"DEATH PENALTY AND HUMAN RIGHTS: A CRITICAL ANALYSIS"

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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LIST OF ABBREVIATIONS

AIR	All India Reporter
CAT	Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Committee on the Rights of the Child
CRC	Convention on Rights of Child
CRPC	Code of Criminal Procedure
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPC	Indian Penal Code
NGO	Non - Governmental Organizations
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
SC	Supreme Court
SCC	Supreme Court Cases
UN	United Nations
UNHCR	United Nations High Commission for Refugees
UPSC	Union Public Service Commission

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CHAPTER 1

1.1 INTRODUCTION

Whether Capital Punishment should be continued or dispensed-with? – has been a central question of various debates since decades. On analyzing the legal position, human rights jurisprudence, judicial trends and socio-economic background of the accused and the victims, this study has focused on the efficacy of capital punishment to identify contemporary developments in capital punishment system in India and world in the context of the human rights

The word "punishment" is used for "Danda'' in Sanskrit. 'Danda' is related to 'Dharma' and the state is the protector. Society is rightly empowered to vest with some powers to regulate 'Dharma' among the people. Thus, the state was armed with the power to deter or restrain people from violating rules of Dharma or doing misconduct. "In Dharmashastras, the power vested with the king to punish a person found guilty of an offence has been praised as a great gift to mankind because without the creation and enforcement of power by the State (Kingship/King) to punish the criminal there would have always been chaos and people would have been tormented by fear, insecurity to life, property and misery" [1]. In English "punishment" signifies curse of some agony for the wrongs done. It's anything but an affliction, misfortune or social incapacity as an immediate outcome of some demonstration or exclusion with respect to the individual rebuffed. The significant element of discipline is checking the transgressors and scoundrel from doing any wrongdoing. It prompts destruction of awful practices and as such the state ought to regulate discipline for the encouragement of ethical quality and religion.

"A punishment is the unpleasant and undesirable imposition outcome upon a person meted by an authority which includes a fine, penalty or confinement[2]" . The justifications for punishment include retribution, deterrence, rehabilitation and incapacitation.

"Capital punishment, is also known as death penalty, it is the execution of a convicted criminal by the state as a punishment for crimes known as capital crimes or capital offences. It is the harshest of punishment provided in the criminal law, which involves judicial killing of or taking the life of the accused as a form of punishment[3]".Capital punishment is defined as the lawful infliction of death as a punishment of death as a punishment for a wrongful act. In simple words,

[1]Jois, Rama : Legal and Constitutional history of India, Vol. 1 (1984) pg. 324.
[2]Hugo, Adam Bedau (February 19, 2010). "Punishment, Crime and the State". Stanford Encyclopedia of Philosophy.
[3]Efficacy of Death Penalty as a Punishment' (UKEssays.com, April 2018)

“capital punishment is a process where a crime of grievous nature has been committed and the act cannot be vitiated other than a death penalty, and the state condemns so by sentencing (awarding punishment) the convicted to death [4]”.

“Capital punishment is a method of retributive punishment as old as a civilization. The Greeks and the Romans both invoked death penalty for many offences[5]. Socrates and Jesus, the two most famous people condemned death penalty in ancient times. The Bible quotes “Death for murder, kidnapping and many other crimes”. In India, Mahabharata and Ramayana contains references about offenders being punished. This illustrates that Capital Punishment existed since times immemorial”.

1.2 ADMINISTRATION OF JUSTICE

As indicated by "Taylor, "A crowd of wolves is calmer and more at one than such countless men except if they all had one explanation in them or have one control over them. This shows the need of power of the State for organization of equity. Hobbes likewise accepted that a typical force was important to keep individuals inside control locally. He says, except if man is under "a typical ability to keep them all in wonder", it is inconceivable for men to live respectively, besides in the crudest types of society, where life would be 'single, poor, dreadful, brutish and short'."

The reality of the matter is that boundless and over the top freedom prompts a condition of insurgency; along these lines, some sort of outside coercive specialist is expected to keep man inside his breaking points and control his liberated freedom. There are some jurists who believe that a force of state is just a temporary phase in the development of human society and public opinion might keep people in restraint and a force of the state might become superfluous. But public opinion fails to have effect upon determined evil doers, unjust and turbulent members of society. It becomes effective only where people have civilized concise.

In modern civilized societies administration of justice has evolved through stages. In the first stage, when society was crude and private retribution and self-improvement were the main cures

[4] Death Penalty : An Overview of Indian cases, By Aditi Agarwal, NUALS, 2 Sept. 2014.
[5] Monica K. Miller and R. David Hayward, Religious Characteristics and the Death Penalty,

accessible to the wronged individual against the miscreant, he could get his wrongs changed with the assistance of his companions and relatives.

In the second stage of origin of administration of justice rise of political States took place but these infant States were hardly powerful to regulate crime and to inflict punishment on the criminal. The law of private vengeance and self-help continued to have influence.

In the third stage, the States began to act as a judge to access liability and to impose penalty. There was a transformation from private justice to public justice through the agency of State. With the growth of State power, private vengeance and violent self-help were substituted by the administration of civil and criminal justice.

The reason for the criminal equity is to rebuff the miscreant. He is rebuffed by the State. Pursuit, fear, and discipline of a guilty party support a basic social need. Society can stand to permit a criminal to get away from his obligation as the after effect of doing so would be social contamination[6] . From old occasions, various hypotheses have been given concerning the motivation behind the discipline. These speculations might be extensively isolated into two classes. One class of speculations say that the finish of the criminal equity is to secure and add to the government assistance of the state and the general public. The other class of the speculations say that the motivation behind the discipline is requital. The guilty party should be made to languish over wrong he has done."

Equity is supposed to be a definitive finish of law and the objective of society, which Judges of the courts have been filling law with new variations of equity as contemporary qualities and need based rights like opportunity, freedom, respect, correspondence and social equity, as appointed in the established report. Admittance to equity to individuals is in this manner, the establishment of the Constitution. [7] .

1.3 PUNISHMENT TO THE WRONGDOER

It is the State that punishes the wrong doer or the criminals. Punishment necessarily implies some kind of a pain inflicted upon the offender or loss caused to him for his criminal act which may either be intended to deter him from repeating the offence or may be an expression of society's

[6]Jurisprudence (legal theory): Dr. B.N.M. Tripathi; Eighteenth Edition
[7]State of Haryana v. Darshna Devi, AIR 1979 SC 855, as per Justice Krishna Iyer

disapprobation for his anti- social conduct or it may also be directed to reform and regenerate him and at the time protect the society from law breakers.

Indeed, even in antiquated India the lord was compelled by a sense of honor to rebuff the guilty party. As per Manu, danda was the fundamental quality of law. He contended that "discipline monitors individuals, secures them and it stays conscious when individuals are sleeping. So, the insightful have perceived discipline itself as a type of "dharma"

The idea of dharma represented Hindu life since the time of the Vedic age, and each one starting from the king to the average person should follow it. Kautilya's Arthashashtra[8] contained an intricate record of monetary, political and lawful organization in the fourth century BC.It describes in detail the procedure to be followed by courts for dispensation of justice, both civil and criminal. The emphasis was on rationality of punishment. The King could commute the sentence of the accused if he confessed his guilt or showed repentance for his offence. The witness indulging in false deposition was punished as if he himself had committed the said offence.

Discipline indeed, prompts annihilation of awful practices and that the King ought to direct discipline for the encouragement of ethical quality and religion. Kamamkada legitimizes discipline with the end goal of equity. The entire world is corrected by 'Danda' and surprisingly the Gods and diving beings are dependent upon this authority[9].

The article and explanations behind upholding 'Dandanitis' since old period have been to discourage the miscreants from submitting wrongs against the subjects for which the Kingship organization had been set up. Different types of discipline have been developed and applied in various social orders through the ages. Torments the , vicious types of executing death penalties and a wide range of savageries in penitentiaries were some of recognizing highlights of the reformatory way of thinking everywhere on the world till moderately ongoing occasions[10] .

[8] The Arthashastra of Kautilya consisted of 15 chapters, 380 shlokas and 4968 sutras and dealt with a wide variety of subjects like civil administration, criminal and civil justice system, taxation, revenues, foreign policy, war, defense, etc.
[9]Choudhary, Radhakrishna : Studies In Ancient Indian Law And Justice (1953) , p.16
[10] Qadri, S.M.A. : Criminology & Penology, p. 136

1.4. TYPES OF PUNISHMENT

"It is not the criminal but the nature and gravity of crime, which are germane for consideration of appropriate punishment in a criminal trial. The punishment to be awarded for a crime should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime governing public abhorrence and it should 'respond to the society's cry for justice against the criminal."

1.4.1 IMPRISONMENT

Detainment or imprisonment, wherein the individual is placed in prison as a legitimate punishment, is maybe quite possibly the most widely recognized and harshest disciplines is the world. Reprisal, i.e., the demonstration of revising an individual for his wrongdoing, is the principal reason for detainment. Other than this, it likewise fills different needs like prevention, debilitation, and restoration. The term, or the period, that the convict needs to spend in the jail relies upon a few components; most noticeable ones being the space of purview and seriousness of the wrongdoing. Detainment might be either be basic or thorough, addresses a generally basic and normal type of discipline which is utilized from one side of the planet to the other. It's anything but a viable technique for crippling the guilty parties. Regardless of being a preventive measure, the most multifaceted issue associated with detainment as a proportion of correctional response to wrongdoing is the "prisonization"[11].

1.4.2 FINE & CONFISCATION OF PROPERTY

Fine is an extra or elective type of punishment. This type of punishment is by and large given when the appointed authority is persuaded that the convict isn't a danger to the general public. The offenses not genuine in nature were rebuffed with fine. Monetary punishment might be in type of pay or expenses. The genuine issue engaged with burden of monetary punishments is the quantum of fine or expenses and authorization of its installment. The typical techniques for authorization are relinquishment of property[12].

[11]Paranjape N.V., : Studies in Jurisprudence and Legal Theory; p.274
[12] Sections 125,126,127 and 169, I.P.C.

1.4.3 CAPITAL PUNISHMENT

Capital punishment, moreover suggested as the death penalty, is by far the most genuine kind of order. A man may be sentenced to death for bad behaviors like homicide, murder, attack, etc., dependent upon the courses of action in the standard that everybody should follow. The most basic focuses of capital punishment are counteraction, i.e., passing on a message that such exhibits will not go on without genuine outcomes in the overall population, and debilitating, i.e., guaranteeing that the individual doesn't repeat such horrendous movement/s. The unmistakable procedures used to do the death penalty executions today fuse hanging, electric stun, lethal mixture, and ending crew. Fuse of capital punishment as a piece of the legitimate system has been a subject of practical conversation since an extended period of time now. While some fight that it is thoroughly bad development on the piece of the system, others feel it is essential to set up a bad behavior free society.

1.4.4 DEPORTATION

The Deportation of lawbreakers is likewise called expulsion. Hopeless and solidified hoodlums were by and large expelled to distant spots with the end goal of disposing of them from the local area. The act of expelling political wrongdoers was regularly stylish in British India. It was famously known as 'Kalapani' and such guilty parties were dispatched to distant island of Andaman and Nicobar. This method of discipline included transportation of lawbreakers past oceans and subsequently, psychologically affected Indians on the grounds that in those days going past oceans was looked with disgrace according to the perspective of religion and came about into out-projecting of the guilty party[13] .

1.4.5 IMPRISONMENT FOR LIFE

Life imprisonment (otherwise called imprisonment forever, life in jail, a lifelong incarceration, a day-to-day existence term, long lasting detainment, or life detainment) is any sentence of detainment for a wrongdoing under which indicted people are to stay in jail either for the remainder of their normal life. Detainment for life is to be treated as thorough detainment forever.

[13]Gaur, H.S. : Penal Law in India, Vol.1 (1972) p. 380

In India, "Section 55 of IPC and Section 433 (b) of the Cr.P.C , to drive the sentence of detainment for life to one of thorough detainment for a long time and the convict who has experienced a greatest sentence of 14 years thorough detainment might be without set, yet the SC in *Kartik Biswas v. Association of India*[14] , has made it clear that life detainment isn't proportional to detainment for a long time or for a long time as there is no arrangement in IPC or CrPC whereby life detainment could be dealt with as a detainment for a long time or for a long time without being a formal reduction by the proper government".

1.4.6 SOLITARY CONFINEMENT

Solitary confinement is an aggravated form of imprisonment where convicts are confined in solitary prison- cells without any contact with their fellow-prisoners. It is generally used for hardened and dangerous offenders . Prisoners are completely separated from human society and cut off from the outer world.

In India, "Sections 73 and 74 of IPC contain arrangements identifying with isolation. The aggregate time of lone limit can't surpass three months regardless and it ought not be over 14 days on end without interims of comparable period".

1.4.7 MUTILATION

This training was very common in antiquated India during Hindu period. In the event of robbery, one or both the hands of the hoodlum were slashed off and if there should be an occurrence of sex offenses, private parts were cut off. This discipline was defended for being filled in as a compelling proportion of discouragement and counteraction. However, in current expresses, this discipline is dismissed on absolute since it is brutal and insensitive.

1.4.8 BRANDING

Roman Criminal Law supports this type of punishment and criminals were branded using an appropriate mark on their forehead with an iron rod so that they could be easily identified and permanently subjected to public mockery.

[14] AIR 2005 SC 3440

1.5 CAPITAL PUNISHMENT

Oxford Dictionary, "Capital Punishment is the legally authorized killing of someone as punishment for a crime". It has always been used as an effective measure for murderers and dangerous offenders. It has both deterrent and preventive effect.

Encyclopedia Britannica, Also called Death Penalty – Execution of an offender sentenced to death after conviction by a court of law of 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.[15]

The term Capital Punishment has a curator past throughout the entire existence of criminal law when neither discipline appeared nor the worth of reparation had been perceived. The demise of the criminal fulfilled the individual or the gathering of casualties."

"Capital has been gotten from the latin word "Capit" which signifies "head". The word capital is utilized to indicate head, fundamental or vital and where capital words are utilized as postfixes in offenses, it is known as "Capital Offenses". The word Capital when prefixed with discipline implies the execution or doing of the sentence of death perpetrated on a blamed saw as liable and indicted for a capital offense. The expression "The death penalty" represents most serious type of discipline. It is the discipline which is to be granted for the most intolerable, deplorable and terrible wrongdoings against humankind."

Capital Punishment is one of those subjects of human concern which give rise to an endless debate without producing any conclusions. The object of Capital Punishment is two-fold-

a) by putting the offender to death, it may instill fear in the minds of others and make a lesson out of it,
b) if the offender is an incorrigible, by putting him to death, it prevents the repetition of the crime.

[15]Capital Punishment in India with Recent Recommendation of the Law Commission of India, By Dr. Vimal R Pramar.

1.6 CAPITAL PUNISHMENT IN INDIA

Capital Punishment has been prevalent in India from times immemorial. It is as old as the Hindu Society. The administration of criminal justice as an integral part of the sovereign function of the State did not seem to have emerged in India till the smriti period. The credit goes to smritis, for the most part Manu, besides to the Artha Sastra of Kautilya. Be that as it may, Artha Sastra was not a correctional code; consequently, it does not have a lucid schematization.

The Government's policy on capital punishment in British India prior to Independence was clearly stated twice in 1946 by the then Home Minister, Sir John Thorne, in the debates of the Legislative Assembly. "The Government does not think it wise to abolish capital punishment for any type of crime for which that punishment is now provided".

1.6.1 Mode Of Execution

The execution of the death penalty in India is finished by two modes to be explicit hanging by neck till death and being shot to death. The restorative office manuals of various States oblige the technique for execution of the death penalty in India. At the point when the death penalty is conceded and is certified in the wake of exhausting every one of the possible available fixes the execution is finished according to section 354(5) of the Code of Criminal Procedure1973 for example hanging by neck till death. It is additionally given under The Air Force Act, 1950, The Army Act 1950 and The Navy Act 1957 that the execution must be done either by hanging by neck till death or by being shot to death.

1.7 STATEMENT OF PROBLEM

The death penalty, unfortunately, still exists in certain nations, today, in spite of advancements in worldwide basic freedoms law asking all states to abrogate it. There have been numerous approaches in all states to maintain, ensure and elevate right to life. Right to life is that incomparable basic liberty, it is on the grounds that some other common freedom depends upon the proceeded with pleasure in the privilege to life by a specified individual. The main thing, accordingly, is for all nations on the planet to secure and elevate right to life.

Capital punishment has been, for clear reasons, an enormous wellspring of discussion in many nations across the world in the previous few decades. Other than issues of basic freedoms,

inquiries of the moral and surprisingly lawful right of the state to give discipline by death have been raised vociferously by supporters of the abolishment of capital punishment. Along these lines, the current examination manages the accompanying issues:

- The capital punishment ought to be saved for rarest of the rare cases.

- In a few cases, where restoration and change aren't conceivable, capital punishment is a reasonable alternative.

- Since the state has no power to give life, it cannot exercise its power to take human life either. The philosophical and ethical basis for the death penalty, thus, is fundamentally wobbly.

- Without a totally secure equity framework, the danger of killing innocent individuals through the death penalty can't be precluded. Capital punishment, thus, should be annulled.

- If the point of legitimate discipline is avoidance of wrongdoing, are there no different strategies to forestall wrongdoing? Wrongdoings are situational, incautious, outrageous demonstrations and less close to home demonstrations carried out with lasting dangerous sense: reprisal and not termination ought to be liked.

- Imprisonment is comparable to refusal of fundamental products of life: A jail is a unisex existence where each prisoner is trashed and needs to continue firmly planned exercises in the organization of outsiders; the detainees are denied of freedom, advantages, enthusiastic security and so on Why the death penalty when life detainment can likewise cause torment but then leave scope for change and reprisal.

- The threat with having capital punishment "on the books" is that it very well may be widened if an administration goes totally statist and lawmakers may utilize it for some different option from murder… to dole out political retributions.

1.8 AIMS AND OBJECTIVES:

In view of the foregoing discussions, statements and hypothesis, the study on capital punishment in India is far from satisfaction and at present, it definitely requires re-evaluation on consideration. To reach out to a just conclusion, consideration of the concept of capital punishment from the

perspective of human rights with reference to judicial authorities and present scenario at both national and international level is of great importance. Thus, this research has been conducted with the following aims and objectives:-

(1) To note the important elements of crime and criminal justice;

(2) To expound the concept of Capital Punishment in the larger perspective of legal sanctions for dealing with conduct which is in contravention of the law;

(3) To study the theories propounded by the social and legal reformers with regard to the system of inflicting various kinds of punishments in general and the system of capital punishment in particular;

(4) To study the provisions of the general law of crimes and those of the special law of crimes adopted for inflicting the capital punishment;

(5) To examine the provisions of the Human Rights Law on the system of capital punishment in general and the trend at the international level for abolishing the system of capital punishment;

(6) To study the cases in which Courts examined the validity of capital punishment in the light of the principles enshrined in the Constitution of India;

(7) To examine the nature of criminal process in India and note how far it is fair in its approach to the question of punishing the offenders by capital punishment;

(8) To note the movement for the abolition of Capital Punishment and the controversies which have arisen in this regard in the wake of recent judgments of the Supreme Court and the High Court.

1.9 HYPOTHESIS

On a starter perception of the improvements at the public and worldwide levels concerning the law on the death penalty the speculation figured for study is that the arrangement of Capital Punishment keeps on being in a similar structure as it was years prior regardless of the arising standards in modern penology.

While there is the interest from different quarters for the nullification of the death penalty there is simultaneously interest for expanding the arrangement of the death penalty to different new offenses, especially those influencing the existence of people and the security and uprightness of the State.

Aside from the topic of nullifying the arrangement of capital punishment from the Statute book there are additionally new principles set down with respect to the requirement of law, the capture, the examination and the norm of proof and so on which require a correlation of the current day framework with the framework considered by modem criminal science and penology.

1.10 REVIEW OF LITERATURE

'Death Sentence and Criminal Justice in Human Rights perspective' by Prof. I.G. Ahmed: Capital punishment is to be very sparingly applied with reasons in case of brutal murder and gravest offences against state. About retention or abolition of capital punishment, debates are raging the world over amongst social activists, legal reformers, judges, jurists, lawyers and administrators. Criminologists and penologists are engaged in intensive study and research to know the answer to some perennially perplexing questions on capital punishment.

Whether capital punishment serves the objectives of punishment?

Whether complete elimination of criminals through capital punishment will eliminate from the society?

Whether the complete elimination from society is at all possible or imaginable?

'Death penalty is a Human Rights Violation' by CCR, New York1[16]: "The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the Universal Declaration of Human Right (UDHR), which the U.S. has helped draft in the aftermath of the World War II and adopted in 1948. Under Article 3 of the UDHR, life is a human right". This makes death penalty our most fundamental human rights violation. As long as governments have the right to extinguish lives, they maintain the power to deny

[16]Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012

access over every other right enumerated in the Declaration. This first most central right provides the foundation upon which all other rights rest.

The beginning and finishing point for a basic liberties-based investigation should be that capital punishment is never reliable with crucial basic freedoms standards. Notwithstanding the right to life, other essential rights are regularly penetrated in its application. Capital punishment has been found to break the forbiddance against brutal, cruel, or debasing treatment and there has likewise been a developing agreement that "death row marvel" comprises a penetrate infringing upon the preclusion against torment under worldwide common liberties law. Besides, capital punishment is regularly applied in a prejudicial way, disregarding the guideline of non-segregation.

'The Right to Life Denied: Death Penalty Violates the Constitution and International Law' by Avinash Samarth[17]: "In Warsaw, Poland, Jamil Dakwar of the ACLU Human Rights Program delivered a statement to the Organization for Security and Cooperation in Europe (OSCE) addressing the continued use of capital punishment in the United States".

"The OSCE is the world's largest security-oriented intergovernmental group. The 56 countries that make up the organization's membership include the United States, Russia and Canada, along with every European nation. The United States and Belarus are the only two countries in the OSCE that still practice state executions. Since 2009, Belarus has executed 6 people, while **the United States has executed 135. In fact, our frequency of executions is matched only by Saudi Arabia, Yemen, North Korea, Iran, and China".**

Coming only days after the unjustifiable and unlawful execution of Troy Davis push the American capital punishment into the worldwide spotlight, the ACLU articulation depicted the American capital punishment as a "bombed try," referring to persistent insufficiencies, including mediation, racial imbalance, pitilessness and improper feelings.

In the wake of Congressional limitations on habeas corpus (the right to challenge one's incarceration), reversing a death sentence has become a **nearly insurmountable task.** The judge presiding over Davis' hearing wrote that a death sentence reversal, under current U.S. law, would require an **"extraordinarily high" standard of proof.**

[17]The Right to Life Denied: *Death Penalty Violates the Constitution and International Law*-Avinash Samarth, ACLU National Security Project.

'Indian Constitutional Law and Philosophy- A small step towards abolition.: On 31st October, the High Court of Delhi – writing through Justice Muralidhar – decided a death penalty reference that can have (potentially) significant consequences for the future of capital punishment. The appellant had been convicted for the rape and murder of a three-year old child, and been sentenced to death by the trial court. On 17th April, 2014, the High Court affirmed the conviction. With respect to the award of the death penalty, the Court rejected the notorious "balancing test" of *Machi Singh* (which was contrary to precedent and has been questioned by the Supreme Court subsequently), and held that one important aspect to consider was the possibility of reform and rehabilitation for the criminal.

'Capital Punishment in India: The Unending Conundrum' by Shivam Dubey & Pooja Agarwal: The possibility of the death penalty is of extraordinary relic and framed a piece of the base idea of mankind. This has been quite possibly the crudest and generally utilized types of clashing discipline for crooks just as political foes. In the overall situation predominant these days, nations like Canada, Australia, NZ, European nations aside from Belarus, Latin American nations have canceled capital punishment in their criminal equity framework. In any case, numerous nations, including India, China, USA, Botswana, Zambia and so on have held capital punishment still as a piece of criminal statute.

The expanding complexities and fast expansion in patterns of shocking wrongdoings and the fierceness in that has uncovered that India is quickly heading towards criminalization and is in middle of wrongdoing blast. The discipline recommended by law for violators of its arrangements is said to fill some needs. Initially, the enduring it causes on wrongdoers fulfills the local area's interest for what is called retribution, requital, reprisal, expiation, criticism or equity. Second, it could be viewed as a positive mean of changing over a guilty party into a deliberately good individual. Third, it might make him reputable essentially by making him dread what might have too him if he somehow happened to carry out a wrongdoing once more. Fourth, it would fill in as a miserable exercise to other potential law violators. Fifth, by denying him of his life or freedom, it would totally forestall for a brief time or for all time diminish his crimes. These days, these points are called reprisal, reconstruction, explicit discouragement, general discouragement and avoidance individually. The incomparable object of all actions required to satisfy these points is to accomplish the security of the local area, its social establishments and privileges of its individuals, by building up its ethical code typified in the law and reinforcing as a rule: regard for law and equity. Despite the fact that clash of contentions is continuous between the two restricting perspectives retentionists and abolitionists and at some point, the circumstance gets to verge. India

just as numerous different nations is involved with this contention and this has been going through ages.

'Death Sentence: A Critical Analysis': Indian constitution is a combination of numerous constitutions, i.e., the constitution of America, Britain and Japan. It ought not amaze anybody, subsequently, that the primary arrangements of the constitution of India ensuring the right to life has been lifted from the American and the Japanese constitutions. It very well might be added here that what we have acquired is the structure or style of articulation and not simply the right. The right to life isn't the something that constitutions make or even give. The constitution just perceives this basic and essential right. The established arrangement is in this way, just evidentiary worth. Allan Gledhill has given a fascinating proclamation in regards to it, which is: In a portion of the more seasoned nations the right to life and freedom gets more successful insurance from constitutiona1 shows than they do in nations with constitutions expounding the right. The level of individual freedom delighted in by the normal Indian isn't strikingly not exactly that appreciated by a resident of some other parliamentary majority rules system.

'Eye for an eye': Does capital punishment do justice or encourage vengeance? By Sabeer Lodhi, Feb. 26, 2014 : "A sore reminder of this is the recent adjudication by an anti-terrorism court in Karachi that sentenced two men to seven and fourteen years imprisonment followed by a 'to be hanged till death' order. In a country that is deeply influenced by a strict and orthodox interpretation of the religion that the majority follows, are we ready for a debate on this controversy, let alone a moratorium or complete abolishment?

Champions of capital punishment often quote the 'eye for an eye' example. The criminal forfeits his right to life when he kills another man. It is assumed to be a deterrent in a society plagued by a flailing law and order situation enforced by faltering law enforcers. Closer to home, there is a certain interpretation of Shariah that governs not just the law but the society's mind set at large. Questioning the man-made law and interpretation is tantamount to questioning God's wisdom and dictate".

How India is confusing serving justice with revenge? By Merlin Francis:

A society which accepts capital punishment as a justified means of making someone accountable for their crime is not civil. As eminent journalist, Seema Mustafa aptly puts it, "Violence by the

state in any form is worse perhaps than by an individual as the state is supposed to be just and protect justice; be compassionate; be ethical and moral; and be larger than the base instincts that often overtake the individual." Capital punishment is against the fundamental right to life provided by our Constitution. How can we promise the people, their right to life and then place exceptions and disclaimers? Can any state justify this? Can revenge really be called justice? Can one type of violence be acceptable and other not? Now when we have moved on from the death of the "Mumbai serial bombing mastermind" to other news headlines of the day. Maybe we should take some time to sit back and think, to debate, if death penalty is an acceptable form of punishment.

1.11 RESEARCH METHODOLOGY

A Non- empirical study is conducted on the topic to analyze the legal framework governing the Criminal Justice System and the loop holes hindering the efficiency of the system. In order to explore the way, the prisoners on death penalty are executed. For the purpose of gaining theoretical insight of the topic, the researcher has referred to a vast amount of literature consisting of primary and secondary sources. In the primary sources, reference has been made to various acts, statutes, case laws, parliamentary debates, international instruments relating to capital punishment and human rights. In the secondary sources, reference has been made to a vast amount to text books, journals, articles, etc.

The present study has been carried out with the help of different books written and foreign authors on Capital Punishment and Human Rights. Various web resources were also used including legal data bases such as Manu Patra, SCC Online, LexisNexis, Westlaw, etc. Various law journals have also been referred for the purpose of present research.

1.12 SCHEME OF THE CHAPTER

There are right now 196 nations on the planet and of those in 2016, 58 actually had capital punishment. It has almost no hindrance impact on individuals who submit murder, so whether a nation has or doesn't have it seems to have no effect on murder rates. Indicted murderers can be condemned to life detainment, as they are in numerous nations and states that have nullified capital punishment.

The death penalty is the public authority's method of lawfully slaughtering crooks. In our general public, there are exacting laws against murdering individuals, so for what reason is the public

authority permitted to pull off it, and call it legitimate? A few groups are in support of capital punishment, feeling that it serves due equity to the individuals who merit demise, and afterward there are those individuals who accept capital punishment is against their ethics. In the beginning of the United States, brutal and uncommon implied a discipline that was torment, cruel, or corrupting. They required a law to disallow such disciplines, so the Eight Amendment was an approach to do this.

Crooks don't bite the dust by the hands of the law. They pass on by the hands of different men. Death on the platform is the most noticeably awful type of death on the grounds that there it is contributed with the endorsement of the general public. Murder and the death penalty are not contrary energies that drop each other but rather similar that breed their sort. Capital punishment is the cruelest discipline, which can be utilized in various cases in certain nations. A couple of individuals reinforce such kind of control and construe that solitary such limit exercises can keep the overall population in prosperity and give security.

1.13 CONCLUSION

The death penalty is a profoundly discussed matter. It is legitimate yet infrequently decided in favor of in India. The death penalty is a legitimate interaction where an individual is executed by the state as a discipline for a wrongdoing. The legitimate decisions that someone be repelled in this manner is a death penalty, while the genuine method of butchering the individual is an execution. Bad behaviors that can achieve a death penalty are known as capital infringement or capital offenses. Capital punishment is a procedure for retributive order as old as human headway itself. Capital punishment is the cruelest type of discipline, which is condemned in number of cases in certain nations. Capital punishment eliminates the person's humankind and with it any possibility of restoration and their giving something back to society. "Discipline is a correspondence to lawbreakers, of what they have done isn't right, and offers them a chance to apologize and change." Basically, discipline is given to a person to make him atone, guarantee equity to the person in question, and set a model for the remainder of the general public. In case discipline fills even one of these requirements, by then censuring is a need.

CHAPTER 2

CONCEPTUAL STUDY OF CAPITAL PUNISHMENT AND NEED FOR PENAL REFORM

2.1 INTRODUCTION

In an examination work of this sort which is worried about the arrangement of disciplines and the requirement for correctional change in India, the initial not many things that should be explored identify with the idea of discipline and the variables which require an adjustment of the arrangement of disciplines. At the end of the day, the two primer things that call for examination identify with –

(i) the hypothetical origination and

(ii) the operational origination

The hypothetical origination has the idea of what the importance and meaning of discipline is all in all, and the operational origination is identified with the real issue close by, to be specific, the various types of discipline that are forced under the arrangements of the criminal law of our country, the sorts of disciplines, the historical backdrop of disciplines, and the destinations with which the discipline is forced.

The methodology followed in presenting the discussion on the matters covered by this chapter therefore is:

Section A - deals with the hypothetical origination of punishments, and

Section B - deals with the operational origination.

The conversation then in Section C follows on the thought of reformatory change and the organizations which have the duty of taking a stab at change.

The two significant themes explained in this chapter along these lines are:

(i) the Concept of Punishment, and

(ii) the need for corrective Reform.

Both the themes are related to the system of criminal justice; hence they are explained in one and the same chapter focusing the subject matter in relation to the system of criminal justice.

2.2 - THE THEORETICAL CONCEPTION OF PUNISHMENT

2.2.1 The Meaning And Definition Of Criminal Justice

Equity is characterized as an ethical stand generally considered being the end which law endeavors to accomplish. The capacity of law for the most part is to change the clashing interests of society. Starting here of view equity is characterized as the amicable mixing of the narrow-minded interest of man with the prosperity of the general public[18].

Equity is comprehensively partitioned into two sorts, one common and the other crook. Common Justice is worried about the authorization of residents.' and inhabitants' privileges and the technique set down for requirement of the rights. through courts of common locale by allowing the cures like the cure of harms, explicit execution, directive statement and so forth, criminal purview by granting discipline such property and so on The essential objectives of criminal equity are the [18]requirement of criminal law, keeping everything under control, shielding the people from bad form.

2.2.2 CRIMINAL JUSTICE SYSTEM:

The idea of criminal equity alludes to certain hypothetical relational words which are carried out through lawful statutes and the regulatory device. The hypothetical recommendations and the regulatory hardware set up for executing the possibility of criminal equity together establish a framework known as the arrangement of criminal equity. Keeping in see the goals of criminal equity the fundamental elements of the System of Criminal Justice relate to

(i) determining whether a crime has been committed;
(ii) detecting possible offender;
(iii) apprehending the suspect;
(iv) providing for a review of evidence by the prosecutor to determine whether the case against the alleged offender a merits prosecution;

[18] Jain, M.P. : Outlines of Indian Legal History, 1976, p. 407

(v) providing for a review of the prosecutor's decision by an independent agency such as a judge of the courts of justice;

(vi) providing for determination by a judge as to the guilt of the offender, and

(vii) sentencing the offender to punishment when he has been found guilty of the offence

Law upholding police , the arbitrating courts, the Prosecutors and the penitentiaries together involve the criminal equity framework. Jails uphold the fundamental standards of society as communicated in its criminal law. These organizations release the most imperative capacity of government. Without a viable arrangement of criminal equity there can be no administration in any genuine sense; disorder wins in the country and no man can be gotten in his individual or property by having a compelling arrangement of criminal equity government can work in the entirety of its spaces of power effectively, and request can be kept up.

[19]The Criminal Justice System of a country may be considered from at least three perspectives:

1. Firstly, it very well may be considered as a roaming framework that is a collection of lawful principles communicating social qualities through preclusions sponsored by pean sanctions against direct saw as unjust or unsafe. The regularizing framework has its rudiments first in the constitution which announce is the targets of tying down equity to individuals, and assents the foundation of courts to regulate equity to individuals. The resolutions established by ethicalness of the protected approvals supplement the object of the general set of laws and set out the method to be followed for the reason;
2. Secondly the Criminal Justice System can be viewed as a regulatory framework. This view grasps the authority device for implementing the Criminal law including the Police and hypothesis forefront authorization organizations proctorial specialists the courts and the Prisons including the reformatory remedial offices and administrations.
3. Thirdly, Criminal Justice can be considered as a decimal framework. In this point of view, characterizing and reacting the criminal lead includes all components of society. This meaning of criminal lead incorporates the corrective law authorized as well as the manner by which the residents decipher the arrangements at different levels.

[19] Banerjee, T.K. :Background to Indian Criminal Law, p. 38-40

2.2.3 Criminal Justice System and Criminal Justice Process:

The Criminal Justice Process isn't exactly the same thing as Criminal Justice System. The arrangement of criminal equity is organized on specific organizations, and offices that have the duty of applying the guidelines of Criminal law. Criminal Justice Process then again alludes to the means taken by different organizations of criminal equity framework as per the strategy which is applicable to the arrangement of criminal equity. The criminal equity interaction can be related to the technique relating to the activities of the organizations and establishments monitoring the arrangement of criminal equity.

2.2.4 The Framework Of Criminal Justice System

The scheme of distribution of subjects giving law making power under the constitution is divided between the Centre and the states. The seventh schedule appended to the constitution has three lists: Union List , State list , Concurrent list.

The subject's crime and criminal procedure are mentioned in concurrent list in number 2. In theory it is held that laws made by parliament take precedence over state laws made by state legislatures. In reality however the laws in India surprisingly topple and frustrate the constitutional provisions spelt out in Article 162 .The Maharashtra Control of Organized crimes Act (section 17) overrides Section 25 of Indian Evidence Act.

Instead of taking the side of protestors who are real masters of the nation the district magistrate is taking the side of the state under the pretext of possible collapse of public order. People are not worker ants that they always maintain order meekly by instinct.

In *Coates v. Cincinnati*[20]**,** "the United States Supreme Court said that breach of prohibitory Order proclaimed by the local authority cannot be a crime since the original freedom granted by the constitution is used by the person who defied the order. Using freedom cannot be a crime anywhere".

The facts of the case are that Coates was a student. "In City of Cincinnati there was prohibitory order proclaimed by the local authority. Coates and two others demonstrated by giving slogans and holding placards. The breach was punishable with 50$ as monetary fine and one month in

[20](1971)

prison. Coates challenged the fine and imprisonment saying that he used the freedom given to him by first and fourteenth amendments".

Prohibitory request was declared by a more modest office not approaching or outperforming established arrangements broadcasting opportunity. The Local authority at the most stops the resident yet can't slap discipline. Certain violations are straightforward instances of defiance and they fall in to the class of stoppable not the in the classification of culpable.

Indian penal code is ordered for the comfort of law implementing police, examiners, safeguard attorneys mediating judges and the regular public. The code classifies offenses against state, offenses identifying with Army, Navy, Air Force , offenses against quietness , offenses against men ladies and kids , offenses identifying with unfaltering and versatile property Offenses identifying with religion , offenses identifying with general wellbeing, marriage , profound quality. violations characterized by the code are ordered further as cognizable and non-cognizable very much like wrongdoings are sorted as crimes and lawful offenses in USA. Non-cognizable offenses as violations are less genuine for which bail isn't requested. The lawful offense is a class of more genuine wrongdoing the discipline for which is over a year of detainment. Misdeed is a class of less genuine violations the discipline for these wrongdoings is under a year.

Punishments are arranged by the administrators according to the reality of the wrongdoing. Punishment incorporates money related fines basic prison term with hard work, prison term forever and the death penalty , straightforward detainment, detainment with hard work. There is provision of solitary confinement in Indian Penal code and also jail manual but in *Sunil Batra v. Delhi Administration*[21]**,** "the supreme court said that Solitary confinement may well be on the statute book but it is not in conformity with the human rights regime of modern times. When the question of abolition of capital punishment came for debate in United Nations, India took the stand the in India Rarest of the rare murder doctrine has been evolved and that death sentence is awarded only for those murders which were committed in most evil, cruel manner, outrageously devilish and inhuman and for crimes such as assassinations and collative murders including murders of children".

The constitution of India furthermore approves the Central government to keep up separated from the military, the para military powers which are important to defend security and honesty of the country. The focal police workplaces and foundations situated in states regardless of the dissent of

[21]Sunil Batra v. Delhi Administration, 1978 AIR 1675, 1979

a state government if the state government has a place with an alternate ideological group and not equivalent to having power in state.

Arbitration of criminal matters for the most part occurs in full general visibility with guest exhibitions. Anyway, becoming aware of issue identified with war pursued on state by fear-based oppressors, occurs in camera preliminaries. As a popularity-based component request exists at higher discussions. After conviction or absolution by preliminary courts. By and large the decision of the preliminary court is switched. There are occurrences in which decision of the great court is likewise switched by the Supreme Court.

In spite of the fact that there is scholarly question mark and analysis about freedom of Indian legal executive; .there is bound together progressive court framework in India having autonomy at each phase of pecking order. There is Supreme Court at the top underneath which are 24 high courts in India. The high courts have force of regulating the area courts in their regional ward headed by chief region judges who screen crafted by common appointed authorities ,leader officers and preliminary adjudicators at locale level. Panchayat courts additionally work in certain provinces of India under names like Nyaya ,Panchayat Adalat , Gram Kacheri etcetera for choosing common and criminal debates of negligible and nearby nature.

The service controls focal police organization and their capacities. Insight gathering observation and surveillance organizations are worked and regulated by the Home Department of the focal government. The Home office headed by a priest for inner undertakings is worried about harmony and peacefulness relating to the whole [22]country. The enlistment of top class authoritative and top-class police faculty is finished by the autonomous organization known as Union Public help commission. The Central Home service chooses and can change the limits of the state and association regions. The association Home service likewise chooses the name of the state and the association domain and can change the name so chose.

The Police forces in India draw their style of working and hierarchy from the Indian Police Act of 1861. The Police organization in each state has a distinct uniform , equipment , and resource base in terms of funding etc. But on a broader scale there appears marked similarity in pattern and functioning.

[22] Ratan Lal and Dhiraj Lal: law of crimes 395(1995)

[23]"A Director General of Police (acronym DGP) in each state heads the Police organization. He must report to the Home Secretary of the state. . National Capital Territory of Delhi does not have its own police. The Central Police is deployed in NCT Delhi and it is headed by commissioner of Police, Delhi".

Under the chief general of police(DGP) in each state various police "ranges" made out of three to six districts, headed by Special Inspector General of Police are made. The high officials provide requests to the lower officials and they have optional forces. They are likewise answerable for a wide range of criminal examinations. All locale likewise has Additional Superintendents Assistant Superintendents and a few representative administrators of Police. Police headquarters are going by Police Inspector. In metropolitan urban areas there are Police chiefs Deputy Police magistrates and Assistant Police official.

Because the police force is less in numbers than the approved figures, the Home Guards are called who are poorly paid and who have poor diet and consequently poor physical strength.

In all the states there are civil as well as the armed police divisions. The formers are attached to police stations, do the job of investigation, answer and redress routine complaints of citizens, manage traffic on roads , and patrol the town and its lanes. Policemen usually carry batons called lathis made by bamboos or plastics.

The division of armed police in each state are divided in to two groups,

1) Armed police attached to District Police Headquarter and

2) The state Reserve Police.

"The armed police in the district are organized as per the military rules. They are posted temporarily by rotation to police stations and do the protection of citizens and the state property. Presently even there are many women working in the police department". [24]

They were first time introduced by UPSC in 1972. "Kiran Bedi" was the first IPS officer who rose to the rank of IGP and created an imprint on contemporary society. Woman officers like Addl. DGP Maharashtra state "Meeran Chaddha Borwanker" are holding important offices. However, their numbers are comparatively small.

23Indian police act 1862
24 Indian Police regulation 1939

The enforcement of law and management of law and order and it is security, prevention of offence and detection of offence are necessarily enforced the police authority. The role and performance of police is governed by the following three major laws:

i. Indian penal code, 1860
ii. Indian evidence act, 1872
iii. Code of criminal procedure 1973.

Aside from these, to take into account different explicit necessities, a few new laws have been sanctioned. As such a few Special laws - material to a specific subject i.e., Arms Act, Narcotics Drugs and Psychotropic Substances Act, and so forth and Local laws-pertinent to a specific piece of India have been instituted now and again to meet the developing violations counteraction needs.

2.3 – THE OPERATIONAL CONCEPTION THE SYSTEM OF PUNISHMENTS

The articulation: 'arrangement of disciplines' alludes[24] to the collection of rules and guidelines which address the standards of equity and the systems of prevention situated requital. The arrangement of disciplines is worried about such sorts of disciplines by which the lawbreakers are rebuffed with, judicially by fines, detainment, removal and so on.

In spite of the fact that the articulation 'discipline' is adequately wide to allude to any sort of unsavory result the particular region visualized in this exploration anyway is the work identifying with the official courtrooms with the object of getting due consistence with the laws.

In the particular space of criminal equity discipline alludes to crafted by the criminal courts whereby particular sorts of disciplines as indicated in the law of wrongdoings are forced on people for contradicting the punitive laws.

A wrongdoing is a demonstration which is considered by law to be unsafe to the general public as a rule, despite the fact that its prompt impact is on a person. The procedures against such people who perpetrate wrongdoing are taken by the state and whenever indicted they are rebuffed. On account of common wrongs just the privileges of the individual violated are encroached and

[24] https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-6/key-issues/1--introducing-the-aims-of-punishment--imprisonment-and-the-concept-of-prison-reform.html (visited on 26-05-2021) at 12.00pm

consequently the cures are looked for by the abused gatherings themselves. Legitimate outcomes of wrongdoings and common wrongs are unique[25] in relation to one another.

Common equity is regulated by one bunch of structures and criminal equity as per another. Common equity is controlled in one bunch of courts criminal equity in fairly unique arrangement obviously. Effective common procedures bring about the honor of harms, or a punishment or a particular compensation or in explicit execution and so forth While criminal procedures when success in one of various disciplines going from a fine to hanging.

There are two episodes of discipline, it very well may be viewed as a technique for ensuring society by lessening the event of criminal conduct or it very well may be viewed as an end in itself. Discipline can ensure society by deflecting expected wrongdoers, by keeping the genuine guilty party from submitting further offenses and by transforming and changing him into a decent resident.

In spite of the fact that discipline is a sort of force practiced by different establishments separated from the courts, the particular territory conceived in this proposition is the work having a place with the courtrooms. The requirement for change of the law has emerged inferable from new sorts of wrongdoings about which the current arrangement of discipline is discovered to be insufficient and the rising pattern of culpability about which the current arrangement of anticipation is discovered to be ineffectual. The meaning of this examination is that it will meet the intense need which has emerged of managing the wrongdoing issue by reconsidering the laws on the arrangement of counteraction and discipline of wrongdoing. The subject of these two parts of criminal law viz .counteraction and discipline are clubbed together.

The disciplines which the courts of criminal locale may grant are of two sorts, one which is accommodated in the Indian penal code 1860 and different disciplines which are accommodated in the Special laws of wrongdoing. To the extent disciplines given by the Indian penal code 1860 are concerned, they are the disciplines of Death, Imprisonment forever, Imprisonment which might be basic or thorough, Solitary Confinement, Forfeiture of Property and Fine.

Discipline by and large is the name of something upsetting or unwanted forced upon a person by a lawful expert for their conduct which is disregarding the standards previously set somewhere near the power, Punishment is proposed for authorizing appropriate conduct by the concerned position. Despite the fact that disciplines are directed for different purposes, the one specific reason for

[25] Commentary on the Indian penal code by K.D Gaur

which it is dispensed is to bring the conduct of the transgressor in similarity with the recommended rules of lead. In this sense, even the relatives of youthful age youngsters, guardians, gatekeepers, and instructors, are additionally rebuffed by their principles.

2.4 CONCLUSION

The hypothetical origination of Punishment is that it is a sort of force practiced by the suitable power other than a few different establishments of state to carry an individual to represent his bad conduct and to do equity to different citizenry. There are a decent number of foundations and officials other than private organizations which play out crafted by forcing discipline on people for their conduct which is in opposition to the standards of that institution. The object of discipline by these establishments and offices is to implement the principles of control and put right the conduct of an individual. Discipline is dispensed on the violator with the aim to get the recognition of control by rest of individuals in the general public.

CHAPTER 3

HUMAN RIGHTS JURISPRUDENCE & INTERNATIONAL PRESPECTIVE ON CAPITAL PUNISHMENT

3.1 INTRODUCTION

The foundation with respect to capital punishment both as far as global law just as state practice has changed somewhat recently. When contrasted with 1967, when the 35th report of the commission was given, and in 1980, when the Bachan Singh[26] judgement was conveyed, a larger part of the nations on the planet have annulled capital punishment. Indeed, even the individuals who hold this punishment, bring out far less executions than the circumstance before certain many years prior.

The change in the global view over the previous many years and the stamped pattern towards nullification in both worldwide and homegrown laws is through an investigation of fitting worldwide law, political guarantees and state work out.

According to Amnesty International, "countries are classified on their capital punishment status", as follows:[27]

- **Death penalty Abolished for all crimes.**

- **Death penalty Abolished for ordinary crimes[28]:** Capital punishment has been abrogated for all normal offenses perpetrated, for example, those contained in the criminal encryption or those anticipated in custom-based law like theft, dacoity, murder, seizing and assault. The Capital Punishment is held uniquely for some excellent environmental factors, like military

[26]Bachan Singh vs State of Punjab, AIR 1980 SC 898

[27]Annex II, Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015

[28]Capital Punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Report of the Secretary - General, E/2015/49.

offenses on schedule of war, or wrongdoings against the State, like injustice, psychological warfare or outfitted defiance.

- **Abolitionist de facto[29]:** It states that "the punishment of death remains lawful and where this punishment may still be prominent but where executions have not taken place for 10 years", or states "that have carried out executions within the previous 10 years but that have made an international commitment through the establishment of an official suspension" Amnesty International follows a somewhat extraordinary definition that the nations which hold capital punishment for common violations like murder yet can be thought abolitionist practically speaking that they have not executed anybody during most recent 10 years and are accepted to have an approach or set up training of not conveying executions.

- **Retentionist:** means that the death penalty in practice for some defined offences. Fifty-eight countries are considered as retentionist, who have the death penalty on their statute book, and have used it in the recent past.[30]

Towards the end of 2015, ninety-eight nations were abolitionist of capital punishment for all offenses, seven nations were abrogated capital punishment for conventional wrongdoings just, and 35 were abolitionist by and by, making 140 nations on the planet abolitionist in law or practice. The rundown of almost one hundred forty nations incorporates some of them officially nullified capital punishment in 2015.While just modest number of nations holds capital punishment, remembers a portion of the well-known countries for the world, including United Nations, China, India and Indonesia, making a greater part of people on the planet likely subject to this discipline.

In future number of executions may ascend in of capital punishment, notwithstanding, on the grounds that it is frequently set apart by the populace development, which has controlled the ascent in retentionist nations. In Japan, Korea, Taiwan, and America capital punishment has just been created in fair nations, capital punishment is an instrument of political pressing factor that frequently deals with a stupendous scale and capital punishment is in poor people, despotic and dictator states. In 1980s, the democratization of Latin America had a record of slave states. In Asia, then again, quick industrialization, democratization is popularity based and created nations are expanding for abolishment.

[29]Report of the Secretary - General, Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015
[30]The Economist, Available at www.economist.com/news/international (visited on25/05/2021) at 1.00 pm

3.2 DEVELOPMENTS IN THE INTERNATIONAL HUMAN RIGHTS LAW FRAMEWORK ON DEATH PENALTY

Death penalty has been organized in the international Human Right Framework with various Protocols or treaties.

3.2.1 Death Penalty in International Human Rights Treaties

Capital punishment has been orchestrated in worldwide basic freedoms deals as one part of the privilege to life, as encased in the International Covenant on Civil and Political Rights. A few aspects of the burden and utilization of capital punishment have additionally been making to disregard the preclusion against horrendous, barbaric, and corrupting behavior and discipline. After the Second Optional Protocol to the ICCPR coming into power the global local area saw the principal International lawful instrument that pointed toward annulling the Capital Punishment.

3.2.2 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights ('ICCPR') is quite possibly the main records presenting the burden of capital punishment in worldwide common freedoms law. The ICCPR doesn't nullify the utilization of capital punishment, however Article 6 contains ensures about the privilege to life and covers essential protections to be trailed by parties who hold capital punishment.

Article 6(2) states:

"In countries which have not abolished the **Article 6(4) requires states to ensure that**
"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases"

Article 6(5) mandates that;

"Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. "

The UN Human Rights Committee debated Article 6 of the ICCPR in detail in General Comment in 1982. The Committee clarified that while the ICCPR did not clearly want the abolition of the death penalty, abolition was desirable, and the Committee would reflect any

move towards abolition as progress in the enjoyment of the right to life. The Committee also said that "Capital punishment should be an exceptional measure. It restated important procedural safeguards including that the death penalty can only be imposed in accordance with the law in force at the time of the commission of the crime and that the right to a fair hearing by an independent tribunal, the presumption of innocence, minimum guarantees for the defense and the right to review by a higher tribunal must all be harshly observed"[31]

"Regardless of opinion polls, the State party should favorably consider abolishing the death penalty and informs the public, as necessary, about the desirability of abolition". Similarly, in 2006 the Committee asked the United States to "revive federal and state legislation with a view to restricting the number of offences carrying the death penalty the State party should place a moratorium on capital sentences bearing in mind the desirability of abolishing death penalty"[32].

3.2.3 The Second Optional Protocol to the ICCPR

The Second Optional Protocol to the International Covenant on Civil and Political Right, targeting at the abolition of the death penalty is the only treaty directly concerned with abolishing the death penalty, which is open to signatures from all the countries in the world. It came into force in 1991, and has 81 states parties and 3 signatories. India has not signed this treaty.

Article 1 of the Second Optional Protocol states that "No one within the jurisdiction of a State Party to the present Protocol shall be executed", and that "Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction." No reservations are permitted to the Second Optional Protocol, "except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime."[33] Some state parties have made such reservations.

3.2.4 The Convention on the Rights of the Child

Similar to the ICCPR, "Article 37(a) of the Convention on the Rights of the Child (CRC) explicitly prohibits the use of the death penalty against persons under the age of eighteen. As of

[31]Human Rights Committee, General Committee No 6 (1982) at Para 7 ,

[32]UNHumanRightsCommittee,ConcludingobservationsoftheHumanRightsCommittee:UnitedStatesof America,15September2006,CCPR/C/USA/CO/3.

[33]Article 2 (1), Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty

July 2015, 195 countries had ratified the CRC". Article 37(a) states:

''States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. "

The Committee on the Rights of the Child has clarified that while some assumed the standard just denied the execution of people underneath the age of eighteen, capital punishment may not be forced for a wrongdoing carried out by an individual under 18 paying little heed to his/her age at the hour of the preliminary or condemning or of the execution of the assent.

3.2.5 The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

There is an investigation of the punishment of death as disregarding standards against torment and unfeeling, barbaric , and debasing treatment or discipline. In these specific circumstances, the convention against torture and cruel, inhumane or degrading treatment or punishment(the torture convention) and the UN committee against torture have been wellsprings of law for restrictions on capital punishment just as essential shields.

3.3 INTERNATIONAL CRIMINAL LAW

The international movement towards abolition of the punishment of death is also perceptible in the development of international criminal law. The penalty of death was an allowable punishment in the Nuremberg and Tokyo[34] tribunals, both of the countries were well- known following World War II. Subsequently, however, International criminal courts – "including the Statute of the International Criminal Tribunal for the former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda, the Statute of the Special Court for Sierra Leone and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia [35] exclude the death penalty as an allowable punishment. The same is true for the Rome Statute of the International Criminal Court, where judges may only impose terms of imprisonment. It

[34]University of Virginia, The Tokyo War Crimes Trial: A digital exhibition

[35]LawontheEstablishmentoftheExtraordinaryChambersintheCourtsofCambodia,mailableat: www.eccc.gov.

must be noted that these tribunals do not use the death penalty, notwithstanding routinely dealing with the most serious crimes under international law, including genocide, war crimes, and crimes against humanity. It is pertinent to that India is not signatory to the Rome Statute."

3.4 INTERNATIONAL TREATY OBLIGATIONS IN INDIAN LAW

India has confirmed the International Covenant on Civil and Political Right and the CRC, and is signatory to the Torture Convention from the above examined deals yet has not sanctioned it. Under the global law, settlement necessities are restricting on states whenever they have endorsed the arrangement. Indeed, even where a settlement has been marked however not endorsed, the state will undoubtedly avoid acts which would crush the item and reason for a deal .

In India, state legislation is required to make international treaties enforceable in Indian law.[36] The Protection of Human Rights Act, 1994, incorporates the ICCPR into India law through section 2(d) and 2(f).

Section 2 (d) states that, "human right means the rights relating to liberty equality and dignity of the individual guaranteed by the Constitution embodied in the International Covenants and enforceable by courts in India."

Section 2(f) states that, "International Covenants "means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the Unite Nations on the 16th December, 1966."

Further, according to **Article 51(c)** of the Indian Constitution, "the state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another. While this does not make all of India's treaty commitments automatically binding on India, courts have respected rules of international law where there is no contradictory legislation in India."

[36]Jolly George Vergeese & Anr v. The Bank Of Cochin, 1980 AIR 470

3.5 The ECOSOC Safeguards

The principal group of United Nation, Economic and Social Council (ECOSOC) has conveyed a few goals prompting shields in regards to how capital punishment ought to be forced in nations where it isn't canceled. These shields incorporate significant impediments to the extension and use of capital punishment in global law.

"The first ECOSOC resolution titled Safeguards guaranteeing protection of the rights of those facing the death penalty was adopted in 1984, and contained the following nine safeguards:

1. In countries which have not abolished the penalty of death, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely serious consequences.
2. Death penalty may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts. Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
5. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
6. Anyone sentenced to death shall have the right to seek pardon, or commutative of sentence; pardon or commutation of sentence may be granted in all cases capital punishment.

7. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation the sentence.

8. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering."

A 1989 ECOSOC resolution added "more safeguards, including encouraging transparency in the imposition of the death penalty (including publishing information; and statistics on the issue); the establishment of a maximum age beyond which person cannot be executed; and abolishing the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.".

In 1996, a third ECOSOC resolution "encouraged states to ensure that each defendant facing a death sentence is given all guarantees to ensure a fair trial. I specifically urged states to ensure that the defendants who do not sufficiently understand the language used in court are fully informed of the charges against them and the relevant evidence, and that they had enough time to appeal their sentence and ask for clemency. It also asked states to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency."

3.6 UNHRC

The UN Human Rights Council as of late[37] began another enquiry on capital punishment, utilizing the basic freedoms of offspring of guardians condemned to capital punishment or executed as an underlying point. In a 2013 goal, the Human Rights Council recognized:

"The negative impact of a parent's death sentence and his or her execution on his or her children, advised States to provide those children with the protection and assistance they may require, and mandated a study on this specific issue." It also called on states "to provide those children or, where appropriate, giving due consideration to the best interests of the child, another member of the family, with access to their parents and to all relevant information about the situation of their parents." A 2014 Human Rights Council resolution noted that "States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use" and deplored the fact that "the use of the death penalty leads to violations of the human rights of those facing the death penalty and of other affected persons. The Human Rights Council states to ratify the Second Optional Protocol to the

[37] Ohchr.org (visited on 26-05-2021) at 12.05 pm

International Covenant on Civil and Political Rights."

3.7 DEATH PENALTY AND THE LAW OF EXTRADITION

The law of extradition has been another apparatus for nations emphatic for the abrogation of the Capital Punishment. For example, "those countries that abolish the death penalty put pressure on those countries that retain the death penalty by rejecting extradition requests for persons wanted for offences carrying the penalty. Several abolitionist countries either require guarantees that retentions extraditing countries not impose the death penalty, or have included such a clause in bilateral extradition treaties." For example, "China has signed extradition treaties with Spain, France and Australia, saying it will not impose the death penalty on individuals extradited from these countries." Abolitionist countries are often bound to ensure this. For example, Article 19(2) of the Charter of Fundamental Rights of the European Union states that:

"No one may be removed, expelled or extradited to a State where there is serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

Several courts have made important statements on the issue. For example, in the case of *Soering v. UK*,[38]"the European Court of Human Rights held that the extradition of a person from the UK to Virginia, a state in USA which imposed the' death penalty, would violate the European Convention of Human Rights because the very long period of time spent on death row in such extreme conditions, with the eve present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United State would expose him to a real risk of treatment going beyond the threshold set by Article3 on Prohibition of Torture."

In the case of *US v. Burns*,[39] the Apex Court of Canada held that in cases of extradition to a country that retain the death penalty, pledges "that the death penalty would not be imposed, or, if imposed, would not be carried out were essential in all but exceptional cases."

Similarly, in the case of *Mohamed and Another v. President of the Republic of South Africa*[40]*& South African* constitutional court held that "a 'deportation' or 'extradition' of

[38]Applicationno.14038/88,availableat:www.hudoc.echr.coe.int/eng?i=001-57619
[39]US v. Burns, [2001] 1 SCR 283
[40]2001 (3) SA 893 (CC

Mohamed without first securing an assurance that he would not be sentenced to death or, if so sentenced, would not be executed would be unconstitutional," adding that such an extradition violated his "right to life, his right to have his human dignity respected and protected and his right not to be subjected to cruel, inhuman or degrading punishment."

India's Extradition Act, 1962, reflects this principle in Section 34C: "'Notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central Government and the laws of that foreign State do not provide for a death penalty for such an offence, such fugitive criminal shall be liable for punishment of imprisonment for life only for that offence."

3.8 INTERNATIONAL TRENDS ON DEATH PENALTY

The position and practice of capital punishment today instructs an unmistakable pattern towards annulment with respect to the punishment. At the point when the United Nation was shaped in 1945, just seven nations on the planet had nullified the punishment of death. In divergence, starting at 31 December 2014, hundred and forty nations on the planet had canceled the discipline of death in law or practice.

The United Nation Secretary General, gives an occasional report on the situation with the punishment of death around the world; the exceptional of these reports reviewed the worldwide circumstance somewhere in the range of 2009 and 2013.In this period, the quantity of completely abolitionist states expanded by six, and practically all retentionist nations revealed decreases in the quantity of executions and the quantity of wrongdoings subject to the punishment of death.

3.9 REGIONAL TRENDS REGARDING THE DEATH PENALTY

3.9.1 THE U.S.A

The American Convention on Human Rights 1969 pointedly restricts the application of the penalty of death. Article 4 of this convention states that "it can only be imposed for serious crimes following a fair trial, it cannot be inflicted for political offences or related common crimes, it cannot be re-established in states that have abolished it, and it cannot be imposed on

persons under the age of 18, over 70 pregnant women."

The Americas also have a specific convention on abolishing the punishment of death. Under Article 1 of the Protocol to the American Convention or Human Rights to Abolish the Death Penalty which is ratified by 13 countries,

"The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction."

"The United States is a prominent exception in the Americas in terms of its approach to the punishment of death". In 2014, the United States was the only country in its region to bring out executions. Even within the United State, for a period of time following the case of *Furmanv. Georgia,* there was a de facto suspension on the death penalty for about four years, between 1972 and 1976. While the death penalty has since been re-established, court decisions have narrowed down its scope and introduced safeguards. For example, in Roper v. Simmons**,**[41] "the Supreme Court held it was unconstitutional to impose the death penalty for crimes committed when the individual was below 18 years of age". Further, in Atkins v. Virginia**,** the Supreme Court held that "executing persons with intellectual disabilities amounted to cruel and unusual punishment, and was thus unconstitutional".

3.9.2 EUROPE

All European countries, except Belarus, has either properly abolished the penalty of death or preserve moratoriums. The 1950 European Convention for the Protection of Human Rights ai Fundamental Freedoms ("the European Convention") originally stated:

"No one shall be deprived of his life intentionally save in the execution of sentence of a court following his conviction of a crime for which this penalty provided by law."

In 1983, the European Convention regarding the abolition of the death sentence said, "The death penalty shall be abolished. No one shall be condemned such penalty or executed except in respect of acts committed in time of war or imminent threat of war." The European Court of Human Rights (ECHR) has grown rich jurisprudent for countries that have not yet ratified the two optional protocols. On several occasions, "the court has held that extradition to a country that does not abolish the penalty of death could violate the right to life and prohibition against torture."

[41]Roper v. Simmons, 543 U.S. 551 (2005)

The punishment of death for homicide was officially abrogated in 1969, when the UK Parliament concluded that the 1965 Act ought not terminate, in spite of ongoing assessments of public sentiment showing that about 80% of the populace was against the annulment of the punishment of death. The death penalty was at last eliminated for all violations in the United Kingdom just in 1999, further to the United Kingdom's approvals of and commitments under the European Convention on Human Rights and the Second Optional Protocol to the ICCPR. The most notable of these was the 1993 case of Pratt & Morgan v. Attorney-General for Jamaica[42]. In this case, the UK Privy Council held that that "it was unconstitutional in Jamaica to execute a prisoner who had been on death row for 14 years. According to the Privy Council, the Jamaican Constitution prohibits inhuman or degrading punishment, as a result of which excessive delays cannot occur between sentencing and execution of the punishment. Specifically, it held that a delay of more than five years between sentencing and execution was prima facie evidence of inhuman or degrading punishment. In cases of such excessive delay, it said that the death sentence should be commuted to life imprisonment". The Pratt & Morgan case had a "ripple effect on similar cases from other Caribbean countries, where the sentence for convicts on death row was commuted to life imprisonment. This has led to a separate and long-enduring debate about the appellate powers of the Privy Council on countries other than the UK."[43]

3.9.3 AFRICA

As on October 2014, seventeen African nations had officially canceled capital punishment, and 25 others had not coordinated an execution in more than ten years. The nations that keep on impressive capital punishment are Egypt, Equatorial Guinea, Sudan, and Somalia. A few African nations like Angola, Namibia have canceled the punishment of death through the Constitution, while in different nations, outstandingly South Africa, the courts have taken the prime.

Article 5 (3) of the African Charter on the Rights and Welfare of the Child states, "Capital punishment will not be articulated for violations submitted by kids". In 2008, in its "Goal approaching State Parties to notice the ban on capital punishment", the African Commission on Human and Peoples' Rights asked "State Parties that actually hold capital punishment to notice a ban on the execution of death penalties with the end goal of nullifying capital punishment."

[42][1993] UKPC 1

[43]OwenBowcottandMayaWolfe-Robmson,BritishcourttoruleondeathsentencesfortwoTrinidad murderers,TheGuardian

In South Africa, the death penalty was abolished through a decision of the Constitutional Court, shortly after the end of the apartheid regime. In an early ruling in 1995, in State v. Makwanyane,[44] the South African Constitutional Court held that "the death penalty was unconstitutional". In doing so, the Court said: "The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in Chapter Three. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be deterred thereby".

In Nigeria, "the death penalty is chiefly a state issue, as the country has a federal system, where criminal laws differ through its 36 states. Each state stipulates crimes and punishments within its territory, and have laws created on both Shariah and common law systems. A mandatory death penalty is agreed for an extensive range of offences in various Nigerian states[45]".

3.9.4 ASIA AND THE PACIFIC

About 40% of the nations in the Asia-Pacific are retentionists, and keep up and utilize capital punishment. China, Iran, Iraq and Saudi Arabia stay among the highest agents around the world, and the previous few years have likewise seen Pakistan and Indonesia breaking their accepted suspensions to get back to executions.

A 2015 OHCHR distribution looking at developments in capital punishment in South East Asia, tracked down that "The Global development towards abrogation of capital punishment has additionally been reflected in South-East Asia". At the hour of the report, Brunei Darussalam, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Vietnam had hold the death penalty, while Cambodia, Timor-Leste and the Philippines had done as such.

China is one of the main executing nations on the planet. There is extremely lacking data of even the number of executions occur in China, as they are totally done stealthily. Nonetheless, assessments recommend that 90% of the world's executions occur in Asia, and the vast majority of them happen in China, and that China executes a bigger number of individuals than any

[44] 1995 (6)BCLR665

[45] Country profile: Nigeria, Available at: www.deathpenaltyworldwide.org

remaining nations. In 2010, 68 wrongdoings were deserving of capital punishment in China. A 2011 revision decreased this number to 55. Hong Kong and Macau, both Special Administrative Regions of China, have not held capital punishment.

3.9.5 CONCLUSION

There is a reasonable pattern towards nullification in worldwide law and state practice across the globe. Global lawful standards have developed to confine the legitimate utilization of the death penalty in an exceptionally restricted assortment of cases, and an extremely restricted way. India keeps on condemning people to death and execute them, and has additionally gone against every one of the five General Assembly goals on a ban. In doing as such, India keeps organization with a minority of nations who hold capital punishment, and a significantly more modest number who really complete executions, a rundown that incorporates China, Iran, Iraq and Saudi Arabia.

CHAPTER 4

CAPITAL PUNISHMENT AND HUMAN RIGHTS PRESPECTIVE AS EMBODIED IN INDIAN LEGAL SYSTEM

4.1 INTRODUCTION

In India, capital punishment may be awarded by the criminal courts under the provisions of the general law of crimes and the special law of crimes. The Indian Penal Code, 1860 is the general law of crimes, and a few other Statutes dealing with certain particular persons, subjects and places together constitute the special law of crimes. These two kinds of laws are the primary sources of law with regard to capital punishment in India.

The Indian Penal Code, 1860 describes the various kinds of offences and the punishments that may be awarded by the criminal courts. It describes the defenses that may be pleaded when there is any allegation of the offences mentioned in the Penal Code. It also describes the situations in which Capital Punishment may be awarded. The Penal Code in its nature is a substantive law of crimes. The procedural law however is in the form of the Code of Criminal Procedure, 1973. It also contains the safeguards to the persons accused of crimes.

To everything covered on the subject crimes and punishment in any law of crimes, the fundamental principles of the Constitution are relevant. The significance of the Constitution therefore is that it contains the safeguards which may be pleaded by a person against the process of conviction by a court of criminal jurisdiction.

Apart from the principles embodied in the Code of Criminal Procedure and the Constitution there are the principles of Human Rights Law which represent the urging norms of International Law on the subject of safeguards to the individuals against any punishment by the law enforcement agencies.

The object of this chapter is to discuss the penal provisions embodied in the substantive law as

well as the procedure law of our country on the subject of capital punishment. The discussion in this chapter also covers the provisions of the Constitution and those of the Human Rights Law with regard to the safeguards available to persons convicted of capital punishment.

The methodology followed in presenting the discussion i[46]n this chapter is to describe first the historical background of the system of punishments in India and then discuss the nature and scope of Capital Punishment under the provisions of the general and the special law of crimes. The discussion also covers the provisions of the Code of Criminal Procedure and the Constitution of India which are concerned with the safeguards to the individuals such as the right to seek pardon, remission, or commutation etc. of the punishment awarded by the criminal courts.

4.2. SYSTEM OF PUNISHMENT IN INDIA

(i) **Crime and Punishment in Ancient India** - In the Rig-Veda, Sabha, Samiti and Vidatha were characterized as the gathering spots of individuals or the congregations of the champions. In such gatherings, the King or the clan leader used to be the preeminent position. Such congregations practiced legal forces in both common and criminal issue and they chose the questions both private and public. In any case, with the advancement of Aryan Civilization, the Sabha as a rule with the King as its head, came to practice every single legal capacity. Other than the Sabha and Samiti, Yajnavalkya likewise alludes to legal functionaries, which acted practically like courts. These were the Kings functionaries, the town local area, the organizations and the families. The target of having such functionaries was to make equity accessible to individuals in their own places. The gatherings and their observers were not to make a trip to distant spots to look for equity. Along these lines' equity was modest as well as quick.

(ii) **Crime and Punishment During Mughal Period** In Mughal India, there were three organizations in everyday charge of legal organization. The Emperor and his representatives like, the commonplace Governors, the Faujd[47]ars in the Sarkar and Kotwals normally managed the political issue. The Qazi controlled Sharia or the hallowed law. His ward was bound uniquely to questions associated with religion. He chose questions concerning family law and marriage, legacy of property and furthermore

[46] Choudhary, Radha Krishna, and Radha Krishna Chowdhary. "THEORY OF PUNISHMENT IN ANCIENT INDIA." Proceedings of the Indian History Congress, vol. 10, 1947, pp. 166–171., www.jstor.org/stable/44137122. Accessed 26 May 2021.
[47] https://blog.ipleaders.in/the-history-of-punishment-in-india/ (visited on 25-05-2021) at 1.15 pm

criminal cases. For the Hindus and the town individuals there were the courts of the Brahmin Pandits and the station older folks. They directed the normal (unwritten) law or the codes of ancestral customs.

(iii) **Crime and Punishment during British Period**[39] - The British system in India began with the foundation of the Government of India succeeding the East India Company, The Britishers had additionally presented, on the example of their own arrangement of organization, semi legal establishments like the Tribunals vesting them with a piece of the ordinary forces to choose debates. These tests had been started via elective debate goal component. They additionally empowered the arrangement of discretion, intervention and mollification with the goal that the postponement in removal of cases was limited. A few councils and commissions were delegated to look at the issues emerging from the utilization of laws and the working of the lawful foundations. Noticeable among them was the Law Commission of India which from 1850's onwards took upon itself the undertaking of recommending a change of the legal framework and a modification of the considerable and procedural laws. In light of the suggestions of the Law Commission changes were made in the guidelines of law and the association of legal establishments.

Jeremy Bentham, an ardent supporter of the reform of criminal law and codification in England, took interest in the codification of law in India. In England Bentham was an untiring campaigner for the reform of the antiquated law. The test to which Bentham subjected every institution was the test of Utility. His doctrine of Utilitarianism had a profound influence on the course of legislation in England.

The influence of Bentham could be seen in the process of law reform and codification in India. Governor General Bentick had sympathies with Bentham's teachings. Bentham died in 1832 and-the first steps towards codification of law in India were initiated in 1833 through Charter Act of 1833. In order to achieve the objective of a uniform and codified system of law in India the Charter Act, 1833[48] made provision in three directions

(1) it established an omni-potent all-India Legislature having legislative authority throughout the country;

(2) It created a new office of the law-member in the Government of India; and

[48] 3 & 4 Will. IV, c 85

(3) It provided for the appointment of a Law Commission in India[49].

First Law Commission consisted only of three members; Lord Macaulay, the first Law Member was appointment as Chairman of the Commission. The first project assigned to the Law Commission by the Government was the codification of penal law. The Law Commission had prepared a draft Penal Code and submitted to the Government of India in 1837.It was mainly the handiwork of Lord Macaulay. The Penal Code was finally approved in 1860 and became the first piece of penal legislation. The Indian Penal code marked the beginning of the period of reforming the criminal law in India. The criminal law which was being applied was not uniform. In Bombay till 1827, the endeavor had been to apply Hindu customary criminal law to the Hindus and the Muslim criminal law to the Muslims.

4.3. CAPITAL PUNISHMENT UNDER THE PROVISIONS OF THE INDIAN PENAL CODE

Capital Punishment is the highest punishment provided in the Indian Law.

Under the provisions of the Penal Code this punishment may be awarded for the following offences;-

I. **Waging or attempting to wage war, or abetting waging of war against the Government of India:**

The Penal Code, dealing with the above offence provides for the punishment of death. It says, "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.[50]

2. Abetment of mutiny, if mutiny is committed in consequence thereof:

The Penal Code dealing with this offence provides: "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 for life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."[51]

[49]Supra

[50]Section121oftheIndian Penal Code

[51]Section132of the Indian Penal Code, 1960

3. **Giving or fabricating false evidence with intent to procure conviction of capital offence;** Section 194 of the Penal Code dealing with this offence provides as follows : "Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is capital by the laws 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; if innocent person be thereby convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described."[52]

4 Murder:

The Penal Code provides the punishment for murder; it says, "Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine."[53]

5. Abetment of suicide of child or insane person:

The Penal Code dealing with this offence provides: "If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.[54]

6. Punishment for murder by life convict

Section 303 of the Penal Code dealing with the offence of murder by life convict, provides: "Whoever, being under sentence of imprisonment for life commits murder, shall be punished with death." However, this section is abolished by the Supreme court in Mitthu singh case.

7. Dacoity with murder:

The Penal Code provides for the punishment of murder in respect of the accused convicted of dacoity with murder. It says,

[52]Section 194 of the Indian Penal Code, 1860
[53]Section 302 of the Indian Penal Code, 1860
[54]Section 305 of the Indian Penal Code, 1860

"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."[55]

4.4. Capital Punishment under Special Laws: There are a good number of Statutes forming part of the special law of crimes in our country which provide for the punishment of death. Among these statutes the largest number are those which deal with the prevention of terrorism, maintenance of internal security and the control of organized crime. The offences for which capital punishment is provided under the special laws of this category may be discussed as follows:

4.4.1 The Prevention of Terrorism Act,2002

The foundation to this enactment is that the nation has confronted and keeps on confronting diverse difficulties in the administration of its interior security. There is an upsurge of psychological militant exercises, escalation of cross-line fear monger exercises and guerilla bunches in various pieces of the country. Frequently, coordinated wrongdoing and fear monger exercises are intently between connected. Illegal intimidation has now obtained worldwide measurements and has become a test for the whole world. The scope and strategies embraced by psychological militant gatherings and associations exploit modem methods for correspondence and innovation utilizing cutting edge offices accessible as correspondence frameworks, transport, complex arms and different methods. This has empowered them to strike and make dread among individuals freely. The current criminal equity framework was not intended to manage such kinds of offensive violations.

In view of the precarious situation that had arisen, it was felt necessary to enact legislation for the prevention of, and for dealing with, terrorist activities.[56]

Punishment for terrorist acts –

(1) Whoever,-With aim to undermine the solidarity, trustworthiness, security or sway of India or to strike dread in individuals or any segment of individuals does any demonstration or thing by utilizing bombs, explosive or other unstable substances or inflammable substances or guns or other deadly weapons or harms or poisonous gases or different synthetics or by whatever other

[55]Section 396 of the Indian Penal Code, 1860

[56]R.P.Kataria&S.K.A.Naqvi,"LawsonPreventionofTerrorismandUnlawfulActivities",OrientPublishing Company,2003

substances (regardless of whether organic or something else) of an unsafe sort or by some other methods at all, in such a way as to cause, or liable to cause, passing of, or wounds to any individual or people or loss of, or harm to, or obliteration of, property or disturbance of any provisions or administrations fundamental for the existence of the local area or causes harm or annihilation of any property or gear utilized or proposed to be utilized for the safeguard of India or regarding some other reasons for the public authority of India, any State Government or any of their offices, or confines any individual and takes steps to slaughter or harm such individual to urge the Government or some other individual to do or avoid doing any demonstration:

(a) Is or keeps on being an individual from an affiliation pronounced unlawful under the Unlawful Activities (Prevention) Act,[57] or willfully does a demonstration helping or advancing in any way the objects of such affiliation and regardless is in control of any unlicensed guns, ammo, dangerous or other instrument or substance fit for causing mass obliteration and submits any demonstration bringing about loss of human existence or offensive injury to any individual or makes huge harm any property, submits a psychological militant demonstration.

(b) Explanation.- For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

(2) Whoever commits a terrorist act, shall,-

(a) "If such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine."

(b) in any other case, "be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".

(3) "Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

(4) "Whoever voluntarily harbors or conceals, or attempts to harbor or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term

[57] 1967 (37 of 1967)

which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine: Provided that this sub-section shall not apply to any case in which the harbor or concealment is by the husband or wife of the offender."

(5) Any person "who is a member of a terrorist gang or a terrorist organization, which is involved in terrorist acts, shall be punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both."

Explanation.- For the purposes of this sub-section, "terrorist organization" means an organization which is concerned with or involved in terrorism... ,"[58]

(i) The Explosive Substances Act,1908.

"This Act extends to the whole of India and applies also to citizens of India outside India." In this Act, -

(a) the articulation "explosive substance" will be considered to incorporate any materials for making any touchy substance; likewise, any device, machine, carry out or material utilized, or proposed to be utilized, or adjusted for causing, or supporting in causing, any blast in or with any unstable substance; additionally, any piece of any such device, machine or execute;

Punishment for causing, explosion likely to endanger life or property- Any person who unlawfully and maliciously causes by;

(a) "Any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than ten years, and shall also be liable to fine";

(b) "Any special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property

[58]Section 3 of the Prevention of Terrorism Act, 2002.

has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine."[59]

4.4.2 The Terrorist and Disruptive Activities (Prevention) Act,1987

This is an Act enacted in the year 1987 to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto. It lays down the following provisions for the punishment and measures for coping with terrorist and disruptive activities:-

Punishment for terrorist acts (1) "Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act".

(2) Whoever commits a terrorist act, shall,

(i) "If such act has resulted in the death of any person ,be punishable with death or imprisonment for life and shall also be liable to fine."

(ii) in any other case, "be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

(3) "Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

[59]Section 3 of the Explosive Substances Act, 1908.

(4) "Whoever harbors or conceals, or attempts to harbor or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

(5) "Any person who is a member of a terrorist gang or a terrorist's organization, which is involved in terrorist acts, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine."

(6) "Whoever holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".[60]

4.4.3 The Narcotic Drugs and Psychotropic Substances Act, 1985

This Act was passed by the Union Parliament to consolidate and amend the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic substances, [to provide for the forfeiture of property derived from, or used in, illicit traffic in Narcotic Drugs and Psychotropic Substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic substances] and for matter connected therewith. The Act has laid down the following punishment for certain offences punishable under the Act :-

31-A. Death penalty for certain offences after previous conviction

(1) "Notwithstanding anything contained in Section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under [Section 19, Section 24, Section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance] is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to:

Engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, or the narcotic drugs or psychotropic substances specified under

[60]Section 3 of the Terrorist & Disruptive Activities (Prevention) Act, 1987

column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance,"

4.5. CAPITAL PUNISHMENT UNDER THE LOCAL LAWS

4.5.1 The Karnataka Control of Organized Crimes Act,2000

This is an Act passed by the Karnataka State Legislature in the year 2001 to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto.

"According to the provisions of this Act an "Organized crime" means continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself for any other person or promoting insurgency;"

Punishment for organized crime.- (1) "Whoever commits an organized crime shall,-

(i) If such act has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, which shall not be less than one lakh also be liable to a fine, which shall not be less than one lakh rupees;

(ii) In any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall be liable to fine, which shall not be less than five lakh rupees."

(2) "Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall not be les then five years but which may extend to imprisonment for life and shall also be liable to a fine, which shall not be less than five lakh rupees."

(3) "Whoever harbors or conceals or attempts to harbor or conceal, any member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, which shall not be less than five lakh rupees."

(4) "Any person who is a member of an organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine which shall not be less than five lakh rupees".[61]

4.5.2 The Maharashtra Control of Organized Crimes Act,1999

"This is an Act passed in the year 1999 to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang, and for matters connected therewith or incidental thereto."

Punishment for organized crime (1) "whoever commits an offence of organized crime shall,-

(i) If such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lakh;

(ii) In any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.[62]

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organized crime or any act preparatory to organized crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five."

4.5.3. The Rajasthan Dacoity Affected Areas Act,1986

The Government of Rajasthan felt that the menace of organized and unorganized gangs of dacoits is causing concern and needs to be tackled effectively. It is, therefore, necessary to break the chain of vested interests assisting such gangs and to control them. For that purpose,

[61]Section 3 of the Karnataka Control of Organized Crimes act,2000.

[62]Section 3 of the Maharashtra Control of Organized Crimes act,1999

provisions are to be made for specifying certain offences in the dacoity affected areas of Rajasthan in order to curb the commission of scheduled offences and for speedy trial and punishment thereof. Properties acquired through the commission of such offences are also intended to be attached. The Rajasthan Legislative Assembly enacted in the year 1985 the Rajasthan Dacoity Affected Areas Act, which contained the following provisions:

"Punishment for offence against public servant.- A scheduled offender who commits the offence of murder of more than one person or a scheduled offence against a public servant or against a member of the family of a public servant, shall,-

(a) If such offence is punishable with death or with imprisonment for life under the Indian penal Code, 1860 be awarded such punishment as is provided for that offence in the Code; and

(b) In other cases, be punished with imprisonment which may extend to ten years and with fine."

Besides these Statutes on prevention of terrorism and threats to internal security capital punishment is also provided under certain other special laws, "the Indian Air Force Act, 1950," "the Army Act 1950", "the Navy Act "etc. which constitute the defense laws of our country. Under Defense Laws death punishment can be awarded for less serious offences if committed during action. The nature and scope of the Defense Laws may be discussed thus:

4.5.4. Capital Punishment under the Defense Laws:

"As a rule, the members of the Armed Forces of the Union of India are subject to the provisions of military laws, but in certain situations an ordinary member of the public renders himself liable to be tried by the Court Martial for violation of the provisions of the defense laws. Hence, he can be sentenced to death without a trial according to accepted [63]principles of Natural Justice which is guaranteed to him under the Code of Criminal Procedure. According to the Defense laws the Courts-Martial constituted under the Act can pass a sentence of death on a person found guilty under the Act. The abetment of the offences punishable with death is also punishable with death under Sec. 68 if the act abetted is committed. Some of the common offences that are punishable with death by the courts Martial are misconduct in action, delaying the service, disobedience in action, cowardice and sleeping over duty. Spying by the member of

[63] Indian penal code chapter vii

the forces or by an ordinary person who is not otherwise subject to the defense laws, is also punishable with death."

4.6. SAFEGUARDS TO PERSONS CONVICTED OF CAPITAL OFFENCES

(i) Safeguards under the general law of crimes:

"The Penal Code contains the safeguards which may be pleaded when an allegation of an offence is made against a person, the important among these safeguards are the safeguards known as General Defenses".

(ii) Safeguards under the Procedural Law of Crimes:

"The Code of Criminal Procedure, 1973 provides certain safeguards to the persons who are convicted of the capital punishment. The objects of these safeguards are to protect a person from being penalized arbitrarily. The whole sentencing process in capital cases is replete with safeguards for the accused."

a. **Death Penalty now is an Exceptional Punishment:** Death penalty has become an exceptional punishment[64] for all the eight offences which are punishable in the alternative with 'death' because Section 354(3) of the Code of Criminal procedure, 1973, now requires the court to assign "special reasons" for such sentence. Accordingly, death sentence is rarely resorted to only in extremely heinous cases, e.g., pre-planned, calculated cold-blooded murder or a murder diabolically conceived and cruelly executed.

Accused's right of Pre-Sentencing Hearing Section 235 (2) of the Code of Criminal Procedure, 1973, is a new advancement in penological direction inasmuch as it confers on the accused person a right of pre-sentencing hearing in all cases where death penalty is prescribed as an alternative punishment.

Under this provision, "the accused now, in such cases can produce evidence or material before the judge relating to the various factors bearing on the question of sentence or which have a bearing on his (accused) choice of sentence. For example, the accused can make his submission on point of sentence that he is the only bread earner in his family, or he can plead extreme youth on his part for not awarding death sentence."

b. **Individualization of Sentence:** Moreover, "Sections 235(2) and 354(3) of the Code of

[64]On the other hand, 'death' was the normal punishment for such offences under the code of 1898ass ec 367(5) required the Court to state reasons for not passing such sentences.

Criminal procedure, 1973, jointly require the court to give due consideration to the circumstances connected with the crime as well as to the circumstances of the criminal, in fixing the degree of punishment or making the choice of sentence for various offences including capital offences. Thus, the question of sentence is completely individualized under our penal system."

c. Confirmation of Sentence by High Court

Every provision relating to submission of death sentence for confirmation in the Code of Criminal procedure, 1973 (Sections 366—370) seeks to ensure that the entire evidence material hearing on the innocence or guilt of the accused and the question of sentence must be scrutinized by High Court with utmost care and caution.

Under these provisions, "the High Court has complete powers to direct further enquiry to be made or additional evidence to be taken; to confirm the sentence of death or pass any other sentence warranted by law; or to annual or alter the conviction or order a new trial or acquit the accused."

d. **Appeal to Supreme Court: "**Section 379 of the Code of Criminal procedure, 1973 and Article 136 of the Indian Constitution stand to safeguard the accused by way of appeal to the Supreme Court when he is sentenced to death by way of appeal to the Supreme Court when he is sentenced to death by the High court by reversing his acquittal in appeal or when his sentence of death awarded by the Sessions Judge is confirmed by the High Court."

e. **Pregnant Woman and Death Sentence:** When a woman is sentenced to death many other factors come to fore. The important question amongst them is if she is pregnant at the time of pronouncement of sentence of death, shall it be commuted or just postponed according to the given provision of Cr.P.C.

"Art 39(f) of the Constitution provides that the State shall direct its policy towards securing those children are given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected from exploitation and against moral and material abandonment. However, the Criminal Procedure Code, 1973 has a provision which goes against the spirit of article 39(f) of the Constitution which imposes a death sentence on pregnant woman. Such a sentence would result in the killing of the fetus also. If the mother is

executed, after the child is delivered, it will orphan the child and the child will suffer for no fault of hers." Sec 366 of the Cr. P. C. is the relevant provision which says that "when any person is sentenced to death by a Court of Session, the sentence shall not be executed unless it is confirmed by the High Court. When the sentence is confirmed by the High Court the court of sessions shall issue a warrant to the superintendent of the prison in which the prisoner is confined to cause the sentence to be carried into effect. 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. The word 'May' in Section 416 of the Cr. P. C. 1973 empowers the Court with discretionary powers. The court may execute the death sentence after the woman gave birth to the child or may commute the sentence to imprisonment for life."

(iii) Safeguards under the Constitution and the Statute Law

(a) Pardoning power under the Constitution:

The Rationale of Pardoning Power: Quite a good number of rules in the sphere of criminal law deal with the exercise of pardoning power and related matters.

The rationale of the pardoning power was felicitously enunciated by Justice Holmes of the United States Supreme Court in the case of **Biddle v. Perovich** as follows: "A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judged fixed."[65]

While in some systems of government the pardoning power is part of the constitutional scheme, in some others it is provided by the statutes, but in certain systems it is part of the traditional power of the Executive called the Prerogative power.

In England, the pardoning power has been practiced from days of yore, and has consistently been viewed as a vital trait of sway. There are a serious decent number of subjects as to which the right powers might be practiced by the Executive in issue of criminal equity, for example, the ability to give parole, the ability to endorse arraignment or pull out the indictment, the ability to suspend, delay or drive the sentence and so forth Privilege powers in England initially were viewed as optional forces as to which there could scarcely be a legal

[65] 71 L Ed. 1161 at 1163.

audit. Yet, with the progression of time different optional forces have been brought under the extension and ambit of legal survey, so likewise the exculpating force of the Executive.

"In United States of America, at the Federal level the President of United States exercises the power under the Constitution and at the State level the Governors of the States exercise such a power either under the State Constitutions or the relevant Statutes. In some States an administrative agency called the Board of Criminal Justice of which the Governor is always a member may exercise the pardoning power. In some cases, the Governor's power is so limited as to render an arbitrary exercise impossible."

Side by side with the rules relating to pardon, there are certain matters which the courts consider to be relevant in examining the justification or otherwise of the exercise of pardoning power. On various occasions the courts were called upon to pronounce the principles as to the manner in which the Executive could exercise its pardoning power. The statutory provisions sanctioning the pardoning power and the judicial decisions on the subject act as the corpus juris of the pardoning power 01 the Executive in India.

In India, the Constitution provides for the pardoning powers of the President at the Union level and of the Governors at the State level.

Article 72 of the Constitution dealing with the powers of the President says, "The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- In all cases where the punishment or sentence is by a court martial;
- !in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the Executive power of the Union extends;
- In all cases where the sentence is a sentence of death."

Article 161 of the Constitution dealing with the pardoning powers of the Governors says, "The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the Executive power of the State extends."

(b) Pardoning Power under the Statutes

While the Constitution provides for the powers of the chief executive at the Union and the State levels, the Statutes dealing with the substantive and procedural matters of criminal justice provide for the powers of the Government to exercise the pardoning powers.

According to the Corpus Juris Secundum, "the pardoning power is founded on considerations of public good and is to be exercised on the ground that the public welfare, which is the legitimate object of all punishment will be as well promoted by a suspension as by an executive of the sentence. It may also be used to the end that justice be done by correcting injustice as where after-discovered facts convince the official or board invested with the power that there was no guilt or that other mistakes were made in the operation or enforcement of the criminal law. Executive clemency also exists to afford relief from undue harshness in the operation or enforcement of criminal law."

The American Jurisprudence explaining the philosophy of pardoning power says, "Every civilized country recognizes, and has therefore provided for the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality, and in that attribute of Deity whose judgments are always tempered with mercy."[66]

"The Indian Penal Code, 1860, which is a general law of crimes dealing the substantive matters of criminal justice, provides in Sections 54 and 55 of the Indian Penal Code confer power on the appropriate Government to commute sentence of (tenth or sentence of imprisonment for life as provided therein."[67]

The Code of Criminal Procedure which is also a general law dealing with procedural matters of criminal justice, contains the following provisions about commutation of offences by Government:-

1. Sec.432: Power to suspend or remit sentences:

(1) "When any person has been sentenced to punishment for an offence, the appropriate

[66]American Jurisprudence, page 5.
[67]Sections 54 and 55 of the Indian Penal Code, 1860

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 an 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 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 the 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 favor 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 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 other person on his behalf shall be entertained unless the person sentenced is in jail."

2. Section 433: Power to Commute Sentence:

"The appropriate Government may without the consent of the person sentenced, commute

(a) a sentence of death, for any other punishment provided by the Indian Penal Code,1860;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine."

3. Section 433-A: Restrictions on powers of remission or commutation in certain cases: "Notwithstanding anything contained in Section 432 where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by law or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

4. Section 434 confers concurrent power on the Central Government in case of death sentence. Section 435 provides that "the power of the State Government to remit or commute a sentence where the sentence is in respect of certain offences specified therein will be exercised by the State Government only after consultation with the Central Government."

(a) The situations in which the Executive at the Union or the State level may exercise the powers laid down in the above provisions:

Sections 434 and 435 dealing with the powers of the Executive at the Union and the State level in regard to the powers enshrined in the above provisions of the law provide as follows:

Section 434 :Concurrent Power of Central Government in case of death sentences:

"The powers conferred by Sections 432 and 433 upon the State Government may, in the case of sentence of death, also be exercised by the Central Government."

Section 435: State Government to act after consultation with the Central Government in certain cases:

1. "The powers conferred by Sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

2. which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act,[68] or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

3. which involved the misappropriation or destruction of, or damages to any property belonging to the Central Government ,or

[68]1946 (25 of 1946)

4. which was committed by a person in the service of the Central Government, while acting or purporting to act in the discharge of his official duty, a. Shall not be exercised by the State Government except after consultation with the Central Government.

5. No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which related to matters to which the executive power of the Union extends, and who has been sentenced to separate term of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentence has also been ma Hs by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends."

"The President, the Governor, the Central Government and appropriate State Governments have power to grant pardons or to commute the sentence of death, under Articles 72 and 161 of the Constitution and certain relevant provisions of the Code of Criminal procedure, 1973. The President of India is authorized to grant pardon or commute the sentence of death under Article 72 of the constitution. The Governors also have concurrent powers to commute the death sentence under Article 161, similarly, the appropriate State Governments and the Central Government have powers to commute the death sentence respectively under Sections 433 and 434 of the Code of Criminal Procedure, 1973".

These chief mercy arrangements, in the expressions of Taft, C.J exist, to bear the cost of help from excessive cruelty or apparent misstep in the activity or authorization of the Criminal Law since organization of equity by courts isn't really consistently astute or positively chivalrous of conditions which may appropriately moderate blame.

It may be observed that the sentence of 'death' as it is administered, is inflicted very sparingly with utmost care and caution to minimize mistakes and mitigate harshness in the operation or enforcement of the criminal law in India.

4.7. SAFEGUARDS UNDER THE HUMAN RIGHTS LAW

(i) "Obligation of States to be Transparent In 1998 the UN Commission on Human Rights called upon all states that retained the death penalty, "to make available to the public information with regard to the imposition of the death penalty".

A comparative goal was likewise passed in 2003. The UN Economic and Social Council

(ECOSOC) as well, in 1989, encouraged part states, "to distribute, for every class of offense for which capital punishment is approved, and if conceivable on a yearly premise, data about the utilization of capital punishment, including the quantity of people condemned to death, the quantity of executions really completed, the quantity of people under sentence of death the quantity of death penalties switched or drove on offer and the quantity of examples in which leniency has been allowed"

The UN exceptional correspondents on extrajudicial synopsis or discretionary executions have additionally centered around straightforwardness as a critical worry at the 2005 Commission of Human Rights in Geneva. The journalists, Philip Alston noted.

4.8 CONCLUSION

In a significant number of nations data concerning capital punishment is shrouded in mystery. No insights are accessible as to executions, or regarding the numbers or personalities of those confined waiting for capital punishment, and little, if any data is given to the individuals who are to be executed or to their families. Such mystery is contrary with basic freedoms guidelines in different regards. It sabotages large numbers of the protections which may work to forestall mistakes or mishandles and to guarantee reasonable and only methodology at all stages.

CHAPTER 5

IMPLEMENTATION OF CAPITAL PUNISHMENT IN INDIA AND ANALYSIS BY JUDICIAL SYSTEM

5.1 INTRODUCTION

Social interest in an edified society lies in a quiet and secure air, which is administered by law and order. A man has free decision to follow either great or wickedness. On the off chance that he picks evil, he is liable for his decision consequently welcoming fitting discipline. To force just discipline is vital as society can't be kept the privilege from getting self-protection in a got way. To dream for tranquil and systematic culture, the innate wrongs created in people should be dispensed with for wellbeing and solace of others. It is surely a despairing critique upon an enlightened society for having neglected to get by. A campaign to vanquish fiendish upsetting the ethical fiber of society, for protection of equity, exemplary nature, human existence and to make a respectable, compassionate society, the discipline being a lasting cycle has gone in assorted ways driving towards the current day legitimate vessel where human existence is more hallowed than the days of yore. What was discipline for a minor wrongdoing in bygone eras is today discipline for a significant wrongdoing. The death penalty is the most noteworthy discipline for any wrongdoing. Regardless of there being changed disciplines for fluctuated wrongdoings from one age to another, wrongdoing is pervasive in each general public. The adequacy of discipline has been supported in each general public with just special case that the unforgiving disciplines have been pretty much killed from the Code and evil is treated in cause in the greater part of the violations. Despite the fact that not in all, the barbarity breeds barbarity appears to have been perceived and the human flight is by all accounts administering the day where condemning is seen as an interaction of reinstructing a criminal consequently restoring him in order to return him in the general public as a dependable resident. The comprehensive perspective on condemning still can't seem to kill the seriousness in wrongdoings which are savage and deceptive misfortunes meriting awful judgment and are so stunning to the human inner voice that curse of extreme discipline gets compelling. The brutality and the human flight couldn't change the shade of violations.

5.2. EFFICACY OF PUNISHMENT

Life is always sweet and death is always cruel. A man is accountable for his acts and a penalty is the sanction that supports accountability. The punishment is a dynamic process in a given society so as to know about its objectives. The question arises as to the efficacy of the 'Punishment' from past to present generation.

Questions arise - Is 'punishment' in its varied forms an artificial danger for the society? - Is it meant for creation of effective deterrence or re-education of the convict so as to make him a responsible person of the society? Is it a mean of repairing the wounds made upon collective sentiments? And/Or, is it a decree of vengeance in favor of State necessary for maintaining the law and order?

Ideally, "a Criminal Law is a command, usually a prohibition, against anti-social conduct; that is to say, against conduct which will interfere with the order and smooth and satisfactory running of the society, and any such explanation of the law demonstrates the necessity that there should be such laws, otherwise chaos would come again. It is of the nature of such a law that practically everybody is ordered to obey it"[69].

"What, then, is to happen if an individual disobeys the law? And the first answer to this surely must be that something must be done to demonstrate that the law is a law, and not a mere request, or pious opinion of what conduct is appropriate. Law is not a law, at any rate in modern times, without a sanction. This we may call punishment. Punishment is required to vindicate the law"[70].

1 "Crime is a dynamic concept and its denotative meaning changes with the growth of society both from the point of view of direction and dimension. What is not crime today may be 'crime' tomorrow, or what is a crime of insignificant gravity today may be of high gravity tomorrow. Naturally, the prescription of punishment also changes accordingly"[71].

[69]CODDINGTON, F.J.O, Problems of Punishment, THEORIES OF PUNISHMENT, STANLEY E. GRUPP (ed), 333-336 (LONDON INDIANA UNIVERSITY PRESS 1971)
[70]Id., p. 337

[71]MITRA, N.L., A New Question on Penal Law, CRIMINAL LAW & CRIMINOLOGY, K.D. GAUR 72 (2002 DEEP & DEEP PUBLICATIONS PVT. LTD.

5.3. REFERENCE TO THE LAW COMMISSION OF INDIA

On reference by the Parliament, the "Law Commission of India" broadly considered, in its 35th report, the issue of maintenance or annulment of capital punishment. After incredible conversation, the Law Commission inferred that "having respect to the conditions in India, to the assortment of the social-childhood of its occupants, to the uniqueness in the degree of profound quality and instruction in the country, to the incomprehensibility of its space, to the variety of its populace and to the vital requirement for keeping up rule of peace and law in the country at the current crossroads, we do not figure that the nation can chance the test of annulment of the death penalty".

5.3.1 Development after 35th report

After accommodation of the 35th report, it was normal that the contention will be put to rest however indeed the improvement at transnational and territorial level drove nullification of capital punishment in one country to another and it likewise kept on touching off the fuel looking for annulment of capital punishment in India in spite of their being expansion in crime percentage and coming into picture more wrongdoings inside the extent of our criminal equity framework.

It is pertinent to mention here that after six years of the 35th Report, unsuccessful challenge was made to the constitutional validity of capital punishment before the "Supreme Court" in *"Jagmohan Singh v. State of UP"*[72]. Subsequent to the decision in Jagmohan Singh's case, three developments took place i.e. firstly, the 1973 Cr.P.C. amendment came into existence that [under Section 354(3)] required special reasons to be mentioned for inflicting death sentence; secondly, in *Maneka Gandhi v. Union of India*[73] the Supreme Court of India held that "every law of punitive detention both in its procedural and substantive aspects must pass the test of reasonableness on a collective reading of articles 14, 19 and 21 of the Constitution of India". In *Rajendra Prasad v. State of U.P.*[74], the Court held that "the special reasons necessary for imposing the death penalty must relate not to the crime but to the criminal. It could be awarded only if the security of the state and society, public order and the interests of the general public compelled that course". Thirdly, there was a development at international level. The International Covenant on Civil and Political Rights, 1966 came into force in 1976 and India

[72]AIR 1973, SC 947
[73]1978 AIR 597
[74]1980, SC 898

being signatory to this covenant committed itself to the progressive abolition of death penalty. Therefore, a need had arisen for consideration of the constitutional validity of the death penalty. Finally, all these aspects fell for consideration before a five Judge Bench of the Supreme Court in *Bachan Singh v. State of Punjab*[75]. In Bachan Singh, the Court considered the suggestions (aggravating circumstances) given by the learned counsel concerning the crime as follows:

"Aggravating circumstances: A court may, however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed—

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) If the murder is of a person who acted in the lawful discharge of his duty under section 43 of the code of criminal procedure 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said code."

The court for the considered mitigating circumstances (concerning the accused) as suggested by the learnt counsel as follows:

"Mitigating circumstances- in the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

1. That the offence was committed under the influence of extreme mental or emotional disturbance.

2. The age of the accused. If the accused is young or old, he shall not be sentenced to death.

[75]AIR 1980 SC 898

3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

4. The probability that the accused can be reformed and rehabilitated. The state shall by evidence prove that the accused does not satisfy conditions (3) and (4) above.

5. That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

6. That the accused acted under the duress or domination of another person.

7. That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

For aggravating circumstances, the Court observed that "there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other." For mitigating circumstances, the Court observed that "we will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence."

The majority view of judges in this case affirmed the decision in *Jagmohan Singh* and overruled *Rajendra Prasad* insofar as it sought to restrict the imposition of death penalty only in cases where the security of the state and society, public order and the interests of the general public were threatened. The Court observed that "judges should never be bloodthirsty. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed." The Court held[76] that "the provision of death penalty as an alternative punishment for murder is not unreasonable and is in public interest. The impugned provision in section 302 Indian Penal Code violates neither the letter nor ethos of Articles 19 or 21 of the Constitution. The normal sentence for murder is life imprisonment and the sentence of death can be passed only in gravest cases of extreme culpability."

"In *Machhi Singh*, the "rarest of rare cases" formula emerged in *Bachan Singh* once again engaged attention of the Court as the identification of the guidelines spelled out in that case in order to determine whether or not death sentence should be imposed was

[76] Jagmohan singh v UOI & others on 19 july,2016 CWP No. 8678 of 2016

creating problem and required to be addressed. The Court noted the reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence in no case doctrine as under":

"1. When a member of the community violates the 'reverence for life' principle, on which the very humanistic edifice is constructed, by killing another member, the society may not feel itself bound by the shackles of this doctrine.

2. When ingratitude is shown instead of gratitude by 'killing' a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. But the community may sanction death penalty in the rarest of rare cases when its collective conscience is shocked."

The Court further noted that "in rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power Centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(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) When the murder is committed for a motive which evinces total depravity and meanness; e.g., murder by hired assassin for money or reward, or cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride

burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-à-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community."

"The Court noted the following guidelines which emerged from *Bachan Sing**h*** will have to be applied to the facts of each individual case where the question of imposition of death sentence arises":

"(*i*) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) 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 be struck between the aggravating and the mitigating circumstances before the option

is exercised."

The Court further observed that the following questions may be asked and answered as a test to determine the 'rarest of rare' case in which sentences can be inflicted:

"(*a*) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favor of the offender?"

The Court finally held that "if upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest or rare case, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

Finally, the Supreme Court streamlined death sentencing regime in *Bachan Singh* which was further strengthened in *Machhi Singh*. It was supposed that the law relating to capital punishment stood streamlined. However, on analysis of the cases, it is true that the decisions in both these cases have not been followed uniformly in subsequent decisions thereby giving room for disparity in sentencing by different Benches in similar cases. Few more decisions of the Supreme Court came into being narrowing the path settled by *Bachan Singh* and *Machhi Singh*. In certain similar cases, different punishments have been awarded by different Benches of the Supreme Court of India thereby giving way to the opinion that decisions in death sentence cases have become judge-centric.

Despite there being very articulated decisions in *Bachan Singh* and *Machhi Singh,* the constitutional validity of death penalty has been challenged time and again in the Supreme Court of India. One such challenge came for consideration in *Shashi Nayar v. Union of India*[77]and it was urged that the view taken in *Jagmohan Singh* and *Bachan Singh* is incorrect and therefore it requires reconsideration by a larger bench. However, the appeal was dismissed.

It is pertinent to mention here that there have been very cases where the Supreme Court has put the guidelines in the abovementioned celebrated decisions into the dock. In *Aloke Nath Dutta*[78], the Supreme Court noticed different decisions by different Bench on similar facts and also

[77]Shashi Nayar v. Union of India, (1992) 1 SCC 96

[78]Aloke Nath Dutta v. State of W.B., (2007) 12 SCC 230

growing demand in the international fora for abolition of death sentence. The Court also put a question that in absence of a sentencing policy in clear cut terms, what would constitute a rarest of rare case. In *Swamy Shraddananda*[79]**,** the Supreme Court observed that "the inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results and the overall larger picture gets asymmetrical and one sided and presents a poor reflection of the system of criminal administration of justice."

The Court further found it necessary "to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission" and held that "this would only be a reassertion of the Constitution Bench decision in *Bachan Singh* besides being in accord with the modern trends in penology." In *Santosh Kumar Satishbhushan Bariyar*[80], the Court observed that "the claim of sentencing to being a principled exercise is very important to the independent and unpartisan image of judiciary." The Court further noticed international development on death penalty and desired to have a credible up-to-date research by Law Commission of India or National Human Rights Commission. In *Mohd. Farooq Abdul Gafur*[81]**,** the Supreme Court once again noted the disparity in capital sentencing and observed that there has to be an objective value to the term "rarest of rare", otherwise it will fall foul of Article 14. In *Sangeet*[82]**,** the Supreme Court observed that "though *Bachan Singh* intended "principled sentencing", sentencing has now really become Judge-centric and this aspect of the sentencing policy seems to have been lost in transition, therefore, not only does the aggravating and mitigating circumstances approach need a fresh look but the necessity of adopting this approach also needs a fresh look in light of the conclusions in *Bachan Singh*." The Court further dealt with the provisions of Section 432 and held that "the appropriate Government cannot be told that it is prohibited from granting remission in his sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever be the reason[83]. In *Shankar Kisanrao Khade*[84]**,** the Supreme Court observed that "while the standard applied by the judiciary is that the rarest of rare principle (however subjective or judge - centric it may be in its application), the

[79]Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767

[80]Santosh Kumar Saishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498

[81]Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641

[82]Sangeet v. State of Haryana, (2013) 2 SCC S452

[83]It is pertinent to mention here that the ruling of the Supreme Court in ***Sangeet*** disagreeing with ***Swamy Shraddananda (2)*** and holding that the Court cannot prohibit the State from granting remission came to be overruled by the Supreme Court in ***V. Sriharan***.

[84]Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546

standard applied by the executive in granting commutation is not known. This may also need to be considered by the Law Commission of India". In *Ashok Debbarma*[85], the Supreme Court observed that "arbitrariness, discrimination and inconsistency often loom large when we analyze some of the judicial pronouncements awarding sentence. Of course, it is extremely difficult to lay down clear cut guidelines or standard to determine the appropriate sentence to be awarded. Even the ardent critics only criticize, but have no concrete solution as such for laying down a clear-cut policy in sentencing."

5.3.2. 262nd Report:

The decisions in *Bariyar* and *Khade* led the Law Commission of India to once again study (in its 262nd Report) "the issue of the death penalty in India to allow for an up-to-date and informed discussion and debate on the subject". The Law Commission also examined the observations of the decisions in *Aloke Nath Dutta, Swamy Shraddananda (2), Gafur, Sangeet* and *Debbarma***.** The Law Commission of India had an occasion to reappraise the death sentencing regime in India by doing some empirical research with new techniques and to bring out some effective suggestions but whole exercise went in vain. The Law Commission in a surprising way recommended "abolition of death penalty for all crimes other than terrorism related offences and waging war". The Law Commission noted that "nevertheless, education, general well-being, and social and economic conditions are vastly different today" and that the decline in murder rate raises question about deterrent effect of death penalty. In opinion of the Researcher such a statement is nothing but an *ipsi dixit* of the learned members of the Law Commission. The Researcher has examined decisions of the Supreme Court, Law Commission's 35th Report, pre-*Bachan Singh* and *Machhi Singh* decisions and thereafter till 2015. By passage of time, India has developed a lot and avowedly socio-economic conditions have improved, with ups and downs in rural and urban areas. But what's the impact of this improvement is need to be examined seriously. The Supreme Court in *Mofil Khan*[86]observed that criminal justice reform and civil rights movement in India has historically only paid considerable attention to the rights of the accused and neglected to address to the same extent the impact of crime on the victims. The Law Commission seems to have failed to examine the circumstances prevailing in India. The Report lacks credible

[85]Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747

[86]Mofil Khan & Another v. State of Jharkhand, (2015) 1 SCC 67

research having no up-to-date discussion and debate on the subject and therefore, the Report rejected on merits.

The Law Commission of India in its 262nd report on the issue in question has failed to resolve the concern shown by the Supreme Court in *Aloke Nath Dutta, Swamy Shraddananda (2), Gafur, Sangeet* and *Debbarma*. Therefore, the debate remains at the same footing. It is also worthwhile to notice that some members of the Law Commission, including Ms. Justice Usha Mehraand ,Shri P.K.Malhtora, Secretary, Ex-Officio Member, Law Commission of India, favored retention of death sentence. Dr. Sanjay Singh, Secretary, Ministry of Law & Justice, desired to get the matter examined further so as to find out what would constitute "rarest of rare case". It is also pertinent to mention here that the Report was submitted to the Government of India on 31st August 2015. It may also be noticed from the report that Dr. Sanjay Singh gave his opinion on 28th August 2015. It also finds mentioned in the opinion of Shri P.K. Malhotra that the report was circulated to him for his opinion only on 29th August 2015. Having regard to these facts, the report if seen from this viewpoint also appears to be questionable.

The 262nd Report is pending consideration with the Government. The Report needs to be rejected by the Government.

5.4. CURRENT SITUATION OF CAPITAL PUNISHMENT IN INDIA

In response to the COVID-19 pandemic, courts all over the country were limited in their functioning. This resulted in a drop in the number of death sentences imposed in 2020, with 77 death sentences imposed by trial courts, involving 76 prisoners, compared to 103 sentences in 2019. However, this is not the lowest number of death sentences imposed in a year. As per available data, this took place in 2001 at 66 death sentences imposed.

About 62% of the death sentences this year were imposed before the lockdown was first announced. The 48 death sentences imposed in the first three months of 2020 were more than double the number of death sentences imposed in 2019 in the same period, which saw 20 death sentences imposed in that time. Even 2018, which saw the highest number of death sentences imposed in two decades, had far fewer death sentences imposed, with 27 imposed in the same time period.

Due to the impact of the pandemic, there was a significant drop in the number of death penalty

cases decided by the appellate courts as well. High Courts across the country decided 30 cases, with the death sentence being confirmed in three cases and commuted in 17 cases. Five cases were remitted and five resulted in acquittals. The Supreme Court passed judgments in multiple proceedings in a total of five cases with one case resulting in the execution of four convicts. Two of these five cases involved the offence of rape and murder, two involved kidnapping with murder and one involved murder simpliciter.

In 2020, the proportion of death sentences imposed by trial courts for crimes involving sexual offences was the highest in five years at 65%, an increase of 11.54% since 2019. In particular, in 48% of cases involving sexual violence, the victims were below the age of 12, with 18% of such cases having adult victims. It would appear that sexual violence, particularly child rape, is increasingly defining the enforcement of the death penalty in India.

"Mukesh, Akshaya Kumar Singh, Vinay Sharma and Pawan Kumar were executed on 20th March 2020 for the gangrape and murder of a woman in Delhi in December 2012. The last execution prior to this was the execution of Yakub Memon in July 2015"[87].

"The Maharashtra Cabinet approved a Bill to introduce death penalty for non-homicidal rape of adult women and acid attacks, which has been referred to a joint select committee of the Legislative Assembly. The Andhra Pradesh legislature passed an amended version of a similar bill, first introduced in December 2019, with the death penalty clause for such offences since excluded. The bill is now awaiting Presidential assent. These proposed laws represent the continued legislative expansion of the death penalty for non-homicide offences that began with amendments to the Indian Penal Code and the Protection of Children from Sexual Offences Act in 2018 and 2019 respectively"[88].

"2020 saw the highest proportion of sexual violence cases in five years, with 65% of the total death sentences imposed by trial courts involving cases of sexual violence. Execution was carried out in India after gap of four years. Mukesh, Akshaya Kumar Singh, Vinay Sharma and Pawan Kumar were executed on 20th march 2020 in Tihar jail for the gangrape and murder of a young women in December 2012. A bill introducing the death penalty for the non-homicidal rape of adult women and acid attacks was approved by the Maharashtra cabinet and is pending consideration by a joint select committee. The Andhra Pradesh legislature passed revised version of a similar bill with the death penalty clause for similar offences since excluded, now awaiting Presidential assent"[89].

[87] Project 39A national law university delhi
[88] Project 39A NLU D
[89] Project 39A NLU D

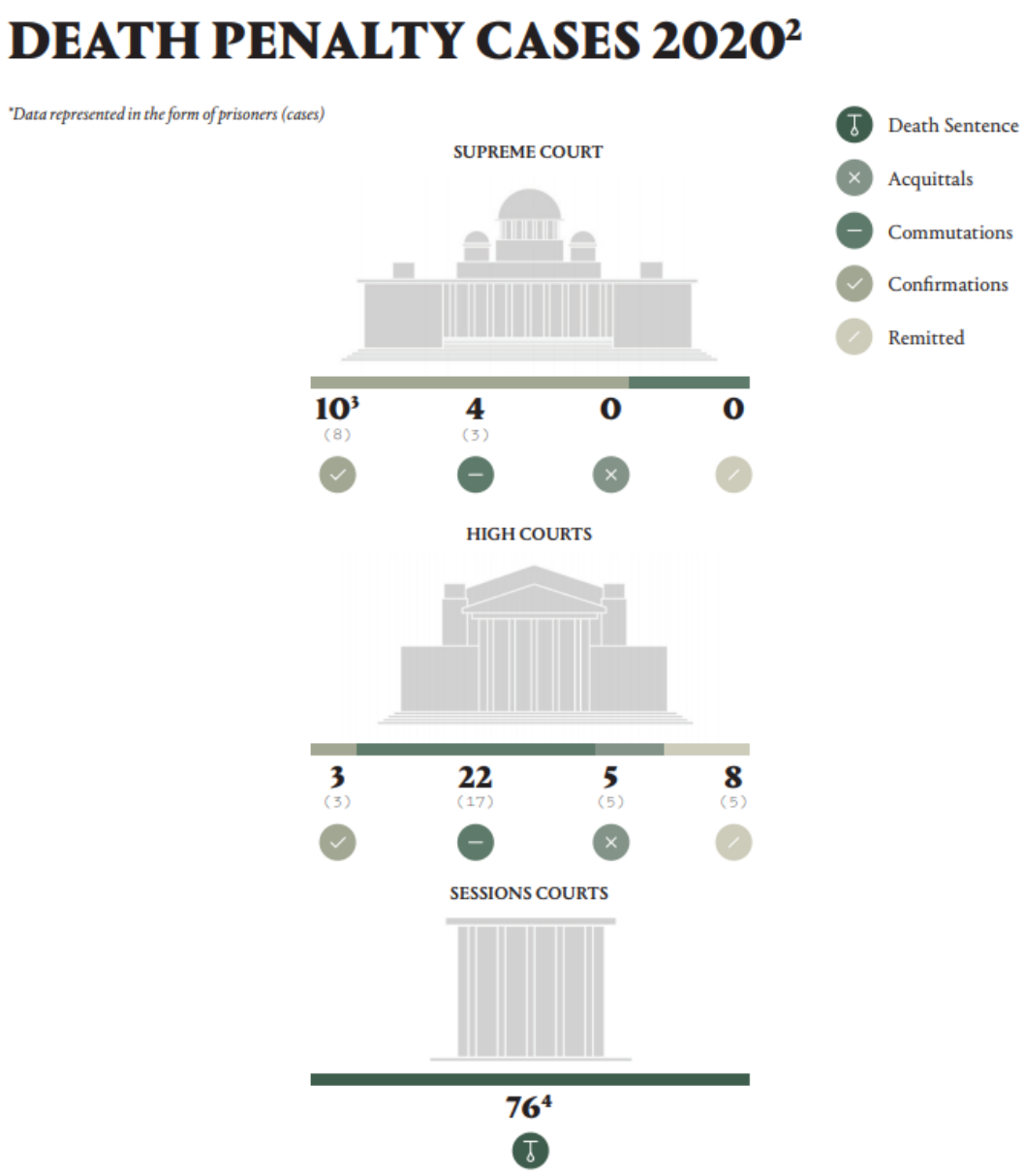

DEATH PENALTY CASES 2020[2]
*Data represented in the form of prisoners (cases)
Death Sentence
Acquittals
Commutations
Confirmations
Remitted
SUPREME COURT
10[3] (8)
4 (3)
0
0
HIGH COURTS
3 (3)
22 (17)
5 (5)
8 (5)
SESSIONS COURTS
76[4]

Figure 1

STATEWISE DISTRIBUTION OF PERSONS ON DEATH ROW

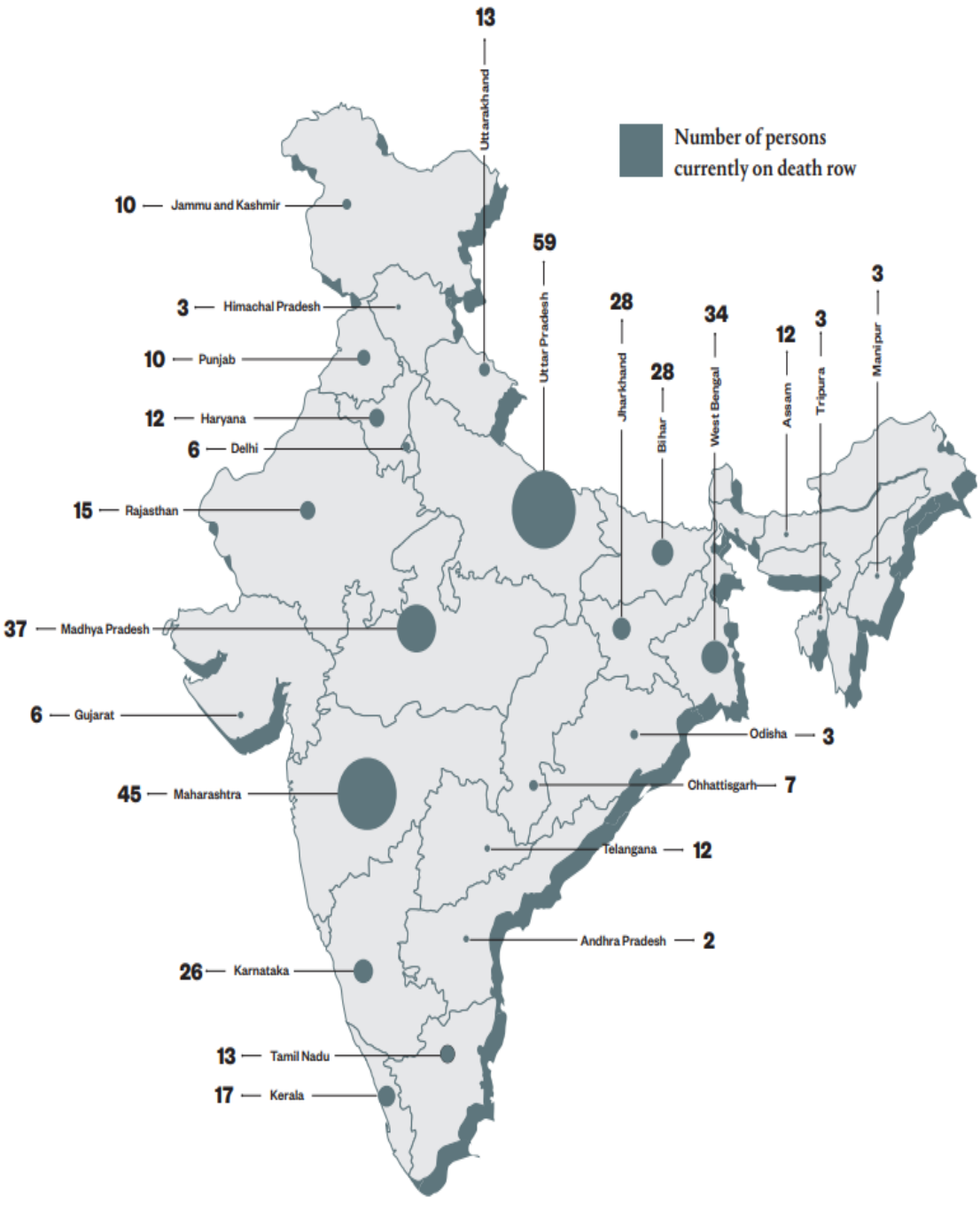
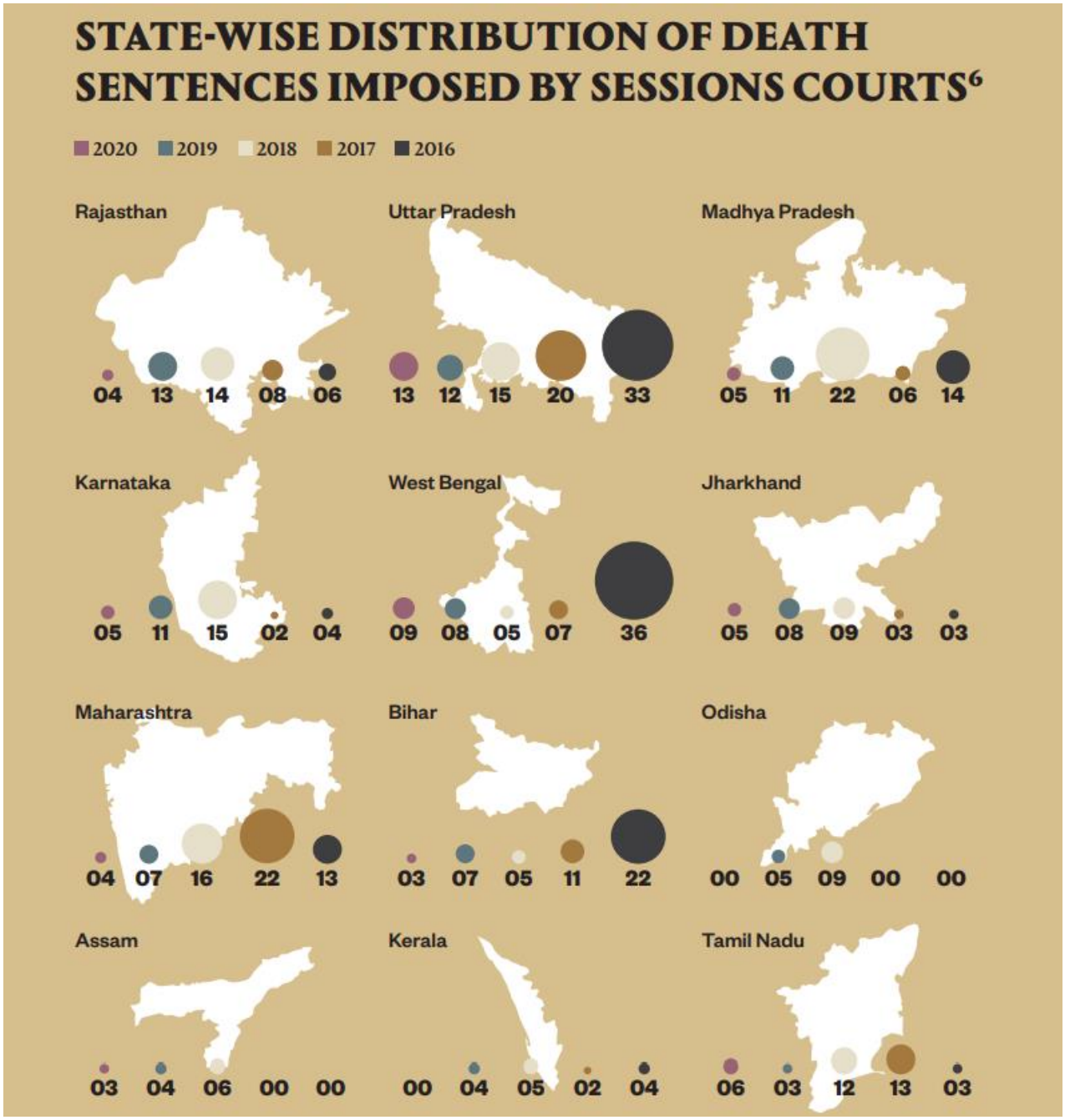


Figure 2


STATE-WISE DISTRIBUTION OF DEATH SENTENCES IMPOSED BY SESSIONS COURTS[6]
2020 2019 2018 2017 2016
Rajasthan
04 13 14 08 06
Uttar Pradesh
13 12 15 20 33
Madhya Pradesh
05 11 22 06 14
Karnataka
05 11 15 02 04
West Bengal
09 08 05 07 36
Jharkhand
05 08 09 03 03
Maharashtra
04 07 16 22 13
Bihar
03 07 05 11 22
Odisha
00 05 09 00 00
Assam
03 04 06 00 00
Kerala
00 04 05 02 04
Tamil Nadu
06 03 12 13 03

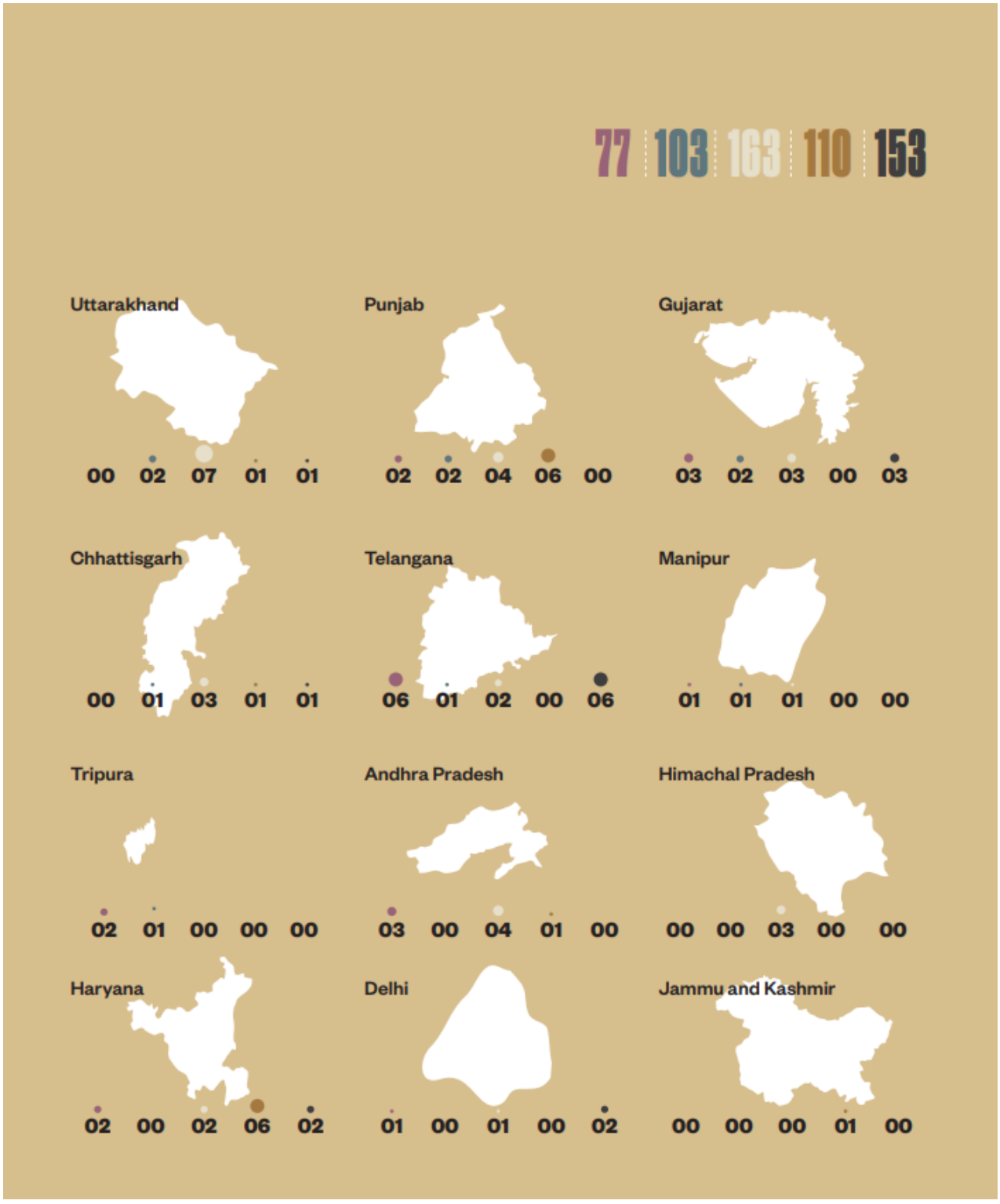

77 103 163 110 153
Uttarakhand
00 02 07 01 01
Punjab
02 02 04 06 00
Gujarat
03 02 03 00 03
Chhattisgarh
00 01 03 01 01
Telangana
06 01 02 00 06
Manipur
01 01 01 00 00
Tripura
02 01 00 00 00
Andhra Pradesh
03 00 04 01 00
Himachal Pradesh
00 00 03 00 00
Haryana
02 00 02 06 02
Delhi
01 00 01 00 02
Jammu and Kashmir
00 00 00 01 00

Figure 3

5.5. ANALYSIS OF SUPREME COURT DECISIONS IN 2020

In 2020, Supreme Court passed orders of capital punishment in 5 cases. In 3 cases, capital punishments forced on Manoj Suryavanshi, Arvind Singh, Rajesh Daware, Shatrughna Baban Meshram were driven to life detainment of different terms. 51 death sentences forced into cases on Mukesh Vinay Sharma Pawan Kumar and Akshaya Kumar Singh just as Shabnam and Salim were confirmed in 2020.

5.5.1.Confirmations

- *Saleem v. State of Uttar Pradesh*[90] *with Shabnam v. State of Uttar Pradesh*[91]

Case History – "Shabnam and Saleem were convicted by the Sessions Judge, Amroha for the murder of seven persons of Shabnam's family under sections 302 read with 34 of the Indian Penal Code. They were sentenced to death by the same court on 15th July 2010. The sentence was confirmed by a division bench of the High Court of Allahabad comprising Justices Amar Saran and SC Agarwal on 26th April 2013. A three-judge bench of the Supreme Court dismissed the appeals filed by the appellants. The arguments before the Supreme Court were restricted to the issue of the sentence imposed. It was argued on behalf of the appellants that since the case relied on circumstantial evidence (such as forensic reports and call records of the appellants) and no eyewitness accounts had been relied on, the death sentence should not have been imposed. Additionally, the young age of the appellants, their mental stress caused due to the opposition of their family to their marriage and Shabnam's pregnancy at the time of commission of the crime were argued as mitigating circumstances."

"The Court held that while determining the sentence between life imprisonment and death, a link between contemporary community values and the penal system ought to be made. In doing so, the evolving standards of public morality and consciousness must be looked at. It was held that the crime of parricide had shaken the society. In addition, the Court considered numerous aggravating factors- the victims being the family members of Shabnam, the magnitude, motive for and manner of the commission of the crime, and the remorseless attitude of Shabnam and Saleem. The Court dismissed mitigating factors of young age and Shabnam's pregnancy. It was held that the extreme

[90]Saleem v. State of U.P. and Ors., Criminal Misc. Writ petition No. 5858 of 2020
[91]Shabnam v. State of U.P. , 2015 SCC Online

culpability in this case merited the sentence of death, which would be an appropriate punishment. The appeal was dismissed."

Supreme Court (Review Petition)

The review petition was restricted to examining the sentence imposed. The Court, while confirming the sentence, held that the death sentence could not be overturned on grounds raised including that of the petitioners such as earning higher academic qualification, learning embroidery or tailoring skills and otherwise observing good conduct in jail. The Court observed that Shabnam committed the offence despite being well educated and being employed as a teacher. The Court found no error apparent on the face of the record, the standard for consideration of review petitions by the Supreme Court.

5.5.2. Commutations

- *Manoj Suryavanshi v. State of Chhattisgarh*[92]

Case History- "Manoj Suryavanshi was convicted and sentenced to death for the kidnapping and murder of three children under sections 302 and 364 of the Indian Penal Code by Upper Sessions Judge, Ms. Neeta Arora on 4th May 2013. The sentence was confirmed by a division bench of the High Court of Chhattisgarh comprising Justices Yatindra Singh and Pritinker Diwaker on 8th August 2013."

Supreme Court (Criminal Appeal)

The Supreme Court commuted the death sentence of the accused, sentencing him to life imprisonment without the possibility of remission for 25 years. The argument that the sentence merited a commutation as it was a case of 'same day sentencing,' i.e., the conviction and sentencing orders were passed on the same day, thereby violating section 235(2) of the Code of Criminal Procedure, was rejected. Reliance was placed on ***Accused X v. State of Maharashtra***[93] to hold that the requirement under the provision would be sufficiently complied with as long as the accused had been given a sufficient opportunity to present their case on sentencing. The Court added that there was no proposition of law mandating that a sentence would be vitiated if the sentence was imposed on the same day as the conviction.

[92]Manoj Suryavanshi v. State of Chhattisgarh, SLP (Crl.) Nos. 8682/2014
[93](2019) 7 SCC 1

The Court considered mitigating factors such as extreme mental disturbance caused to the accused, good conduct in prison and lack of criminal antecedents. It placed emphasis on the appellant being in a state of extreme mental disturbance at the time of commission of the crime. These mitigating factors collectively outweighed the sole aggravating factor- brutality of the offence. Though the conviction under sections 302 and 364 of the Indian Penal Code was sustained, the death sentence was converted into a sentence of life imprisonment. The Court clarified that 'life' meant the end of the natural life of the prisoner with no possibility of remission till the prisoner completed 25 years of imprisonment.

- *Arvind Singh v. State of Maharashtra*[94]

Case History – "Arvind Singh and Rajesh Daware were convicted for kidnapping and murder of a child under sections 364A, 302, 201 and 120-B read 34 of the Indian Penal Code by Mr. KK Sonawane, Sessions Judge, Nagpur on 30th January 2016. Death sentences were imposed on both accused under sections 364A and 302 by the same court on 4th February 2016. On 5th May 2016, the conviction and sentence were confirmed by a division bench of the High Court of Bombay (Nagpur Bench) comprising Justices BR Gavai and Swapna Joshi."

Supreme Court (Criminal Appeal)

The Supreme Court, in the criminal appeal, upheld the conviction but converted the death sentence to life imprisonment. The Court did not consider the argument that a higher standard of proof known as 'residual doubt,' which was over and above the 'beyond reasonable doubt' ought to be imposed in this case. Young age of the accused and the absence of criminal antecedents were also not considered as mitigating factors. However, the Court observed that the accused had the potential to reform and rehabilitate. It further held that the case was not a 'rarest of rare' case which had shocked the collective conscience of the community and therefore did not merit the death sentence. Death sentences imposed on Arvind Singh and Rajesh Daware were commuted to life imprisonment, without the possibility of remission for 25 years of imprisonment.

- *Shatrughna Baban Meshram v. State of Maharashtra*[95]

Case History- "Shatrughna Baban Meshram was convicted and sentenced to death by Mr. AC Chaphale, Additional Sessions Judge, Yavatmal for the rape murder of his niece under sections 376 (1) and (2), 376A and 302 of the Indian Penal Code and Section 6 of the Protection of

[94]Criminal Appeal No. 1515 - 1516 of 2017
[95]Appeal (Crl.) 763 - 764 of 2016

Children from Sexual Offences (POCSO) Act on 14th August 2015. A division bench of the High Court of Bombay (Nagpur bench) comprising Justices BR Gavai and Prasanna B. Varale confirmed the sentence on 12th October 2015. Supreme Court (Criminal Appeal) On appeal, the Supreme Court commuted the death sentence to life imprisonment. However, the conviction was sustained. Though the conviction was based on circumstantial evidence (such as the post mortem report and the DNA analysis report), the Court held that the circumstances establishing the complicity of the appellant-accused stood proved beyond reasonable doubt and excluded all other hypotheses other than the guilt of the accused. Since the appellant was sentenced to death by the trial court on the same day on which he had been convicted, the defense argued that this violated section 235(2) of the Code of Criminal Procedure, warranting a commutation of the death sentence. While rejecting this argument, the Court relied on ***Dagdu v. State of Maharashtra***[96]and held that adequate and sufficient opportunity had been afforded to the accused to place all relevant material on record and the plea that his rights under Section 235(2) had been violated was untenable. The Court further examined the possibility of imposing the death sentence in a case that relied solely on circumstantial evidence. The defense argued that since the case relied on circumstantial evidence, applicability of "residual doubt" in this case was rejected. The court held that the theory of residual doubt would not be applicable in cases in which the conviction was based on circumstantial evidence as the burden in such cases is already of a very high magnitude. However, it held that though the circumstantial evidence establishing the guilt was unimpeachable, sentences alternate to the death penalty had not been foreclosed".

The Court commuted the sentence to life imprisonment, observing that death sentences are rarely given for convictions under the "fourth" clause to Section 300 of the Indian Penal Code which deals with culpable homicide amounting to murder without there being any intention to murder. The death sentence imposed for an offence under section 376A for committing rape that resulted in murder was also converted to rigorous imprisonment for 25 years stating that the provision had been enacted a few days before the crime was committed.

[96](1977) 3 SCC 68

CHAPTER 6

CONCLUSION, RECOMMENDATIONS/SUGGESTION

6.1. CONCLUSION

- The death penalty is an exceptionally discussed matter. It is lawful however once in a while decided in favor of in India. The death penalty is a legitimate cycle where an individual is executed by the state as a discipline for a wrongdoing. The legitimate decisions that someone be repelled in this manner is a death penalty, while the genuine strategy of butchering the individual is an execution. Bad behaviors that can achieve a death penalty are known as capital infringement or capital offenses. Capital punishment is a procedure for retributive control as old as human advancement itself. Capital punishment is the cruelest type of discipline, which is condemned in number of cases in certain nations. The death penalty empties the individual's mankind and with it any shot of recuperation and their giving something back to society". "Order is a correspondence to wrongdoers, of what they have done isn't right, and allows them an opportunity to apologize and change."

- "Capital Punishment is a repeal of the principal right, "Right to Life". It is our major right cherished under Article 21 of the Constitution of India. Presumably, the pleasure in this privilege is liable to intrigue of individuals. The state may in this way interfere in the area of these rights for the benefit of everyone".

The death penalty is acknowledged in India from days of yore. It is pretty much as old as the Hindu society. The organization of criminal justice as a vital piece of the sovereign elements of the State didn't appear to have arisen in India till the smriti period. The credit goes to smritis, generally Manu, moreover to the Artha Sastra of Kautilya in making association of criminal value as a significant part of the sovereign limit of the State. In any case, Artha Sastra was not a Penal Code. Thusly, it doesn't have a sensible schematization. In the Buddhist messages in like manner, references to the death penalty were found. The death penalty was stylish for the offenses of good

turpitude. Muslim period denotes the start of another time in the legitimate history of India. The social arrangement of the Muslims depended on their religion".

- The "organization of equity through official courtrooms, is essential for the sacred plan, under which it is for the adjudicator to articulate judgment and sentence and it is for the chief to authorize it. Articles 72 and 161 of the Indian Constitution enables the President or the Governor, by and large, to concede pardons and furthermore suspend, transmit or drive sentences, in specific cases. For Nanavati's situation the Supreme Court held that the force of exoneration and lesser forces of relief, suspension and so forth, could be practiced by the chief heads previously, during or after the preliminary".

- "Dreadful people ought to persevere." This is a breaking point brand name, "anyway it gets the substance of a significantly normal idea: people who have submitted chargeable wrongs merit their lives to go more lamentable likewise. Why do they justify it? Perhaps because it's not sensible for the existences of offenders to go well when the existences of the unadulterated have gone ineffectually – discipline makes everything reasonable. Whatever the explanation, "retributivists" – the people who believe in vengeance – battle that the control of culprits is normally significant; it is huge without help from anyone else, rather than beneficial taking into account its extraordinary outcomes (for example, deflecting future bad behavior)".

- "Whether or not rebuking executioners and hoodlums no affected reducing the overall bad behavior rate, retributivists will in general trust it's at this point the legitimate action. Retributivists similarly accept that the reality of order should facilitate the earnestness of the bad behavior. Along these lines, likewise as it isn't on the whole correct to over-repel someone (executing someone for several shoes), it cannot be more right than wrong to under-rebuke someone (giving him a gathering advantage orchestrate slaughter)".

- "Discipline passes on to guilty parties that what they have done isn't right, and allows them an opportunity to apologize and change. “There is a wide scope of varieties of this view: educative, open, rehabilitative – and there are basic differentiations between them. Notwithstanding, the principal thought is that control should impact the violator to appreciate what the person has messed up and inspire her to apologize and change".

- Capital Punishment, "from the arguments made under Chapter 5 and 6 is by all accounts

vile , as individuals neglect to get help from great legal advisors to battle for their sentence. A genuine thought should be made on nullification of the death penalty. For a layman, the state was and is, the state or leader over life and demise".

- "The capital punishment is the cruelest discipline, which can be utilized in various cases in certain nations. A couple of individuals reinforce such kind of order and induce that solitary such limit exercises can keep the overall population in prosperity and give security. People believe that seeing without question discipline another people would be hesitant to execute bad behaviors. It's simply a solitary viewpoint, there is another that is absolutely converse and maybe it's more suitable for the developed society with principles of humankind and strength. The exercises of the state are the situation of the lead for the different people. Using the death penalty as an order the state pulls down the moral guidelines".

- "It isn't just a practical conversation of authenticity and defendability of the death penalty yet also the great and social points that are related to this problematic subject that have brief wide perplexity in such manner. Keeping perpetually the subject of law, the subject of the death penalty needs to take into examinations factors, for instance, open assessments on one hand and tussle with the moral issue of the "blow for blow" rule on the other. Additionally, it is known to us that mistake in making decisions is just accommodating and some of the time allowing somebody another opportunity resembles giving them a slug again on the grounds that they missed you the first run through".

- **Bernard Shaw**[97] "Criminals do not die by the hands of the law. They die by the hands of other men. Assassination on the scaffold is the worst form of assassination because there it is invested with the approval of the society. Murder and capital punishment are not opposites that cancel one another but similar that breed their kind".

6.2. SUGGESTIONS

- Capital Punishment is imposed on the poor, uneducated, underprivileged, and minorities. Legal Aid now provided in India is for the poor advocates who cannot have earnings on par with senior advocates. The Government shall of an advocate thus engaged substantially according to his regular charges but not a statutory fee .

[97]Bernard Shaw, Irish playwright and co-founder of the London School of Economics

- Instead of legislating execution provisions for Capital Punishment, it would be better to look for alternatives which will not put an end to "Right to Life".

- Life Imprisonment is the best alternative to death penalty, where life convicts are expected to serve the remaining period of their sentence are not only reformative in nature but, a very income to the government. Now, the retentionists need not complain that keeping murderers behind the bars would cost more for the public exchequer .

- Causing death to an individual may become inevitable at times as circumstances. In such cases strict legal safeguards must be provided to curtail the abuse .

- The prime object of a State should be towards prevention of crime and reformation of its citizens but not to put an end to life of the person. And now maintenance of law-and-order judiciary is also playing a vital role. No law violator should go unpunished. Prevention and control of criminality in society is essential function of judiciary. The court in not bound to be influenced by law and administer it .

- In India, SC thought “it necessary to restrict the imposition of capital punishment to a very limited use. From, Bachan Singh's case, the SC innovated and suggested a new doctrine "rarest of the rare" case where death penalty can be used. The court left it to the judiciary to use its discretion in cases of imposition of death penalty when they find no other alternative .”

- The hanging of Yakub Memon gives us a good reason to start the debate over the death penalty. I would like to make out a case in favor of retaining the death penalty. The main arguments trotted out in favor of the abolition of capital punishment are these. First, we should not be party to taking precious human life. Second, condemning somebody to death when certainties may later demonstrate him or her pure means unsalvageable foul play will be finished. Third, passing is never an obstruction. What's more, a fourth, that retaliation ought to never be the point of the death penalty. It is crude and brutal to look for death notwithstanding for the most exceedingly bad violations .

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