"AN URGENT NEED TO RETHINK THE PROVISIONS OF DEATH PENALTY"

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DISSERTATION SYNOPSIS

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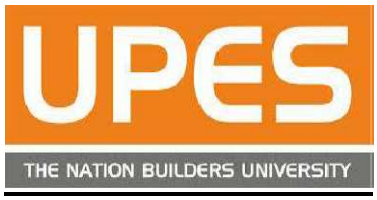

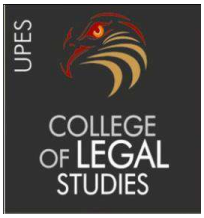

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ABSTRACT

Capital punishment is an outcome of the different theories of punishment. However, it is a matter of active controversy worldwide. Debates regarding the retention and abolition of such activities have been in news now and then. Such decisions are dependent on a country's social, economic, cultural situation and development, political ideologies of the parties forming the government in the respective countries etc. The term is debated in the light of the fact that when the government or the state is going to make the execution of someone because something wrong has been done by the person or the contravention of all that has taken place or the law has been breached on the grounds where the serious nature offence like murder and rape has emerged, then this the very term is elaborated and make effective at times.

Hence, there is ***an urgent need to rethink the provisions of death penalty.***

CERTIFICATE

It is certified that the work incorporated in this dissertation, "**AN URGENT NEED TO RETHINK THE PROVISIONS OF DEATH PENALTY**" was carried out by the research candidate under my guidance and supervision. The material obtained from other sources has been duly acknowledged in the dissertation. It is further certified to the best of my knowledge that it is her original work.

Place: Dehradun _____

(Supervisor)

DECLARATION

I, the undersigned, hereby declare that the research work done on the topic entitled **"AN URGENT NEED TO RETHINK THE PROVISIONS OF DEATH PENALTY"** is written and submitted under the guidance of Dr. Mamta Rana, Assistant Professor, College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

The findings and conclusions drawn in the Dissertation are based on the data and other relevant information collected by me during the period of my research study for the award of B.A. LL.B Hons. Degree from University of Petroleum and Energy Studies, Dehradun.

I further declare that the dissertation submitted on the research study is my original work and I have not copied anything from any report of this nature while preparing this dissertation. Neither the work nor any part thereof is published in any journal or anywhere else.

Place: Dehradun

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APOORVA

ACKNOWLEDGMENTS

"*God gives us life to decorate it with knowledge. Life without knowledge is like river without water.*"

The gratification and elation on the completion of this Dissertation will be incomplete without mentioning all the people who helped to make it possible, whose guidance and encouragement was valuable for me.

I convey my heart-full gratitude to **Dr. Mamta Rana**, Assistant Professor, College of Legal Studies for her valuable guidance, constant encouragement and valuable suggestions, without which the present study would not have come to its present shape. I have no words indeed to express my deep sense of gratitude toward her for her encouragement. I express my sincere and heartiest thanks to my teachers, my colleagues, my friends and my parents who has been a constant source of inspiration for me in completing the Dissertation to its rightful path. I am grateful to all present faculty members of law for providing all the required academic facilities in accomplishing my research work.

Last, but not the least, I thank my institution, **University of Petroleum and Energy Studies, Dehradun,** for giving me the opportunity for developing the Dissertation.

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CHAPTERS

INTRODUCTION

Capital punishment has been a matter of active controversy. The researcher would give a brief idea in regard to the same. The theories of punishments would also be explained. The term is explained in the light of the fact that when the government or the state is going to make the execution of someone because something wrong has been done by the person or the contravention of all that has taken place or the law has been breached on the grounds where the serious nature offence like murder and rape has emerged, then this the very term is elaborated and make effective at times.

STATEMENT OF RESEARCH PROBLEM

Capital Punishment has been a matter of active controversy worldwide. Retention and abolition of such activities depend upon a country's social, economic and cultural situation, development, political ideologies of the parties forming such government etc. It should depend upon the crime and the criminal. Some countries follow it for treason, murder etc as part of military justice while some other use it for religious and sexual crime. According to an 18^{th} century philosopher Immanuel Kant "But whatever has committed crime, must die. There is, in this case, no juridical substitute or surrogate, than can be given or taken for the satisfaction of justice. There is likeness or proportion between life, however painful, and death; and therefore, there is no equality between crime of murder and the retaliation of it but what is judicially accomplished by the execution of the criminal." However, a view that retribution is simply revenge and cannot be condoned. So, the issue is whether capital punishment is a deterrent punishment or retributive justice or serves as an incapacitative goal or not.

OBJECTIVE OF THE STUDY

To prove that the doctrine of 'rarest of rare' is good enough of a qualification to decide the punishment and conclude as said by the Supreme Court[1] that the nature and gravity of the crime but not the criminal which are germane for consideration of appropriate punishment in a criminal trial.

RESEARCH QUESTIONS

1. Whether capital punishments should be abolished or not? And why?
2. Whether the modes of executions should be upgraded after scientific development to new modes or not?

HYPOTHESES

1. Capital Punishment should not be abolished to paramount the need for maintaining law and order at present juncture and it should not be unendurable and deplorable.

2. Modes of executions should be upgraded to newer methods.

[1] Ravji @ Ram Chandra vs State of Rajasthan (1996) 2 SCC 175 (paragraph 24)

REVIEW OF LITERATURE

1. **KK Geetha, Revisiting Rape Laws- Need of the Hour, *Nirma University Law Journal*, Volume III, Issue I, page 91, July 2013**

The author discussed rape laws and the distress and psychological damage that is caused to a victim of rape destroying her to the fullest and making her life unendurable. The Indian laws are criticised and said that revisiting the substantive and procedure laws is the need of the hour. Further, the amendments required in the substantive and procedural laws, with specific reference to the Criminal Law (Amendment) Bill, 2012 is discussed in detail.

2. **V. Venkatesan, A case against the death penalty, *Frontline – A commemorative issue,* Volume No.2, page 134, September 2012**

This article starts with instance when the Indian judicial system confesses its wrong judgement in front of the President and request him to commute the punishment of 13 convicts who were erroneously sentenced to death and later were rendered per incuriam and against the dictum of "rarest of rare" pronounced in Bachan Singh v State of Punjab[2] The case of Santosh Kumar Bariyal v State of Maharashtra [3] and Rajesh Kumar v State [4] are discussed. The execution of Ravji Rao and Surja (both from Rajasthan) on May 4, 1996 and April 7, 1997 respectively are grieved for. The concept of "rarest of rare" is further discussed to be given prime importance. However, the circumstances mitigating the crime and the criminal should also be taken into consideration. The presidency tenure of Pratibha Patel and Pranab Mukherjee is also compared.

[2] (1980) 2 SCC 684
[3] (2009) 6 SCC 498
[4] (2011) 13 SCC 706

This piece of literature clearly supports the provision of death penalty. But it also gives an idea to the judges to look into the circumstances leading to the criminal and the crime while giving final pronouncements especially which results in sentence of death penalty.

3. **Vishesh Garg, Death Penalty Still It Is Not The Time To Dissent Macualay, *A Journal of Chandraprabhu Jain College Studies & School of Law*, Volume II, July 2012**

The writer, in this article, has opted out a mid path regarding the relevant issue. He extends a *conditional support to death penalty*. He explains Article 21 of the Constitution of India, the dissenting judgement of Justice Bhagwati in Bachhan Singh v State of Punjab[5], the procedure established by law and its defects. Various cases like the Indira Gandhi's assassination [6] and that of Pandurang[7] have been discussed in details. The sentences given to the convicts, is termed as "judicial murder" by the writer. Further, the Law Commission's 35th Report is also studied and few recommendations are given by the said writer in his 'conditional support'.

4. **Akhilendra Kumar Pandey, Mandatory Death Sentence: A Comparison of Judicial Perception, *The Banaras Law Journal*, Faculty of Law, Volume 41, 2012**

The author introduces by explaining the Indian position with respect to the topic concerned. He says that the penal statutes of several countries in the world had the provision of mandatory death sentence for certain categories of offences but gradually such provisions under the influence of modern penology were found to be out of date either on the ground of inhuman, degrading and cruel treatment or that it violated the principle of separation of power or the power of judicial review.

[5] AIR 1982 SC 1325
[6] Keher Singh v State, Delhi Administration (1988) 3 SCC 609
[7] Pandurang v ST. of Hyderabad 1955 SCR (1) 1083

The provision of mandatory death sentence existed in the Indian Penal Code, 1860 which was declared unconstitutional as the court found it unjust, unfair and in violation to the Article 21 of the Constitution. Despite the fact that the mandatory death sentence did not receive the approval of the Supreme Court of India on earlier occasion, in 1988 the Parliament amended the Arms Act and incorporated mandatory death sentence in various jurisdictions.

CHAPTERISATION

Introduction

Capital punishment has been a matter of active controversy. The researcher would give a brief idea in regard to the same. The theories of punishments would also be explained. The term is explained in the light of the fact that when the government or the state is going to make the execution of someone because something wrong has been done by the person or the contravention of all that has taken place or the law has been breached on the grounds where the serious nature offence like murder and rape has emerged, then this the very term is elaborated and make effective at times.

1. **Historical perspective**

   The researcher attempts to study the historical background of death penalty as to where and how it started. This is done so as to have a better understanding of the concept and in formation a conclusion.

2. **Present scenario and relevant legislations**

   The existing substantive and procedural law like the Indian Penal Code,1860, Criminal Procedural Code, 1973, Indian Evidence Act, 1872, Arms Act, 1959, 35th Law Commission Report,1967 and 187th Report on mode of execution, 2003, the Criminal Amendment Act, 2013, Juvenile Justice (Care And Protection of Children) Act, 2000 etc. are to be studied in detail.

3. **International guidelines**

International guidelines like the ICCPR, United General Assembly Resolution 62/149, UN Convention on Rights of Child etc will be discussed.

4. Mode of Execution

The substantial question of here raised is the method of executions, process of eliminating difference in judicial opinions among judges of apex court in passing sentence of death penalty and need to provide a right of appeal to the accused to the Supreme Court in death sentence matters and the 187th Report on Mode of Execution, 2003 will be refereed by the researcher.

5. Judicial Perception

Under this head, various cases like the Jagmohan Singh, Bachhan Singh Singh, Panduranga and other landmark judgements would be discussed and presidency tenure will be discussed to understand the past and the present course over such an important topic.

6. Law Commissions and Reports

The 35th Law Commission Report, 1967 and 187th Report on mode of execution, 2003 and The Law Commission Report NO. 262, 2015 etc would be analysed and explained by the researcher.

Conclusion / Recommendations

The question that whether death penalty is a deterrent punishment or retributive justice or serves as an incapacitative goal will be answered and suggestion as to approach a mid path and follow the dictum of the 'rarest of the rare' with proper precautions to carry out the ultimate goal i.e. justice.

CHAPTER - 1

INTRODUCTORY

1.1 Introduction

Ever since there has been crime, there has been punishment. Capital punishment is one of the punishments existing from the beginning of the society. It is the execution of the perpetrator for committing a heinous crime and is a hotly debated topic. A dispassionate analysis of the criminological jurisprudence reveals that capital punishment is justified only in extreme cases in which a high degree of culpability is involved causing grave danger to the society. It is awarded for capital offences involving planned murder, multiple murders, rape and murder etc., wherein the criminal provisions consider those criminals are danger to the society and impose death penalty. All through history civilisations have utilized capital disciplines as method for keeping social request and in addition retaliation. Many cultures throughout ages have used capital punishment and accepted the idea that certain crimes deserved such a punishment.[8] Ancient Roman and Mosaic Law authorised the thought of retribution and believed in the rule of "an eye for an eye", "tooth for a tooth" and "a life for a life".

In the same way the ancient Egyptians, Assyrians and Greeks all executed citizens for a variety of crimes. The most prominent people executed are Socrates and Jesus. Most of death sentences involved torture, such as burning at stake, breaking on the wheel, slow strangulation and many more severe punishments, but as humanitarian movement grew in strength the intensity of the punishments have reduced.[9] At present common modes of execution of death sentences prevalent in different parts of the world include electrocution, shooting, guillotine, gas chamber, hanging and lethal injection. The death penalty has been utilized as a successful weapon of retributive equity for quite a long

[8] "Areti Krishna Kumari, *Death Penalty: New Dimensions,* The ICFAI University Press, Hyderabad, 2007. (p. 69)"

[9] N.V. Pranjape, *Criminology and Penology,* 12th Edn., Central Law Publications, Allahabad, 2006. (p. 27)

time. The defence contended that it is lawful to give up the life of a man who takes away other's life. A man who slaughters another must be dispensed with from the general public and along these lines the rationale in capital punishment for sure incorporates retribution which is a compensatory and reparatory fulfillment for a harmed party. The trepidation of being sentenced to death is maybe the best obstacle to keep the guilty party far from culpability.

Abolitionists of capital punishment argue that it leads to miscarriage of justice and life imprisonment is better substitute. They also put forward a view that it violates the right to life of a criminal.

The adoption of Universal Declaration of Human Rights, 1948 is the first attempt by the international community towards abolishing the death penalty or simply minimising the use of it. Since the declaration in December 1948, 118 Member States have abolished death penalty either in law or in practice. After 15 years the International Covenant on Civil and Political Rights came into force and the General Assembly in 1989 adopted an optional protocol to the Covenant which aimed at abolition of death penalty. Despite international efforts to restrict the use of death penalty on children, capital punishment is still being applied to juvenile offenders, although it is clearly against the provisions of the Covenant and the convention of the rights of child.

It may be reiterated that capital punishment is undoubtedly against the notions of modern rehabilitative process of treating the offenders. It doesn't offer an opportunity to the offender to reform himself. That apart, on account of its irreversible nature, many innocent persons may suffer irredeemable harm if they are hanged wrongly. As a matter of policy the act of taking another's life should never be justified by the State except in extreme cases of dire necessity. Therefore, it may be concluded that though capital punishment is devoid of any practical utility yet its retention in penal law seems expedient keeping in view the presence circumstances when the incidence of crime is on a constant increase.

1.2 Punishment

Punishment may be said to be an evil inflicted on an offender by persons in authority. More than a century ago, Hobbes defined punishment in his book 'Leviathan'(1651) in similar way. However, punishment may be justified, if at all, as the least bad use of coercion in the name of securing public safety, in the idea that the gain in security, the satisfaction of living in a secure society outweighs the loss in punishment, which involves intentionally causing harm to offenders. In short, an increase in public safety achieved through general deterrence and individual reformation of convicted offenders.

However, as per our Indian Law or IPC[10], the object of discipline is to shield society from insidious and undesirable components by stopping potential guilty parties, by keeping the genuine wrongdoers from reforming so as to confer further offenses and transforming them into reputable natives. It is additionally stated that regard for law becomes to a great extent out of restriction to the individuals who disregard the law. People in general abhorrence a criminal and this aversion is talked as discipline. The object dislikes a criminal and this dislike is expressed in the form of punishment. The "object of punishment has been very well summarized by "Manu", the Great Hindu law-giver, in the following words:

"Punishment governs all mankind; punishment alone preserves them: Punishment wakes while their guards are asleep; the wise considers the punishment ("danda") as the perfection of justice."[11]

The aim of protecting society is can be tried to be achieved by application of the theories of punishment, namely deterrent, preventive, retributive, reformative and compensation theory.

[10] Indian Penal Code, 1860
[11] Institutes of " Hindu Law (translated by Haughton, G.C. 1835)" Ch,7, para 18, p 189

a) Deterrent Theory

This hypothesis says that the discipline not just tries to keep the wrong practitioner from doing the wrong a second time additionally to make him a case to other people who have comparative criminal propensity of doing any criminal demonstration.

"Salmond considers deterrent aspects of criminal justice to be the most important for control of crime.[12] To quote a judge:

'I do not punish you for stealing the ship, but so that the ship may not be stolen.' "

Hence, the ultimate aim of this theory is to set an example of the evil doer for the likeminded people. The commission of every offence should be made a bad bargain.

This theory of deterrence was the basis of laws and punishments in England during the medieval period. Even for minor offences like pick picketing and stealing very harsh punishments were given sp as to create terror in the minds of the people and the criminals. In India, the penalty of a death sentence or or other severe punishments of like nature as the cutting of the limbs was imposed for simple and petty offences of the forgery and stealing during the Mughal period.[13]

b) Preventive Theory

The object of this punishment is avoidance or disablement and the offenders are afraid from repeating the crime by giving punishments of death, forfeiture of an office. According to Paton,

"The preventive theory concentrates on the prisoner and seeks to prevent him from offending again in the future. The death penalty and exile serve the same purpose of disabling the offenders"

[12] Salmond on Jurisprudence, 12th Ed. , (1996 by P.J. Fitzgerald) , pp 94-100
[13] P.K. Sen, Penolog Old and New(T.L.L 1929) pp. 90-91, for the concept of punishment in the Hindu reign Law Commission of India, 42nd Report on IPC (1971) pp 41-81

The discipline undermining this hypothesis is to have undesirable impact on the primary guilty parties, or adolescent wrongdoers, when detainment is the discipline, by placing them in the relationship of solidified crooks.

c) Retributive Theory

The principle under this theory "is 'an eye for an eye' 'a tooth for a tooth' 'a nail for a nail' was the basis of the criminal administration.[14] "

It gratifies the instinct for revenge or retaliation, which exists not merely in the individual wronged, but also in society at large. In modern times the idea of private revenge has been forsaken and the state has come forward to effect revenge in place of the private individual. But critics of the retributive theory point out that punishment per se is nit a remedy for the mischief committed by the offender. "Discipline in itself is an under handedness and can be legitimized just on the ground that it yields better results. Reprisal is equity gone wild."

d) Reformative Theory

According to this hypothesis, the object of the discipline is the reorganization of crooks. It is kept up that discipline would change the culprits and trepidation would be introduced in the psyches of the crooks that if rehashed, no chance of reorganization would be given. The circumstances under which he carried out the wrongdoing may not happen once more.

The punishment intends to reform the offender and the criminal should be educated and trained some art, craft or other industry. Even if the offender does a crime, he does not cease to be a human being and 'to err is human'.

The hypothesis is reprimanded that if the culprits are sent to jail to be changed into great resident, a jail will never again be a "jail" however an abode house. The thought process ought not be relinquished through and through for the reformative methodology since the changeless impact of criminal law contributes to a great extent to the upkeep of moral,

[14] Shiv Ram v State of Uttar Pradesh, Air 1998 SC 49: (1998) 1 SCC 149: 1997 CrLR 790 (SC): 1998 CrLJ 76.

good and social propensities that dodge any yet the anomalous and subnormal individual from carrying out wrongdoing.

e) Multiple Approach Theory

This theory suggests that no single theory will be adequate for any society. "A mixed approach should be taken and all the theories should be a combined to be applied to the people depending upon the situations and type of crime."

The object of any indulgence given to an offender should be to convince him that normal and free life is better than life in jail. The establishment of open jails on the model of Dr. Sampurna Nand Jail and improvement of living conditions in jail would be better serve the purpose of remedy.

Narotam Singh Case

The Supreme Court decided in the case of Narotam Singh v State of Punjab,[15] and rightly said "that reformative approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to secure social justice." However, as cautioned by Justice Krishna Iyer of the Supreme Court in M.H. Hoskkot v State of Maharashtra:[16]

"The Court should not confuse the correctional approach with prison treatment and nominal punishment verging on decriminalization for serious social and economic offences. For instance, the award of sentence till rising of the Court in case of an offence of counterfeiting University certificated by a highly educated professor is mockery on criminal justice system. The Court which ignores the grave the injury to society implicit

[15] AIR 1978 SC 1542: Air 1978 SC 1542: (1979) 4 SCC 505: 1979 UJ 369: 1979 CrLJ 1612. The accused appellant businessman, charged of bigamy was directed to pay Rs. 40,000 and cost of Rs. 500 to the complainant wife in lieu of 2 years of rigorous imprisonment and the offence was compounded.. Rs 5,000 compensation for sexual aberration and breaking up of thee matrimonial home was also provided.

[16] Air 1978 SC 1548: (1978) 3 SCC 544: (1979) 1 SCR 192: CrLJ 1678. The accused, Reader in the Saurashtra University, holding M.Sc. and Ph.D degrees from Karnataka University, was convicted for offence of attempting to issue counterfeit University degrees. It was held that the award of sentence by the Sessions Court till the rising of the Court was too lenient.

in economic crimes by the upper berth mafia ill serves social justice. Soft sentence justice is gross injustice when many innocents are the potential victims."

CHAPTER – 2

STATUTORY ASPECT OF CAPITAL PUNISHMENT

2.1 Introduction

Provisions regarding death penalty are given in Indian Penal Code, 1860, Criminal Procedure Code, 1973 and the Unlawful Activities (Prevention) Act, 1963. Further the Constitution of India empowers "the President or the Governor, as the case may be, to grant pardon, and also to suspend, remit or commute sentences in certain cases. The executive heads can exercise this power before, during and after the trial. "

Before the year 2004 death penalty could be awarded under the Prevention of Terrorism Act, 2004. The Prevention of Terrorism Act, 2002 (POTA) was an anti-terrorism legislation enacted by the Parliament of India in 2002. The act replaced the Prevention of Terrorism Ordinance (POTO) of 2001 and the Terrorist and Disruptive Activities (Prevention) Act (TADA) (1985–95), and was supported by the governing National Democratic Alliance. The act was repealed in 2004 by the United Progressive Alliance coalition.

Presently for different offences capital punishment is provided under the Indian Law and the legislations are discussed below.

2.2 HISTORICAL PERSPECTIVE

The term death penalty is interpreted by the individuals and a mixture of reaction comes. Hence, the researcher attempts to look into the history of death penalty in India and the worldwide.

This is a disputed topic which has forced the many countries to abolish the capital punishment as per their laws. However, there are about one third of the countries where

the death penalty is allowable and the countries like USA, JAPAN and Iran are its best examples.

In pre-constitutional India, an attempt was made by Shri Gaya Prasad Singh for the introduction of a Bill abolishing death penalty from Indian Penal Code, 1860 in the year 1931. But the attempt went in vain. Later after the execution of Bhagat Singh, Rajguru and Sukhdev by British government, the Congress moved the Resolution in Karachi session for the same. India's constituent Assembly had a long debate on this topic between the year 1947-49 and the first execution in Independent India was that of Nathuram Godse and Narayan Apte in the *Mahatma Gandhi assassination case*[17]. However, one of the prominent things about this was that Dr. B R Ambedkar was in favour of abolition of capital punishment.

"Hanging is the method of execution in the civilian court system, according to the Indian Criminal Procedure Code.[18] Under the 1950 Army Act, hanging as well as shooting are both listed as official methods of execution in the military court-martial system.[19] The number of people executed in India since independence in 1947 is a matter of dispute. The official claims, on behalf of the government, is that only 52 people executed since the independence. The People's Union for Civil Liberties indicates that the actual number of executions is in fact much higher, as they located records of 1,422 executions in the decade from 1953 to 1963 alone.[20] According to a report of the Law Commission of India 1967, the total number of cases in India was executed from 1953 to 1963 was 1,410. "

In 2007 December, India had voted against a United Nations General Assembly resolution calling for a moratorium against death penalty. Again in November 2012, India upheld its stand on the same topic by voting against the United Nation General Assembly

[17] Nathu Ram v Godse vs Crown AIR 1949 East Punjab 341
[18] "Criminal Procedure Code, ch. XXVII, art. 354 (5), 1973"
[19] Army Act, art. 166, Act no. 46 of 1950, May 20, 1950.
[20] "Number of executions much higher than 52", Times of India. 10 March 2005 "

draft resolution seeking to ban death penalty.[21] But ultimately the provision of death penalty is not removed yet.

"The last execution was done in India on the July 30, 2015 hanging of *Yakub Memon*, convicted of financing the 1993 Mumbai bombings.[22] Prior to these hangings, the last three executions to take place in India were the February 8, 2013 hanging of *Muhammad Afzal*, convicted of planning the 2001 attack on India's Parliament, the hanging of 2008 Mumbai attack gunman *Mohammad Ajmal Amir Qasab* on November 21, 2012, and the hanging of *Dhananjoy Chatterjee* in 2004 for the murder and rape of a 14-year old girl.[23] This, in turn, was the country's first execution since 1995. "

India went "8 years without executions before its two executions in November 2012 and February 2013. Both the prisoners had been convicted participating in the terrorist attacks.[24] The executions were carried out after President Pranab Mukherjee swiftly rejected mercy petitions as compared to his predecessors. It can be said that the present President's tenure could mark the beginning of an accelerated rate of executions in India".

Furthermore, the last two executions were marked by unusual secrecy as in neither the prisoner's family nor the public or media was updated regarding the same until the whole execution process had been carried out. This runs counter to prior government exercise and RTI Act, which asks all public authorities to pass on the required information. After

[21] ""General Assembly GA/11331, sixty seventh General Assembly Plenary 60th Meeting" 20th December 2012. Annex XIII Retrieved 30 July 2013"

[22] "BBC, India executes Mumbai bomb plotter Yakub Memon, http://www.bbc.com/news/world-asia-india-33713407, Jul. 30, 2015."

[23] "BBC, Mumbai Attack Gunman Ajmal Qasab Executed, http://www.bbc.co.uk/news/world-asia-india-20422265, Nov. 21, 2012. AFP, Mubai Attacks Gunman Ajmal Kasab Hanged, Dawn, http://dawn.com/2012/11/21/ajmal-kasab-hanged-indian-media/, Nov. 21, 2012. Execution by Hanging to Continue, The Times of India, http://timesofindia.indiatimes.com/Execution-by-hanging-to-continue-SC/articleshow/4746794.cms, Jul. 7, 2009. BBC News, India Carries out Rare Execution, http://news.bbc.co.uk/2/hi/south_asia/3562278.stm, Aug. 14, 2004. Amnesty Intl., Death Sentences and Executions in 2004, p. 1, ACT 50/005/2005, Apr. 4, 2005."

[24] "BBC, Mumbai Attack Gunman Ajmal Qasab Executed, http://www.bbc.co.uk/news/world-asia-india-20422265, Nov. 21, 2012. AFP, Mubai Attacks Gunman Ajmal Kasab Hanged, Dawn, http://dawn.com/2012/11/21/ajmal-kasab-hanged-indian-media/, Nov. 21, 2012. Neha Thirani Bagri, Amid Protests, India Executes Man in '01 Parliament Attack, N.Y. Times, www.nytimes.com/2013/02/10/world/asia/india-executes-man-tied-to-2001-attack-on-parliament.html?_r=0, Feb. 9, 2013."

mercy petitions were rejected by the President, the convict and the petitioners are expected to be well-informed of the decision. "Once an execution date has been fixed, the convict and his relatives are to be notified. Such policies ensure that the prisoner and relatives are able to utilize various judicial remedies to further commute the pending execution.

According to reports, Qasab, who was executed in November 2012, was informed of the date of his execution the day before it took place. Reportedly, "the Union Home Minister and Maharashtra Chief Minister said that the government's actions concerning Qasab's execution were kept secret because they wanted to prevent additional efforts by human rights activists to prevent his execution."[25] There is another debate during the February 2013 hanging of Afzal Guru, whose family was informed of his death by letter two days after the execution took place. "

"The recent executions came up with a trend of gradual abandonment of the death penalty. According to one statistics, India carried out approximately 140 executions per year between 1954 and 1963. Between 1996 and 2000, this rate decreased to roughly 1 execution per year; between 1998 and 2007, there occured only one execution.[26] Over the last 20 years, India has persistently reduced the number of executions it has carried out. In recent years, very few people have been executed."

"However, the scope of the capital punishment as per the law has actually expanded over time. For example, new anti-terrorist legislation since the 1990s has included the death penalty.[27]"

"In early 2013, the punishment of death was expanded to certain instances of rape. Following the brutal *Delhi gang rape* and murder of a 23-year old woman in December

[25] "Yug Mohit Chaundhry, Breach of Procedure, Frontline http://www.frontline.in/stories/20121214292413200.htm, Dec. 1, 2012.
[26] David Johnson & Franklin Zimring, The Next Frontier: National Development, Political Change, and the Death Penalty in Asia, p. 429, Oxford University Press, 2009."
[27] "Amnesty Intl., The Death Penalty in India: A lethal lottery: A study of Supreme Court judgments in death penalty cases 1950-2006 (Summary Report), p. 12, ASA 20/006/2008, May 2, 2008."

2012, a wave of protests came up throughout the country calling for harsher and swifter punishments for rape, which had previously been punished with 7 to 10 years' imprisonment.[28] The Verma Committee, formed by the government to study legislative reforms and headed by former Chief Justice Verma, recommended enhancing the maximum sentence for rape to "the remainder of natural life," but rejected the death penalty as a possible punishment.[29] " "Nevertheless, on February 3, 2013, President Pranab Mukherjee approved an ordinance under which rape is punishable by death if it leads to death or if it leaves the victim in a "persistent vegetative state." [30]" Repeated offenders of aggravated rape also face capital punishment under this ordinance. "The ordinance was strongly criticized by human rights groups for its introduction of capital punishment, its inclusion of vague and discriminatory provisions, and its grant of effective legal immunity to state security forces accused of sexual violence. [31]" "Despite this, the ordinance was passed into law in April 2013 as the Criminal Law (Amendment) Act, 2013. [32]" "A parliamentary panel's recommendations that persons convicted for rape and murder be denied access to clemency proceedings – in contravention of India's obligations under the ICCPR – was not included in the final law.[33]"

Also in response to the December 2012 Delhi rape, several state governments proposed to lower the age for juveniles' eligibility for punishment if convicted to as low as 16 years of age. "One of the six accused in the Delhi rape is a juvenile and will escape harsher criminal punishment because of the current laws that place the bar of adult status at 18

[28] "AFP, India Says May Use Death Penalty as Anger Mounts Over Rape, The News Tribe, http://www.thenewstribe.com/2012/12/23/india-says-may-use-death-penalty-as-anger-mounts-over-rape/, Dec. 23, 2012."

[29] "Sandeep Joshi, Verma Panel says no to death penalty, www.thehindu.com/news/national/verma-panel-says-no-to-death-penalty/article4336046.ece, Jan. 24, 2013."

[30] "BBC News, India president approves tough new rape laws, www.bbc.co.uk/news/world-asia-india-21318648, Feb. 4, 2013."

[31] "Amnesty Intl., India: Reject New Sexual Violence Ordinance, www.amnesty.org/en/for-media/press-releases/india-reject-new-sexual-violence-ordinance-2013-02-12, Feb. 12, 2013."

[32] "Criminal Law (Amendment) Act 2013, sec. 9, Act no. 13 of 2013, 2013"

[33] "Express news service, don't allow clemency for rapists, says Parliament panel, The Indian Express, www.indianexpress.com/news/dont-allow-clemency-for-rapists-says-parliament-panel/1081973/0, Mar. 2, 2013. Criminal Law (Amendment) Act 2013, sec. 9, Act no. 13 of 2013, 2013."

years of age.[34]" "The government confirmed that it would not reduce the age of juvenile offenders before trying him.[35]" If the age of juveniles is legally changed, the heinousness of crimes rather than the age of the convicted could determine punishments rendered. "Hence, those persons under 18 should face the death penalty rather than the maximum of three years in a reformatory centre as stipulated by the Juvenile Justice Act.[36]" "The government has been called on to review the death penalty provision under Clause 3 of the proposed 2012 Piracy Bill." [37] "The Parliamentary Standing Committee is concerned that a death penalty provision would deter foreign governments from cooperating in order to extradite accused pirates." [38]

"There is increasing concern about the incorrect application of capital punishment law. In August 2012, several former judges called on the President to commute the sentences of 13 death row inmates who they say were wrongly sentenced per in curiam, or "out of error or ignorance." [39]"

"In January and February 2014, the Indian Supreme Court emphasized the importance of the clemency process for capital inmates and commuted a total of 22 death sentences. [40]"

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[34] "Indian Express, Lower Juvenile Age Limit to 16 Years: States, http://www.indianexpress.com/news/lower-juvenile-age-limit-to-16-yrs-states/1054852/, Jan. 5, 2013. Indian Express, No Consensus on Death Penalty for Rape, but Parties Juvenile Age Bar at 16, http://www.indianexpress.com/news/no-consensus-on-death-penalty-for-rape-but-parties-want-juvenile-age-bar-at-16/1054497/2, Jan. 4, 2013."

[35] "OneIndia News, Delhi gangrape: Govt won't reduce age of juvenile offenders, news.oneindia.in/2013/02/27/gangrape-govt-saves-juvenile-rapist-age-not-be-reduced-1159735.html, Feb. 27, 2013."

[36] "Himanshi Dhawan, Minors Could Face Death Penalty if Law Amended, Times of India, http://articles.timesofindia.indiatimes.com/2012-12-31/india/36079011_1_violent-crimes-death-penalty-jj-act, Dec. 31, 2012."

[37] "Piracy Bill, 2012, Bill No. 34 of 2012, as introduced in Lok Sabha. PRS Legislative Research, The Piracy Bill, 2012, http://www.prsindia.org/billtrack/the-piracy-bill-2012-2298/, last accessed Dec. 5, 2012. Deccan Hearald, Parliamentary Committee Wants Govt to Review Piracy Bill, http://www.deccanherald.com/content/271978/parliamentary-committee-wants-govt-review.html, Aug. 15, 2012."

[38] "Deccan Hearald, Parliamentary Committee Wants Govt to Review Piracy Bill, http://www.deccanherald.com/content/271978/parliamentary-committee-wants-govt-review.html, Aug. 15, 2012".

[39] "V. Venkatesan, A Case Against the Death Penalty, Frontline, http://www.frontlineonnet.com/fl2917/stories/20120907291700400.htm, Aug. 25, 2012."

[40] "Shatrughan Chauhan & Another vs. Union of India & Others, Judgment, Writ Petition No. 55 of 2013, para. 54, Supreme Court of India, Jan. 21, 2014. V. Sriharan Murugan v. Union of India & Others,

"The Supreme Court reasoned that undue, inordinate, and unreasonable delay in considering mercy petitions constitutes torture." [41] "The Court stated that as per Article 32 of the Constitution, the Supreme Court has the power to commute death sentences into life imprisonment upon undue delay in disposal of mercy petitions." "The court also cancelled the other practices, such as executing individuals with mental illnesses and the use of solitary confinement. In addition, the court determined that the government must carry out post-mortem examinations of executed prisoners to provide the courts with data on the cause of death, which will allow for consideration of whether hanging constitutes cruel and inhuman punishment.[42]" "In late February 2014, the Supreme Court commuted the death sentences of four inmates because the Court determined that they were not beyond reformation."[43] "The decisions came at a crucial time, shortly after India performed its first execution in the last 8 years."

2.3 INDIAN PERSPECTIVE

a) Indian Penal Code

As per IPC, 1860, Section 53 talks about punishment. "The punishment to which offenders are liable under the provisions of this code are-

First- Death;

[Secondly.—Imprisonment for life;]

(Fourthly) —Imprisonment, which is of two descriptions, namely:—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Judgment,Transferred Case No. 3 of 2012, Supreme Court of India, Feb. 18, 2014. The Times of India, Supreme Court Commutes Death Sentences of Four to Life Imprisonment, http://timesofindia.indiatimes.com/india/Supreme-Court-commutes-death-sentence-of-four-to-life-imprisonment/articleshow/31181997.cms, Feb. 28, 2014."

[41] supra

[42] supra

(Fifthly) —Forfeiture of property;

(Sixthly) —Fine."

The penal code in Sections 53[44] to 75 has provided for a graded system of penalty to suit the different categories of offences for which the offenders are liable under it. The "criminal law follows in general to the standard of proportionality in prescribing liability according to the culpability of each type of criminal conduct." It customarily affirms some imperative carefulness to the Judge in touching base at a sentence for every situation, probably to allow sentences that reflect more unobtrusive contemplations of risk that might be raised by the uncommon realities of every case. Judges in soul, insist that discipline should dependably to fit the wrongdoing: however practically speaking sentences are resolved to a great extent by other thought. It is the restorative needs of the culprits that are offered to legitimize sentences, in some cases the allure of keeping him unavailable for general use, and once in a while even the lamentable after effects of his wrong doing. The Law Commission in its 42nd Report considered the question whether any changes are necessary but did not recommend any change regarding the types of punishment. It, however, recommended certain changes only in sections 64 to 59, 71 and 75. The Commission also recommended that a new section 55 should be inserted with effect that the imprisonment for life shall be rigorous. To the same effect are the

[44]The Law Commission in its 42nd Report considered the question whether any changes are necessary but did not recommend any change regarding the types of punishment. It, however, recommended certain changes only in sections 64 to 59, 71 and 75. The Commission also recommended that a new section 55 should be inserted with effect that the imprisonment for life shall be rigorous. To the same effect are the recommendations made by the Law Commission in its 39th Report regarding the punishment of imprisonment for life.
In the Indian Penal Code (Amendment) Bill, 1978, however, certain other types of punishments are proposed to be added in section 53 and these are community service, disqualification from holding office, order for payment of compensation and public censure. In the various workshops held it is highlighted that the punishment of community service is not practicable. It is also voiced that the fine amount fixed many years ago have no relation to the realities to the present changed economic scenario and therefore, an upward revision is necessary. Doubts have been expressed whether the respective punishments, namely, disqualification from holding office and public censure should be included in Section 53. It is said that when there is conviction and Dunishment is awarded, disqualification from holding office gshould automatically be called for by virtue of the service Erules or in view of the regulations governing the management Eff C°VD0rations. Likewise, it was voiced that public censure does not relate to the concept of punishment and, therefore, it would be out of place to include the same in section 53. The National Commission for Women recommended that more severe punishment should be awarded under section 376.

recommendations made by the Law Commission in its 39th Report regarding the punishment of imprisonment for life. In the Indian Penal Code (Amendment) Bill, 1978, however, certain other types of punishments are proposed to be added in section 53 and these are community service, disqualification from holding office, order for payment of compensation and public censure. In the various workshops held it is highlighted that the punishment of community service is not practicable. It is also voiced that the fine amount fixed many years ago have no relation to the realities to the present changed economic scenario and therefore, an upward revision is necessary. Doubts have been expressed whether the respective punishments, namely, disqualification from holding office and public censure should be included in Section 53. It is said that when there is conviction and punishment is awarded, disqualification from holding office should automatically be called for by virtue of the service or in view of the regulations governing the management. Likewise, it was voiced that public censure does not relate to the concept of punishment and, therefore, it would be out of place to include the same in section 53. Further, the following provisions in IPC talk about death penalty:

1) Waging war or attempt to wage war/ abetment (S. 121)[45]
2) Abetting mutiny actually committed (S. 132)[46]
3) Giving or fabricating evidence (false) – resulting in death of innocent person (S.194)[47]

[45] "S121A. Conspiracy to commit offences punishable by section 121. 1*[121A. Conspiracy to commit offences punishable by section 121.--Whoever within or without 2*[India] conspires to commit any of the offences punishable by section 121, 3*** or conspires to overawe, by means of criminal force or the show of criminal force, 4*[the Central Government or any State Government 5***], shall be punished with 6*[imprisonment for life], or with imprisonment of either description which may extend to ten years, 7*[and shall also be liable to fine]."

[46] "132. Abetment of mutiny, if mutiny is committed in consequence thereof.--Whoever abets the committing of mutiny by an officer, soldier, 1*[sailor or airman], in the Army, 2*[Navy or Air Force] of the 3*[Government of India], shall, if mutiny be committed in consequence of that abetment, be punished with death or with 4*[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

[47] "194. Giving or fabricating false evidence with intent to procure conviction of capital offence.--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 2*[by the laws for the time being in force in 3*[India]] shall be punished with 4*[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. If innocent person be thereby conviceted and executed.--and if an innocent

4) Murder- punished with death penalty or Life imprisonment (S.302)[48]
5) Abetment of suicide of a minor or insane or intoxicated person (S.305)[49]
6) Attempt to murder by a person under Life imprisonment if hurt caused (S. 307) [50]
7) Kidnapping for ransom (S. 364 A)[51]
8) Dacoity with murder (S. 396)[52]

Others (in IPC)

9) Criminal conspiracy- to commit offence punishable with death and no punishment is prescribed (S.120A)[53]
10) Joint liability who conjointly commit offence punishable with death- common intention or common object of all (S. 34[54] and S 149[55])

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person be 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."

[48] "302. Punishment for murder.--Whoever commits murder shall be punished with death, or 1*[imprisonment for life], and shall also be liable to fine."

[49] 305. Abetment of suicide of child or insane person.--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 1*[imprisonment for life], or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

[50] knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to 1*[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life-convicts. Attempts by life-convicts.-2*[When any person offending under this section is under sentence of 1*[imprisonment for life], he may, if hurt is caused, be punished with death.]

[51] *364A. Kidnapping for ransom, etc.-Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable appreension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine.

[52] "396. Dacoity with murder.--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 1*[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

[53] "120A. Definition of criminal conspiracy.--When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

[54] "34. Acts done by several persons in futherance of common intention.--When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]"

11) Abetment of offence punishable with death (S.109[56])
12) Delay in execution of death sentence does not by itself entitle communication to life imprisonment (S. 54[57])

b) Other Legislations

1) Indian Air Force Act, 1950
2) Army Act, 1950
3) Navy Act, 1950
4) National Security Guards Act, 1986
5) Indo- Tibetan Border Police Act, 1992
6) Commission of Sati (Prevention) Act, 1987
7) Narcotic Drugs & Psychotrpoic Substance Act, 1985
8) SC & ST (Prevention of Atrocities) Act, 1989

c) Criminal Procedure Code

There is an express chapter under the Criminal Procedure Code, 1973 which clearly talks about sentences and it can be clarified as follows:

The whole chapter can be divided so as to deal with the execution of sentences and further to deal the circumstances in which the appropriate government can suspend, remit, or commute the sentences imposed on the offender.

[55] "149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.--If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

[56] "109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.--Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation.-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

[57] "54. Commutation of sentence of death.--In every case in which sentence of death shall have been passed, 3*[the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code."

The proceeds of execution and every sentence will depend on the nature and type of execution sentence given by the Judge. Death Sentences are exclusively given in Sections 413-426.

Chapter 32 – Execution, Suspension, Remission And Commutation Of Sentences

- 413. Execution of order passed under section 368.[58]
- 414. Execution of sentence of death passed by High Court.[59]
- 415. Postponement of execution of sentence of death in case of appeal to Supreme Court.[60]
- 416. Postponement of capital sentence on pregnant woman.[61]
- 419. Direction of warrant for execution.[62]

[58] "413. Execution of order passed under section 368. When in a case submitted to the High Court for the confirmation of a sentence of death, the Court of Session receives the order of confirmation or other order of the High Court thereon, it shall cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary."

[59] "414. Execution of sentence of death passed by High Court. When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant."

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

[61] "416. Postponement of capital sentence on pregnant woman. 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."

[62] "419. Direction of warrant for execution. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined."

- 426. Sentence on escaped convict when to take effect.[63]

The above[64] provisions clarify that the Court of Session to give effect to the order passed by the High Court on reference being made to it for confirmation of death sentence. In case of death sentence is confirmed, the Court of Session issues a warrant in the prescribed form to the officer in charge of the jail for the proper execution of the sentence. [65] When the death sentence has been executed, the officer executing it shall return the warrant to the Court of Session, with an endorsement under his hand certifying the manner in which the sentence has been executed.[66]

Section 414 is applicable when the death sentence is passed not by a court of session but by the High Court itself, that is, either in appeal against acquittal or for the enhancement of the sentence or in the revision proceedings.

Before the actual execution of any death sentence, the Jail Superintendent should determine personally whether the sentence of death imposed upon any of the co-accused of the prisoner who is due to be hanged , has been committed. If it has been committed, the Superintendent should apprise the superior authorities of the matter, who, in turn, must take prompt steps for bringing the matter to the notice of the court concerned.[67]

As for the postponement of execution of the death sentence, Section 415[68] comes into play. The aim of the provision is clearly to ensure that where there is a possibility of

[63] "426. Sentence on escaped convict when to take effect - (1) When a sentence of death, imprisonment for life or fine is passed under this Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately. (2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict,— (a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately; (b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence. (3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment."

[64] Section 413 CrPC

[65] Public hanging as a mode of execution of death sentence has been held to be unconstitutional in Attorney General of Indnia v Lachma Devi , 1989 Supp (1) SCC 264: 1989 SCC (Cri) 413: AIR 1986 SC 467

[66] Sec. 430, infra para 27.14

[67] Harbans Singh v State of UP (1982) 2 SCC 101: 1982 SCC (Cri) 361, 364: 1982 Cri LJ 795

48 Section 415 – Postponement of execution of sentence of death in case of appeal to Supreme Court

appealing to the Supreme Court, the appeal is not rendered infructous by an unfortunately prompt execution of the sentence of death.[69]

2.4 INTERNATIONAL GUIDELINES

Global measures begin from worldwide instruments and other legitimate proclamations significant to the nullification of capital punishment, masterminded by subject. Reference can be made to global arrangements, tying on all states which get to be gatherings to them. Then, again resolutions pro received by United Nations (UN) bodies and other intergovernmental associations. Still others are "statements by UN officials and Special Rapporteurs, or judgments and recommendations of expert bodies set up to monitor the implementation of human rights treaties - the UN Human Rights Committee, set up to monitor implementation of the International Covenant on Civil and Political Rights, and the UN Committee against Torture, monitoring implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)." Some are of worldwide importance: "they apply to all countries, or to all states parties to the relevant treaties. Others emanate from regional intergovernmental organizations and apply to states in those regions. Many of the texts quoted in this document set out safeguards and restrictions on the use of the death penalty. These restrictions and safeguards should not be taken to justify the maintenance

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

[69] Observations in the 41st Report, p 241

of the death penalty, a punishment which Amnesty International regards as a violation of fundamental human rights."

"Article 6 of the International Covenant on Civil and Political Rights, setting out safeguards and restrictions on the death penalty, states explicitly that these are to be applied in "countries which have not abolished the death penalty" (Article 6(2)) and goes on to state: "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant" (Article 6(6))." "In addition to the standards cited in the document, important safeguards on the conduct of death penalty cases in situations of armed conflict are set out in the laws of armed conflict. These standards are cited in the Appendices."[70] "Professor William A. Schabas, Director of the Irish Centre for Human Rights, has noted that these "two important references to abolition" were added to the draft text of the International Covenant on Civil and Political Rights when it was under consideration at the Third Committee of the UN General Assembly."

"The reference in Article 6(2) "indicated not only the existence of abolitionist countries but also the direction which the evolution of criminal law should take", while the reference in Article 6(6) "set a goal for parties to the covenant." "The travaux préparatoires indicate that these changes were the direct result of efforts to include a fully abolitionist stance in the covenant." "They represented an intention... to express a desire to abolish the death penalty, and an undertaking by States to develop domestic criminal law progressively towards abolition of the death penalty"."

"The right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment are recognized in the Universal Declaration of Human Rights,

[70] "Professor William A. Schabas, Director of the Irish Centre for Human Rights, has noted that these "two important references to abolition" were added to the draft text of the International Covenant on Civil and Political Rights when it was under consideration at the Third Committee of the UN General Assembly. The reference in Article 6(2) "indicated not only the existence of abolitionist countries but also the direction which the evolution of criminal law should take", while the reference in Article 6(6) "set a goal for parties to the covenant. The travaux préparatoires indicate that these changes were the direct result of efforts to include a fully abolitionist stance in the covenant. They represented an intention... to express a desire to abolish the death penalty, and an undertaking by States to develop domestic criminal law progressively towards abolition of the death penalty". (William A. Schabas, The Abolition of the Death Penalty in International Law, second edition, Cambridge University Press, Cambridge, United Kingdom, 1997, p. 73)"

other international human rights instruments and many national constitutions. Amnesty International believes that the death penalty violates these rights." "This view is finding increasing acceptance among intergovernmental bodies and in national constitutions and court judgments." "A survey by Amnesty International has revealed that at least 42 countries have prohibited the death penalty in their constitutions. Almost all of these prohibitions are on human rights grounds."[71]

"On 24 October 1990 the Hungarian Constitutional Court declared that the death penalty violates the "inherent right to life and human dignity" as provided under Article 54 of the country's constitution. Hence, the death penalty was abolished for all crimes in Hungary." "On 6 June 1995 the South African Constitutional Court declared the death penalty for murder as provided under the country's laws to be incompatible with the prohibition of "cruel, inhuman or degrading treatment or punishment" under the country's interim constitution."[72] "Eight of the 11 judges also found that the death penalty violates the right to life. The ruling had the effect of abolishing the death penalty for murder."[73]

"Further, on 9 December 1998 the Constitutional Court of the Republic of Lithuania also declared that the death penalty for murder as was provided under the Lithuanian Criminal Code conflicted with the provisions of the Constitution of the Republic of Lithuania and stated that the right to life should be protected by the law and eliminating torture, injury, degradation and maltreatment and the establishment of such punishments."

"On 29 December 1999 the Constitutional Court of Ukraine announced the death penalty under the country's laws unconstitutional and all the laws approving it void. The court stated that the death penalty is contrary to the provisions of the Constitution of Ukraine which provide for the right to life and prohibit torture and cruel, inhuman or humiliating treatment or penalty that violates a person's dignity. It should be noted that unlike the

[71] "Amnesty International, Constitutional prohibitions of the death penalty, AI Index: ACT 50/009/2005, April 2005."
[72] Makwanyane and Mcbunu v. The State, paragraphs 95, 146
[73] "In 1998 the South African parliament removed the death penalty from the country's laws under the Criminal Law Amendment Act."

International Covenant on Civil and Political Rights, the Ukrainian Constitution does not explicitly allow for the death penalty as an exception to the right to life."[74]

"On 11 November 1999, the Constitutional Court of the Republic of Albania abolished the death penalty in peacetime as incompatible with the Article 21[75] of the Constitution of the Republic of Albania. The court stated that the death penalty approves denial of the right to life and forms a part of an inhuman and cruel punishment. The court also said that unlike previous constitutional provisions, Article 21 of the Constitution of 1998 does not expressly allow for the death penalty as an exception to the right to life."

"The European Court of Human Rights has held that "the manner in which [a death sentence] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received."

"The UN Committee against Torture has referred to the uncertainty of many people under sentence of death in a country where the death penalty is in the process of being abolished as "amounting to cruel and inhuman treatment in breach of article 16 of the [UN] Convention [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment]"."[76]

"In resolution 1253 (2001), which was adopted on 25 June 2001, the Parliamentary Assembly of the Council of Europe said that the application of the death penalty comprises torture and inhuman or degrading punishment within the meaning of Article 3 of the European Convention on Human Rights."

"In a general comment on Article 6 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee has stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest. that abolition is

[74] In February 2000 the Ukrainian parliament removed the death penalty from the criminal code
[75] The life of a person is protected by law.
[76] European Court of Human Rights, Soering case (1/1989/161/217), judgment, Strasbourg, 7 July 1989, para. 104. Article 3 of the European Convention on Human Rights prohibits torture and inhuman or degrading treatment or punishment.

desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life... ""”[77]

“The UN Human Rights Committee has expressed concern over the retention of the death penalty in states parties to the International Covenant on Civil and Political Rights and has encouraged states parties to abolish it in law.”[78] “The UN Committee against Torture has welcomed the abolition of the death penalty and moves towards abolition in several countries.”[79]

“The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, states in its preamble that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights" and that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life”.

“In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights stated that "the elimination of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights" and that "the abolition of the death penalty is essential for the protection of [the right to life]".”

“The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasised that the abolition of capital punishment is most desirable in order fully to respect the right to life"[80] has urged governments of countries where the death penalty is still enforced "to deploy every effort that could lead to its abolition."[81]”

[77] “8 General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights, adopted on 27 July 1982, para. 6.”
[78] “Concluding observations of the Human Rights Committee: Equatorial Guinea, UN document CCPR/CO/79/GNQ, 30 July 2004, para. 4.”
[79] “Conclusions and recommendations of the Committee against Torture: Estonia, UN document CAT/C/CR/29/5, 23 December 2002, para. 4(b); concluding observations of the Committee against Torture: Armenia, UN document A/56/44, 17 November 2000, para. 35(b).”
[80] “Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur..., UN document E/CN.4/1997/60, 24 December 1996, para.79.”
[81] “Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document A/51/457, 7 October 1996, para.145.”

“In resolution 1044 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe called "upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states".”

“The Guidelines to EU [European Union] Policy towards Third Countries on the Death Penalty, adopted by the Council of the European Union in 1998, state that "abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights". They establish that it is an EU objective "to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states".”

“Under the Rome Statute of the International Criminal Court, the death penalty is excluded from the punishments which that Court is authorized to impose, even though the Court has jurisdiction over extremely grave crimes: crimes against humanity, genocide and war crimes. Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty for these crimes.[82] International Treaties Favouring Abolition The community of states has adopted four international treaties providing for the abolition of the death penalty. One is of worldwide scope; the other three are regional.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.”

“Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] concerning the abolition of the death

[82] “The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were established under UN Security Council resolutions 825 of 25 May 1993 and 955 of 8 November 1994, respectively.”

penalty, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war".

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] concerning the abolition of the death penalty in all circumstances, adopted by the Council of Europe in 2002, provides for the abolition of the death penalty in all circumstances, including time of war or of imminent danger of war. The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990, provides for the total elimination of the death penalty but allows states parties to retain the death penalty in wartime if they make a declaration to that effect at the time of ratifying or acceding to the Protocol. ”

“The UN General Assembly has strongly requested to all states that have not yet done so to become parties to the International Covenant on Civil and Political Rights and "to consider as a matter of priority acceding to the Optional Protocols to the International Covenant on Civil and Political Rights".[83]

The UN Human Rights Committee has called on states parties to the International Covenant on Civil and Political Rights to "consider… Acceding to the Second Optional Protocol to the Covenant", including states that have not yet abolished the death penalty.[84] The Committee has commended countries for having acceded to the Second Optional Protocol.[85] Moratoria and Commutations In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty “to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions”. The UN Human Rights Committee has

[83] “Resolution 58/165 of 22 December 2003, adopted without a vote. Also see UN Committee on Human Rights resolution 2004/69 of 21 April 2004.”
[84] “Concluding observations of the Human Rights Committee: Kenya, UN document CCPR/CO/83/KEN, 29 April 2005, para. 13.”
[85] “Concluding observations of the Human Rights Committee: Serbia and Montenegro, UN document CCPR/CO/81/SEMO, 12 August 2004, para. 6.”

welcomed moratoria on executions[86] and has called for such moratoria to be extended indefinitely and the sentences of those people currently on death row to be commuted.[87]"

"In resolution 1097 (1996), adopted on 28 June 1996, the Parliamentary Assembly of the Council of Europe stated that "the willingness... to introduce a moratorium [on executions] upon accession [to the Council of Europe] has become a prerequisite for membership of the Council of Europe on the part of the Assembly.""

"The UN Human Rights Committee has called for the commutation of the death sentences of all prisoners whose final appeals have been exhausted in a country where no executions had been carried out for more than 10 years.[88] In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon "States that no longer apply the death penalty but maintain it in their legislation to abolish it"."

a) Adequate Time between Sentence and Execution

"In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council called on UN member states in which the death penalty may be carried out "to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency". The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recommended "that States establish in their internal legislation a period of at least six months before a death sentence imposed by a court of first instance can be carried out, so as to allow adequate time for the preparation of appeals to a court of higher jurisdiction and petitions for clemency."[89]" "The Special Rapporteur has stated that "Such a measure would prevent

[86] "Concluding observations of the Human Rights Committee: Mali, UN document CCPR/CO/77/MLI, 16 April 2003, para. 5."
[87] "Concluding observations of the Human Rights Committee: Kyrgyzstan, UN document CCPR/CO/69/KGZ, 24 July 2000, para. 8."
[88] "Concluding observations of the Human Rights Committee: Kenya, UN document CCPR/CO/83/KEN, 29 April 2005, para. 13."
[89] "Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur.., UN document E/CN.4/1996/4, 25 January 1996, para.556."

hasty executions while affording defendants the opportunity to exercise all their rights."[90]"

"Informing Families and Lawyers of Executions The UN Human Rights Committee has stated that "the failure to notify the family and lawyers of the prisoners on death row of their execution" in a state party to the International Covenant on Civil and Political Rights is "incompatible with the Covenant".[91]"

b) Method of Execution

"The UN Human Rights Committee has called for the abolition in law of the penalty of death by stoning.[92] In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately"."

c) Public Execution

"The UN Human Rights Committee has stated: "Public executions are... incompatible with human dignity."[93] The Committee has called on states to refrain from public executions.[94] In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights requested all states that still preserve the death penalty "to ensure that, where capital punishment occurs, it… shall not be carried out in public or in any other degrading manner"."

[90] "Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur..., UN document E/CN.4/1998/68, 23 December 1997, para.118"
[91] "Concluding observations of the Human Rights Committee: Japan, UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21."
[92] "7 Concluding observations of the Human Rights Committee: Yemen, UN document CCPR/CO/84/YEM, 9 August 2005, para. 15"
[93] "Concluding observations of the Human Rights Committee: Nigeria, UN document CCPR/C/79/Add.65, 24 July 1996, para.16."
[94] "Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea, UN document CCPR/CO/72/PRK, 27 August 2001, para. 13."

2.5 MODES OF EXECUTION

a) LETHAL INJECTION

Process: "The discipline of death must be caused by relentless, intravenous organization of a harmful amount of a Ultra short acting barbiturate in mix with a substance disabled specialists until death is professed by an authorized specialist as indicated by acknowledged principles of therapeutic practice."

“The execution hone for most locales approves the utilization of a blend of three medications. The principal ... sodium thiopental or sodium pentothal, is a barbiturate that renders the detainee inert. The following, pancuronium bromide, is a muscle relaxant that deadens the stomach and lungs. The last, potassium chloride, causes heart failure. Every compound is deadly in the sum managed.”

“The detainee is escorted into the execution compartment and is strapped onto a gurney with lower leg and wrist affixed. The detainee is connected to a cardiovascular screen which is related to a printer outside the execution compartment. The procedure is begun in two usable veins, one in every arm, and a stream of typical saline arrangement is given continuously at a moderate rate. One line is held available for later if there should arise an occurrence of an impediment or separate in the other. At the superintendent's sign, 5.0 grams of sodium pentothal (in20 cc of diluents) is given, and then the line is flushed with clean ordinary saline arrangement. This is trailed by 50 cc of pancuronium bromide, a saline flush, lastly, 50 cc of potassium chloride.”

The most successive inconvenience experienced is separating veins and the failure to appropriately embed the same. A few states take into account a Thorazine or narcotic infusion to encourage the insertion.

“History: In 1888, New York became the first state to adopt electrocution. William Kemmler was the first man to be executed by lethal injection in 1890.[95] The last state to adopt electrocution as a process of death penalty was in 1949. From 1930-1980, it was clearly the most general method of execution in the United States.”

[95] In re Kemmler, 136 U.S. 436 (1890)

b) ELECTROCUTION

System: The enactments give: "capital punishment should be executed by creating to surpass through the body of the detainee a current of power of sufficient energy to bring about death, and the utilization and duration of such current through the assemblage of such convict might proceed until he is dead."

“The execution process for most locales approves the utilization of a wooden seat with restrictions and associations with an electric momentum. The wrongdoer enters the execution chamber and is set in the hot seat. The seat is built of oak and is determined to elastic tangling and dashed to a solid floor. Lap, mid-section, arm, and lower arm straps are held. A leg part (anklet) is fixing to the guilty party's correct calf and a wipe and anode is appended. The headgear comprises of a metal headpiece secured with a calfskin hood conceal the guilty party's face. The metal part of the head piece comprises of a copper wire network screen to which the anode is brazened. A wet wipe is set between the anode and the guilty party's scalp. The security switch is shut. The electrical switch is locked in. The execution control board I initiated. The programmed cycle starts with the modified 2,300 volts (9.5amps) for eight seconds, trailed by 1,000 volts (4 amps) for 22 seconds, trailed by 2,300 volts (9.5 amps) for eight seconds. At the point when the cycle is finished, the mechanical assembly is separated and the manual circuit behind the seat is possessed. In the event that the wrongdoer is not chose dead, the procedure is then rehashed. The most well-known inconveniences confronted incorporate blazing of changing degrees to parts of the body, and a disappointment of the systems to bring about death without rehashed stuns. Witness records of numerous messed up executions throughout the years have likely made electric shock be supplanted with deadly infusion as the general procedure of execution.”

d) LETHAL GAS

System: State statutes give: "The discipline of death must be perpetrated by the supervision of a deadly gas." “The death penalty methodology for most locales approves the utilization of a steel impenetrable execution chamber, outfitted with a seat and connected chains. The detainee is limited at his mid-section, waist, arms, and lower legs,

and wears a veil amid the execution. The seat is outfitted with a metal compartment underneath the seat. Cyanide pellets are put in this compartment. A metal ganister is on the floor under the holder loaded with a sulphuric corrosive arrangement. There are three killers, and every professional killer turns one key. At the point when the three key sare turned, an electric switch causes the base of the cyanide pot to open permitting the cyanide to plummet into the sulphuric corrosive arrangement, create a deadly gas."

Unconsciousness can occur within a few seconds if the prisoner takes a deep breath. Though, if he or she holds their breath death can take much longer, and the prisoner usually goes into wild convulsions. A heart monitor attached to the inmate is read in the control room, and after the warden pronounces the inmate dead, ammonia is pumped into the execution chamber to neutralize the gas. Exhaust fans then remove the inert fumes from the chamber into two scrubbers that contain water and serve as a neutralizing agent. The neutralizing procedure takes approximately 30 minutes from the time the offender's death is determined. Death is estimated to usually occur within 6 to 18 minutes of the lethal gas emissions.

The most widely recognized issues experienced are the conspicuous misery endured by the detainee and the time allotment to bring about misfortune.

"History: The use of a gas chamber for execution was inspired the use of poisonous gas in World War I, as well as the popularity of the gas oven as a means of suicide. Nevada became the first state to adopt execution by lethal gas in 1924 and carried out the first execution in 1924. Since then it has served as the means of carrying out the death sentence 31 times. Lethal gas was seen as an improvement over other forms of execution, because it was less violent and did not disfigure or mutilate the body. The last execution by lethal gas took place in Arizona in 1999."

e) HANGING

Strategy: "Before any execution, the hangman's tree zone trapdoor and discharge instruments are reviewed for appropriate operation. The rope, which is of manila hemp of

at least3/4"and not more than 1/4"in breadth and around 30 feet long, is doused and after that extended while drying to dispense with any spring, solidness, or propensity to loop. The executioner's bunch, which is attached as per military regulations, is treated with wax, cleanser, or clear oil, to ensure that the rope slides easily through the bunch. The end of the rope which does not contain the noose is attached to a puncturing in the roof and after that is fixing off to a metal T molded section, which takes the power conveyed by the guilty party's drop."

Further, before an execution, the predetermined wrongdoer's document is surveyed to figure out whether there are any unordinary qualities the guilty party has that may warrant deviation from field directions on hanging. A physical assessment and measuring procedure is led to guarantee practically moment passing and at least wounding. In the event that watchful measure and arranging is not done, strangulation, impeded blood stream, or executing could come about. At the suitable time on the Execution day, the prisoner, handcuffed, is escorted to the scaffold range and is put remaining over a pivoted trap entryway from which the wrongdoer will be dropped.

Consequent the guilty party's last assertion, a hood is put over the wrongdoer's head. Restrictions are likewise connected. On the off chance that the guilty party declines to stand or can't stand, he is set on a tumble down board. A quality of brain of the best possible measure of the drop of the denounced guilty party through the trap entryway is figured utilizing a standard military execution outline for hanging. The "drop" must be founded on the detainee's weight, to convey 1260 foot pounds of power to the neck. The noose is then put cozily around the convict's neck, behind his or her cleared out ear, which will bring about the neck to snap. The trap entryway then opens, and the convict drops. On the off chance that legitimately done, demise is created by separation of the third and fourth cervical vertebrae, or by suffocation. A catch mechanically discharges the trap entryway and escorts then move to the lower floor area to help with the evacuation of the guilty party's body.

"History: Hanging is the oldest method of execution in the United States, but fell into disfavor in the 20th century after many botched attempts, and was replaced by

electrocution as the most common method. There have been only 3executions by hanging since 1977: Westley Dodd (WA 1993), Charles Campbell (WA 1994), and Billy Bailey (DE 1996).”

e) FIRING SQUAD

Strategy: “Shooting can be completed by a solitary killer who fires from short range at the back of the head or neck as in China. The customary terminating squad is comprised of three to six shooters for each detainee who stand or bow inverse the sentenced that is typically fixing to a seat or to a stake. Typically the shooters go for the mid-section, since this is simpler to hitthan the head, bringing on burst of the heart, incredible vessels, and lungs so that the denounced individual kicks the bucket of drain and stun. It is not surprising for the officer in control to need to give the detainee a gun shot to the head to complete them off after the underlying volley has neglected to slaughter them.”

The Utah statute firing so as to approve execution squad just gives: "If the judgment of death is to be completed by shooting, the official chief of the office or his designee might choose a five man terminating squad of peace officers." At the suitable time, the sentenced guilty party is directed to the execution territory or chamber, which is utilized for both deadly infusion and terminating squad executions. The guilty party is put in an uncommonly composed seat which has a dish underneath it to get and hide blood and different liquids. Limitations are connected to the wrongdoer's arms, legs, mid-section and head. A head restriction is connected freely around the guilty party's neck to hold his neck and head in an upright position. The guilty party is wearing a dull blue outfit with a white material circle joined by Velcro to the range over the wrongdoer's heart. Behind the wrongdoer are sandbags to ingest the volley and forestall ricochets. Roughly 20 feet straightforwardly before the guilty party is a divider. This divider has terminating ports for every individual from the terminating squad. The weapons utilized are 30_30 bore rifles. No exceptional ammo is utilized. Taking after the wrongdoer's announcement, a hood is set over the guilty party's head. The superintendent leaves the room. The terminating squad individuals stand in the terminating position. They bolster their rifles

on the stage rests. With their rifle barrels in the discharging ports, the colleagues sight through open sights on the white material circle on the wrongdoer's mid-section. On the order to flame, the squad fires all the while. One squad part has a clear charge in his weapon however no part knows which part is assigned to get this clear charge.

"History: In recent history only three inmates have been executed by firing squad, all in Utah: Gary Gilmore (1977), John Albert Taylor, and Ronnie Lee Gardner (2010). While the method was popular with the military in times of war, there has been only one such execution since the Civil War: Private Eddie Slovak in WWII."

2.6 The Substantive Law

The Indian Penal Code (IPC) provides for capital punishment for seven different kinds of offences. The most important aspect here is that awarding of capital punishment is not the rule but an exception, that is to say it is the last resort and is awarded only in the rare of the rarest cases.[96]

(i) Section 121: This section provides for the imposition of death penalty for waging a war or abetting the waging of a war against the government of India. The common law concept of preservation of state has been incorporated in this section providing for the most severe punishment of death sentence, or life imprisonment, and fine.

(ii) Section 124-A

This segment characterizes the offense of subversion and states that whoever, by words, either talked or composed, or by signs, or by noticeable representation, or something else, conveys or endeavours to bring into disdain or scorn, or energizes or endeavours to energize irritation towards the Legislature set up by law in India might be rebuffed with detainment forever, to which fine perhaps included, or with detainment which might reach out to three years, to which fine might be included, or with fine.

In India, the law of subversion has comprehended questionable significance to a great extent on account of progress in body politic, and particularly as a result of established

[96] *Bacchan Singh* v. *State of Punjab* (1980) 2 SCC 684

procurement of the right to speak freely and expression ensured as a crucial directly under Article 19(1) (i). This procurement of law depends on the rule that each express, whatever its type of government, must be outfitted with the ability to rebuff the individuals who by their behavior endanger the security and steadiness of the state.

To sum up one can say that the offence of sedition under section 124A is the doing of certain acts which would bring the Government established by law in India into hatred or contempt, or create disaffection against it.[97]

(iii) Section 132

It defines abetment of mutiny and the punishment for the consequences thereof. "According to this section 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."

"This is also a capital offence because it aims at the destruction of very forces that affect the stability, political independence and territorial integrity of the state."

(iv) Section 194

"This section aims at punishing the persons who give or fabricate false evidence with the intent to procure conviction of capital offence to innocent persons. The offence under this section is punishable with death on the logic that the person concerned gave false evidence with the intention of or knowledge of likelihood of deprivation of innocent human life."[98]

(v) Section 302

"It states that whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to fine.

[97] *Bilal Ahmed Kaloo* v. *State of Andhra Pradesh,* (1997) Supreme Today 127
[98] *Supra note:* 1

It is the most important section in the jurisprudence of capital punishment. It prescribes death sentence for the offence of murder. Here, like in the other sections, death penalty is not the only punishment but is awarded at the discretion of the court. It is based on the retributive theory of punishment which demands a life for a life."

(vi) Section 307

This accommodates the inconvenience of capital punishment for endeavor to kill. The offense under this segment is one where the endeavor is unsuccessful; the nonchalance of the sacredness of human life is likewise obvious here. Furthermore, the sentence of death can be honored just where harmed is brought about and the individual culpable is as of now under sentence of detainment forever.

(vii) Section 396

This is the last capital offence in order under the IPC. It states that "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 term which may extend to ten years, and shall also be liable to fine."

The offense under this segment is "a particular instance of vicarious obligation in appreciation of the sentence of death." Further, "joint obligation under this segment does not emerge unless every one of the persons conjointly confer dacoity and the homicide was conferred in so submitting dacoity."

Under the conventional standards of criminal obligation, given under the IPC, the arraignment needs to demonstrate the blame past sensible uncertainty and the advantage of uncertainty is given to the denounced. Here, capital punishment is not the run but rather just a special case which is administered by the standard of rarest of uncommon cases as deciphered by courts.

2.6 The Procedural Law

The new Criminal Procedure Code of the year 1973 provides for the following provisions relating to sentencing of capital punishment:

(i) Section 235(2)

It states that "if the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law. The object of this provision is to give a fresh opportunity to the convicted person to bring to the notice of the court that in awarding the sentence the court must give regard to the personal, social and other circumstances of the case."[99]

"The accused may have some grounds to urge for giving him consideration in regard to the sentence such as that he is the breadwinner of the family of which the court may not be made aware of during the trial."[100] "The social compulsion, pressure of poverty, the retributive instinct to seek an extra legal remedy to is sense of being wronged, the lack of means to be educated in the difficult part of an honest living, the parentage, the heredity - all these and similar other considerations can, hopefully and legitimately, tilt the scales on the propriety & sentence. The mandate of Section 235(2) must therefore be obeyed in its letter and spirit." [101]

"The requirement of hearing the accused is intended to satisfy the rules off natural justice."[102] "The Judge must make a genuine effort to elicit from the accused all information, which will eventually bear on the question of sentence. This is indeed one of the reasons in *Mithu's*[103] case for the Supreme Court to strike down section 303 of Indian

[99]Retrieved from <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1015473> on 12.10.2012
[100]*Ibid*
[101]*Dagdu* v. *State of Maharashtra,* AIR 1977 SC 1579
[102]*Allaudin Mian* v. *State of Bihar,* 1989 Cri.L.J 1486 (SC)
[103]*Mithu* v. *State of Punjab,* AIR 1983 SC 473

Penal Code as unconstitutional." "Section 235(2) becomes a meaningless ritual in cases arising under Section 303 of Indian Penal Code."[104]

(ii) Section 354(3) & (5)

Section 354(2) states that when conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.The ultimate shift in legislative emphasis is that, under "the New Criminal Procedure Code, 1973, life imprisonment for murder is the rule and capital punishment the exception - to be resorted to for reasons to be stated as per Section 354(3) of Criminal Procedure Code. Now only special reasons, that is to say, special facts and circumstances in a given case, will warrant the passing of death sentence."[105] But, it is neither necessary, nor possible to make a catalogue of special reasons, which may justify the passing of death sentence in a case.

"The special reasons mentioned in this section of Criminal Procedure Code should be taken as equivalent and synonymous to "compelling reasons"."[106] Murder is terrific is not a reason to impose death penalty. All murders are terrific and if the fact of murder being terrific is an adequate reason for imposing death sentence, then every murder shall have to be visited with that sentence and death sentence will become the rule, not an exception and Section 354(3) Criminal Procedure Code will become a dead letter.[107]

Section 354(5) of Criminal Procedure Code deals with "the implementation of death penalty and provides that when any individual is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead." Even if it is not mentioned so also, there is no difficulty. Further the High Court has to confirm the death sentence imposed by the Sessions Court. The form of the warrant that is issued when the superintendence is confirmed by the High Court direct the convict to be hanged by the neck fill he is dead and where the sentence is imposed by the High Court either in appeal under Section 378

[104] *Ibid*
[105] *Balwant Singh* v. *State,* AIR 1976 SC 230
[106] *State* v. *Heera,* 1985 Cri.L.J 1153 (Raj)
[107] *Muniappan* v. *State of Tamil Nadu,* AIR 1981 SCC 1220

Criminal Procedure Code or in exercise of the power of revision, the formal order that flows from the High Court contains a similar direction.

The state must establish that the procedure prescribed by Section 354(5), Criminal Procedure Code for executing the death sentence is just, fair and reasonable and that the said procedure is not harsh, cruel or degrading. The method prescribed by Section 354(5) Criminal Procedure Code for executing the death sentence does not violate the provisions of Article 21 of Indian Constitution. "The system is consistent with the obligation of the State to ensure that the process of execution is conducted with decency and decorum without involving degradation or brutality of any kind."[108] "The direction for execution of death sentence by public hanging is unconstitutional and if any Jail Manual were to provide public hanging the Supreme Court would declare it to be violative of Article 21 of the Constitution."[109]

(ii) Section 366

Section 366 of Code Criminal Procedure "insists upon the confirmation of death penalty by the High Court. The first provision of this particular section states that when the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and sentence shall not be executed unless it is confirmed by the High Court. The second provision insists that the Court passing the sentence shall commit the convicted person to jail custody under awarrant. The first provision of the said section corresponds to Section 374 of the Old Code, without any change and Sub-section (2) has been newly added." "It is the practice of the High Court to be satisfied on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm the sentence."[110]

"The High Court has to come to its own individual conclusions as to the guilt or innocence of the accused, independent of the opinion of the Sessions Judge."[111] "The High Court is duty bound to independently consider the matter carefully and examine all

[108] *Deena* v. *Union of India,* AIR 1983 SC 1155
[109] *Attorney General of India* v. *Licchima Devi,* AIR 1986 SC 467
[110] *Masalti* v. *State,* AIR 1965 SC 202; Also *seeRam Shankar* v. *State,* AIR 1962 SC 1239
[111] *Balak Ram* v. *State,* AIR 1974 SC 2165

relevant and material evidence."[112] "The High Court is under an obligation to consider what sentence should be imposed and not to be content with trial court's decision on the point."[113]

Right when a charged is arraigned and sentenced to death, he is only a convict prisoner and not to be managed as reprimanded prisoner. The death penalty is not executable without certification of the High Court. Such a prisoner will be controlled by Part XVII of the Correctional office Manual and will be given workplaces under that chapter...at least till he is affirmed as criticized prisoner in the eye of law. Nor is he serving intensive confinement nor clear confinement. He is in jail so he is kept protected and secured with the reason that he may be available for the execution of the death penalty.

(iv) Section 367

"Section 367 of Criminal Procedure Code deals with the power of the High Court to direct further enquiry to be made or additional evidence to be taken. Sub-section (i) of this section provides that if, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session. Where an application by an accused person to call material evidence bearing on his line of defense was refused by the lower court but was renewed in the High Court, it was held that the accused should be permitted under this section to produce further evidence." "As Pointed out by the Supreme Court, when the reference is made for the confirmation of the death sentence, the High Court is to see not only the correctness of order passed by the Sessions Judge but must examine the entire evidence by itself."[114] "The High Court may even direct a further inquiry or the taking of additional evidence for determining the guilt or innocence of the accused and then come to its own conclusion on the entire material on record whether the death sentence should be confirmed or not."[115]

[112] *Iftikhar Khan* v. *State,* AIR 1973 SC 863
[113] *Neti Shri Ramulu* v. *State of Andhra Pradesh,* AIR 1973 SC 255
[114] *Subash* v. *State of Uttar Pradesh,* 1976 Cri.L.J 152 (SC)
[115] *Bhupender Singh* v. *State of Punjab,* 1969 Cri.L.J 6 (SC)

(v) Section 368

"Section 368 of Criminal Procedure Code empowers the High Court to confirm sentence or annul conviction. It envisages that in any case submitted under 5,ection 366, the High Court - (a) may confirm the sentence, or pass any other sentence warranted by low, or (b) annul the conviction, and convict the accused of any offence of which the court of session might have convicted him, or order a new trial on the same or on amended charge, or (c) may acquit the accused person; Provided that no order of confirmation shall be made under this section Until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of."

(vi) Section 369

"Section 369 of the Code prescribes that either confirmation of the sentence or new sentence is to be signed by two judges of High Court. It states that in every case so submitted, the confirmation - of the sentence, or any new sentence or order passed by the High Court, shall when such Court consists of two or more judges, be made, passed and signed by at least two of them."

"Where the Court consists of two or more Judges and the order of confirmation of sentence of death is made, passed and signed by one of therm, the sentence of death is not validly confirmed but remains submitted to the court which has to dispose of the same under sections 367-371."[116] "The Code mandates that when the High Court concerned consists of two or more Judges, the confirmation of the death sentence or other sentences shall be signed by at least two of them and this applied only where the court, at the time of confirmation of the death sentence, consists of two or more Judges. But, when a single judicial commissioner alone is functioning, Section 369 of the Code is not attracted and he maysign the confirmation of the death sentence alone and there will be no illegality."[117]

[116] *Supra note*: 6
[117] *Joseph Peter* v. *State of Goa, Daman & Diu,* AIR 1977 SC 1812

(vii) Section 370

"Section 370 of the Code deals with the procedure in cases of difference of opinion. Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by Section 392 of the same Code. When a sentence of death is referred to the High Court for confirmation and the Judges differ, the matter should be referred to a third Judge, under Section 370, who should not decide it according to the opinion of the Judge for acquittal or conviction, but shall deliverhis opinion. The third Judge's duty is to examine the whole evidence and come to a final judgment. No fetters can be placed on the third Judge. He is at liberty to express and act upon the opinion, which he himself arrives at. If the third Judge chooses he can pass a sentence of death, even though one Judge favors n acquittal and the other gives a lesser sentence when convicting the accused." "But, the golden rule to be followed by the third Judge is to give the benefit of doubt to the accused. The observation of such a rule does not amount to abdication of hi functions as a Judge under Sections 370 and 392 of the Code."[118] "However, when there is difference of opinion in the High Court not only on the question of guilt but also on that of sentence, the sentence should be reduced to imprisonment for life. In the same case as a precautionary method the Supreme Court further maintained that when appellate Judges who agree on the question of guilt differ on that of sentence, it is usual not to impose death penalty unless there are compelling reasons."

(viii) Section 371

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

[118] *In re Narasiah, AIR 1959 AP 313*

(ix) Section 385

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

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

(i)To the appellant or his pleader.

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

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

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

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

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

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

(x) Section 389

"Section 389 deals with the suspension of sentence pending the appeal and release of appellant on bail. It gives the opportunity to the convict to avail the benefit of bail and for doing so the court must be satisfied with special reasons to grant him bail."[119] "This section corresponds to the provisions of Section 426 of the Old Code."

(xi) Section 413

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

"A warrant does not mean only one warrant, even when interpreted in isolation and out of context. A warrant once issued can go unexecuted and is liable to be rendered ineffective in a number of situations. But, by no logic can it be said that since warrant has become infructuous and that death sentence should automatically stand vacated. No provision of the Code bars return of the first warrant without the execution having been carried out. Nor does it do so in case, of issuance of a second warrant."

(xii) Section 414

"Section 414 of Criminal Procedure Code deals with the execution of sentence of death passed by High Court. When a sentence of death is passed by the High Court in appeal or in revision, the Court of Session shall, on receiving the order of the High Court, cause the sentence to be carried into effect by issuing a warrant."[120]

(xii) Section 415

[119] Shailender Malik, *The Code of Criminal Procedure,* 18th Edn., Allahabad Law Agency, Faridabad, 2011 (p. 98)
[120] *Ibid*

"Section 415 Code of Criminal Procedure deals with the postponement of execution of sentence of death in case of appeal to Supreme Court. Where a person is sentenced to death by the High Court and an appeal from its judgment lies to Supreme Court under sub-clues (a) or sub-clause (b) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence,to be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of."

"The sub-clause (2) of this section provides that where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of certificate under Article 132 or under sub-clause (c) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application, until the period allowed for preferring an appeal to the Supreme Court."

"The sub-clause (3) of the section provides that where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under Article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition."[121]

(xiv) Section 416

It is an important section as deals with postponement of capital punishment on pregnant women. It states that "when a woman sentenced to death is found pregnant the High Court shall order the execution of the sentence to be postponed, may if it thinks fit commute the sentence to life imprisonment."

"This provision does not specify the time for which the execution has to be postponed. There is no clue, whatsoever; in the provision whether such postponement is for good or

[121] *Supra note*: 26

till the woman delivers. Moreover, the High Court is the only forum in which the law vests the power of postponing the execution of a sentence of death passed and confirmed on a woman proved to be pregnant. The Sessions Judge, may, of course, direct the postponement of the execution of the sentence, until appropriate orders to that effect are passed by the High Court. The High Court, under such circumstances, is empowered even to commute the sentence to one of life imprisonment, if it thinks fit and this is one instance making a departure from the mandate of Section 362 of the Code of Criminal Procedure, 1973 that no Court, when it has signed its judgment or final order, disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."[122]

(xv) Section 432

"It deals with suspension, remission and commutation of sentences." "It states that:

1. When any person has been sentenced to punishment for an offence, the appropriate government may, at any time, without conditions or upon any conditions, which the person sentenced, accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.[123]

2. Whenever the application is made to the appropriate Government for the suspension or remission of a sentence the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of trial or of such record thereof as exists.

3. If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favor the sentence has been

[122] *Supra note*: 6

[123] Woodroffe (Vol. 1) Commentaries on Code of Criminal Procedure, 2nd Edn., Law Publishers (India) Pvt. Ltd., Allahabad, 2005 (p. 96)

suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

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

5. The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which,petitions should be presented and dealt with: Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and means[124]-

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

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

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

7. In this section and in Section 433, the expression "Appropriate Government" means:

a. In cases where the sentence is for an offence against or the order referred to in sub-section 6 is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government;

b. In other cases, the Government of the State within which the offender is sentenced or the said order is passed."

[124] *Ibid*

"This section incorporates the provisions of section 401 and 402(3) of the Old code. There is no change in substance of the old law. This section does not give any power to the Government to reverse the judgment of the Court, but provides the power of remitting the sentence. The minimum sentence awardable under Section 302 of Indian Penal Code, being life imprisonment no reduction is possible. This power is executive in nature."

"While Article 161 of the Constitution speaks of grant of reprieves, pardons and remissions etc., it does not speak of imposition of conditions for the grant, whereas section 432 of Criminal Procedure Code speaks of remission or suspension with any condition. Section 432(3) specifically provides n 432(l) consequences of the conditions, which are contemplated by Section 432(l) Criminal Procedure Code not being fulfilled. Section 432(3) contemplates remanding the person so subjected to remission to jail once again. Section 43 of Criminal Procedure Code is not manifestation of Articles 72 and 161 of the Constitution but a separate, though similar, provision."[125]

In instances of homicide, the Judge might report any special conditions requiring a relief of discipline to the Administration and the legislature might immediately make such move under this segment as it supposes fit. The word dispatch as utilized as a part of Segment 432 is not a term of workmanship. A percentage of the implications of the word transmit are to acquit, to cease from dispensing, and to surrender. There is hence, no snag in the method for the Senator in dispatching a sentence of death.

"When the concerned Court feels sympathetic towards the accused, owing to some reasons such as the wife of the accused is a cancer patient with six children 41 or the accused is a boy of tender years[126] or accused is a young lord who committed murder under the influence of others[127] but legally constrained to show mercy, then it recommends such cases to the Government, because the power of granting mercy is vest with the executive but not with the judiciary."

"An order passed under Section 432 is justiciable on any of the following grounds:

[125] *Krishna Nair* v. *State of Kerala,* 1994 Cri.L.J 86 (Ker)
[126] *Nawab* v. *Emperor,* AIR 1932 Lah. 259
[127] *Kartar Singh* v. *Emperor,* AIR 1932 Lah 259

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

2. That the impugned order goes beyond the extent of power conferred by low.

3. That the order has been obtained on the ground of fraud or that it has been passed taking into account the extraneous considerations not germane to the exercise of the power or in other words, is a result of malafide exercise of power."[128]

(xvi) Section 433

"It deals with the power of commuting the sentence. The appropriate Government may, without the consent of the person sentenced, commute the sentence of death, for any other punishment provided by the Indian Penal Code."

"Section 433 corresponds to the provisions of Section 402(l) of the Old Code. A combined reading of the provisions of the Articles 72, 73, 161, 162 and 246 of the Constitution of India and those of Section 433(a) Criminal Procedure Code indicates that the State Government continues to enjoy the power of commuting a sentence of death; since the expression "State Government" means the Governor under the General Clauses Act and under Section 433 the Governor can commute sentence of death under this section."[129]

(xvii) Section 434

"Section 434 envisages that the power 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. It corresponds to section 402(2) of the old code. It must be noted that it is applicable to only a sentence of death and no other sentence." "The Supreme Court retains and it must retain an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done."[130]

[128] *Supra note*: 6
[129] *Parkasho* v. *State of Uttar Pradesh,* AIR 1962 All 151
[130] *Ibid*

2.7 Provisions under the Indian Constitution

The administration of justice through courts of law is a part of the constitutional scheme to secure law and order and the protection life, liberty or property. "Under this scheme it is for the judge to pronounce judgment and sentence, and it is for the executive to enforce the sentence."[131] Normally this procedure is followed. But, sometimes the sentence pronounced by the judge is not carried out as it is. It may be altered in the following forms:

1. Pardon: "it is an act of grace and cannot be demanded as a matter of right. It releases both, the punishment prescribed for the offence and the guilt of the offender. When the pardon is full in nature it releases the punishment and blots out of existence of the guilt so that in the eyes of law the offender is an innocent as if he had never committed the offence."[132] If decided before conviction, it removes the penalties and disabilities and restores him to all his public rights.

2. Commutation: it means swap of one thing for another. Here, it means replacement of one form of sentence for another, of lighter nature.

3. Remission: it means lessening of the quantity of penalty without changing its nature.

4. Respite: it means giving of a lesser penalty on some extraordinary grounds like: pregnancy of the accused, etc.

5. Reprieve: it means provisional postponement of death punishment like: pending proceeding for pardon or commutation, etc.

The Law Commission of India has justified the existence of the prerogative of mercy in the executive.[133] In this connection it has been observed that there are many matters which may not have been considered by the courts. The hands of the courts are tied down by the evidence placed before it. A sentence of death passed by the court after

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[132] *Supra note*: 6

[133] Law Commission's *Report on Capital Punishment,* 1967 (p. 317-318)

consideration of all the materials placed before it may yet require reconsideration because of:[134]

(a) facts not placed before the court

(b) facts placed before the court but not in proper manner

(c) facts discovered after passing of the sentence

(d) events which have developed after passing of the sentence

(e) other special features.

The following provisions deal with capital punishment:

(i) Article 72 "It states that the President has the power to grant pardon, etc., and suspend, remit or commute the sentence in the following cases:

Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases:

(1) 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 -

(a) in all cases where the punishment or sentence is by a court Martial;

(b) 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;

(c) in all cases where the sentence is a sentence of death

(2)Noting in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

[134]M.P. Jain, *Indian Constitutional Law,* 6th Ed., Lexis Nexis Butterworths Wadhwa, Nagpur, 2010 (p. 173)

In this subject the President acts on the recommendation of the Home Minister. The range of power conferred on the President by Article 72 is very extensive. "It extends to the whole of India. The power to grant pardon may be exercised either before conviction by amnesty to the accused or under-trial prisoner or after conviction."[135]

Further, in the case of *Kehar Singh*[136], the Supreme Court "took the view that that in exercising the power of pardon, the President can go into merits of the case notwithstanding the fact that it has been judicially concluded by the court. He can examine the record of evidence of the criminal case and determine for himself whether the case is one deserving the grant of relief falling within the power."

To conclude, it can stated that Article 72 designedly and benignantly vests in the highest executive the humane and vast jurisdiction to remit, reprieve,, respite and commute and pardon criminals- on whom judicial sentences may have been imposed. [137]Although the power of pardon is very wide but it cannot run riot, i.e. to say it cannot be exercised arbitrarily.[138]

It must also be noted that a similar power of pardon has been conferred upon the State Executive, i.e. the Governor through Article 161 of the Constitution. The powers under this Article have a narrower scope as compared to Article 72.[139]

[135] *In re Channugadu,* AIR 1954 Mad 511
[136] *Kehar Singh* v. *Union of India,* AIR SC 653
[137] *G. Krishna Goud* v. *State of Andhra Pradesh,* (1976) 1 SCC 157; Also *see*, *Kuljeet Singh* v. *Lt. Governor,* AIR 1982 SC 774
[138] *In re Maru Ram,* AIR 1980 SC 2147
[139] *Supra note*: 41

CHAPTER – 3

THE JUDICIAL DECISIONS

3.1 The Erroneous Judgments

Inside of a couple of weeks of "Pranab Mukherjee accepting office as the thirteenth President of India on July 25, 2012, fourteen previous judges of prominence marked an irregular request tended to the President. The advance, as discrete letters, looked for his intercession to drive the capital punishments of 13 convicts, right now held up in different correctional facilites the nation over, utilizing his forces under Article 72 of the Constitution."

The surprising offer does not come from their principled restriction until the very end punishment, however some of them might have confidence in its abrogation by and by. They have spoke to the President in light of the fact that these 13 convicts were incorrectly sentenced to death as indicated by the Supreme Court's own particular confirmation and are as of now confronting the risk of up and coming execution. The Supreme Court, while deciding three recent cases, held that seven of its judgments awarding the death sentence were rendered *per incurium* (meaning out of ignorance of error) and contrary to the binding dictum of rarest of rare category propounded in the Constitution Bench judgment in *Bacchan Singh's*[140]case. The three recent judgments are:

(i) *Santosh Kumar Barriyar* v. *State of Maharashtra*[141]

(ii) *Dilip Tiwari* v. *State of Maharashtra*[142]

(iii) *Rajesh Kumar* v. *State*[143]

[140]*Supra note*:3
[141]*Santosh Kumar Barriyar* v. *State of Maharashtra,*(2009) 6 SCC 498
[142]*Dilip Tiwari* v. *State of Maharashtra,* (2010) 1 SCC 775

"It was also stated in the appeal that two prisoners had been wrongly executed, Ravji Rao[144] and Surja Ram[145] (both from Rajasthan), on May 4, 1996 and April 7, 1997 respectively, pursuant to the flawed judgments."[146]

These executions have constituted the gravest known unsuccessful labor of equity in the historical backdrop of wrongdoing and discipline in autonomous India. The Supreme Court's confirmation of blunder had come past the point of no return for them. Executions of persons wrongly sentenced to death seriously will undermine the validity of the criminal equity framework and power of the state to complete such disciplines in future.

It must be carefully noted that the *Ravji Rao* [147] case passed by a double bench of the Supreme Court is in contradiction to the *Bachhan Singh's* judgment[148] passed by a 5 member Constitution bench of the Supreme Court. The court has more often relied upon the *Ravji* principle and passed judgments that have (wrongly) imposed death penalty upon the convicts.

The 13 convicts who have been wrongly sentenced to death by the Supreme Court as follows:

(i) Dayanidhi Bisoi[149]

(ii) Mohan Anna Chavan[150]

(iii) Shivaji Dadya Shankar Allahat[151]

(iv) Bantu[152]

(v) Sattan Satyendra[153]

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[143] *Rajesh Kumar* v. *State,* (2011) 13 SCC 706
[144] *Ravji Rao (Ram Chandra)* v. *State of Rajasthan,* (1996) 2 SCC 175
[145] Surja Ram v. State of Rajasthan (1996) 6 SCC 271
[146] *A Case Against the Death Penalty* by V. Venketesan, Frontline Magazine, September 2012 (p. 4)
[147] *Supra note*:44
[148] *Supra note*:3
[149] *Dayanidhi Bisoi* v. *State of Orissa* (2003) 9 SCC 310
[150] *Mohan Anna Chavan* v. *State of Maharashtra* (2008) 7 SCC 5611
[151] *Shivaji Dadya Shankar Allahat* v. *State of Maharashtra* (2008) 15 SCC 269
[152] *Bantu* v. *State ofU.P.* (2008) 11 SCC113

(vi) Upendra (same case as above)

(vii) Ankush Maruti Shinde

(viii) Ambadass Laxman Shinde

(ix) Bapu Appa Shinde

(x) Raju Mahasu Shinde

(xi) Rajya Appa Shinde

(xii) Surya Suresh Shinde[154](vii to xii, the same case)

(xiii) Saibanna[155]

"Out of the above stated convicts Bantu's sentence was commuted by President Pratibha Patil in June this year."[156] Another convict, "Ankush Maruti Shinde has been declared a juvenile and has now been removed from the death row. Dayanidhi Bisoi's death sentence was commuted to life imprisonment by Governor of Odisha in 2003. President Pratibha Patil also commuted the death sentences of Sattan and Upendera in July 2011. Thus, there are now only eight convicts whose death sentences are ought to be commuted in line with the Supreme Court's judgment in *Bariyar's*[157] case. Of these, only Siabanna's mercy petition is pending before the President's Secretariat since the time Pratiba Patil completed her term."

The mercy petitions of staying seven convicts have not yet accomplished the President. By far most of them got their petitions rejected by the Governors of their States and are ceased in detainment facilities expecting for their execution.

[153]*State of U.P.* v. *Sattan Satyendra & Ors.* (2009) 4 SCC 736
[154]*Ankush Maruti Shinde & Ors*. v. *State of Maharashtra* (2009) 6 SCC 667
[155]*Saibanna* v. *State of Karnataka* (2005) 4 SCC 165
[156]*Supra note*:46
[157]*Supra note*:41

3.2 Instances of Terrorism

The word "terrorism has only a political meaning because it is politics that makes a distinction between murder in ordinary law and murder when committed as a part of terrorist act."[158] "Looking into the picture chronologically, when the Terrorist and Disruptive Activities (Prevention) Act, or TADA, was enacted in 1985; it was intended to be in force for two years as an extraordinary measure. During that period, terrorist activities were expected to be brought under control. That, of course, did not happen. So the life of this law was extended, time after time, until 1995, when it became a political embarrassment because of the excesses that were practised, especially by the police, under its shelter. The Prevention of Terrorism Act (POTA), enacted in 2002 following the attack on Parliament House on December 13, 2001, met an early death when the cynical abuse of the law against political adversaries became manifest."[159]

"TADA and POTA provided for the death sentence, and there are those who are still on death row for convictions under these laws. The death sentence in anti-terrorism laws, however, rests on an uneasy premise. If the death penalty in anti-terrorism laws is to have any meaning, it must deter others from committing similar crimes."

Experience, be that as it may, indicates something else. This has implied that the individuals who confront the punishment of death have a tendency to obtain the sheen of saints. The conviction taking into account an admission, the refusal to bid, and the bombast showed by Harjinder Singh Jinda and Sukhdev Singh Sukha, sentenced for the death of General Arun Vaidya, are illustrative. Suicide planes and the cyanide case are proof that the punishment is unrealistic to have an impediment impact. It is a part of hostile to terrorism laws that specific segments of the commonwealth get identified as aggressors and as conflicting with the state. It is no fortuitous event that those denounced in the Godhra train smoldering case have been charged under POTA, while those blamed for the gore in the days that took after are being attempted under general criminal law. Hostile to terrorism laws have obviously exacerbated the feeling of wrong and of distance, against which groups that vibe focused on have been standing up. Dissents in

[158] *Futile Penalty* by Usha Ramanathan, Frontline Magazine, September 2012 (p. 22)
[159] *Ibid*

Punjab against the completing of capital punishment on Devinder Pal Singh Bhullar (Bitta bomb assault case) and Balwant Singh Rajoana (Beant Singh death case), or by segments of the Kashmiri individuals in connection to Afzal Guru (Parliament House assault case) or those in Tamil Nadu against the execution of the professional killers of Rajiv Gandhi are articulations of groups, and their voices should be heard and deciphered to comprehend what capital punishment for terrorist acts is really accomplishing.

"It also seems a futile penalty. The roll call of people convicted in terrorist offences consists largely of marginal players who would have little effect on the ending, or even the lessening, of terrorism. Nalini, Perarivalan, Murugan, Santhan (convicted in the Rajiv Gandhi assassination case"[160], they were tried under the anti-terrorism law too, but only convicted under the Penal Code), Afzal, Rajoana and Bhullar -none of them could have turned the tide against terrorism. "So, too, Ajmal Kasab[161]; Kasab's was a horrific crime, no one would question that. Further, the legal aid fees paid to the lawyers of Ajmal Kasab per day exceeded the total legal aid remuneration payable foe entire death penalty cases."[162]

There is an issue that pooches every last remarkable law: they weaken measures and benchmarks that have been made after some time and through included techniques for thought and practice. Hostile to terrorism laws are no exemption. Among the deviations TADA and POTA have made using standard criminal law is making admissions to a cop commendable in insistence. Torment, motivation and passings in force are irritatingly typical wonders. In making affirmations permissible, abundances by specialists started to be persisted as a political need, and examinations persuaded the chance to be authoritative. The Indian Evidence Act saw this when it made admissions to a cop inadmissible as certification.

The years of increased military action in Punjab, when TADA was authorized as an apparatus in the hands of the law-implementing organizations, saw not very many arraignments and even less feelings. What it saw was an abundance of instances of

[160] *Veerasekaran* v. *State of Tamil Nadu,* 1992 Cri.L.J 2168
[161] *Md. Ajaml Md. Amir Kasab* v. *State of Maharashtra*Criminal Appeal Nos.1899-1900 of 2011
[162] *Uneven Balance* by Yug Mohit Chaudhary, Frontline Magazine, September, 2012 (p. 25)

custodial torment and demise, illicit detainment, experiences and vanishings. Diminished to Ashes: The Insurgency and Human Rights in Punjab archives several people — identified by name and joined by representations of their own and political foundations — who were the casualties of police snatchings prompting unlawful cremations. "Jaswant Singh Kalra, who, with Jaspal Singh Dhillon, released copies of the official document, which showed that security agencies in Punjab had secretly cremated thousands of bodies after labelling them as unidentified, unclaimed was himself disappeared even as his case was in the High Court, having filed a petition asking for an investigation into the matter of illegal cremations.[163] It was a period when there was a deepening of impunity."

"The Parliament House attack case,[164]too, is situated in a maze of curious circumstances and unanswered questions. The five attackers who entered the precincts of Parliament House were slain and their identity and antecedents continue to be shrouded in silence. Afzal Guru's alleged confession and his answers to the trial court's questions say completely different things. Both are reproduced in Nirmalangshu Mukherji's *December 13: Terror over Democracy."*[165]

India has had more thn 25 years of practice with anti-terrorism legislation, and we are yet to understand the lessons they give. It is now irrefutable that extraordinary laws promote extremes.

[163]*Supra note*:67
[164]*Supra note*:65
[165]Retrieved from <http://www.uread.com/book/december-13-nirmalangshu-mukherji/9788185002545> on 14.10.2012

CHAPTER-4

DEATH PENALTY: A QUESTION FOR INQUEST AND INTROSPECTION

The execution and authenticity of capital punishment has been generally bantered on its hypothetical grounds. Contentions of profound quality lawfulness still remain the most pervasive in the exchanges of abolitionists. Yet this article brings up issues of potential examples in disavowal of capital punishment. In this paper the creators have fundamentally centred upon the Indian situation in regards to capital punishment and how there is a hole between the substantive and procedural law. There is much open deliberation in regards to maintenance or annulment of the death penalty and on that the creators have intentionally attempted to stay away from Rather, it has been tried to look at the paradox in law through contextual investigations by method for direct records of convicts and their families and, obviously, through legitimate examination. The situation of the casualties and also the wrongdoers has been broke down and the conclusion touched base at similar to that there is powerless execution of law in such manner and deferrals in discipline prompts a unintended negative impact on the casualty, the guilty party, their separate families and definitely the general public on the loose. The deferral in equity is the issue of great importance and should be tended to truly considering the way that a discipline as unforgiving, or maybe the harshest, as capital punishment is being referred to. Further, measures have been recommended for precise and rapid conveyance of equity and finally, the worldwide situation has been considered and expressed in like manner.

4.1 INTRODUCTION

Human existence is the most valuable gift of nature and one that rightly deserves to be treated with reverence and absolute discretion. The right to life is invariably the most fundamental of all human rights since time immemorial. “This is the reason why it is argued that if you cannot give life, you do not have the right to take it.” Many consider that death penalty should not be given irrespective of the character and quantum of the

crime. Others think that it functions as a strong deterrent against heinous crimes and there is nothing wrong in legislative recommendation of the same as a mode of punishment. "The discussion on this subject became more intense in the 20th century and those belonging to the first school of thought succeeded in convincing the governments of 140 countries to abolish death sentencing."[166]

In India, death was prescribed as one of the punishments in the *Indian Penal Code*, 1860, (hereinafter referred to as IPC),[167] and the same was retained after independence. However, IPC is not the only statute that provides for death sentence. "There are various legislations like *The Army Act*, 1950, *The Air Force Act*, 1950, *The Navy Act*, 1950, etc., that also provide for capital punishment in India."[168] However, keeping in view the old adage that man should be merciful to all living creatures, the "framers of *The Constitution of India,* 1950 (hereinafter referred to as the Constitution) enacted Articles 72 and 161 in the Constitution, under which the President or the Governor, as the case may be, can grant pardons, reprieves, respites or remission of punishment or suspend, remit or commute the sentence of any person convicted of any offence punishable with death sentence."

Further, "the Law Commission of India has examined the issue of retention or abolition of death penalty from various angles and recommended that death penalty should be retained in the statute book."[169] "The conclusion of the research was that considering the circumstances in India, to the variety of the societal background of its population, to the inconsistency in the level of principles and education in the country, to the enormity of its area, to variety of its population and to the paramount need for maintaining law and order

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[166] 1, *Devender Pal Singh Bhullar* v. *State (N.C.T Delhi)*, AIR 2013 SC 1975; Retrieved from <http://www.infoplease.com/ipa/A0777460.html> on 29.07.2013 at 2:35 pm.

[167] *See* §§ 121, 124-A, 132, 194, 302, 307, 364-A, 376-A, 376-E, 396 of the IPC.

[168] N.V. PARANJAPE, CRIMINOLOGY AND PENOLOGY, p. 245 (14th ed., Central Law Publications, Allahabad, 2012); *See* §§ 34, 37of *The Air force Act*, 1950, §§ 34, 37, 38(1) and 67 of *The Army Act*, 1950, §§ 34-39, 43, 44, 49, 50 and 59 of *The Navy Act*, 1950, § 15 of *The National Security Guards Act*, 1986, § 51 of the *Indo-Tibetan Border Police Act*, 1992, § 4(1) of the *Commission of Sati (Prevention) Act*, 1987, § 31-A of the *Narcotic, Drugs and Psychotropic Substances Act*, 1985, § 30 of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act)*, 1989.

[169] 35TH REPORT OF THE LAW COMMISSION OF INDIA, p. 354 (Government of India, 1967).

in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment."[170]

"The 26/11 Mumbai Attack terrorist, Ajmal Kasab hanged on 21 November 2012."[171] "The execution of Afzal Guru who was convicted for the 13th December 2001 attack on the Indian parliament at **Tihar Jail**, New Delhi on 9th February 2013 also exposed the discriminatory acts of the Government of India with respect to the treatment of death-row convicts."[172] These acts rejuvenated the debate of Capital Punishment in India.

Now, it is apparent that death penalty exists, and should exist, as a method of discipline in the correctional approach of India. Henceforth, the level headed discussion of maintenance or annulment stands replied here. The researcher is not the slightest bit expect to undermine or negate the perspectives of administrators, prominent legal scholars and the judges of this country who have favored the maintenance of the death penalty. The issue that must be considered here is the usage of this cruel discipline which frames a much antagonistic piece of our criminal equity framework.

"A study of the substantive law shows that death penalty is an alternative and must be given in exceptional cases and not as the primary means of punishment."[173] "The recently added provisions in law by the *Criminal Law Amendment Act*, 2013 do not provide any room for discretion in socially abhorrent crimes like: murder while committing rape, etc."[174] On the other hand, the procedural law in such cases lacks the effective implementation of the substantive law and this gap between the substantive and procedural law shall be carefully scrutinized in this essay.

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[170] *Ibid.*

[171] *Available at* http://www.kashmirlife.net/ajmal-kasab-hanged-protests-in-srinagar/ (Last visited on July 3, 2013).

[172] The State of Death Penalty in India 2013: Discriminatory treatment amongst the death row convicts, ASIAN CENTRE FOR HUMAN RIGHTS NEW DELHI, 1 (February 14th, 2013).

[173] *See Bachan Singh* v. *State of Punjab*, AIR 1980 SC 898.

[174] *SeeCriminal Law Amendment Act*, 2013.

4.2 JUDICIAL PERPLEXION

For the first time, question regarding the constitutional validity of capital punishment was challenged in ***Jagmohan* v. *State of U.P.*,**[175] wherein the court upheld the provisions that provide for capital punishment. With the development in this area of law, the Hon'ble Supreme Court laid down the doctrine of rarest of rare cases in the landmark judgment of ***Bachan Singh* v. *State of Punjab***,[176], which simply means that for awarding capital punishment the Court must record special reasons and explain in detail the aggravating and mitigating circumstances[177] which give rise to such a decision. The doctrine evolved in the above stated case has been applied in a plethora of cases[178] and has been appreciated and followed as a well-settled law in the country. Till date this has been the guiding light to decide cases involving offences punishable with death sentence.

4.3 DEATH PENALTY IN RAREST OF THE RARE CASES

In the landmark case of ***Maneka Gandhi* v. *Union of India*,** the Supreme Court emphasized that be it the criminal procedure for imposing of punishment or its quantity and nature, the related legislation should keep in mind the fundamental rights guaranteed under ***Articles. 21, 19 and 14***. Based on this judgement the Supreme Court in ***Rajendra Prasad* v. *State of Uttar Pradesh*[179]**the specific reasons for granting of death penalty should be related to the crime doer and not to the crime.

Though a murder is proved, the manner of crime, the factors which caused the accused to commit the crime, his/her family background should also be taken in to consideration in awarding punishment." In ***Bachan Singh* v. *State of Punjab*[180]**the Court "sought for the advice of ***amicus curiae*** to determine what are the mitigating circumstances and

[175] *Jagmohan* v. *State of U.P.*, AIR 1973 SC 917.
[176] *Bachan Singh* v. *State of Punjab*, AIR 1980 SC 898.
[177] The concept of aggravating and mitigating circumstances has been elaborately explained by the Apex Court in the case of *Ramnaresh & Ors.* v. *State of Chattisgarh*, AIR 2012 SC 1357.
[178] *SeeDevender Pal Singh Bhullar* v. *State (N.C.T Delhi)*, AIR 2013 SC 1975; *Machhi Singh* v. *State of Punjab*, AIR 1983 SC 957; *K.P. Mohd.* v. *State of Kerala*, AIR 1983 (1) Crimes 796 SC; *Maru Ram* v. *Union of India*, AIR 1980 SC 2147.
[179] 3 SC 646 1979.
[180] (1980) AIR 898.

aggravating circumstances for the commitment of a crime. And later in the case of ***Machi Singh* v. *State of Punjab***[181] the court held that "only after considering both the mitigating and aggravating circumstances of a crime and giving due importance for the mitigating circumstances that a decision can be made whether life imprisonment or death penalty should be imposed."

Hon'ble Justice Thakkar who gave judgement in this case also framed the guidelines for 'rarest of the rare' in the following manner:

- *Manner of murder* (eg: Burning alive a person, Cutting in to pieces the body etc).,
- *Instigation for murder:* Acts which portray unethical and mean nature (eg: murder for money, killing someone for acquiring possession of his property, murder for betraying the country).
- *Committing murder that is antisocial or hated by the society* (eg: murder of a person from Scheduled Castes or of minorities which kindles anger of the society, murder for obtaining dowry by force).
- *Dimension of the murder* (eg: murder of all the members of a family or murder of all the persons belonging to a particular group or community).
- *Personality of the deceased*(eg: an ignorant child, an orphan woman, a poltical leader loved by public murdered for political reasons and not personal).

These guidelines no doubt help us in providing us with a deep insight for the sound understanding of a crime.

In ***Muniappan* v. *State of TamilNadu***[182] the Supreme Court held that " the reasons stated by the learned judge (Sessions Judge) for granting death penalty does not hold to the meaning of the provisions under ***Sec.354(3) of Criminal Procedure Code*** We doubt whether he would have imposed death penalty if he had understood his great responsibility under this legal provision".

[181] (1983) 3 SC 470.
[182] (1981) 3 SCC 11.

Later the question of fair trial and speedy justice came up in cases which involved capital punishment. Article 21 of the Constitution envisages within its ambit the concepts of speedy justice[183] and fair trial,[184] and the umbrella of this protection extends to all persons- persons accused of offences, under trial prisoners, prisoners undergoing jail sentences, etc.[185] Hence, nowhere the class of people accused with offences punishable with death sentence has been excluded. The debate regarding fair trial and speedy justice in such cases was answered by the Apex Court in the famous case of ***Tribeni Ben* v. *State of Gujarat***,[186] wherein it was held that the right of fair trial cannot be put to stake for the sake of right to speedy justice. The Court in its ***ratio decidendi*** also stated that it would be arbitrary to fix any period of limitation for execution on the ground that it would be a denial of fairness in procedure under Article 21 of the Constitution. Hence, delay in delivery of justice has been considered as an insignificant factor, thereby, in the opinion of authors, adding to the sufferings of the victim as well as the offender.

4.4 DELAY AND LACHES

To further answer the questions regarding inquest into the topic, the authors visited the Central Jail located in Patiala (Punjab), which stirred the authors to act towards a much needed change in the existing law and led to deep introspection and motivation.[187] During this period, the authors had a chance to meet and interview seven prisoners who were sentenced to death either by the High Court or by the Supreme Court. Each one of them was guilty of heinous crimes that shook the conscience of not only the victim but the entire society. One of the most horrendous cases was of a man who murdered his maternal aunt and then raped her dead body for hours. There is no question as to the fact that such offenders should be socially condemned and must not be spared. The offender

[183] *Vakil Prasad Singh* v. *State of Bihar*, AIR 2009 SC 1822; *Mohan Kumar Rayana* v. *Komal Mohan Rayana*,AIR 2008 SC 471; *Kartar Singh* v. *State of Punjab*, AIR 1993 SC 341; *State of Maharashtra* v. *Champa Lal*, AIR 1981 SC 1675; *Kadra Pahadiya* v. *State of Bihar*, AIR 1981 SC 939; *Hussainara Khatoon* v. *Home Secretary, State of Bihar (I)*, AIR 1979 SC 1360.

[184] *DLF Power Limited* v. *Central Coalfields Limited*, AIR 2009 SC 2189; *Zahira Habibullah Sheikh* v. *State of Gujarat*, AIR 2004 SC 3114; *State of Punjab* v. *Baldev Singh*, AIR 1999 SC 2378; *Varkey Joseph* v. *State of Kerala*, AIR 1993 SC 1982.

[185] M.P. JAIN, INDIAN CONSTITUTIONAL LAW, p. 1188 (6th ed., Lexis Nexis Butterworths Wadhwa, Nagpur, 2010).

[186] *Tribeni Ben* v. *State of Gujarat*, AIR 1989 SC 1335.

[187] The authors visited the Central Jail, Patiala during a summer internship programmme, from 21.05.2013 to 04.06.2013.

in this case was merely twenty one years of age and the doctors who examined him clearly stated that he and his behaviour is beyond reformation or rehabilitation. If let free he could harm many other innocent lives by his pervert actions.[188] On the other hand, if we consider the victim's mental trauma, the loss that her relatives have suffered is immeasurable and the courts must not turn a blind eye to such cases.

Another case that was examined by the authors was a case of judicial confession wherein the accused, without any external fear or pressure, had confessed before the High Court about a brutal and planned murder of the chief minister of his state. He wished to file no appeal or mercy petition and was ready to bear the consequences of his act. He has been in custody since the year 1995 and awaits his hanging. In such a situation the family members of the accused have been suffering since that time and the adjudicators have been insensitive towards the society at large. He did not fear death or hanging but all the others are not as brave as him. Some of them saw a hangman every night in their dream and said that let justice be done for once and for all so that their fear eliminates and their family reaches a level of stability. In this situation justice delayed is absolutely justice denied, both to the victim and to the offender.

It must also be pointed in this regard that the Supreme Court's different understanding of what constitutes the rarest of rare case has led to anomaly and confusion. "Examples also abound of a pattern of confusion, contradiction and aberrations in judgments in death penalty cases."[189] "A study of Supreme Court judgments in death penalty cases from **1950 to 2006** shows that the cases in which death penalty were imposed are often indistinguishable from those in which it was commuted."[190]

By giving the above information, the authors in no way want to favour the offenders but rather bring to notice the miscarriage of justice that is prevailing among the victims and

[188]The above stated information is accurate and true to the best of the authors' knowledge as it has been gathered during the above stated jail visit.
[189]*Sudam* v. *State of Maharashtra* (2011) 7 SCC 125 and *State of Maharashtra* v. *Damu* (2000) 6 SCC 269, wherein the court ignored its own precedents. Facts in both the cases were similar, though not identical, grounds of defense pleaded were identical, but alas the judgments delivered were contrary to each other.
[190] '*Lethal Lottery: The death penalty in India*' (Amnesty International and the People's Union for Civil Liberties, 2008), retrieved from <http://www.amnesty.org/en/for-media/press-releases/india-time-end-lethal-lottery-india%E2%80%99s-death-penalty-system-20080502> on 03.08.10.2013 at 11:10 pm.

the offenders in this regard. "While reformation of a criminal is only one side of the picture, rehabilitation of the victims and granting relief from the tortures and sufferings which are caused to them as a result of the offences committed by the criminals is a factor which seems to have been completely overlooked while defending the cause of the criminals for abolishing deterrent sentences."[191] "For example, where one person commits three murders it is illogical to plead for the criminal and to argue that his life should be spared, without at all considering what has happened to the victims and their family."[192] "A person who has deprived another person completely of his liberty forever and has endangered the liberty of his family has no right to ask the court to uphold his liberty."[193] Liberty is not a one-sided concept, nor does Article 21 of the Constitution consider such a idea. "If a person commits a criminal offence and punishment has been given to him by a procedure established by law which is free and fair and where the accused has been fully heard, no question of violation of Article 21 arises when the question of punishment is being considered."[194] Hence, earlier the sentence is enforced, earlier is the justice delivered.

4.5 RECENT TRENDS AND PRACTICES OF DEATH PENALTY

The death sentence of Dhananjay Chaterjee was executed on 14th August 2004, and he was hanged till death, after affirmation by the Supreme Court and refusal of his mercy Petition by the Hon'ble President. The Karnataka chief minister, Jagdish Shettar favours such sentence for rapists and enacting a law in the same regard. In earlier days our three successive presidents K.R. Narayanan, A.P.J. Abdul Kalam and Pratibha Patil used these privileges to ensure that from 1999 to 2012, only one hanging took place in India. But in recent year it has ensured that Ajmal Kasab (convicted for the terrorist attack in Mumbai in 2008) and Afzal Guru (convicted for the attack on the Indian Parliament in 2001) have been hanged. Pranab Mukherjee has also rejected the mercy petitions of Mahendra Nath

[191] ¶ 21, *Maru Ram* v. *Union of India*, AIR 1980 SC 2147.
[192] ¶ 20, *Maru Ram* v. *Union of India*, AIR 1980 SC 2147; ¶ 7, *Devender Pal Singh Bhullar* v. *State (N.C.T Delhi)*, AIR 2013 SC 1975.
[193] *Ibid*.
[194] *Ibid*; M.P. JAIN, INDIAN CONSTITUTIONAL LAW, p. 1188 (6th ed., Lexis Nexis Butterworths Wadhwa, Nagpur, 2010).

Das, who was sentenced for murdering a man by beheading in 1996, and four men who killed 22 policemen in a landmine blast in 1993, the so-called Veerappan Gang.

The Justice Verma committee which was "constituted to improvise the laws relating to the safety of the women which presently are no fiercer than a 'toothless tiger' even commented- 'the world community is abandoning capital punishments and our country should strike this chord with the world.'" Our Indian Constitution by the virtue of Article 15 (3) proclaims that "special provision for women and children can be made." This research can be used to bring the perpetrators against women under the ambit of death penalty. On a contradictory consideration, capital punishment surely serves as a violent admonition to potential criminals and can give them a tough grounds to be at their best. After the horrifying Delhi Gang Rape case, an individual is psychologically triggered at the pathetic state of affairs and instructs the court to set everything right with a single blow of gavel.

4.6 MODES OF EXECUTION

As already discussed in the previous chapters, various modes of death penalty exist. Examples could be hanging, lethal injection, lethal gas, electrocution and firing squad. The law commission presented a report as the 187th "Report on the Modes of Execution of Death and Incidental Matters."[195] "The Commission had taken up this matter *suo moto* because of the "*technological advances in the field of science, technology, medicine, anaesthetics"*[196] since its 35th Report." "This Report did not address the question of whether the death penalty was desirable. Instead, it restricted itself to three issues: (a) the method of execution of death sentence, (b) the process of eliminating differences in judicial opinions among Judges of the apex Court in passing sentence of death penalty,

[195] "Law Commission of India, 187th Report, 2003, available at http://lawcommissionofindia.nic.in/reports/187th%20report.pdf (last viewed on 26.08.2015)"

[196] "Law Commission of India, 187th Report, 2003, at page 5, available at http://lawcommissionofindia.nic.in/reports/187th%20report.pdf (last viewed on 26.08.2015)"

and (c) the need to provide a right of appeal to the accused to the Supreme Court in death sentence matters."[197]

Further the commission suggested that an appeal mechanism should be made so that the convict can appeal against the decision of the High Court. It also said that the decision for death sentence must be heard by a bench of around five judges or more to decide such trivial issues and then award such a deterrent punishment to the accused. The mode of lethal injection for a mode of execution was also suggested apart from hanging as under Section 354(5) of the CrPC.[198]

4.7 SOME CLOSING THOUGHTS

To solve the above stated problem the legislators at the first hand must statutorily define rare of rarest cases to eliminate subjectivity and judicial discretion. Also, a law must be enacted which focuses on time bound delivery of justice in cases that fall within the do defined concept of rare of rarest cases. Further, there must be established fast track criminal benches in the High Courts and the Supreme Court so that the whole process becomes speedier.

"Considering the issue at the international level it is pointed out that death penalty is not prohibited by the ***International Covenant on Civil and Political Rights***, (hereinafter referred to as ICCPR), or any other virtually universal international treaty, though there are a number of instruments in force with fewer states parties that do abolish capital punishment."[199]

Customary International Law also provides certain protection and rights to the persons who are under a sentence of capital punishment. According to Article 6 of the ICCPR there are certain restrictions on the implementation and execution of capital punishment

[197] "Law Commission of India, 187th Report, 2003, at page 7, available at http://lawcommissionofindia.nic.in/reports/187th%20report.pdf (last viewed on 26.08.2015)"

[198] Section 354(5) CrPC- When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

[199] '*The Death Penalty under International Law*' (International Bar Association, May 2008).

and certain principles must not be overlooked which include:- "right to a fair trial before the imposition of death penalty, limitation of the death penalty to only the most serious crimes, prohibition against imposing the death penalty when other ICCPR rights have been violated, prohibition against retroactive imposition of the death penalty, right to seek pardon or commutation of a death penalty sentence, prohibition against the execution of persons who were under the age of eighteen at the time the offence was committed and prohibition against the execution of pregnant women."[200]

It must be noted that 140 nations who have abolished death sentence have not totally banned it but have partially abolished i.e. abolition in cases of simple offences. Hence, India has not violated any principle of International Law by retaining capital punishment for most serious crimes. The only fallacy that exists in Indian law is delay of execution and no time bound laws for the same. Lastly, the authors hope that their views be considered by the law makers and adjudicators for speedy and absolute delivery of justice.

[200] *Ibid.*

CHAPTER – 5

CONCLUSION AND SUGGESTIONS

Capital punishment, went in dusty courts after arcane lawful contentions, is executed in the most extreme mystery behind high jail dividers at the break of day. Despite the fact that the privilege of the state to rebuff by slaughtering is bantered about seriously, the procedure that takes detainees from the phone to the platform remains covered in mystery. Since executions are done in our names-we have to know more about them and settle on educated decisions.

The Supreme Court's varied interpretation of what constitutes the rarest of rare case has led to anomaly and confusion. Examples also abound of a pattern of confusion, contradiction and aberrations in judgments in death penalty cases. There is a time-honoured principle of not confirming the death penalty if one of the judges on the Bench or any of the lower courts had either acquitted the accused or sentenced him to life imprisonment. "There is a period valued guideline of not affirming capital punishment if one of the judges on the Seat or any of the lower courts had either justified the denounced or sentenced him to life detainment. A situation where a judge either clears the charged or grants a lesser sentence can't certainly be a rarest of uncommon situation where a lesser sentence is impossible."

However, "in Krishna Mochi[201](2002) and again in Bhullar (2002), the Supreme Court confirmed the death sentence despite one of the judges having acquitted the appellants." In Kheraj Ram[202] (2003) and Satish (2005), the Supreme Court imposed "the death sentence on persons acquitted by the High Courts. In Sattan (2009), the Supreme Court enhanced the sentence to death 15 years after the High Court had commuted it. Out of deference to principle and precedent, the court ought to have explained why it repudiated

[201] *Krishna Mochi* v. *State of Bihar* (2002) 5 SCC 203
[202] *State of Rajasthan* v. *Kheraj Ram* (2003) 7 SCC 419

the aforementioned principle ruling out the death penalty in such cases." "A study of Supreme Court judgments in death penalty cases from 1950 to 2006 *Lethal lottery: The death penalty in India* (2008) by Amnesty International and the People's Union for Civil Liberties (PUCL) shows that cases in which the death penalty was imposed are often indistinguishable from those in which it was commuted."[203] "Nothing has changed since then. Dharmendra Singh[204] (2002) and Kheraj Ram[205] (2003), doubting their spouses' fidelity and the parentage of their offspring, killed their wives and children." "The former was sentenced to life imprisonment, the latter to death. Vashram[206] (2002) and Sudam[207](2011) murdered theirwives and children because they were being nagged. The former's sentence was commuted, while the latter was sent to the gallows." "Harassing was understood as a mitigating fact and continued aggravation in only one case though it was the reason of both murders. In two cases of child sacrifice, the court commuted the death penalty in one case but upheld it in the other. It commuted the death penalty in Damu [208](2000), where three children were killed, and upheld it in Sushil Murmu [209](2004), where one child was killed. The grounds for commutation — that the accused acted out of ignorance and superstition — applied squarely to Murmu as well, which was also less heinous a case than Damu." In each of these comparisons, "the court ignored its own precedent and imposed the death penalty in the subsequent case." "Mohan (2008) was sentenced to death for the rape and murder of two minor girls, having earlier been convicted twice of raping other minor girls. Sebastian (2010), described as a violent paedophile with previous convictions for molestation, kidnapping, rape and murder of a young child, was given life imprisonment for yet another rape and murder of a child. There is little to differentiate the case of Sebastian's from Mohan's, except the composition of the Bench."

[203] Retrieved from <http://www.amnesty.org/en/for-media/press-releases/india-time-end-lethal-lottery-india%E2%80%99s-death-penalty-system-20080502> on 14.10.2012
[204] *Devender Pal Singh & Dharmender Singh* v. *NCT, Delhi* (2003) 2 SCC 501
[205] *Supra note*:73
[206] *Vashram Narsibhai* v. *State of Gujarat* (2002) 9 SCC 168
[207] *Sudam* v. *State of Maharashtra* (2011) 7 SCC 125
[208] *State of Maharashtra* v. *Damu* (2000) 6 SCC 269
[209] *Sushil Murmu* v. *State of Jharkhand* (2004) 2 SCC 338

Further it can be said that both the organs of the government, namely the judiciary and the executive, treat the issue of death penalty in a different manner. Standards applied by the judiciary is the fulfilment of the 'Rarest of rare cases' (which obviously becomes subjective or judge-centric at times) while the standard of executive for commutation is unknown (which is even more subjective or emotive).

It is suggested that:

(i) The term rarest of rare should be statutorily defined rather than leaving a provision for judicial discretion.

(ii) Death penalty under the Indian Penal Code should be abolished because it is embodied as an alternative form of punishment which creates room for judicial discretion.

(iii) For serious offences like: terrorism and others, death penalty should be provided and executed immediately.

(iv) The prevailing law on terrorism in India needs to be revised and implemented in a more effective and desired manner.

(v) Under the anti-terrorism laws there must be no deviation from the normal established rules of procedure and evidence so as to avoid any kind of arbitrary behavior on the part of law enforcing agencies.

(vi) Cases involving terrorism should be tried by Special Courts on a speedier basis and as stated above must not deviate from the normal procedural and evidence rules.

(vii) Execution of the sentence of death should be speedier and be implemented immediately once the mercy petition is decided.

(viii) The filing and deciding of such mercy petitions must be time barred.

(ix) Law Commission or the legislators should look into the matter and lay down certain standards or guidelines based on which the pardoning power or commutation of the sentence should be done.

I would like to conclude by quoting Justice A.K. Ganguly that "in the law relating to capital punishment the mitigating and aggravating circumstances can be structurally indicated and defined so that the courts become duty bound to consider them before awarding the death penalty". [210]

[210] *Criminal Justice system needs Overhaul* by Suhrid Sankar Chattopadhyay, Frontline Magazine, September 2012

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