment.[11] The Abbasid Caliphs in Baghdad, such as Al-Mu'tadid, were often cruel in their punishments.[12] In the *One Thousand and One Nights*, also known as the *Arabian Nights*, the fictional storyteller Sheherazade is portrayed as being the "voice of sanity and mercy", with her philosophical position being generally opposed to punishment by death. She expresses this though several of her tales, including "The Merchant and the Jinni", "The Fisherman and the Jinni", "The Three Apples", and "The Hunchback".

Similarly, in medieval and early modern Europe, before the development of modern prison systems, the death penalty was also used as a generalised form of punishment. During the reign of Henry VIII, as many as 72,000 people are estimated to have been executed. In 18th century Britain there were 222 crimes which were punishable by death, including crimes such as cutting down a tree or stealing an animal. Thanks to the notorious Bloody Code, 18th century (and early 19th century) Britain was a hazardous place

[8] Schabas, William (2002). The Abolition of the Death Penalty in International Law. Cambridge University Press. .
[9] Robert. "Greece, A History of Ancient Greece, Draco and Solon Laws". History-world.org.
[10] "Capital punishment in the Roman Empire". En.allexperts.com. 2001-01-30.
[11] "Islam and capital punishment". Bbc.co.uk.
[12] The Caliphate: Its Rise, Decline, and Fall., William Muir

to live. For example, Michael Hammond and his sister, Ann, whose ages were given as 7 and 11, were reportedly hanged at King's Lynn on Wednesday, September 28, 1708 for theft. The local press did not, however, consider the executions of two children newsworthy.

Although many are executed in China each year in the present day, there was a time in Tang Dynasty China when the death penalty was abolished. This was in the year 747, enacted by Emperor Xuanzong of Tang (r. 712–756). When abolishing the death penalty Xuanzong ordered his officials to refer to the nearest regulation by analogy when sentencing those found guilty of crimes for which the prescribed punishment was execution. Thus depending on the severity of the crime a punishment of severe scourging with the thick rod or of exile to the remote Lingnan region might take the place of capital punishment. However the death penalty was restored only twelve years later in 759 in response to the An Lushan Rebellion. At this time in China only the emperor had the authority to sentence criminals to execution. Under Xuanzong capital punishment was relatively infrequent, with only 24 executions in the year 730 and 58 executions in the year 736.

The two most common forms of execution in China in the Tang period were strangulation and decapitation, which were the prescribed methods of execution for 144 and 89 offenses respectively. Strangulation was the prescribed sentence for lodging an accusation against one's parents or grandparents with a magistrate, scheming to kidnap a person and sell them into slavery and opening a coffin while desecrating a tomb. Decapitation was the method of execution prescribed for more serious crimes such as treason and sedition. Interestingly, and despite the great discomfort involved, most Chinese during the Tang preferred strangulation to decaptitation, as a result of the traditional Chinese belief that the body is a gift from the parents and that it is therefore disrespectful to one's ancestors to die without returning one's body to the grave intact.

Some further forms of capital punishment were practiced in Tang China, of which the first two that follow at least were extralegal. The first of these was scourging to death with the thick rod which was common throughout the Tang especially in cases of gross corruption. The second was truncation, in which the convicted person was cut in two at the waist with a fodder knife and then left to bleed to death. A further form of execution called Ling Chi (slow slicing), or death by/of a thousand cuts, was used in China from the close of the Tang dynasty in roughly 900 CE to its abolition in 1905.

When a minister of the fifth grade or above received a death sentence the emperor might grant him a special dispensation allowing him to commit suicide in lieu of execution. Even when this privilege was not granted, the law required that the condemned minister be provided with food and ale by his keepers and transported to the execution ground in a cart rather than having to walk there.

Nearly all executions under the Tang took place in public as a warning to the population. The heads of the executed were displayed on poles or spears. When local authorities decapitated a convicted criminal, the head was boxed and sent to the capital as proof of identity and that the execution had taken place.

In Tang China, when a person was sentenced to decapitation for rebellion or sedition, punishment was also imposed on their relatives, whether or not the relatives were guilty of participation in the crime. In such cases fathers of the convicted under 79 years of age and sons aged over 15 were strangled. Sons under 15, daughters, mothers, wives, concubines, grandfathers, grandsons, brothers and sisters were enslaved and uncles and nephews were banished to the remotest reaches of the empire. Sometimes the tombs of the family's ancestors were levelled, the ancestors' coffins were destroyed and their bones scattered.

Despite its wide use, calls for reform were not unknown. The 12th century Sephardic legal scholar, Moses Maimonides, wrote, "It is better and more satisfactory to acquit a thousand

guilty persons than to put a single innocent man to death." He argued that executing an accused criminal on anything less than absolute certainty would lead to a slippery slope of decreasing burdens of proof, until we would be convicting merely "according to the judge's caprice." His concern was maintaining popular respect for law, and he saw errors of commission as much more threatening than errors of omission.

The last several centuries have seen the emergence of modern nation-states. Almost fundamental to the concept of nation state is the idea of citizenship. This caused justice to be increasingly associated with equality and universality, which in Europe saw an emergence of the concept of natural rights. Another important aspect is that emergence of standing police forces and permanent penitential institutions. The death penalty became an increasingly unnecessary deterrent in prevention of minor crimes such as theft. The argument that deterrence, rather than retribution, is the main justification for punishment is a hallmark of the rational choice theory and can be traced to Cesare Beccaria whose well-known treatise *On Crimes and Punishments* (1764), condemned torture and the death penalty and Jeremy Bentham who twice critiqued the death penalty.[13] Additionally, in countries like Britain, law enforcement officials became alarmed when juries tended to acquit non-violent felons rather than risk a conviction that could result in execution. Moving executions there inside prisons and away from public view was prompted by official recognition of the phenomenon reported first by Beccaria in Italy and later by Charles Dickens and Karl Marx of increased violent criminality at the times and places of executions.

The 20th century was one of the bloodiest of the human history. Massive killing occurred as the resolution of war between nation-states. A large part of execution was summary execution of enemy combatants. Also, modern military organisations employed capital punishment as a means of maintaining military discipline. The Soviets, for example, executed 158,000

[13] *The Journal of Criminal Law and Criminology* (Northwestern University School of Law)

soldiers for desertion during World War II.[14] In the past, cowardice, absence without leave, desertion, insubordination, looting, shirking under enemy fire and disobeying orders were often crimes punishable by death (see decimation and running the gauntlet). One method of execution since firearms came into common use has almost invariably been firing squad. Moreover, various authoritarian states—for example those with fascist or communist governments—employed the death penalty as a potent means of political oppression. According to the declassified Soviet archives, 681,692 people were shot in 1937 and 1938 alone – an average of 1,000 executions a day.[15] Partly as a response to such excessive punishment, civil organisations have started to place increasing emphasis on the concept of human rights and abolition of the death penalty.

Among countries around the world, almost all European and many Pacific Area states (including Australia, New Zealand and Timor Leste), and Canada have abolished capital punishment. In Latin America, most states have completely abolished the use of capital punishment, while some countries, such as Brazil, allow for capital punishment only in exceptional situations, such as treason committed during wartime. The United States (the federal government and 34 of the states), Guatemala, most of the Caribbean and the majority of democracies in Asia (e.g. Japan and India) and Africa (e.g. Botswana and Zambia) retain it. South Africa, which is probably the most developed African nation, and which has been a democracy since 1994, does not have the death penalty. This fact is currently quite controversial in that country, due to the high levels of violent crime, including murder and rape.[16]

Advocates of the death penalty argue that it deters crime, is a good tool for police and prosecutors (in plea bargaining for example), improves the community by making sure that

---

[14] ^ Patriots ignore greatest brutality. *The Sydney Morning Herald.* August 13, 2007

[15] "*A Companion to Russian History*". Abbott Gleason (2009). Wiley-Blackwell. p.373.

[16] "Definite no to Death Row – Asmal".

convicted criminals do not offend again, provides closure to surviving victims or loved ones, and is a just penalty for their crime. Opponents of capital punishment argue that it has led to the execution of wrongfully convicted, that it discriminates against minorities and the poor, that it does not deter criminals more than life imprisonment, that it encourages a "culture of violence", that it is more expensive than life imprisonment, and that it violates human rights.

### 2.3.1 Cruel and Unusual Punishment

**Cruel and unusual punishment** is a phrase describing criminal punishment which is considered unacceptable due to the suffering or humiliation it inflicts on the condemned person.

For most of recorded history, capital punishments were often deliberately painful. Severe historical penalties include:

**Death by boiling** is a method of execution in which a person is killed by being immersed in a boiling liquid such as water or oil. While not as common as other methods of execution, boiling to death has been used in many parts of Europe and Asia.

**Death by burning** (also known as burning alive or burning to death) is death brought about by combustion. As a form of capital punishment, burning has a long history as a method in crimes such as treason, heresy, and witchcraft.

**Flaying** is the removal of skin from the body. Generally, an attempt is made to keep the removed portion of skin intact.

Flaying of humans is used as a method of torture or execution, depending on how much of the skin is removed. This article deals with flaying in the sense of torture and execution. This is often referred to as "flaying alive". There are also records of people flayed after death, generally as a means of debasing the corpse of a prominent enemy or criminal, sometimes related to religious beliefs (e.g. to deny an afterlife); sometimes the skin is used, again for deterrence, magical uses, etc. (e.g. scalping).

**Crucifixion** is an ancient method of painful execution in which the condemned person is tied or nailed to a large wooden cross (of various shapes) and left to hang until dead. Crucifixion was in use particularly among the Seleucids, Carthaginians, and Romans from about the 6th century BC to the 4th century AD.

Death by **crushing or pressing** is a method of execution that has a history during which the techniques used varied greatly from place to place. This form of execution is no longer sanctioned by any governing body.

**Disembowelment (evisceration)** is the removal of some or all of the organs of the gastrointestinal tract (the bowels), usually through a horizontal incision made across the abdominal area. Disembowelment may result from an accident, but has also been used as a method of torture and execution. In such practices, disembowelment may be accompanied by other forms of torture, and/or the removal of other vital organs.

**Dismemberment** is the act of cutting, tearing, pulling, wrenching or otherwise removing, the limbs of a living thing. It may be practiced upon human beings as a form of capital punishment, as a result of a traumatic accident, or in connection with murder, suicide, or cannibalism. As opposed to surgical amputation of the limbs, dismemberment is often fatal to all but the simplest of creatures. In criminology, a distinction is made between offensive and defensive dismemberment.

**Execution by elephant** was, for thousands of years, a common method of capital punishment in South and Southeast Asia, and particularly in India. Asian Elephants were used to crush, dismember, or torture captives in public executions. The animals were trained and versatile, both able to kill victims immediately or to torture them slowly over a prolonged period. Employed by royalty, the elephants were used to signify both the ruler's absolute power and his ability to control wild animals.

**Impalement** was a method of torture and execution whereby a person is pierced with a long stake. The penetration can be through the sides, from the rectum, or through the mouth. This method would lead to a slow and painful death. Often, the victim was hoisted into the air after partial impalement. Gravity and the victim's own struggles would cause him to slide down the pole, especially if the pole were on a wagon carrying war prizes and prisoneers. Death could take many days. Impalement was frequently practiced in Asia and Europe throughout the Middle Ages. Vlad III the Impaler, who learned the method of killing by impalement while staying in Constantinople as a prisoner, and Ivan the Terrible have passed into legend as major users of the method.[17]

**Necklacing** (sometimes called necklace) is the practice of summary execution carried out by forcing a rubber tire, filled with petrol, around a victim's chest and arms, and setting it on fire. The victim may take up to 20 minutes to die, suffering severe burns in the process.

**Sawing** was a method of execution used in Europe under the Roman Empire, in the Middle East, and in parts of Asia. The condemned were hung upside-down and sawn apart vertically through the middle, starting at the groin. Since the the body was inverted, the brain received a continuous supply of blood despite severe bleeding, consciousness thereby continuing until, or after, the saw severed the major blood vessels of the abdomen.

**Slow slicing** also translated as the slow process, the lingering death, or death by a thousand cuts, was a form of execution used in China from roughly 900 AD until its abolition in 1905. In this form of execution, the condemned person was killed by using a knife to methodically remove portions of the body over an extended period of time.

**The breaking wheel** was a torturous [capital punishment] device used in the Middle Ages and early modern times for public execution by cudgeling to death, especially in France and Germany. In France the condemned were placed on a cart-wheel with their limbs stretched

[17] Dracula - Britannica Concise

out along the spokes over two sturdy wooden beams. The wheel was made to revolve slowly. Through the openings between the spokes, the executioner hit the victim with an iron hammer that could easily break the victim's bones. This process was repeated several times per limb. Once his bones were broken, he was left on the wheel to die. It could take hours, even days, before shock and dehydration caused death. The punishment was abolished in Germany as late as 1827.[18]

### 2.3.2 Nineteenth Century

In the early to mid-Nineteenth Century, the abolitionist movement gained momentum in the northeast. In the early part of the century, many states reduced the number of their capital crimes and built state penitentiaries. In 1834, Pennsylvania became the first state to move executions away from the public eye and carrying them out in correctional facilities. In 1846, Michigan became the first state to abolish the death penalty for all crimes except treason. Later, Rhode Island and Wisconsin abolished the death penalty for all crimes. By the end of the century, the world would see the countries of Venezuela, Portugal, Netherlands, Costa Rica, Brazil and Ecuador follow suit.

Although some U.S. states began abolishing the death penalty, most states held onto capital punishment. Some states made more crimes capital offenses, especially for offenses committed by slaves. In 1838, in an effort to make the death penalty more palatable to the public, some states began passing laws against mandatory death sentencing instead enacting discretionary death penalty statutes. The 1838 enactment of discretionary death penalty statutes in Tennessee, and later in Alabama, were seen as a great reform. This introduction of sentencing discretion in the capital process was perceived as a victory for abolitionists because prior to the enactment of these statutes, all states mandated the death penalty for anyone convicted of a capital crime, regardless of circumstances. With the exception of a

[18] http://www.1911encyclopedia.org/Breaking_on_the_wheel

small number of rarely committed crimes in a few jurisdictions, all mandatory capital punishment laws had been abolished by 1963.

During the Civil War, opposition to the death penalty waned, as more attention was given to the anti-slavery movement. After the war, new developments in the means of executions emerged. The electric chair was introduced at the end of the century. New York built the first electric chair in 1888, and in 1890 executed William Kemmler. Soon, other states adopted this execution method.

**2.3.3: Early and Mid-Twentieth Century**

Although some states abolished the death penalty in the mid-Nineteenth Century, it was actually the first half of the Twentieth Century that marked the beginning of the "Progressive Period" of reform in the United States. From 1907 to 1917, six states completely outlawed the death penalty and three limited it to the rarely committed crimes of treason and first degree murder of a law enforcement official. However, this reform was short-lived. There was a frenzied atmosphere in the U.S., as citizens began to panic about the threat of revolution in the wake of the Russian Revolution. In addition, the U.S. had just entered World War I and there were intense class conflicts as socialists mounted the first serious challenge to capitalism. As a result, five of the six abolitionist states reinstated their death penalty by 1920.

In 1924, the use of cyanide gas was introduced, as Nevada sought a more humane way of executing its inmates. Gee Jon was the first person executed by lethal gas. The state tried to pump cyanide gas into Jon's cell while he slept, but this proved impossible, and the gas chamber was constructed.

From the 1920s to the 1940s, there was resurgence in the use of the death penalty. This was due, in part, to the writings of criminologists, who argued that the death penalty was a necessary social measure. In the United States, Americans were suffering through Prohibition

and the Great Depression. There were more executions in the 1930s than in any other decade in American history, an average of 167 per year.

In the 1950s, public sentiment began to turn away from capital punishment. Many allied nations either abolished or limited the death penalty, and in the U.S., the number of executions dropped dramatically. Whereas there were 1,289 executions in the 1940s, there were 715 in the 1950s, and the number fell even further, to only 191, from 1960 to 1976. In 1966, support for capital punishment reached an all-time low.

**2.4 Pros and Cons of Capital Punishment**

**2.4.1 Pros of Capital Punishment**

- A person who has committed a crime like killing or raping another person should be given death penalty, which is as severe punishment as the act. It is said that when a criminal is given a capital punishment, it dissuades others in the society from committing such serious crimes. They would refrain from such crimes due to fear of losing their lives. This would definitely help in reducing crime rate in society.
- If a criminal is jailed, he may again commit the same crime after being released from prison. Giving him capital punishment would make sure that the society is safe from being attacked by criminals. It seems to be an appropriate punishment for serial killers and for those who continue to commit crimes even after serving imprisonment.
- Some believe that instead of announcing life imprisonment for the convicts, where they would have to live a futile life behind closed bars, it is better to kill them. It is said that imprisoning someone is more expensive than executing him. Rather than spending on a person who may again commit terrifying crime, it is better to put him to death.
- Capital punishment is equated as revenge for pain and suffering that the criminal inflicted on the victim. Some people strongly believe that a person who has taken the

life of another person does not have a right to live. Sentencing such a criminal can give relief to the family members of the victim that their loved one has obtained justice.

- It is also important for the safety of fellow prison inmates and guards, as people who commit horrifying crimes like murder are believed to have a violent personality and may, in future, attack someone during imprisonment. These reasons emphasize the importance of capital punishment for the betterment of human society. However, there is another section of people who believe that it is an immoral and unethical act of violence.

### 2.4.2 Cons of Capital Punishment

- If we execute a person, what is the difference between us and the criminal who has committed the horrifying crime of killing another individual.
- Capital punishment is not always just and appropriate. Usually, it has been seen that poor people have to succumb to death penalty as they cannot afford good lawyers to defend their stance. There are very rare cases of rich people being pronounced capital punishment. Also, an individual from minority communities are more likely to be given death penalty.
- Every human being is entitled to receive a second chance in life. Putting a convict behind bars is always a logical option than killing him, as there is a chance that he may improve. People who have served life sentences are reported to have bettered their earlier ways of living and have made worthwhile contribution to the society.
- There is also a chance that an individual is innocent and is wrongly charged for a crime he has never committed. There have been cases where individuals were released after being given death sentence, because they were proved innocent. There

are also cases where a person's innocence was proved after he was put to death. Hence, it is best to avoid executing a person.

- It is reported that there is no relation between capital punishment and crime rate i.e giving death penalty does not decrease crime rate in the society. Crimes are prevalent in countries where capital punishment exists and also where it has been abolished.

The question whether capital punishment is a moral or an immoral act in a cultured society, does not have a definite answer. Whether to give capital punishment to a criminal or not, may depend on his previous criminal records and the seriousness of the crime he has committed. But, do we really have the right to take the life of our fellow human beings?

# Chapter 3

## Legislative and

## Constitutional Provision On

## Capital Punishment

## 3.1 Introduction

As far as India is concerned, the provisions relating to Capital Punishment are embodied in Indian Penal Code and Criminal Procedure Code. Indian Penal Code is the substantive law, which suggests the offences, which are punishable with death sentence. Criminal Procedure Code is the procedural law, which explains the procedure to be followed in death penalty cases. The substantive law of India viz., Indian Penal Code was enacted in the year 1860. Though very few Amendments are made here and there, in total it remains unchanged, where as Criminal Procedure Code was amended substantially once in 1955 and reenacted in 1972. Though majority of the provisions remain unchanged Section 235(2) and Section 354(3) underwent a major change. The present chapter mainly deals with the substantive and procedural laws pertaining to Capital Punishment. It is also proposed to discuss the power of the executive to grant pardon and commute death into life imprisonment as provided under the Indian Constitution.

### 3.2 Capital Offences under the Indian Penal Code:

The Indian Penal Code provides for the imposition of Capital Punishment in the following cases: Section 121 provides that whoever wages war against the Government of India or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine. The offence under Section 121 is a capital offence because it threatens the very existence of an organized Government, which is essential for the protection of human life.

Section 124-A provides death penalty for sedition. The line dividing preaching disaffection towards the Government and legitimate political activity in a democratic set-up cannot be precisely drawn. Where the legitimate political criticism of the Government in power ends and disaffection begins, cannot be ascertained with precision. The demarcating line between the two is very thin. What was sedition against the Imperial Rulers May today pass of as

legitimate political activity in a democratic set-up under our libertarian Constitution? The interpretation has to be moulded within the letter and spirit of our Constitution.[19]

According to Section 132 whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy, or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment of life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 132 is also a capital offence, because it aims at the destruction of the very forces, which are intended to protect the machinery of the State. Sections 121, 124-A and 132 prescribe death penalty for the offences intended to affect the stability, political independence and territorial integrity of the Nation.

Section 194 aims at the persons who give or fabricate false evidence with intent to procure conviction of capital offence to innocent persons. It runs thus: "Whoever gives or fabricates false evidence, intending thereby cause, any person to be convicted of an offence which is capital by the law for the time being in force in India shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. And if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished with either death or the punishment herein before described." Section 194 part II is punishable with death on the logic that the person concerned gave false evidence with the intention of or knowledge of likelihood of deprivation of innocent human life.

Section 302 of Indian Penal Code is the most important section in the jurisprudence of Capital Punishment. It prescribes death sentence for the offence of murder. But the section gives discretion to the sentencing judge by prescribing life imprisonment as an alternative punishment though the authors of the Code prescribed death as a punishment, they are

[19] Ratan Lal and Dhiraj Lal: Law Of Crimes: 398 (1995)

convinced that it ought to be sparingly inflicted. They also observed "Though the sentence consequent upon a conviction of murder must be death, if there exists any grounds for mercy, that circumstance will have to be considered by the Government or its executive minister, and all that a Court of Justice can do is to submit a recommendation after passing the sentence of law."[20]

According to Section 307, "whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned. When such an attempt is made by a life convict, he may, if hurt is caused, be punished with death."[21]

The offence under Section 307 is one where the attempt is not successful; the disregard of the sanctity of human life is, however, transparent here also. But, the sentence of death can be awarded only where hurt is caused and the person offending is already under sentence of imprisonment for life. The last requirement is merely an illustration of the proposition that the law has not ruled out the consideration of the individual.

The reasoning, which applied for holding section 303 as unconstitutional, would have applied with same force to the last part of Section 307 also, and the same, if it had left no discretion with the Judge, would have met the same fate. Fortunately, however, the provision for the Capital Punishment, in that section is not mandatory but spells out its desirability. The word "may be" is indicative only of a desirable course.[22]

[20] Ibid at 1121

[21] Law Commission of India: Thirty-Fifth Report: 35 (September-1967).

[22] Chaturvedi and Chaturvedi: Theory and Law of Capital Punishment: 50 (1989).

The last capital offence in the order in Indian Penal Code is Section 396. It runs thus: "If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine." The offence under Section 396, is a specific case of vicarious liability in respect of the sentence of death, but even here it would be difficult to discuss the principle of protection of human life: the section requires that there must be five or more persons who are conjointly committing dacoity and that one of such persons must commit murder in so committing dacoity. Joint liability under this section does not arise unless all the persons conjointly commit dacoity and the murder was committed in so committing dacoity.[23]

The Indian Penal Code provides death penalty in three distinct patterns. Sections 303 and 307 relate to two offences for which the death penalty is the sole form of punishment. Section 302 is the second pattern where death penalty is with only one alternative namely. Life imprisonment. The third pattern is followed in respect of other offences cited above, where death penalty is the maximum to be applied along with wide range of other minimum sentences. In respect of the rules or guidelines for the operation of the choice out of the range of sentences the penal code is fairly bold. The question of when or why the death penalty should be imposed is left to judicial discretion in every case.[24] Guided by missiles with lethal potential in unguided hands, even judicial, is a grave risk where the peril is mortal though tempered by the appellate process.[25]

---

[23] Supra note 3 at 36

[24] Pande, B.B: "Face to Face with Death": Supreme Court Cases: 124 (1986)

[25] Rajendra Prasad v. State of Uttar Pradesh: AIR 1979 S.C. 916.

Section 303 of Indian Penal Code is a unique section, because it is the only section in the whole Code, which prescribes mandatory death sentence. It runs thus: "Whoever being under sentence of imprisonment for life, commits murder, shall be punished with death." However, the Indian Supreme Court as ultra vires of the Constitution struck down this section.

## 3.3 Provisions under Criminal Procedure Code:

The new Criminal Procedure Code, 1973 provides a new provision in Section 235(2) at the stage of sentencing.[26] The object of this provision is to give a fresh opportunity to the convicted person to bring to the notice of the court in awarding appropriate sentence having regard to the personal, social and other circumstances of the case.[27]

The accused may have some grounds to urge for giving him consideration in regard to the sentence such as that he is breadwinner of the family of which the court may not be made aware of during the trial.[28] The social compulsion, the pressure of poverty, the retributive instinct to seek an extra legal remedy to a sense of being wronged, the lack of means to be educated in the difficult art of an honest living, the parentage, the heredity - all these and similar other considerations can, hopefully and legitimately, tilt the scales on the propriety of sentence. The mandate of Section 235(2) must therefore be obeyed in its letter and spirit.[29]

Under the Code of Criminal Procedure, 1898, whatever the accused wished to submit in regard to the sentence had to be stated by him before the arguments concluded and the judgment was delivered. There was no separate stage for being heard in regard to sentence. The accused had to produce material and make his submission in regard to sentence on the assumption that he was ultimately going to be convicted. This provision was most unsatisfactory. The Legislature therefore, decided that it is only when the accused is

[26] Section 235 (2): If the accused is convicted, the judge shall Unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass Sentence on him according to law.
[27] Ram Nath Iyer,P: Code of Criminal Procedure: 1865 (1994)
[28] Subhash C. Gupta: Capital Punishment in India: 119 (1986)
[29] Dagdu v.State of Maharashtra: AIR 1977 S.C.1579.

convicted that the question of sentence should come up for consideration and at that stage, an opportunity should be given to the accused to be heard in regard to the sentence.[30]

The requirement of hearing the accused is intended to satisfy the rules of natural justice. The Judge must make a genuine effort to elicit from the accused all information, which will eventually bear on the question of sentence.[31] This is indeed one of the reasons in Mithu's case[32] for the Supreme Court to strike down Section 303 of Indian Penal Code as unconstitutional. "Is a law which provides for the sentence of death for the offence of murder, without affording to the accused an opportunity to show cause why that sentence should not be imposed, just and fair?" Section 235(2) becomes a meaningless ritual in cases arising under Section 303 of Indian Penal Code. Prior to 1955, Section 367(5) of the Code of Criminal Procedure, 1898 insisted upon the court stating its reasons if the sentence of death was not imposed in a case of murder. The result was that it was thought that in the absence of extenuating circumstances, which were to be stated by the court, the ordinary penalty for murder was death. In 1955, sub-section (5) of Section 367 was deleted and some Courts, to mean that the sentence of life imprisonment was the normal sentence for murder and sentence of death could be imposed only if there were aggravating circumstances, interpreted the deletion, at any rate. In the Code of Criminal Procedure of 1973, there is a further swing towards life imprisonment. The discretion to impose the sentence of death or life imprisonment is not so wide now as it was before 1973 Code. Section 354 (3) of the new Criminal Procedure Code has narrowed down the discretion. Now death sentence is ordinarily ruled out and can only be imposed for special reasons.[33]

The ultimate shift in legislative emphasis is that, under the New Criminal Procedure Code, 1973, life imprisonment for murder is the rule and Capital Punishment the exception - to be

---

[30] Santa Singh v. State of Punjab: AIR 1976 S.C. 2386

[31] Allauddin Mian v. State of Bihar: 1989 Cri.L.J. 1486 S.C.

[32] Mithu v. State of Punjab: AIR 1983 S.C. 473 at 478

[33] Subhash C. Gupta: Capital Punishment in India: 120 (1986)

resorted to for reasons to be stated as per Section 354(3) of Criminal Procedure Code.[34]"... Now only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of death sentence." But, it is neither necessary, nor possible to make a catalogue of special reasons, which may justify the passing of death sentence in a case.

In keeping with the current penological thought imprisonment for life is a rule and death sentence is an exception... if a death sentence is to be awarded, the court has to justify it by giving special reasons.[35]

Thus Judges are left with the task of discovering "special reasons", observed Krishna Iyer, J.[36] He further held that "special reasons" necessary for imposing death penalty must relate not to the crime as such but to the criminal. However, in Rajendra Prasad's case,[37] Kailasam J. did not accept this view of Krishna Iyer J. and observed that such a principle was not warranted by the law as it stands today. "Extreme penalty could be invoked in extreme situations", he opined. In Rajendra Prasad's case the majority further held "Such extraordinary grounds alone constitutionally qualify as special reasons as to leave no option to the Court but to execute the offender if State and society are to survive. One stroke of murder hardly qualifies for this drastic requirement, however gruesome the killing or pathetic the situation be, unless the inherent testimony oozing from that act is irresistible that the murderous appetite of the convict is too chronic and deadly that ordered life in a given locality or society or in prison itself would be gone if this man were now or later to be at large. If he is an irredeemable murderer, like a bloodthirsty tiger, he has to quit this terrestrial tenancy.[38] This concept of special reasons is further explained by the Apex Court through

[34] (i)Ediga Annamma v. State of Andhra Pradesh: AIR 1974: S.C. 799 (ii) Har Dayal v. State: AIR 1976 S.C. 2055 and (iii) Peter Joseph v. State of Goa: 1977 S.C. 1812

[35] Balwant Singh v. State: AIR 1976 S.C. 230.

[36] Bishnu Deo v. State of West Bengal: AIR 1979 S.C. 964.

[37] Rajendra Prasad v. State of Uttar Pradesh: AIR 1979 S.C. 916.

[38] Ibid

Bhagwati, J. in the case of Bachhan Singh.[39] What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. It is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist.

The "special reasons" mentioned in Section 354(3) of Criminal Procedure Code should be taken as equivalent and synonymous to "compelling reasons".[40] Murder is terrific (bhayankaram) is not a reason to impose death penalty. All murders are terrific and if the fact of murder being terrific is an adequate reason for imposing death sentence, then every murder shall have to be visited with that sentence and death sentence will become the rule, not an exception and Section 354(3) Criminal Procedure Code will become a dead letter.[41] Section 354(5) of Criminal Procedure Code deals with the execution of death penalty. It provides that "when any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead." Even if it is not mentioned so also, there is no difficulty. Anyway the High Court has to confirm the death sentence imposed by the Sessions Court. The form of the warrant that is issued when the sentence is confirmed by the High Court direct the convict to be hanged by the neck till he is dead and where the sentence is imposed by the High Court either in appeal under Section 378 Criminal Procedure Code or in exercise of the power of revision, the formal order that flows from the High Court contains a similar direction.

The state must establish that the procedure prescribed by Section 354 (5), Criminal Procedure Code for executing the death sentence is just, fair and reasonable and that the said procedure is not harsh, cruel or degrading. The method prescribed by Section 354(5) Criminal Procedure Code for executing the death sentence does not violate the provisions of Article 21 of Indian Constitution. The system is consistent with the obligation of the State to ensure that

[39] Bachhan Singh v. State of Punjab: AIR 1982 S.C. 1325.
[40] State v. Heera: 1985 Cri.L.J. 1153
[41] Muniappan v. State of Tamil Nadu: AIR 1981 S.C. 1220.

the process of execution is conducted with decency and decorum without involving degradation or brutality of any kind.[42] The direction for execution of death sentence by public hanging is unconstitutional and if any Jail Manual were to provide public hanging the Supreme Court would declare it to be violative of Article 21 of the Constitution. Section 366 of Code Criminal Procedure insists upon the confirmation of death penalty by the High Court. The first provision of this particular section states, "When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and sentence shall not be executed unless it is confirmed by the High Court. " The second provision insists that the Court passing the sentence shall commit the convicted person to jail custody under a warrant. The first provision of the said section corresponds to Section 374 of the Old Code, without any change and Sub-section (2) has been newly added. It is the practice of the High Court to be satisfied on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm the sentence.[43]

The High Court has to come to its own individual conclusions as to the guilt or innocence of the accused, independent of the opinion of the Sessions Judge. The High Court is duty bound to independently consider the matter carefully and examine all relevant and material evidence.[44]

The High Court is under an obligation to consider what sentence should be imposed and not to be content with trial court's decision on the point. [32] When an accused is convicted and sentenced to death, he is only a convict prisoner and not to be treated as condemned prisoner. The death sentence is not executable without confirmation of the High Court. Such a prisoner will be governed by Chapter XVII of the Jail Manual and will be given facilities under that chapter...at least till he is declared as condemned prisoner in the eye of law. Neither he is

[42] Deena v. Union of India: AIR 1983 S.C. 1155.

[43] Masalti v. State: AIR 1965 S.C. 202. See also Guru Bachan Singh v. State: AIR 1963 S.C. 340 and Ram Shankar v. State: AIR 1962 S.C.1239

[44] Iftikhar Khan v. State: AIR 1973 S.C. 863

serving rigorous imprisonment nor simple imprisonment. He is in jail so that he is kept safe and protected with the purpose that he may be available for the execution of death sentence. Section 367 of Criminal Procedure Code deals with the power of High Court to direct further enquiry to be made or additional evidence to be taken. Sub-section (i) of this section provides "If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session." Where an application by an accused person to call material evidence bearing on his line of defence was refused by the lower court but was renewed in the High Court, it was held that the accused should be permitted under this section to produce further evidence. As pointed out by the Supreme Court, when the reference is made for the confirmation of the death sentence, the High Court is to see not only the correctness of order passed by the Sessions Judge but must examine the entire evidence by itself[45]. The High Court may even direct a further inquiry or the taking of additional evidence for determining the guilt or innocence of the accused and then come to its own conclusion on the entire material on record whether the death sentence should be confirmed or not.[46] Section 368 of Criminal Procedure Code empowers the High Court to confirm sentence or annul conviction. It envisages "In any case submitted under Section 366, the High Court - (a) may confirm the sentence, or pass any other sentence warranted by law, or (b) annul the conviction, and convict the accused of any offence of which the court of session might have convicted him, or order a new trial on the same or on amended charge, or (c) may acquit the accused person; Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of." Section 369 of the Code

[45] Subhash v. State of Uttar Pradesh: 1976 Cri.L.J. 152 S.C.
[46] Bhupendra Singh v. State of Punjab: 1969 Cri.L.J. 6 S.C.

prescribes that either confirmation of the sentence or new sentence is to be signed by two judges of High Court. It runs thus: "In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such Court consists of two or more Judges, be made, passed and signed by at least two of them."

Where the Court consists of two or more Judges and the order of confirmation of sentence of death is made, passed and signed by one of them, the sentence of death is not validly confirmed but remains submitted to the court which has to dispose of the same under Sections 367-371.[47] The Code mandates that when the High Court concerned consists of two or more Judges, the confirmation of the death sentence or other sentences shall be signed by at least two of them and this applied only where the court, at the time of confirmation of the death sentence, consists of two or more Judges. But, when a single judicial commissioner alone is functioning, Section 369 of the Code is not attracted and he may sign the confirmation of the death sentence alone and there will be no illegality.[48] Section 370 of the Code deals with the procedure in cases of difference of opinion. "Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by Section 392 of the same Code." When a sentence of death is referred to the High Court for confirmation and the Judges differ, the matter should be referred to a third Judge, under section 370, who should not decide it according to the opinion of the Judge for acquittal or conviction, but shall deliver his opinion. The third Judge's duty is to examine the whole evidence and come to a final judgment. No fetters can be placed on the third Judge. He is at liberty to express and act upon the opinion, which he himself arrives at. If the third Judge chooses he can pass a sentence of death, even though one Judge favors an acquittal and the other gives a lesser sentence when convicting the accused. But, the golden rule to be followed by the third Judge is to give the benefit of doubt to the

---

[47] Ram Nath Iyer,P: Code of Criminal Procedure: 2713 (1994)

[48] Jopseph Peter v. State of Goa, Daman & Diu: AIR 1977 S.C.1812.

accused. The observation of such a rule does not amount to abdication of his functions as a Judge under Sections 370 and 392 of the Code.[49] However, when there is difference of opinion in the High Court not only on the question of guilt but also on that of sentence, the sentence should be reduced to imprisonment for life.[50] In the same case as a precautionary method the Supreme Court further maintained that when appellate Judges who agree on the question of guilt differ on that of sentence, it is usual not to impose death penalty unless there are compelling reasons.

Section 371 of the Code deals with the procedure in cases submitted to High Court for confirmation. It provides “In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the Order, under the seal of High Court and attested with his official signature, to the Court of Session."

Section 385 of Criminal Procedure Code dealing with the procedure for hearing appeal ordinarily not to dismiss such appeals summarily-

(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given –

(i) To the appellant or his pleader:

(ii) To such officer as the State Government may appoint on his behalf:

(iii) If the appeal is from a judgment of conviction in a case instituted upon complaint, to the complainant:

(iv) If the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

---

[49] In re Narasiah: AIR 1959 A.P. 313 at 317-318.

[50] Pandurang v. State of Hyderabad: AIR 1955 S.C. 216 AT 223.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court, and near the parties: Provided that if the appeal is only as to the extent or the legality of the sentence, the court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground."

This section corresponds to section 422 of the Old Code with some changes and additions. This section embodies the principles of natural justice by providing that the appellate court shall cause notice of the time and place at which such appeal shall be heard to be given to the appellant or his pleader and this is mandatory.

Section 389 deals with the suspension of sentence pending the appeal and release of appellant on bail. It runs thus:" (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if is in confinement, that he be released on bail, or on his own bond." This section corresponds to the provisions of Section 426 of the Old Code.

Section 413 deals with the execution of order passed under Section 388: It reads "When in a case submitted to the High Court for the confirmation of a sentence of death, if the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary." This section corresponds to section 381 of the Old Code without any change in the substance. No fixed period of delay can be held to make the sentence of death inexecutable.

A warrant does not mean only one warrant, even when interpreted in isolation and out of context. A warrant once issued can go unexecuted and is liable to be rendered ineffective in a

number of situations. But, by no logic can it be said that since warrant has become infructious and that death sentence should automatically stand vacated. No provision of the Code bars return of the first warrant without the execution having been carried out. Nor does it do so in case of issuance of a second warrant. Section 414 of Criminal Procedure Code deals with the execution of sentence of death passed by High Court. When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant. Section 415 Code of Criminal Procedure deals with the postponement of execution of sentence of death in case of appeal to Supreme Court."

(1) Where a person is sentenced to death by the High Court and an appeal from its judgment lies to Supreme Court under sub-clause (a) or sub-clause (b) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of." The sub-clause (2) of the same section provides "Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of certificate under Article 132 or under sub-clause (c) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application, until the period allowed for preferring an appeal to the Supreme Court." The sub-clause (3) of the section provides "Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under Article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition." Section 416 of Code of Criminal

Procedure is an important provision because it deals with the postponement of Capital Punishment on pregnant woman. It envisages: "If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and May if it thinks fit commute the sentence to imprisonment for life."

This provision does not specify the time for which the execution has to be postponed. There is no clue, whatsoever; in the provision whether such postponement is for good or till the woman delivers. Moreover, the High Court is the only forum in which the law vests the power of postponing the execution of a sentence of death passed and confirmed on a woman proved to be pregnant. The Sessions Judge, may, of course, direct the postponement of the execution of the sentence, until appropriate orders to that effect are passed by the High Court. The High Court, under such circumstances, is empowered even to commute the sentence to one of life imprisonment, if it thinks fit and this is one instance making a departure from the mandate of Section 362 of the Code of Criminal Procedure, 1973 that no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.[51] The provision of Section 416 of the Code of Criminal Procedure is an instance of "Reprieve" or "Respite". It is stated that when a woman is convicted and sentenced to death, clerk of the Crown, after sentence, is to ask whether the woman has anything to say in the stay of the execution of the sentence. If she then claims or the Court, then or later on, has reason to suppose that she is pregnant, a jury of twelve matrons are empanelled and sworn to try whether or not she is quick with child. If the Jury requires the assistance of a medical man, a medical man is requested by the Court to retire and examine the prisoner and is then examined as a witness. If the Jury finds that the prisoner is quick with child, the Court stays the execution of the Capital sentence until the prisoner delivers a child or it is no longer possible that she should deliver a child. It is however, for the

[51] Chaturvedi & Chaturvedi: Theory and Law of Capital Punishment: 60 (1989).

prisoner to plead pregnancy, because the right to a Jury of matrons accrues to her only when she pleads but not otherwise. In India, too, it is implied, under the provisions of Section 416 of Criminal Procedure Code, that the convict herself, or her counsel should reveal the state of her pregnancy, though, for the postponement of execution, it is not at all necessary that she should be quick with child. What is necessary is that she must be pregnant, and the time factor as to the duration of the pregnancy at the time of conviction is immaterial.

In France, United Kingdom (position prior to abolition) USSR, Czechoslovakia, Yugoslavia, Australia, Netherlands, New Guinea, Laos, China, Cambodia, and The Central African Republic of Morocco, pregnant women are exempted from being executed. The law provides only for the postponement of the execution for a period which varies depending upon the fact whether the women sentenced to death breast-feed the child or not.[52]

The aspect of breast-feeding is not considered in India. It is quite interesting to note whether by depriving a child from being fed by mother is violative of is fundamental right or not. However, in actual practice, the postponement of the execution in such circumstances generally leads to subsequent commutation of the death sentence. Section 432 of the Code deals with suspension, remission and commutation of sentences. It runs in the following terms:

**3.3.1 Power to suspend or remit sentences:**

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions, which the person sentenced, accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever the application is made to the appropriate Government for the suspension or remission of a sentence the appropriate Government may require the presiding Judge of the

[52] Bhattacharya, S.K: "Issues in Abolition of Capital Punishment": Employment News Weekly:1 : Dt.21-27, December,1994.

Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with: Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and

(a) Where such a petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) Where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provision of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in Section 433, the expression "appropriate Government" means, -

(a) In cases where the sentence is for an offence against or the order referred to in subsection (6) is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government:

(b) In other cases, the Government of the State within which the offender is sentenced or the said order is passed." Section 432 incorporates the provisions of section 401 and 402(3) of the Old code. There is no change in substance of the old law. This section does not give any power to the Government to adverse the judgment of the Court, but provides the power of remitting the sentence. The minimum sentence awardable under section 302 of Indian Penal Code, being life imprisonment no reduction is possible. This power is executive in nature. While Article 161 of the Constitution speaks of grant of reprieves, pardons and remissions etc., it does not speak of imposition of conditions for the grant, whereas section 432 of Criminal Procedure Code speaks of remission or suspension with any condition. Section 432(3) specifically provides for consequences of the conditions, which are contemplated by Section 432(1) of Criminal Procedure Code not being fulfilled. Section 432 (3) contemplates remanding the person so subjected to remission to jail once again. Section 432 of Criminal Procedure Code is not manifestation of Articles 72 and 161 of the Constitution but a separate, though similar provision.[53]

In cases of murder, the Judge may report any extenuating circumstances calling for a mitigation of punishment to the Government and the Government may thereupon take such action under this section as it thinks fit. The word remit as used in Section 432 is not a term of art. Some of the meanings of the word "remit" are to pardon, to refrain from inflicting, and to give up. There is therefore, no obstacle in the way of the Governor in remitting a sentence

[53] Krishna Nair v. State of Kerala: 1994 Cri.L.J. 86

of death.[54] When the concerned Court feels sympathetic towards the accused, owing to some reasons such as the wife of the accused is a cancer patient with six children[55] or the accused is a boy of tender years[56] or accused is a young lady who committed murder under the influence of others[57] but legally constrained to show mercy, then it recommends such cases to the Government, because the power of granting mercy is vest with the executive but not with the judiciary.

An order passed under Section 432 Cr.P.C. is justiciable on any of the following grounds:

(1) That the authority exercising the power had no jurisdiction.

(2) That the impugned order goes beyond the extent of power conferred by law.

(3) That the order has been obtained on the ground of fraud or that it has been passed taking into account the extraneous considerations not germane to the exercise of the power or in other words, is a result of malafide exercise of power.[58]

The brother of the murdered person is considered to one of the most aggrieved parties and has the locus standi to challenge the order of remission of punishment. While the State Government Is not legally obliged to give reasons for remitting sentence, it is duty bound to reply to allegations made in petition challenging the remission. The State Government is not bound to produce the records under writ of certiorari. The initial onus is on the petitioner to give prima facie evidence to show that the power has been exercised malafide. Reference under sub-section (2) of section 432 Criminal Procedure Code is not mandatory and therefore non-compliance of the said provision does not make the impugned order without jurisdiction.[59]

---

[54] The Deputy Inspector General of Police, North Ranges, Waltair and another v. D. Raja Ram and others: AIR 1960 A.P. 259 and Manepragada Ramachandra Rao v. The Revenue Divisional Officer, Kovvuru: AIR 1957 A.P. 249.

[55] Sadhu Singh v. State of Punjab: 1968 Cri.L.J. 1183 (P&H).

[56] Nawab v. Emperor: AIR 1932 Lah. 308

[57] Kartar Singh v. Emperor: AIR 1932 Lah. 259

[58] Ram Nath Iyer: Code Criminal Procedure: 3233 (1994)

[59] Hukam Singh v. State of Punjab:1975 Cri.L.J. 902 (P&H)

# Chapter 4

# Consequences of Capital Punishment

## 4.1 DEATH PENALTY: CONTEMPORARY ISSUES

Capital Punishment, legal infliction of death as a penalty for violating criminal law. Throughout history people have been put to death for various forms of wrongdoing. Methods of execution have included such practices as crucifixion, stoning, drowning, burning at the stake, impaling, and beheading. Today capital punishment is typically accomplished by lethal gas or injection, electrocution, hanging, or shooting.

The death penalty is the most controversial penal practice in the modern world. Other harsh, physical forms of criminal punishment - referred to as corporal punishment - have generally been eliminated in modern times as uncivilized and unnecessary. In the majority of countries, contemporary methods of punishment - such as imprisonment or fines - no longer involve the infliction of physical pain[60]. Although imprisonment and fines are universally recognized as necessary to the control of crime, the nations of the world are split on the issue of capital punishment. About 90 nations have abolished the death penalty and an almost equal number of nations (most of which are developing countries) retain it.

The trend in most industrialized nations has been to first stop executing prisoners and then to substitute long terms of imprisonment for death as the most severe of all criminal penalties. The United States is an important exception to this trend. The federal government and a majority of U.S. states allow the death penalty, and on average 75 executions occur each year throughout the United States.

**A. BRUTALITY**

Early opponents of capital punishment objected to its brutality. Executions were public spectacles involving cruel methods. In addition, capital punishment was not reserved solely for the most serious crimes. Death was the penalty for a variety of less serious offenses.

---

[60] Ref. Corporal Punishment

The allegations of brutality inspired two different responses by those who supported executions. First, advocates contended that capital punishment was necessary for the safety of other citizens and therefore not gratuitous. Second, death penalty supporters sought to remove some of the most visibly gruesome aspects of execution. Executions that had been open to the public were relocated behind closed doors. Later, governments replaced traditional methods of causing death—such as hanging—with what were regarded as more modern methods, such as electrocution and poison gas. The search for less brutal means of inflicting death continues to recent times. In 1977 Oklahoma became the first U.5. state to authorize execution by fethal injection—the administration of fatal amounts of fast-acting drugs and chemicals. Lethal injection is now the preferred method of execution in the majority of U.S. states. However, modern opponents of capital punishment contend that sterilized and depersonalized methods of execution do not eliminate the brutality of the penalty.

**B. Dignity**

In the debate about execution and human dignity, supporters and opponents of the death penalty have found very little common ground. Opponents of capital punishment assert that it is degrading to the humanity of the person punished. Since the 18th century, those who wish to abolish the death penaity have stressed the significance of requiring governments to recognize the importance of each individual. However, supporters of capital punishment see nothing wrong with governments deliberately killing terrible people who commit terrible crimes. Therefore, they see no need to limit governmental power in this area.

**C. Effectiveness**

Early opponents of capital punishment also argued that inflicting death was not necessary to control crime and properly punish wrongdoers. Instead, alternative punishment—such as imprisonment—could effectively isolate criminals from the community, deter other potential offenders from committing offenses, and express the community's condemnation of those

who break its laws. In his Essay on Crimes and Punishments, Beccaria asserted that the certainty of punishment, rather than its severity, was a more effective deterrent.

Supporters of capital punishment countered that the ultimate penalty of death was necessary for the punishment of terrible crimes because it provided the most complete retribution and condemnation. Furthermore, they argued that the threat of execution was a unique deterrent. Death penalty supporters contended that capita! punishment self-evidently prevents more crime because death is so much more feared than mere restrictions on one's liberty.

Supporters and opponents of capital punishment still debate its effectiveness. Social scientists have collected statistical data on trends in homicide before and after jurisdictions have abolished capital punishment. They have also compared homicide rates in places with and without the death penalty. The great majority of these statistical comparisons indicate that the presence or absence of capital punishment or executions does not visibly influence the rate of homicide.

Opponents of capital punishment maintain that these studies refute the argument that the death penalty deters crime. Many capital punishment opponents consider the deterrence argument fully negated and no longer part of the debate. However, supporters of the death penalty dispute that interpretation of the statistical analyses of deterrent effect. Capital punishment advocates note that because the death penalty is reserved for the most aggravated murders, the deterrent effect of capital punishment on such crimes may not be apparent in data on homicide rates in general. Supporters also urge that the conflicting results of various studies indicate that the deterrent effect of the death penalty cannot not be proven or disproven with any certainty. They maintain that in the absence of conclusive proof that the threat of execution might not save some people from being killed, capital punishment should be retained.

**D. Human Rights**

A unique facet of the modern debate about capital punishment is the characterization of the death penalty as a human rights issue, rather than a debate about the proper punishment of criminals. Modern opposition to the death penalty is seen as a reaction to the political history of the 20th century, most notably the Holocaust—the systematic mass killing of Jews and others during World War II (1939-1945). All the major nations in Western Europe utilized capital punishment prior to World War tl. After the defeat of the National Socialist (Nazi) and Fascist governments of Germany and Italy, those two nations became the first major powers in Europe to abolish capital punishment. The postwar movement to end capital punishment, beginning in Italy and Germany and then spreading, represented a reaction to totalitarian forms of government that systematically violated the rights of the individual.

The human rights focus on the death penalty has continued, especially in settings of dramatic political change. When people view capital punishment as a human rights issue, countries that are becoming more democratic have been eager to abolish the death penalty, which they associate with the former regime and its abuses of power. For example, a number of Eastern European nations abolished capital punishment shortly after the collapse of communist regimes there in 1989. Similarly, the multiracial government of South Africa formed in 1994 quickly outlawed a death penalty many associated with apartheid, the official policy of racial segregation that had been in place since the late 1940s.

## 4.2 DEATH PENALTY IN INDIA

Capital punishment is the punishment of death which is generally awarded to those guilty of heinous crimes, particularly murder and child rape. In Indian the traditional way of awarding this punishment is “handing by the neck” till the death of the criminal. In other countries, shooting, electric chair, etc…, are the various devices used for the purpose.

Though the awarding of capital punishment, specially for murder, is according to age-old, tradition, in recent times there has been much hue and cry against it. It has been said that capital punishment is brutal, that it is according to the law of jungle – "an eye for an eye", and tooth for a tooth". It is pointed out that there can be no more place for it in a civilized country. Moreover, judges are not infallible and there are instances where innocent people have been sent to the gallows owing to some error of judgment.

Capital punishment is nothing but judicial murder, it is said, specially when an innocent life is destroyed. Besides this, capital punishment, as is generally supposed, is not deterrent. Murders and other heinous crimes have continued unabated, inspite of it. The result of such views has been that in recent years there has been an increasing tendency in western countries to award life imprisonment instead of capital punishment. Muslims countries, generally speaking, continue to be more serve in this respect.

Despite frequent demands from all society Indian has not so far abolished capital punishment. But even in India there has been a decline in the frequency of such punishment. It is now awarded only in cases of hardened criminals and only when it is established that the murder was not the result of a momentary impulse, the result of serious provocation, but well-planned and cold-blooded. In such cases, it is felt that nothing less than capital punishment would meet the ends of justice, that it is just and proper that such pests of society are eliminated. Those who indulge in anti-social and sternest possible measures should be taken against them, specially when they are habitual offenders.

It is, therefore, in the fitness of things that India has not so far abolished capital punishment but used it more judiciously. Sociologist are of the view that capital punishment serves no useful purpose. A murderer deprives the family of the murdered person of its bread-winner. By sending the criminals to gallows, we in no way help or provide relief to the family of the murdered. Rather, we deprive another family of its bread-winner. The sociologists, therefore,

suggest that the murderer should be sentenced for life to work and support the family of murdered person as well as his own. In this way, innocent women and children would be saved from much suffering, hunger and starvation. Moreover, such measures would provide the criminals with an opportunity to reform himself. He would be under strict watch and if his conduct is satisfactory, he may be allowed to return to society as a useful member of it.

There is much truth is such views, and they must be given due weightage before a decision is taken to abolish or retain capital punishment. But Capital punishment should be continue for those who commit rare of the rarest crimes such as child rape, group rape, terrorism and etc.

**Retention**

1. Capital Punishment acts as a deterrent. If the death sentence is removed, the feast that comes in the mind of people committing murder will be removed. “Do we want more of murders in our country or do we want less of them?” All sentence are awarded for security and protection of society, so that every individual may live in peace. Capital punishment is needed to ensure this security.

2. Elimination of the criminals. When the public peace is endangered by certain particularly dangerous forms of crime, death penalty is the only means of eliminating the offender.

3. Possibility of repeated murders. Society must be protected from the risk of a second offences by a criminal who is not executed and who may be released, after release may commit murder again.

### 4.2.1 Getting the hang of death penalty

India is one of only 58 countries that have the death penalty on their statute book and have used it in the recent past. In 1967, the Law Commission had argued to retain capital punishment, but in 2015 it stated that ‘retribution cannot be reduced to vengeance’

In January, when senior advocate and human rights activist Indira Jaising urged the mother of the 23-year-old victim of the infamous December 16, 2012, gang rape and murder case to

"forgive" the four death row convicts, there was a backlash — not just from the mother but the public as well.

This was despite Ms. Jaising making clear that she was with the mother in her pain, but "against death penalty".

The debate over the death sentence is going on for a long time. Those in favour of capital punishment see it as a deterrence against such type of crimes while others opine that it has not had any such effect.

### 4.2.2 Rarest of rare cases

The first legal challenge to the constitutionality of the death penalty came in the 1973 case of Jagmohan Singh vs State of Uttar Pradesh in which the petitioners argued that the death penalty was against the Constitution.

The Supreme Court, however, found that the death penalty was a permissible punishment.

This was followed by the 1980 landmark verdict of the top court in the Bachan Singh case where it upheld the constitutionality of the death penalty but confined its application to the 'rarest of rare cases', to reduce the arbitrariness of the penalty.

### 4.2.3 International scenario

Internationally, countries are classified on their death penalty status based on four categories: abolitionist for all crimes, abolitionist for ordinary crimes, abolitionist de facto, and retentionist.

At the end of 2014, seven countries were abolitionist for ordinary crimes. Only 98 countries were abolitionist for all crimes, and 35 were abolitionist in practice.

This brought the number of countries which are abolitionist in law or practice to 140.

At the same time, 58 countries are regarded as retentionist, who still have the death penalty on their statute book and have used it in the recent past. This list includes some of the most populous nations in the world, including India, China, Indonesia and the United States.

Neighbouring countries such as Nepal officially abolished the death penalty in 1990 and did not reintroduce it even in the aftermath of the civil war.

Sri Lanka, despite a long civil war, has maintained a moratorium on the penalty, the commission report said.

## 4.2.4 Recent executions

- Four men hanged together on March 20, 2020 in Tihar Jail, Delhi for the gang rape and murder of a woman on a Delhi bus in 2012 that sparked huge nationwide protests and international revulsion. This is the first time that four convicts hanged together on the same platform.
- In July 2015, Yakub Memon was executed by hanging in Nagpur Central Jail for his role in the 1993 Bombay bombings.
- Afzal Guru, who was convicted for his role in the 2001 Parliament attack, was executed in February 2013.
- In November 2012, Ajmal Kasab, the lone terrorist captured alive in the 2008 Mumbai terrorist attacks, was hanged at Yerwada Jail in Pune.
- The previous execution was carried out in 2004 of Dhananjoy Chatterjee for the crimes of rape and murder of a 14-year-old schoolgirl.

**4.2.5 No clear data**

Project 39A of the National Law University, Delhi, which publishes the death penalty reports has highlighted the difficulty in obtaining the exact number of prisoners under the sentence of death in India.

As per Project 39A, India has executed around 759 persons since Independence. Its report said that Uttar Pradesh carried out the highest number of executions at 366. Also, the Bareilly District Jail in the State has the distinction of carrying out 130 executions, the highest of all jails in the country, with the last execution being carried out on September 24, 1988.

Delhi's Tihar Central Prisons carried out 29 executions, the last one of Four men booked under 'Nirbhaya Case' on March 20, 2020.

"Though we at Project 39A have tried our best to collate data from various sources, it is an unfortunate truth that the prisons and other government departments do not have accurate records of the people they have executed," Project 39A stated.

"Hence, we continue our struggle to get accurate data on the administration of the death penalty in India and are hindered by an absolute lack of coordination between different official sources," it added.

#### 4.2.6 A case for abolition

"The notion of "an eye for an eye, tooth for a tooth" has no place in our constitutionally mediated criminal justice system. Capital punishment fails to achieve any constitutionally valid penological goals," the Law Commission, in its 262th Report had said.

It pointed out that even the Supreme Court has on numerous occasions expressed concern about arbitrary sentencing in death penalty cases. "The court has noted that it is difficult to distinguish cases where death penalty has been imposed from those where the alternative of life imprisonment has been applied," it said.

The commission had stated that the constitutional regulation of capital punishment attempted in Bachan Singh case has failed to prevent death sentences from being "arbitrarily and freakishly imposed".

The commission had put a case for abolition of death penalty, except terrorism-related offences and waging war, noting, "Retribution has an important role to play in punishment. However, it cannot be reduced to vengeance".

## 4.3 Flaws in the Arguments for Abolition

### 4.3.1 Racial Bias

Occasionally the charge is made that the death penalty is administered in a racially biased fashion. But the empirical evidence does not reveal any discrimination against black defendants facing the death penaity. The Bureau of Justice Statistics in 1984 compiled the relevant data on the performance of the criminal justice system. About 48 percent of all murderers were black, but about 42 percent of those sentenced to death were black. In other words, a lower percentage of black murderers receive the death penalty than white murderers. The reason for this difference is that in general, homicides by white murderers are slightly more aggravated than those by black murderers.

This data is strong evidence that the nation's tragic history of discrimination against blacks in the criminal justice system has no relevance to the current administration of capital punishment.

Recognizing that the data fail to support a claim that black murderers are more likely to be executed, opponents of the death penalty have recently shifted to the claim that those who murder whites are more likely to be executed than those who murder blacks. At first glance, this might be viewed as an argument for expanding capital punishment to ensure that black victims receive justice no less than white victims. But in any event, this purported effect of the race of the victim disappears when the relevant circumstances of individual murders are considered. Many black-on-black murders are committed during altercations between persons known to each other, circumstances not typically thought to warrant a death sentence. On the other hand, black-on-white murders (and to a lesser extent, white-on-white murders} are more often committed during the course of robberies or other serious felonies, circumstances often prompting a capital sentence. In a careful analysis of the alleged effect of the race of the

victim, a federal district court in Georgia found that racial effects disappeared when variables controlling for such relevant factors were added in.

**4.3.2 Risk to the Innocent**

Sometimes the claim is made that the possibility of executing an innocent person requires the abolition of the death penalty. This claim gives excessive weight to what is a minute risk in maintaining capital punishment while ignoring the much larger and countervailing risks in abolishing capital punishment.

The risk that an innocent person might be executed is minuscule. Our contemporary system of capital punishment contains an extraordinary array of safeguards to protect innocent defendants, including in many jurisdictions appointment of specially qualified counsel at the trial level and multiple appeals through both the state and federal courts. Before any sentence is carried out, the governor of the state typically will carefully examine the case to make sure that the murderer deserves a death penalty. In light of all of these safeguards, it would be extraordinary if an innocent person were to be executed. And, indeed, there is no credible, documented case of an innocent person being executed in this country for at least the last 50 years.

While no innocent person has been shown to have died in recent memory as a result of capital punishment, innocent people have died because of our failure to carry out capital sentences. In a number of documented cases, murderers have been sentenced to death only to escape these sentences in one way or another. Some of these murderers have gone on to kill again.

The horrific case of Kenneth McDuff starkly illustrates this. Sentenced to death for two 1966 murders, he narrowly escaped execution three times before his death sentence was commuted to a prison sentence in 1972. Uhimately released in 1989, McDuff proceeded to rape, torture, and murder at least nine women, and probably many more. After the television show America’s Most Wanted aired a program about him, McDuff was arrested in 1992, convicted,

and given two death sentences. Based on cases such as McDuffs, it is quite clear that innocent people are more at risk from a criminal justice system that fails to carry out death penalties than from one that employs them.

The death penalty is vital to carrying out the mission of the criminal justice system. It is just punishment for the deliberate taking of innocent human life. k prevents some murders through its deterrent effect and prevents other murders by permanently incapacitating the most dangerous killers. It is therefore no surprise that capital punishment receives such broad support in the United States.

But in the face of a growing culture of death, every effort should be made to promote a culture of life. Therefore, we believe that the primary response to these situations should not be the use of the death penalty but should instead be the promotion of needed reform of the criminal justice system so that society is more effectively protected. One alternative to the death penalty is life without the possibility of parole for those who continue to pose a deadly threat to society. Our Conference has addressed these challenges in its criminal justice statement entitled Responsibility, Rehabilitation, and Restoration.[61]

Our family of faith must care for sisters and brothers who have been wounded by violence and support them in their loss and search for justice. They deserve our compassion, solidarity, and support—spiritual, pastoral, and personal. However, standing with families of victims does not compel us to support the use of the death penalty.... For many left behind, a death sentence offers the illusion of closure and vindication. No act, even an execution, can bring back a loved one or heal terrible wounds. The pain and loss of one death cannot be wiped away by another death.

Ravi Nair , Human Rights activist: Yes. It rarely acts as a deterrent. And what if the person is innocent? The debate has been an ongoing one. The last time the Lok Sabha specifically

[61] United States Conference of Catholic Bishops, A Culture of Life and the Penalty of Death: A Statement of the United States Conference of Catholic Bishops Calling for an End to the Use of the Death Penalty

discussed the question was in 1983. Then prime minister Indira Gandhi had stated that she favoured abolition of death penalty. But her minister of state for home affairs, N R Laskar announced that the government was not considering any...{times of india).

With only twenty one countries reported as having practiced capital punishment in 2010, the United States remains one of the only remaining developed nations that enforces it. While the death penalty continues to become less commonly pursued, the surrounding controversy and debate remains heated.

Amnesty International - Arguing that capital punishment violates human rights, Amnesty International is devoted to ending its practice. Further, this organization isminterested in protecting those faced with the death penalty.

Capital punishment is a legal but rarely carried out sentence in India. Imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment. In recent times there has been numerous gaps; between the hanging of on Auto Shankar in 1995 and Dhananjoy Chatterjee in 2004, and thereafter until the execution of Ajmal Kasab[62] in 2012 and Afzal Guru[63] in 2013 followed by hanging of four convicts of "Nirbhaya Case"[64][65][66] in March 2020.

The Supreme Court of India ruled in 1983 that the death penalty should be imposed only in "the rarest of rare cases." Crimes which are punishable by death sentence are murder, gang robbery with murder, abetting the suicide of a child or insane person, waging war against the nation, and abetting mutiny by a member of the armed forces. In 1989, the Narcotic Drugs and Psychotropic Substances (NDPS) Act was passed which applied mandatory death penalty for a second offence of "large scale narcotics trafficking". On 16 June 2011, the Bombay

[62] Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra (2012 SC 3565)
[63] State vs Mohd. Afzal And Ors. 2003 VIIAD Delhi 1, 107 (2003) DLT 385, 2003 (71) DRJ 178, 2003 (3) JCC 1669
[64] Mukesh v. State for NCT of Delhi , (2017) 6 SCC 1,
[65] Mukesh & Anr vs State For Nct Of Delhi & Ors CRIMINAL APPEAL NOS. 609-610 OF 2017
[66] Pawan Kumar Gupta v. State of NCT of Delhi, 2020 SCC OnLine SC 340, decided on 20.03.2020

High Court ruled that Section 31A of the NDPS Act, which imposed mandatory sentence, violated Article 24[67] of the Constitution and that a second conviction need not be a death penalty, giving judges discretion to decide about awarding capital punishment. In recent years, the death penalty has been imposed under new anti-terrorism legislation for people convicted of terrorist activities.

India's apex court has recommended the death penalty be extended to those found guilty of committing "honour killings" with the Supreme Court stating that honour killings fall within the "rarest of the rare" category and deserves to be a capital crime. The Supreme Court also recommended death sentences to be awarded to those police officials who commit police brutality in the form of encounter killings.

On 3 February 2013, in response to public outcry over a brutal gang rape In Delhi, the Indian Government passed an ordinance which applied the death penalty in cases of rape that leads to death or leaves the victim in a "persistent vegetative state".

In December 2007, India voted against a United Nations General Assembly resolution calling for a moratorium on the death penalty. In November 2012, India again upheld its stance on capital punishment by voting against the UN General Assembly draft resolution seeking to ban death penalty.

In India the death penalty is carried out by hanging. An attempt to challenge this method of execution failed in the Supreme Court, which stated in its 1983 judgement that hanging did not involve torture, barbarity, humiliation or degradation.

For example, records on death penalty shows that the first man to receive this capital punishment was Daniel Frank, in the 15th century. However, it is important to note that justification of death penalty varies from one society to the other and in contemporary world

[67] Right to Life

where everyone thinks the world is more liberalized than ever, death penalty is likely to receive support and criticism from different quarters in the society.

## 4.4 CAUSES OF DEATH PENALTY

Therefore, the root causes of death penalty arise from retribution. One of the main arguments against death penalty based on the root causes has been wrong conviction. There are thousands of people in the world who have wrongly faced the hangman noose though they were wrongly convicted[68]. Therefore, although the root cause of death penalty is to punish individuals who have committed capital offences, this may not always be the case considering the number of people who are wrongly convicted.

## 4.5 EFFECT OF DEATH PENALTY

Deterence , According to sociology theories, every individual plays an important role in the society, being a child, a father, or a mother and as a member of the society. When this individual is taken away from the society, it means one part of the society is usually taken away[69]. Death penalty causes a lot of disruption in the society. Losing one member of the society means that the roles that he or she used to play will have to be taken by other people and this leads to disorientation of individual roles in the society. For example, when a married man is hanged, his family is left without a bread winner. This role has to be taken up by another person be it the mother, close relative, or the society at large. While this aspect may look at economic aspect alone, it is also important to consider the emotional effect this will have on children and their mother. The emotional support they used to get from their father will not be easily taken by another member of the society (Melissa). Therefore, one effect of death penalty is that it leads to disorientation of societal roles and causes a lot of disruption in the society. The burden and pain of death penalty is borne by those who are left

---

[68] Andrews 62

[69] Andrews 27

behind[70]. Children left without a mother or a father have to chart their own way in life while wives left without husbands or husbands left without wives have to bear the duty of raising the family alone.

Alternative-community policing, rehabilitation, and life imprisonment. One of the alternatives to death penalty that is practiced in the world is life imprisonment. In most countries where death penalty has been abolished, life imprisonment is preferred. Rehabilitation has been advanced as one of the most possible solution to the problem of death penalty. As opposed to retribution, rehabilitation adopts the principie of restitution and it is geared towards restoring individuals back to the society as reformed people. Like any other crime, death penalty is committed for a reason. The other alternative to death penalty is taking primary level of prevention.

"Many that live deserve death. And some that die deserve life. Can you give it to them? Then do not be too eager to deal out death in judgment." — J.R.R. Tolkien, The Fellowship of The Ring.

The constitutional validity of the death penalty was challenged from time to time in numerous cases starting from Jagmohan Singh v. State of U.P[71] where the SC rejected the argument that the death penalty is the violation of the "right to life" which is guaranteed under article 19 of the Indian constitution. In another case Rajendra Prasad v. State of UP, Justice Krishna lyer has empathetically stressed that death penalty is violative of articles 14, 19 and 21. But a year later in the landmark case of Bachan Singh v. State of Punjab[72], by a majority of 4 to 1 (Bhagwati }.dissenting) the Supreme Court overruled its earlier decision in Rajendra Prasad. It expressed the view that death penalty, as an alternative punishment for murder is not unreasonable and hence not violative of articles 14, 19 and 21 of the Constitution of India,

[70] ohnson 47
[71] 1973 AIR 947, 1973 SCR (2) 541
[72] (1980) (2 SCC 684) 14

because the “public order” contemplated by clauses (2) to (4) of Article 19 is different from “law and order” and also enunciated the principle of awarding death penalty only in the ‘rarest of rare cases’. The Supreme Court in Machhi Singh v State of Punjab[73] laid down the broad outlines of the circumstances when death sentence should be imposed.

Similarly in various other cases the Supreme Court has given its views on death penalty and on its constitutional validity. But the punishment of death penalty is still used in India, some time back the death penalty was given to Mohammad Ajmal Kasab[74]. The Pakistani gunman convicted in 2008 Mumbai attacks was sentenced to death by hanging and after a long discussion, politics and debate was finally hanged on 21 November 2012. Next in the row is Afzal Guru, convicted in 2001 Parliamentary attacks was also hanged after a huge political discussion on 9 February 2013, The next convict in the death row is Devendra Pal Singh Bhullar, convict of 1993 car bombing will be hanged in the coming days as his mercy petition was rejected by the Supreme Court by holding that in terror crime cases pleas of delay in execution of death sentence cannot be a mitigating factor.

Sanction is an essential ingredient of law. Punishment is a social custom and institutions are established to award punishment, after following criminal justice process. Governments prohibit taking life, liberty or property of others and specify the punishments, threaten those who break the law. Death penalty in india is not completely abolished but given in rarest of the rare cases which in my opinion must be retained for incorrigibles and hardened criminals but its use should be limited to rarest of rare cases so as to reduce the chances of arbitrariness in judicial process and failure of justice.

[73] [1980] 2 S.C.C. 684

[74] Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra (2012 SC 3565)

# Chapter 5

# Judicial Views on Capital Punishment

## 5.1 Judicial Views

The Magistracy has more often than not, used Section 354(3) of the Code of Criminal Procedure to justify its stand either in support of or against the award of capital punishment. The abolitionists see this provision a green signal for dilution of capital punishment while for the receptionists the special reasons contemplated by Section 354(3) implicitly suggest that death sentence is legally and constitutionally permissible.

It must, however, be noted that what appears to one judge as extenuating circumstances justifying commutation of death sentence to that of life-imprisonment, may not be necessarily so with the other Judge. Thus in *Kunju Kunju Janardhanam v. State of Andhra Pradesh*[75], the accused, infatuated by the charm of a village girl, committed brutal of his innocent wife and his two minor sons while they were asleep in death of night. The girl, on her part, had warned the accused through her letters not to destroy his happy family life by the illicit intimacy, but the accused paid no heed and chose to commit tripe murder with extreme depravity. Although the majority by 2:1 commuted death sentence to that of imprisonment for life, *Mr. Justice A.P. Sen*, in his dissenting judgment disagreed with the majority and observed.

"The accused who acted as a monster, did not even spare his two innocent minor children in order to get rid of his wife and issues though her ; if death sentence was not to be awarded in a case like this I do not see the type of offences which call for death sentence."

A perusal of some of the Supreme Court decisions involving award of death penalty would reveal that sudden impulse or provocation[76] uncontrollable hatred arising out of sex indulgence[77], family feud or land dispute, infidelity of wife[78] or sentence of death hanging

---

[75] Ciminal Appeal No. 511 of 1978 Disposed Of Alongwith Rajendra Prasad's Case (AIR 1979 SC 916)

[76] Ummilal v. State of M.P. , AIR 1978 disposed of along with Rajendra Prasad's case (AIR 1979 SC 916).

[77] Ediga Anamma v. State of A.P., AIR 1974 SC 799

[78] Chawla v. State of Haryana, AIR 1974 SC 1089 : Guru Swamy v. State of Tamil Nadu , AIR 1979 SC 1177 ;Shidagouda Ningappa v. State of Karnataka, AIR 1981 SC 764

over the head of the accused for a considerable long period of time due to law's delay[79], have been accepted as extenuation circumstances justifying lesser penalty of life imprisonment instead of death sentence. *Mr. Justice Krishna lyer* of the Supreme Court of India, however, made it clear in *Rajendra Prasad v. State of U.P.*, that where the murder is deliberate, premeditated, cold-blooded and gruesome[80] and there are no extenuating circumstances, the offender must be sentenced to death as a measure of social defense.[81]

The pros and cons of "life or death sentence" have been extensively death with by the Supreme Court of India in *Rajendra Prasad* case. Therefore it would be pertinent to state the facts of the case to analyze the entire issue in its proper perspective.

The accused in the instant case was a desperate character who had undergone sentence of imprisonment for life and was released on Gandhi Jayanti day in 1972, a few day prior to the occurrence. On 25th October, 1972 the accused suddenly attacked on Rambharosey and dealt several blows on vital parts of his body with knife. Rambharosey released himself from the grip of the accused and ran inside house and bolted the door. The accused chased him all the way with the blood-stained knife and knocked at the door asking him to open it. Meanwhile, the deceased Mansukh came and tried to entreat the accused not to assault Rambharosey. Thereupon, the accused struck deceased Mansukh, who tried to escape but the accused chased him over a distance of 200 to 250 feet and inflicted repeated knife blows on him which resulted into his death. Thus the deceased was done to death by the accused because the former tried to prevent him from assaulting Rambharosey.

The Supreme Court by a majority of 2 to 1 and speaking through *Mr. justice V. R. Krishna lyer*, attributed failure of penal institutions to cure criminality within the criminal as the sole

[79] T.V. Vatheeswaran v. State of Tamil Nadu , 1983 cr lj 481
[80] HARIHAR SINGH V. STATE OF U.P. , AIR 1975 SC 1501
[81] Sarveshwar Prasad Sharma v. State of M.P. , AIR 1977 SC 2423

cause of this cruel murder and allowed commutation of death sentence of the accused to that of life imprisonment. The Court, *inter alia*, observed:

"A second murder is not to be confounded with the persistent potential for murderous attack by the murderer. This was not a menace to the social order but a specific family feud…. here was not a youth of uncontrollable, violent propensities against the community but one whose paranoid pre-occupation with family quarrel goaded him to go at the rival."

Expressing his compassion for the condemned accused the learned Judge further observed:

"This convict has had the hanging agony hanging over his head since 1973 with near solitary confinement to boot! He must by now be more a 'vegetable' than a person and hanging a "vegetable" is not death penalty."

Reacting sharply to the majority view Justice A.P Sen in his dissenting judgment in this case however, pleaded that the accused deserved no leniency in award of death sentence. To quote his own words[82]:

"The case of this accused is destructive of the theory of reformation. The therapeutic touch which is said the best of preventing repetition of the offence has been of no avail. Punishment must be designed so as to deter, as far as possible from commission of similar offences. It should also serve as a warning to other members of society. In both aspects, the experiment of reformation has miserably failed. I am quite sure that with the commutation of his death sentence, the accused will commit a few more murders and he would again become a menace to the society."

The learned Judge further observed:

……..the humanistic approach should not obscure our sense of realities. When a man commits a crime against society by committing a diabolical, cold-blooded, pre-planned

[82] AIR 1979 SC 916 , AT Pg 962

murder of one innocent person the brutality of which shocks the conscience of the Court, he must face the consequences of his act. Such a person forfeits his right to life.

In a way Rajendra Prasad's case provided as appropriate opportunity for the Supreme Court to express its view on need for dilution of death penalty in the context of India Society. Citing extensively from Anglo-American literature[83] available on the subject and the relevant case law[84]. Mr. Justice Krishna lyer tried to derive at the point that special reasons referred to under Section 354(3) of the Code of Criminal Procedure must be liberally construed so as to limit death penalty only to rare categories of case such as white collar crime, anti-social offences like hijacking or selling of spurious liquor, etc. and hardened murderers. *Justice Krishna lyre* emphatically stated that, by and large, murders in India are not by a calculated professionally cold-blooded planning but something that happens on the spur of the moment due to sudden provocation, passion, family feud, or an altercation etc., motivates one to go to extreme and commit the crime and, therefore, there are prospects for reformation of the offenders if they are not done away to death.

The learned Judge discarded the award of death penalty from the constitutional standpoint also. He emphatically stressed that death sentence is violative of Articles 14, 19 and 21 of the Constitution of India. To quote his own words[85].

"Corporeal death is alien to fundamental rights. Restriction on fundamental rights are permissible if they are reasonable. Such restrictions may reach the extreme state of extinction only if it is so completely desirable to prohibit totally. While sentencing you cannot be arbitrary since what is arbitrary is per se unequal."

---

[83] Stockholm declaration of amnesty international conference (10th , 11th December 1977)

[84] Furnam v. Georgia , (1972) 408 us 238.

[85] Rajender prasad's case , AIR 979 SC 916 at p 982

In sum, the Supreme Court concluded that commutation of death penalty to imprisonment for life is justified in the instant case keeping in view the ideological, constitutional, criminological and cultural trends in India and abroad.

The ruling in *Rajendra Prasad's* case was followed in two subsequent cases decided by the Supreme Court in the same year. In one case[86], the accused was sentenced to death by the High Court but on appeal his sentence was commuted to life imprisonment because the murder arose out of a family quarrel relating to division of land and the fact that the appellant was under the sentence of death for six long year was by itself enough to justify mitigation of sentence.

In another case[87], although the accused was convicted for quadruple murder and sentenced to death, but the Supreme Court in appeal reduced it to one of imprisonment for life on the ground that dispute related to regulating "turns" for taking irrigation water for agricultural purposes and the earlier provocation came from the deceased side by beating the accused.

A year letter, the Supreme Court, was once again called upon to settle the controversy over choice between death penalty and imprisonment for life[88] but this time by a larger Bench of five judges. Overruling its earlier decision in *Rajendra Prasad*, the Court by a majority of 4 to 1 (majority view taken *by Mr. Justice Y. V. Chandrachud, O. J. Sarkaria, Gupta* and *Untavalia,* JJ while Bhagwati, J. dissenting) expressed a view that death sentence as an alternative punishment for murder is not unreasonable and hence not voilative of Articles 14, 19, and 21 of the Constitution[89], because the "public order"comtemplated by clause (2) to (4) of article 19 is different from "law and order". Justifying retention of death

[86] Guruswaky v. state of tamil nadu, AIR 1979 SC 1177.
[87] Dalbir Singh v. State of U.P. ,AIR 1979 SC 1384
[88] Bachan Singh v. State of Punjab AIR 1980 SC 898
[89] JAG MOHAN SINGH V. STATE OF U.P. AIR 1973 SC 947

penalty as an alternative punishment in reference to Section 354(3) of the Code of Criminal Procedure, 1973 the Court, *inter alia*, observed[90].

"The question whether or not death penalty serves any penological purpose is a difficult, complex and intricate issue. It has evoked strong divergent views…. Notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologist, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society."

The Court further observed: The Supreme Court should not venture to formulate rigid standers in an area in which the legislators so wearily tread; only broad guidelines consistent with the policy indicated by the legislature can be laid down.

The majority, however, expressed the need for liberal construction of mitigating factors in the area of death penalty and held that dignity of human life postulates resistance to taking life through laws instrumentality, that ought not to be done save in *rarest of rare cases* when alternative option is unquestionably foreclosed.

Negativing the abolitionist's contention that vengeance which is no longer an acceptable end of punishment, that it is contrary to reformation of criminal and his rehabilitation, and finally that it is inhuman and degrading, the Supreme Court rule that though life imprisonment is the rule, death sentence must be retained as an exception for the offence of under Section 302, I.P.C to be used sparingly.

Following the ruling laid down in *Bachan Singh,* the Supreme Court upheld the death sentence of the accused in *Machi Singh and others v. State of Punjab*,[91] on the ground that the murder committed was of exceptionally depraved and heinous in character and the manner of its execution and its design would put it at the level of extreme atrocity and cruelty. The accused in the instant case had killed two innocent and helpless women. Their Lordships of

[90] Bachan singh v. state of Punjab, AIR 1980 SC 898
[91] AIR 1983 SC 957

the Supreme Court opined that the *rarest of rare case* doctrine was clearly attracted in this case and that sentence of death was perfectly justified.

While deciding, this case(i.e. *Machi Singh*), the Apex Court realized that the rarest of rare cases doctrine had caused 'inner conflict' in the minds of the Judges because it was left much to the judicial discretion to decide whether the case fell within the category of rarest of rare case or not. Hence the Supreme Court laid down a five –point formula based on the manner in which the murder was committed and the motive, nature and magnitude of the crime and the personality of the victim. The factors which the Court was expected to take into consideration for this purpose may be briefly stated as follows:-

1) The *manner* in which the offence of murder was committed. If it was committed with extreme brutality such as burning the victim alive or cutting body into pieces, it would be a fit case to be consideration for this purpose may be briefly states as follows :
2) When the *motive* reveals depravity and meanness of the murderer e.g. crime being committed for material gain.
3) When the murder is *socially* abhorrent such as bride burning or killing of a Harijan.
4) When the *magnitude* of the offence is enormous as in case or multiple murders.
5) When the *victim* is an innocent child, a helpless woman, or a reputed figure i.e. the case of a political murder.

The Court, however, cautioned that these guidelines should not be applied too literally. Instead, the judges should interpret the provisions rationally to ascertain whether collective conscience of the community has been shocked and it will expect the Judge to award the death penalty.[92]

[92] Dina v. state of U.P. , AIR 1983 SC 1155

The Supreme Court reiterated its approval for death sentence once again in its decision in *Chopra Children*[93] murder case. In this case the accused kuljeet Singh alias Ranga along with one Jasbir Singh *alias* Billa committed gruesome murder of two teenage children Gita Chopra and her brother Sanjay in a professional manner and was sentenced to death by Additional District Judge, Delhi. The High Court confirmed the conviction and death sentence whereupon appellant moved in appeal to Supreme Court. Dismissing the appeal, the Supreme Court upheld the conviction and sentence of the accused on the ground that the murder was preplanned, cold-blooded and committed in most brutal manner, hence there were no extenuating circumstances warranting mitigation of sentence.

The Supreme Court in its decision in T.V. Vatheeswaran v. State of Tamil Nadu[94], once again ruled that prolonged delay in execution exceeding two years will be a sufficient ground to quash death sentence since it is unjust, unfair and unreasonable procedure and only way to undo the wrong is to quash the death sentence. The Court further observed that the cause of delay is immaterial when the sentence is that of death and a person under sentence of death may also claim fundamental rights, i.e. procedure under Article 21 must be just, fair and reasonable.

But soon after in *Sher Singh v. State of Punjab* the Supreme Court overruled is earlier ruling in Vetheeswaran's case. Delivering the judgment in this case *Chief Justice Mr. Y. V. Chandrachud* observed that death penalty should only be imposed in rare and exceptional cases but any death sentence upheld by the Supreme Court should no be allowed to be defeated by applying any rule of thumb. The learned Court further observed that no hard and fast rule can be laid down as far as the question of delay was concerned. If a person was allowed to resort to frivolous proceeding in order to delay the execution of death sentence, the law laid down by Court on death sentence would become an object of ridicule. Thus,

---

[93] Kuljeet singh alias ranga v. union of india , AIR 1981 SC 1572

[94] AIR 1983 SC 361

dismissing the write-petition the Supreme Court in this case directed the Punjab Government to explain the delay in execution.

In yet another case, namely, Javed *Ahmad Abdulhamid Pawala* v. *State of Maharashtra*[95], the Supreme Cort upheld the sentence of death for a gruesome and brutal murder. In the instant case the appellant was convicted for multiple murders. He killed his sister-in-law aged 23 years, his little nice aged 3 years, his baby nephew age about one and half years and the minor servant aged about 8 years. The motive of murders was the golden ear-rings and bangles of the deceased. The sister-in-law sustained 20 stab-injuries, niece 23 stab wounds, servant 8 incised wound and baby niece 3 injuries. The accused was convicted for murder and sentenced to death. His conviction was upheld by the High Court. He thereupon moved an appeal to the Supreme Court only on the question of sentence. Dismissing his appeal the Supreme Court, *inter alia* observed:-

"The appellant acted like a demon showing no mercy to his helpless victims three of whom were helpless little children and one a woman. The murders were perpetrated in a cruel, callous and fiendish fashion. Although the appellant was 22 years of age and the case rested upon circumstantial evidence, the Court were unable to refuse to pass the sentence of death as it would be stultifying the course of law and justice. It was truly the rarest of rare cases the Court had no option but to confirm the sentence of death."

In the notorious *Joshi-Abhyunkar* murder case[96] the accused committed a series of gruesome murders during January, 1976 and March, 1977. They were sentenced to death by the trial Court which was confirmed by the Bombay High Court on 3th April, 1979. The appellants thereupon filed special leave petitions before the Supreme Court for commutation of death sentence to one of the life imprisonment as the "death" was hovering over their minds for five years. Two of the petitioners, namely, Shanta Ram Jagtap and Munawar Shah pleaded that

[95] AIR 1983 SC 465

[96] Munawar harun shah v. state of Maharashtra , AIR 1983 SC 585

during this period they had written a book entitled "*Kalyan Marg"* in Marathi and translated "*Sukshma Vyayam*" written in English by Dhirendra Bramhachari in to Marathi. Dismissing the petitions the Supreme Court observed that the book-writing and translation work of the petitioners belied that any spectre of death penalty was hovering over their minds during the period they have been in jail. Therefore any mercy shown in matter of sentence would not only be misplaced but will certainly give rise to and foster a feeling of private revenge among the people leading to destabilization of society.

The Supreme Court in *Ranjit Singh V. Union Terriroty of Chandigarh*[97] was once again called upon to decide an appeal relating to the question of sentence. In the instant case, murder was committed by appellant a life convict during parole. The accused was sentenced to death on conviction under Section 303, I.P.C. and the co-accused was awarded life-imprisonment. Agreeing with the contention of deceased's counsel the Supreme Court commuted the sentence of death to that of imprisonment for life as Section 303, I.P.C had been declared unconstitutional in *Mithu v. State of Punjab*[98]. The Court held that during parole appellant should have behaved like a law abiding citizen but instead he indulged into heinous crime of murder hence the case fell within the category of rarest of rare cases. Again, in *Mahesh etc. v. State of M.P.*[99], the Supreme Court maintaining the sentence of death passed by the High Court observed:

"it would be mockery of justice to permit the appellant to escape the extreme penalty of law …. and to give lesser punishment for the appellant would be to render justicing system of this country suspect, the common man would lose faith in courts"

In the instant case father and son had axed a person and three members of his family and his neighbor who intervened merely because daughter of that person married a Harijan. The

[97] AIR 1984 SC 45
[98] AIR 1983 SC 473
[99] AIR 1987 SC 1346

Supreme Court held that interference with the sentence was not called for because the act of appellants was extremely brutal, revolting and gruesome which shocks the judicial conscience. Therefore deterrent punishment was a social necessity in this case.

The Supreme Court in its decision in *Asharfi Lal & Sons v. State of U.P*[100], once again upheld the death sentence of the accused who committed reprehensible and gruesome murder of two innocent girls on 14th August, 1984 to wreck their personal vengeance over the dispute they had with regard to property with the mother of victims and commenced that "the only punishment the accused deserved was nothing but death." Commenting on the desirability of death sentence the Court further observed:

"Failure to impose a death sentence in grave cases where it is a crime against the society, particularly in case of murders committed with extreme brutality will bring to naught the sentence of death provided by Sec. 302 I.P.C. it is duty of Court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment."

However, the execution of death sentence by public hanging was held as barbaric and violative of Art. 21 of the Constitution. Even if the Jail Manual were to provide public hanging, it would be declared unconstitutional.[101]

In *Kamta Tiwari v. Sate of M.P*,[102] the accused committed the rape on a seven year old girl and strangulated her to death. He threw her body in a well and caused disappearance of evidence. The accused was convicted for the offence under section 363, 376, 302 and 201, I.P.C. and was sentenced to death by the trial court and the sentence was maintained by the high court also. In appeal the supreme court upheld the decision of the lower courts and held that this is a "*rarest of the rare case"* where the sentence of the death is eminently desirable

[100] AIR 1987 SC 1721
[101] Lachma devi v. state of rajasthan , AIR 1986 SC 467
[102] AIR 1996 SC 2800

not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crimes. The court , inter alia , observed :

"Before opting for death penalty , the circumstances of the 'offender' also required to be taken into consideration along with the circumstances of the crime . A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to struck between the aggravating and mitigating circumstances before the opinion is exercised."

In Mohd. Chaman v. State of Delhi[103], the accused has committed rape on a minor girl Ritu aged one and a half years when parents and two sisters were away from Home. As a result of this brutal and ghastly act the child suffered several injuries and died. The trial Court convicted the accused under Section 302 and 376, I.P.C and sentenced him to death which was confirmed by the High Court. Om appeal, the Supreme Court held that, when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and indignation of community these should be construed as aggravating circumstances for imposition of death sentence. In the instant case the crime committed is undoubtedly serious and heinous and reveals a dirty and perverted mind of a person who has no control over his carnal desires. But taking guidelines laid down in Bechan Singh (supra) the case is one which deserves humanist approach and therefore capital sentence imposed against appellant is commuted to imprisonment for life.

In the case of Amit alias Ammu v. State of Maharashtra[104], the accused aged 20 years (appellant) took deceased, a school girl of about 12 years of age to a secluded place and committed rape on her and strangulated her to death. He sentenced to death by the Sessions Court in view of heinousness of the crime and also ordered fine of Rs. 25,000/- to be paid to the parents of the child. The High Court confirmed the aforesaid sentences on the ground that

[103] 2001 (1) C.Cr.J. 121 (SC)

[104] AIR 2003 SC 3131

the case full in the category of rarest of rare case. On appeal, the Supreme Court held that conviction of the appellant for the offence under Section 302 and 376, IPC, has been rightly recorded by the Court of Session and affirmed by the High Court. But considering that the appellant is a young man of 20 years, he was a student and there being no previous record of any heinous crime and also there being no evidence that he will be a danger to the society, and considering the circumstances of the case and cumulative facts, the Apex Court held that the case did not fall in the category of 'rarest of rare' case and hence the sentence of death was modified to one of imprisonment for life. The appeal was therefore allowed only to the extent of modification of sentence only.

In Dhananjay Chatterjee alias Dhana v. State of West Bengal[105], the appellant was found guilty of committing rape and murder of a school going 18 year old girl in retaliation for his transfer as a security guard to some other building complex, on the complaint by the deceased girl to her parents that the appellant was testing and harassing him. His appeal having failed in the High Court and the Supreme Court and the mercy appeal being rejected by Governor of West Bengal and also the Hon'ble President of India, he was finally hanged till death on 14th August 2004 in Alipore Jail of West Bengal in execution of his death sentence. The facts of the case were as follows:-

The appellant was security guard deputed to guard the building 'Anand Apartments. Deceased has made complaint about the teasing by the appellant to her mother previously also and her father requested to replace the appellant and accordingly he was transferred to Paras apartment. Anguished from this, the appellant entered the house in the absence of other members, committed rape and killed her. She was found dead on the floor with her skirt and blouse pulled up and her private parts and breast were visible with patches of blood near her head and floor. According to medical evidence, hymen of the deceased showed fresh tear

[105] Criminal appeal nos. 393-394 of 2004 decided on 26-3-2004

with fresh blood in the margins and blood stains on the vagina and matter public hair. It is settled law that when the case is based on circumstantial evidences, the motive also gears importance. In the circumstances the chain of the evidence was so complete that it led to the guilt of the accused. The High Court rightly upheld the conviction and sentence of death.

Thus, the ill-fated victim Hetal Parekh was raped and murder on March 5, 1990 between 5.30 and 5.45 P.M. in her Flat No. 3-A, on the third floor of Anand Apartment. The appellant was challaned and tried for rape and murder and also for an offence under Section 380, IPC for committing theft of a wrist-watch from the said flat. The learned Additional Sessions Judge found him guilty and convicted the appellant (i) for an offence under Section 302 IPC and sentenced him to death, (ii) for an offence under Section 376, IPC and sentenced him to imprisonment for life, and (iii) for the offence under Section 380 IPC, he was sentences to undergo rigorous imprisonment for five years. The substantive sentences under Sections 376 and 380, IPC were ordered to run concurrently but were to cease to have any effect, in the sentence of death for conviction of the appellant under Section 302 IPC was confirmed by the High Court and the appellant was executed. Reference for confirmation of the death sentence was accordingly made to the High Court. The appellant also preferred an appeal against his conviction and sentence in the High Court. The criminal appeal filed the appellant was dismissed and the sentence of death was confirmed by the High Court. On special leave being granted, the appellant Dhananjoy Chatterjee alias Dhana, filed an appeal.

There were no eye-witnesses of the occurrence and the entire case rested on circumstantial evidence. In a case based on circumstantial evidence, the existence of motive assumed significance though absence of motive does not necessarily discredit the prosecution case if the case stands otherwise established by other conclusive circumstances and the chain of such evidence is complete and takes one irresistible conclusion about the guilt of the accused. In the case there was ample evidence on record to show that the appellant had a motive commit

the alleged crime and therefore, the Court rightly found the accused guilty of aforesaid offences. Ascendance of the accused after the occurrence, though not by itself sufficient to prove the guilt of the accused, was sufficient to support the case against him. The Court, therefore, rejected the belated and vague plea a alibi which it considered to be only an afterthought and a plea in despair. The Court held that prosecution has successfully established that the appellant alone was guilty of committing rape of Hetal and subsequently murdering her.

As to the question of sentence, the trial Court awarded the sentence of death and the High Court confirmed the imposition of capital punishment for the offence under Section 302 of IPC for the murder of Hetal Paresh. Learned counsel submitted that appellant was a married man of 27 years of age and there were no special reasons to award the sentence of death on him. It was further submitted that keeping in view the legislative policy discernible from Section 235(2) read with Section 354(3) of Cr.P.C., the Court may make the choice of not imposing the extreme penalty of death on the appellant and give him a chance to become a reformed member of the society in keeping with the concern for the dignity of human life. The learned counsel for the State, on the other hand canvassed for confirmation of the sentence of death do that it serves as a deterrent to similar depraved minds. According to the learned State counsel there were no mitigating circumstances and the case was undoubtedly rarest of the rare cases where the sentence of death alone would meet the ends of justice.

The Court observed as follows:-

We have given our anxious consideration to the question of sentence keeping in view the changed legislative policy which is patent from Section 354(3) Cr. P.C. we have also considered the observations of this Court in Bachan Singh v. State of Punjab[106]. But in recent years, the rising crime rate- particularly violent crime against women has made the criminal

[106] AIR 1980 SC 898

sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not to unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

## 5.2 The Court Further Observed:

In our opinion, the measure of punishment in a given case must depend upon atrocity of the crime; the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the right of the of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

According to the Hon'ble Court, the sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his just and murder her in retaliation for his transfer on her complaint, makes the crime even more

heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found. It is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenseless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstance whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the Courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenseless young girl of 18 years, by the security guard certainly makes this case a rarest of the rare cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302, IPC. The order of Section imposed on the appellant by the courts below for offences under Sections 376 and 380, IPC are also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dismissed.

As a last ditch to save his life, the appellant filed a mercy appeal with the Hon'ble President of India which was rejected by an order of the President dated 4th August 2001, Thereafter, the brother of the appellant filed a petition in the Supreme Court seeking stay of Dhananjoy's execution of death sentence. But the five –judge Bench of the Apex Court refused to review the President's decision to reject appellant's mercy petition. Consequently, Dhananjoy's

death sentence was executed in Alipore Central Jail in West Bengal on 14th August 2004 by hanging him till death.

Dhananjay's case is undoubtedly a trend-setter in the history of capital punishment in India and clearly indicates that the principle laid down in Bachan Singh's case i.e. rarest of rare case is best suited to the socio-millieu of the Indian society even in the present 21st century.

In suraj Ram v. State of Rajasthan;[107] the accused brutally murdered his real brother, brother's two sons and aunt while they were asleep. He also attempted to murder brother's wife and daughter. The Supreme Court upheld the sentence of death as the murder were committed in a cool and calculated manner and without any provocation. Therefore, it clearly fell in the category of rarest of rare cases.

The Supreme Court in Krishan v. State of Haryana[108]; declined to hold that the appellant's case fell in the category of rarest of rare cases, and therefore, commuted death sentence to one of life imprisonment. In the case, the accused was already serving a sentence of life – imprisonment. In this case, the accused was already serving a sentence of life-imprisonment for a murder and he was found guilty of committing another murder of a person with whom he had a property dispute while he was released on parole. The Court ruled that undoubtedly felonious propensity of offender is a factor which requires consideration for the sentence of death but that cannot be made the sole basis for award of death sentence as all other factors such as motive, manner and magnitude should also be taken into consideration.

In Raja Ram Yadav & others v. State of Bihar[109], the appellants (eight in number) were charged for committing premeditated murder of six persons in a cool and calculated manner with extreme cruelty and brutality under Section 302, 436 read with Section 148 and 120-B, I.P.C The incident occurred when a group of persons committed mass massacre of 26

[107] AIR 1997 SC 18
[108] AIR 1997 SC 2598
[109] AIR 1996 SC 1613

persons out of which 25 belong to one community and 20 of them also belonged to the same family in the village Bhagora, Police Station Madanpur, Dist- Aurangabad on the night of 30th May, 1987. The conviction was based on the testimony of solitary child witness who was five year old son of one of the deceased. His deposition was held convincing and reliable. The Supreme Court ruled that normally sentence of death was wholly justified keeping in view the special facts of the case, but it will not be proper to award extreme sentence of death on the appellants hence it would be proper to commute the death sentence to one of the life imprisonment.

Again, in the case of Ashok Kumar v. The State of Delhi Administration[110], the allegations against the accused were that he was having illicit relations with co-accused and killed her husband in a room of hotel by striking him with stone. The High Court enumerated as many as eleven circumstantial evidence against the appellant and spelt out the case to be rarest of rare one. The Supreme Court held the view that appellant was rightly convicted of the offence under Section 302, I.P.C as the chain of circumstance fully established the guilt of the accused. However, on the point of sentence, the Apex Court observed that the act of striking the deceased with a handy stone and causing the death cannot be said to be so cruel, unusual or diabolic which would warrant death penalty. Therefore, the Court commuted the death sentence of the appellant to that of imprisonment for life.

In Renuka Bai alias Rinku alias Ratan and another v. State of Maharashtra[111], the appellants Renuka and Seema, both sister, their mother Anjalibai, a co-accused who died in 1997 and approver Kiran Shinde (husband of Renuka) all belonging to Pune used to commit thefts by snatching the gold chains in restively or crowded and made a living out of the income derived from such thefts. They used to have a child with them at the time of committing the crime so that by making use of child they would easily escape from the crows. So all of them used to

[110] AIR 1996 SC 265

[111] AIR 2006 SC 3056

enter into a conspiracy to kidnap small children below 5 years of age and make use of them whenever necessary and dispose them of when they were no longer useful. In this manner they killed as many as 9 children during the period June. 1990 to October, 1996. They were convicted on various counts and the two accused Renuka and Seema were sentenced to death by the Sessions Court and their sentence was confirmed by the High Court. The approver Kiran Shinde had also kidnapped 13 children and caused death of 9 out of them. The appellants were found guilty of guilty of offences under section 364 read with Section 120 –B of IPC and also section, 323 IPC.

In appeal against the death sentence, the Supreme Court held that there were no mitigating circumstance in favor of the appellants, except for the fact that they were women. But the nature of the crime and the systematic way in which each child was kidnapped and killed amply demonstrated the depravity of the mind of the appellants. The appellants were clearly a menace to the society and the people of the locality were completely horrified and could not send their children even to school. The Court observed, we are alive to the new trends in the sentencing system in criminology, but we do not think that appellants are likely to reform. Therefore, their conviction and death sentence was confirmed and the stay of execution of capital punishment imposed on them was vacated.

In Mahendra Nath Das v. State of Assam[112], the appellant (accused) was a young man, who killed the deceased and chopped off the hands and head of the dead body. Thereafter, he came to the police station along with the chopped hand and head of the deceased to make a confession of his offence. The Supreme Court considered this murder as the rarest of rare case and upheld the death sentence of the accused. The Court rejected the plea that the accused was a young man having liability of his three young unmarried sisters and age-old parents who were solely dependent on him.

---

[112] (1999) 5 SCR 102

In the case of Prem Sagar v. Dharambir & others[113], the accused were sentenced to life imprisonment for committing murder by intentionally causing death of the deceased in furtherance of common intention under Section 302/34 I.P.C In appeal against the sentence by the informant, the Supreme Court held that undoubtedly, brutality is inbuilt in every murder but in the case of every murder death sentence is not imposed because life imprisonment is the rule and death sentence is the exception. The sentence of death is imposable in rarest of rare cases. The Court further noted that having taken into consideration the mitigating circumstances indicated by the High Court, there was no scope for interference and altering the sentence of life imprisonment to one of the death sentence. The conviction of accused Dharambir was, therefore, affirmed. The Court, however, ordered acquittal of the accused Karambir because the prosecution did not link him with the occurrence and, therefore, his conviction was not justified.

The Supreme Court in Sushil Murmu v. state of Jharkhand[114], reiterated the rarest of rare case doctrine and held, when collective conscience of the community is shocked and it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability of otherwise of retaining death penalty, death sentence must be awarded. In this case the appellant sacrificed a child of nine years before the deity Kali by beheading him, for his own prosperity. The non-challant way in which he carried the severed head in a gunny bag and threw it in the pond unerringly shows that the act was diabolic of most superlative degree in conception and cruel in execution, particularly when the appellant (accused) was having his own child of the same age. The Supreme Court dismissed the appeal and laid down the test to determine as to what cases may be covered under the rarest of rare rule. According to the Apex Court the following cases would attract the rarest of rare cases rule to justify imposition of death sentence:-

[113] AIR 2004 SC 21

[114] AIR 2004 SC 394

1. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community
2. The murder is committed for a motive which evinces total depravity and meanness ;
3. When murder is that of a member of Scheduled Cast or minority community ;
4. When murder is in enormous proportion i.e., several persons are murdered ;
5. When the victim of murder is an innocent child or a helpless woman or an old or infirm person.

The Court ruled that death penalty should be the only punishment to be awarded in the aforesaid case.

In the case of Holiram Bordoloi v. State of Assam[115], the Supreme Court confirmed the death sentence in the peculiar circumstances of the case. The Court listed out the aggravating circumstances against the accused and held :-

(a) this is a case cold-blooded murder;

(b) the accused was leading the gang;

(c) the victims did not contribute or provoke the incident;

(d) two victims were burnt to death by locking the house from outside;

(e) one of the victims was a young child of about 6 years of age, who somehow, managed to come out of the burning house, but he was mercilessly thrown back to the fire by the appellant (accused);

(f) the dragging of Nagarmol Bordoloi by the accused Holiram to his house and the cutting him into pieces in broad daylight in the presence of bystanders reflected on the depravity and barbarity of the offender ;

[115] Criminal appeal no. 1063/2004 decided on april 8, 2005

(g) the whole incident took place in broad daylight and the crime was committed in a most barbaric manner to deter others from challenging the supremacy of the appellant (accused) in the village;

(h) the entire incident was pre-planned by the accused Holiram.

In absence of any mitigating circumstance in favor of the appellant (accused), the Apex Court upheld the death sentence which in its opinion was the only appropriate punishment in view of the facts of the case.

In Satyendra v. State of Uttar Pradesh[116], the accused persons who were variously armed came in group by using cars and motor cycles and intercepted a bus knowing fully well that deceased were traveling in that bus. They entered the bus from both doors without giving an opportunity to deceased persons to escape, and killed them on the spot. Two deceased who tries to escape from the bus, were chased by accused and killed. The medical report testified death by gun-fires. The accused were convicted under Section 149/302 (unlawful assembly and murder) and sentenced to death by the trial Court which was affirmed by the High Court. In appeal, the Supreme Court held that sentencing the accused to death was not proper because various overt acts of individual accused persons were not established. Therefore, the death sentence was converted to imprisonment for life.

In the case of Jay Kumar v. State of Madhya Pradesh[117], the accused was a young man of 22 years of age who attempted to rape his sister-in-law (Bhabhi) but having failed in his attempt, he murdered her and hanged her mutilated head on a tree. He also murdered the 8 years old daughter of the deceased who was the sole witness to this incident. The Supreme Court rejected the appeal and upheld the death sentence on the ground that the double murder was committed in a brutal and gruesome manner and deserved no leniency in the award of sentence.

---

[116] AIR 2004 SC 3508

[117] (1999) 5 SCC 1

In Molai & another v. State of Madhya Pradesh,[118] the Supreme Court upheld the death sentence of the two accused and expressed a view that the case squarely fell in the category of one of the rarest of rare case. The facts of the case were as follows:-

The victim, a girl named Naveen aged 16 years was alone in her home and was preparing for her Xth class examination. Suddenly both the accused taking advantage of her being alone in the in the house entered the house and committed the shameful act of rape and strangulated her by using her undergarment and thereafter took her to the septic tank alone with the cycle and caused injuries with a sharp edged knife. The accused further exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead-body. The trial court convicted the accused for rape and murder under Sections 375 and 300 and sentenced them to death. The High Court upheld the conviction in appeal. In appeal, the Apex court held that counsel for the accused (appellants) could not point any mitigating circumstance which would justify reduction of the sentence; hence the case clearly fell in the category would justify reduction of the sentence; hence the case clearly fell in the category of rarest of rare case and death sentence was the only proper punishment in the instant case.

The Supreme Court in Ram Deo Chauhan and another v. State of Assam[119], reiterated that commission of the murder in a brutal manner on a helpless child or the woman in a pre-planned manner justify the imposition of maximum penalty of death sentence. In this case the accused caused death of four persons of a family in a very cruel, heinous and dastardly manner. His confessional statement showed that he committed these murders after previous planning which involved extreme brutality. Under the circumstances, the Court held that the plea that the accused was a young person at the time of occurrence cannot be considered as

[118] AIR 2000 SC 177

[119] AIR 2000 SC 2679

mitigating circumstance and therefore, death sentence imposed on the accused cannot be interfered with. The Court further observed:

It is true that in a civilized society a tooth for tooth, and a nail for nail or death for death is not the rule but it is equally true that when a man becomes a beast and menace to the society, he can be deprived of his life according to the procedure established by law, as Constitution itself has recognized the death sentence as a permissible punishment.

The Apex Court reiterated that in offences punishable with death, life sentence is the rule and death sentence is exception, but the present case is an exceptional case which warrants the award of death sentence to the accused. The appeal was, therefore, dismissed.

In the case of Govindaswami V. State of Tamil Nadu[120], the Supreme Court speaking through Mukerjee, J. observed that, in case of murder committed in a gruesome brutal and calculated manner, declining to confirm death sentence will stultify the course of law and justice. The commutation of death sentence to life imprisonment in such case will be yielding spasmodic sentiment, unregulated benevolence and misplaced sympathy.

The Supreme Court in Bablu alias Mubarak Hussain v. State of Rajasthan[121], held that, a case would fall in the category of rarest of rare cases when the collective conscience of the community is so shocked that it will expect the holders of the judicial power to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The sentence of death is justifies when the crime is enormous in proportion and the accused has committed multiple murders of all members of his own family in a cruel manner.

In the instant case, the appellant (accused) killed his wife, three daughters aged 9, 6 and 4 years and son aged two and half years in the evening of 9-12-2005 by strangulation one by one and after committing the brutal act came out of his house shouting that I have killed the

---

[120] AIR 1998 SC 1933

[121] AIR 2007 SC 697

five bastards. The accused made a extra judicial confession of his gruesome act before four prosecution witnesses and he was the only person in the house besides the five victims of his ghastly act. The accused pleaded the defense of drunkenness under Section 85 I.P.C.

Rejected the defense plea, the Apex Court held that merely because the appellant claim to be in a state of drunkenness at the relevant point of time, that does not in any way dilute the gravity of his offence because he killed five persons one after another including his wife and four young children. The case squarely falls under rarest of rare cases and therefore the sentence of death awarded to the appellant by the Sessions Court, Nagpur and affirmed by the High Court needs no interference. The Court reiterated that conviction can be based solely on circumstantial evidence when the prosecution has proved beyond doubt that the chain is complete and there is no infirmity or lacuna which could be cured by false defense or plea[122].

In the case of Laxman Naik v. State of Orissa[123], it was conclusively proved on the basis of circumstantial evidence that the accused committed rape on his brother's daughter aged 7 years in a lonely place in forest and thereafter murdered her. The evidence on record indicated low diabolically the accused had conceived of his plan and brutally executed it, and such a calculated, cold-blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of rare case attracting no other punishment than the capital punishment.

The Apex Court in this case held that injuries caused on the person of the murdered child and the blood-soaked undergarments found near the body completed the chain of evidence as not to leave any doubt about the sexual assault followed by brutal, merciless, dastardly and monstrous murder which the appellant had committed. The girl of the tender age of 7 years fell prey of the lust of the accused which sends shocking waves not to the judicial conscience but to everyone having slightest sense of human values and particularly to the blood relations

[122] State of U.P. v. Ashok Kumar Srivastava AIR 1992 SC 840, AIR 1984 SC 1622 etc

[123] AIR 1995 SC 1387

and the society at large. The Court, therefore, upheld the sentence of death passed on the accused (appellant) and the appeal was dismissed.

In a similar case of Amrit Singh v. State of Punjab[124], the appellant (accused)aged 31 was convicted for the offence of rape and murder under Section 376 and 302 of IPC and sentenced to death by the Additional Sessions Judge, Mansa which was affirmed by the Punjab High Court. In appeal against this sentence, the Supreme Court declined to treat the case as rarest of rare and held that the rape and murder of the deceased 7/8 year girl was no doubt but it could have been a momentary lapse on the part of appellant (accused), seeing a lonely girl at a secluded place. He had no pre-meditation for committing the offence. The offence may look to be heinous, but under no circumstances, it can be said to be a rarest of rare case. The Court, therefore, allowed the appeal to the extent that maximum sentence of rigorous imprisonment for life be imposed instead of death sentence.

In the case of appellant on 3-11-2003 found the deceased girl Raj Preet Kaur (Guddi) aged 7/8 years returning alone from the house of her classmate at about 5.30 p.m. He raped her in his cotton field and thereafter murdered her brutally and covered the dead body with dry leaves. Injuries were also found on the deceased girl's neck and mouth. The evidence that the accused was last seen with the deceased girl was corroborative of his involvement in the brutal rape and murder of an innocent helpless female child.

In Kulwinder Singh v. State of Punjab[125], the accused inflicted gandasi blows on the neck of victims, Hardip Kaur and Joginder Kaur, who received serious injuries and died. The evidence showed that the accused had entered the fodder-room of the Haveli for committing rape upon Hardip Kau and when she resisted, he strangulated her by putting her chunni around. Since Joginder Kaur was approaching the fodder-room seeing the accused malhandling Hardip, she was obviously an eye-witness to the crime, hence accused struck

[124] AIR 2007 SC 132
[125] AIR 2007 SC 2868

blows on her neck so that no witness is left to his offence. The incidence occurred on 4-8-2002 at 2.30 P.M. and the F.I.R was logged immediately at 5 p.m. On the basis of medical report and fingerprint of the accused the Session Court convicted him for the offence under Section 300/302 and sentences him to death by its judgment dated 21-10-2003. The High Court maintained the conviction but set aside the death sentence and remitted the matter to the Sessions Judge to reconsider the quantum of sentence. The appellant filed an appeal against this order of the High Court by way of special leave to the Supreme Court.

The defense plea was that there were 14 injuries on the body of Hardip and 16 injuries on the body of Joginder Kaur and so many injuries could not possibly be caused by a single person, i.e. accused. Hence there must have been more than one persons who attacked the victims. Rejecting the plea, the Court upheld the conviction of the appellant under Section 302 IPC but reduced the sentence to life imprisonment since it appeared to the Court that the crime was committed in a fit of passion and does not come within the category of rarest of rare cases.

In a criminal appeal[126] against the judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur on 11.2.1998 to the Supreme Court by both appellants and the respondents, the Apex Court was called upon to decide the propriety of alteration of conviction of 5 accused from Section 302 read with Section 149, 148 and 341 of IPC to Section 304-Iread with Section 149, 148 and 341, IPC. The accused were found guilty of committing murder by beating the deceased with lathis and axes on a trifle issue of damage of crop by goats entering into their fields. This had resulted into instantaneous death of the deceased. The High Court found no grievous injuries having been found on the body of the deceased, altered the conviction of the accused under Section 302 to one of 304 Part I, IPC and reduced the sentence to the period undergone (i.e. six years) but enhanced the amount of

[126] Adu ramv. Mukna & others, criminal appeal no. 646 & 647/1999 decided by the supreme court

fine from Rs. 2000/- to Rs. 10,000/- to be paid to the widow of the deceased as compensation. The Supreme Court emphasizing the principle of proportion between crime and punishment held that imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The Court observed:

The social impact of crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking to sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

Allowing the appeals partly, the Court held that custodial sentence of six year would serve the ends of justice although normally the sentence for conviction for offence relatable de Sect. 304-I, IPC would be more. But this is a case which actually falls under 304-II, IPC though there is no appeal on behalf of accused persons in this regard. The enhanced fine must be paid within two months and default custodial sentence will be two years' rigorous imprisonment.

In Union of India and others v. Devendra Nath[127], the accused was awarded death sentence for having caused homicidal death of two army personnel and grievous injuries to others in Court martial proceedings. The accused was tried for four charges section 9 of the Army Act for the charged of murder (Section 302 of IPC) and attempt to murder. The Deputy Advocate General was of the view that the evidence on record clearly established the guilt of the accused and this being a rarest of rare case, he deserved the sentence of death. His sentence

[127] 2006 SCCL com 27

was confirmed by the Judge Advocate General and also by the Central Government. On a writ application filed in the High Court of Allahabad against this sentence, the Court held that the conviction was well merited, but felt that the case did not fall within the category of rarest of rare cases and therefore, directed the authorities to pass a fresh order on the question of sentence.

The Central Government moved in appeal against this order of the High Court to the Supreme Court. The Apex Court held that in the instant case, the High Court has not attempted to do the exercise of drawing a balance-sheet of aggravating and mitigating circumstances of the case and had come to an abrupt conclusion about the case being not covered by the rarest of rare rule. The case was, therefore, remitted to the High Court to consider the matter of sentence afresh and award the appropriate sentence. The Court ruled that while drawing a balance-sheet of aggravating and mitigating circumstances, the mitigating circumstances should be accorded full weightage before the option of award of death sentence is exercised. The circumstances of the offender also require to be taken note of along with the circumstances of the crime.

In Bishnu Prasad Sinha v. State of Assam,[128] the accused committed rape on a minor girl who has sleeping with her family in waiting room of travel agency along with co-accused who was a cleaner of another bus travel agency and caused her death by striking to heavy blows of brick. He made a confession which was not retracted throughout the trial and expressed repentance and remorse in his judicial confession. The circumstantial evidence fully established the guilt of the accused. Moreover, he had showed his remorse and repentance even in his statement under Section 313 of the Code of Criminal Procedure. Therefore, the Supreme Court held that appellant can be convicted only on the basis of the circumstantial evidence but ordinary, death penalty should not be awarded.

[128] AIR 2007 SC 848

Reiterating its earlier decision handed down in State of Rajasthsn v. Kheraj Ram[129], the Apex Court held as follows :-

Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be as altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided the option to impose sentence of imprisonment for life canon be conscientiously exercises having regard the nature and circumstances of the crime and all the relevant circumstances[130].

The Court further Stated that even otherwise, it cannot be said to be a rarest of rare case. Although the manner in which deceased girl was raped was brutal, but it could have been momentary lapse on the part of appellant, seeing a lonely, girl, at a secluded place. He had no premeditation for committing the crime. The offence was no doubt heinous but under no circumstances, it could be said to be a rarest of rare case, hence death penalty is converted into life imprisonment.

In the case of Reddy Samath Kumar v. State of Andhra Pradesh[131], the accused who was a medical practitioner (doctor) on 11/12 March 1998 caused the death of his father-in-law, mother-in-law and three minor children by poisoning them injecting Pan Curonium Bromide (called PAVULON). The accused doctor made his father-in-law and mother-in-law and their three minor children believe that they were suffering from AIDS when actually it was not so. He then managed to kill them by giving poisonous injection under the pretext of giving treatment in order to grab their property. The prosecution established circumstantial evidence beyond all reasonable doubts and, therefore, the accused was sentenced to imprisonment for life by the trial Court and it was affirmed by the High Court. In appeal, the Supreme Court noted that the facts of the case has shocked the judicial conscience. The gruesome murders

[129] (2003) 8 SCC 224
[130] AIR 1983 SC 857; State of M.P. v. Munna Choube and another , (2005) 2 SCC 625 etc.
[131] AIR 2005 SC 3478

were perpetrated in cold blooded, pre-meditated and well organized manner with a view to grab the property. Since the High Court had not issues notice for enhancement of punishment to death sentence, the Apex Court held that looking to the gravity and manner in which the murders were committed, the ends of justice would warrant that the appellant should be in jail in terms of Section 57 of IPC and he should not get the benefit of any remission either granted by the State or Central Government on any auspicious festival.

In the case of Swamy Shraddananda allies Murli Manohar v. State of Karnataka[132], the appellant was convicted for the offence of murder under Section 302/201 I.P.C and was sentenced to death by the Sessions Court, Bangalore on 20th May, 2005 which was confirmed by the High Court of Karnataka on 19-9-2005. The appellant came to the Supreme Court against the judgment of the High Court. The two Judge Bench of the Apex Court unanimously upheld the conviction but differed on the quantum of punishment. Katju, J. held that the appellant deserved nothing but the death whereas S.B. Sinha, J,, felt that the punishment of life imprisonment, rather than death, would serve the ends of justice. He however added that the appellant would not release from prison till the end of his life.

The facts of the case briefly stated were that the deceased victim belonged to a high reputed and wealthy princely family holding vest property including a big bungalow in Bengalore constructed over 38,000 Sq. ft. of land which she got in gift from her parents. She was married to one Akbar Khaleeli, and Indian foreign service official and her four daughters from him. She sought the services of the appellant to handle her property disputes. Her husband was posted in Iran and she lived in her bungalow in Bangalore. She divorced her husband in 1985 and married the appellant in the hope of having a son from him. It was registered marriage. Her four daughters from previous husband mostly living abroad. After marriage she appointed jointly. The daughters, however, maintained affection and love for

[132] AIR 2008 SC 3040

their mother. By the end of May 1991, the deceased victim (Shakereh) suddenly and mysteriously disappeared. Her daughters made frequent enquires about their mother from the appellant who once said that she has gone to Hyderabad, another time said she has gone to Kutch to attend a marriage and always gave evasive replies which raised doubt in the mind of the daughter. When she personally came to Bangalore and enquired about her mother, the appellant said she has gone to U.S.A for treatment in Roosevelt Hospital. When she contracted the hospital, they replied there was no such patient in their record. She confronted the appellant and accused him of giving false and evasive information. The appellant now told that her mother has gone to Landon and she wanted to keep her movements confidential. However, the appellant stood totally exposed when the daughter of the deceased called on him in a hotel room in Bombay and chanced to see the passport of her mother lying around. Now she was sure that there was some foul play with her mother and therefore registered a case against the appellant on 10th June, 1992.

Investigation revealed that the appellant had administered a heavy dose of sleeping pills to the deceased and kept her alive in a wooden box which put in a pit in the backyard of his bungalow in Bangalore. It was also found that the appellant had submitted fabricated returns to Income Tax authorities in 1993 bearing forged signatures of the deceased. He was although deposing as shrewd and cunning man with no remorse for his gruesome murder.

It was because of the conflicting opinions of the aforesaid two-judge Bench, that the matter came up before a larger Bench which felt that the case of the appellant fell just short of rarest of rare case and therefore the appellant should be awarded sentence of imprisonment for rest of life and the prison Act does not confer on any authority a power to commute or remit sentences. It only provides for regulation of prisons and treatment of prisoners confined therein. There is no rule conferring an indefeasible right on a prisoner sentenced to life imprisonment to as unconditional release on the expiry of a particular period of time

including remission. Nor a less sentence can be substituted for a prisoner sentenced to rest of life. Imprisonment for life implies imprison for whole of remaining life.

## 5.3 Delays in Execution Of Death Sentence

A survey of available case-laws on death sentence would reveal that the attention of the Supreme Court was focused on the question whether inordinate delay in the execution of death penalty can be considered to entitle the convict to claim commutation of the sentence to that of life imprisonment. In Triveniben v. State of Gujarat[133], the five Judges Bench of the Supreme Court overruled Vatheeswaran and Javed Ahmed to the extent they purported to lay down the two years' delay rule, and held that no fixed period of delay could be held to make the sentence of death in executable. The Court, however, observed that it would consider such delay an as important ground for commutation of the sentence.

In Madhu Mehta v. Union of India,[134] the Supreme Court held that a delay of eight years in the disposal of mercy petition would be sufficient to justify commutation of death sentence to life imprisonment since right to speedy trial is implicit in Art. 21 of the Constitution which operated though all the stages of sentencing including mercy petition to the President.

In State of U.P v. Ramesh Prasad Misra[135], the Supreme Court reduced the death sentence of the accused to one of imprisonment for life in view of long lapse of time from the date of commission of crime. The incident had occurred on the intervening night of September 26/27, 1985 in Karwi town of Banda district of U.P. The accused was a practicing advocate who had committed horrendous bed-room murder of his 28 years old wife whom he had married only 5 months ago. He was found guilty of offence under Section 300 and 498-A (i.e., dowry death) and his plea of alibi was not established hence he was convicted on the basis of circumstantial evidence and sentenced to death.

[133] AIR 1989 SC 1355
[134] DAYA SINGH V. union of india ,AIR 1991 SC 1548
[135] AIR 1997 SC 2766

## 5.4 Mode of Execution of Death Sentence

Section 354(5) of the Code of Criminal Procedure, 1973 requires that when a person is sentenced to death, the judge in hid sentencing order shall direct that the condemned person be hanged by neck till he is dead. The constitution validity of this mode of execution of death sentence was challenged in Dina v. State of U.P.[136] on the ground that it was violative of Art 21 of the Constitution being barbarous and inhuman in nature. The Supreme Court, However, rejected the contention and held that hanging the condemned parson by neck till he is dead was perhaps the only convenient and relatively less painful mode of executing the death sentence. The issue was once again raised in Smt. Shashi Nayer v. Union of India[137] but the Supreme Court upheld the validity of hanging by neck until death reiterating its earlier decision in Dina's case.

[136] AIR 1983 SC 1155

[137] AIR 1992 SC 395

# Chapter 6

# Conclusion & Suggestions

## Conclusion

In India, the provision for death sentence still prevails as part of criminal jurisprudence but the Supreme Court of India has repeatedly asserted that it should be imposed only in the rarest of rare case. The highest Judicial Tribunal of the country has given from time to time authoritative pronouncements and made it clear that the provisions for death sentence are not violative of Articles 14, 19 and 21 of the Constitution. Thus, the provisions dealing with death sentence are not opposed to the Constitution, but care must be exercised in every case to look into the circumstances of the case, facts and the nature of the crime for making choice between the imposition of death penalty and the award of the sentence of life imprisonment. However, the death penalty should be imposed only in accordance with the procedure established by law.

For all the offences, in which death sentence is the punishment, it may be noted that it is not the only punishment, it is the extreme penalty. Thus, these provisions, by virtue of their very wordings, provide for a discretion which is to be vested in the courts to decide the quantum of punishment. Now comes the question as to when should the courts be inclined to inflict death sentence to an accused? By virtue of section 354(3) of Cr.P.C. it can be said that death sentence be inflicted in special cases only. The apex court modified this terminology in Bachan Singh's Case and observed, "*A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed...*"

A person sentenced to death is entitled to procedural fairness till his last breath of life. Article 21 demands that any procedure which takes away the life and liberty of such person must be just, fair and reasonable. Undue delay in execution of death sentence due to delay in disposal of mercy petition would certainly cause mental torture to the condemned prisoner and, therefore, would be violative of Article 21. In such a situation, the Court examines the delay

factor in the light of the circumstances of the case and in appropriate cases commute death sentence to life imprisonment sentence. Now, a constitutional bench of the Supreme Court has ruled that an unduly long delay in execution of the sentence of death would entitle an approach to the Court, but that only delay after the conclusion of the judicial process would be relevant, and that the period cannot be fixed.

The Executive can exercise the pardoning power in mercy petition after conviction of accused by a court of law and offender has tried for commutation of sentence through appeal, revision and he has no option except mercy petition. A pardon is an act of grace and, therefore, it cannot be demanded as a matter of right. By ruling that the exercise of the President's power under Article 72 will be examined on the facts and circumstances of each case the Supreme Court has retained the power of judicial review even on a matter which has been vested by the Constitution solely in the Executive. Thus, if the pardoning power has been exercised on the ground of political reasons, caste and religious considerations it would amount to violation of the Constitution and the Court will examine its validity.

## Suggestions

In the last decade death penalty has become a subject-matter of intense focus in the Supreme Court. The Apex Court on various occasions has wrestled with the disparate application of law on death penalty and constitutional fairness implications of the same. A systematic study which would address the queries and concerns of Courts and also presents an international perspective on the issue is much needed. The Court in some of these cases has specifically requested the Law Commission to undertake research in this behalf.

To voice my opinions on this matter, I feel that capital punishment is a very subjective matter. India, having a population of more than a billion, has diverse views on the existence of capital punishment.

In India, propounding of the “rarest of rare” standard as a rigorous test to be fulfilled in all cases where the Courts award death sentence has in its heart the conception of death penalty as a sentence that is unique in its absolute denouncement of life for a penal purpose. As part of this characterization of death penalty standing in its own league, the Court devised one of the most demanding and compelling doctrines in law of crimes as existing in this country. Emergence of the “rarest of rare” dictum was very much the beginning of constitutional regulation of death penalty in India.

In the last decade, the Supreme Court has revisited the theme of constitutional regulation of death penalty multiple times. The comments made by the Supreme Court in this behalf indicate a degree of anxiety felt by the Court in dealing with the issue of death penalty. It is also to be noted that in the last few years, Supreme Court has entrenched the punishment of “full life” or life sentence of determinate number of years as a response to challenges presented in death cases.

In my opinion, death penalty is a punishment that must be inflicted upon criminals who have committed a very heinous crime against the society and possess a further threat to the entire nation. It may be said that it reduces the chance of reformation but crimes like rape and murder which shake the very foundations of humanity, should be punished severely. Also changing of death penalty sentences into life imprisonment imposes the burden on the government to support the existence of the criminal. Hence, death penalty should be imposed only in rarest of the rare cases as stated by the Supreme Court.

The following arguments strengthen my support for the existence of capital punishment-

a) Capital Punishment acts as a deterrent for future crimes
b) Retribution through death penalty is the most effective means of achieving justice for the victim and provide closure to the victim/victim's family and society

c) Capital Punishment ensures that the convicts are never released back into society as they may pose a threat in future
d) Capital punishment reduces the chances of convicts escaping from prison
e) Those accused of capital crimes do not deserve an opportunity for reformation
f) The severity of a crime should mandate an equally severe punishment
g) Capital Punishment ensures jails are not overpopulated/overcrowded as the current prison infrastructure is inadequate to accommodate too many prisoners for life
h) Capital Punishment may impose less financial burden on the State as the cost of imprisoning someone for life may be higher

# Bibliography

## References


- Basu, D.D: Commentary on the Constitution of India
- Barnes & Teeters ; New Horizons In Criminology, (3rd ed.)
- Bhattacharya, S.K: "Issues in Abolition of Capital Punishment"
- Chaturvedi, R.G: Judiciary Under Constitution
- Chaturvedi and Chaturvedi: Theory and Law of Capital Punishment
- Hansaria, B.L: Right to Life and Liberty under the Constitution
- Leon Radzinowicz : In Search Of Criminology
- Pande, B.B: "Face to Face with Death": Supreme Court Cases
- Ram Nath Iyer,P: Code of Criminal Procedure
- Ratan Lal and Dhiraj Lal: Law Of Crimes
- Salmond : Jurisprudence (12th ed.)
- Subhash C. Gupta: Capital Punishment in India
- Seervai, H.M: Constitutional Law of India
- Wrongful executions
- N.V. Paranjape : Criminology and Penology


**Periodicals/Journals & Reports**


- Capital Defense Weekly
- Law Commission of India: Thirty-Fifth Report: 35 (September-1967).
- Second Law Commission Report: Paras 511-512
- The Innocence Project – News and Information: Press Releases.

## Websites


- www.amnesty.org
- www.bbc.co.uk
- www.britannica.com
- www.deathpenaltyinfo.org
- www.en.wikipedia.org
- www.justicedenied.org.
- www.google.com
- www.indiankanoon.org
- www.legalindia.in
- www.legalserviceindia.com
- www.pib.nic.in
- www.prb.org
- www.scribd.com
- www.un.org