DEATH PENALTY IN INDIA-ISSUES AND CHALLENGES

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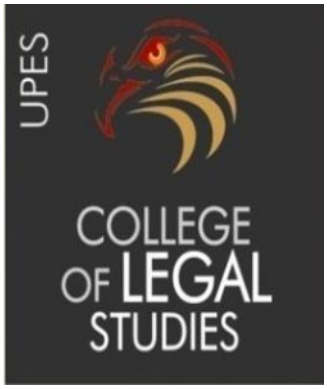
Submitted under the guidance of Mr. Anubhav Kumar

This dissertation is submitted in partial fulfillment of the degree of B.B.A., LL.B.



College of Legal Studies

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DECLARATION

I declare that the dissertation titled **"Death Penalty-Issues and Challenges"** is the outcome of my own work and research conducted under the supervision of, **Mr. Anubhav Kumar**, Faculty at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that this dissertation comprises only of my original work and due acknowledgement has been made with regard to any material which is used from any other source .

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CERTIFICATE

This is to certify that the research work titled **"Death Penalty-Issues and Challenges"** is the work done by **Atisha Singh** under the guidance and supervision of Mr. Anubhav Kumar for the partial fulfillment of the requirement of B.B.A., LL.B. (Hons) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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ABSTRACT

The death penalty debate is the most socially relevant debate, keeping in mind the circumstances that have been brought about by the 21st century. Death penalty forms an integral part of the criminal justice system in the Indian State. With the increasing strength of the human rights movement, the very existence of death penalty is questioned as immoral. This however is a surreal argument as keeping one person alive at the cost of the lives of numerous members or potential victims in the society is unimaginable and in fact, that is immoral. Death penalty is a debatable international topic and every country stands with different opinion in this context. It has been banned in various countries where as, it is regarded as panacea to the persistent threat to the society. United Nations prohibits death penalty in all of its forms declaring it as barbarous and inhuman. India is party to UN conventions but it has always voted against the question of global moratorium on the death penalty.

India restricts itself to apply the provisions of UN resolutions on death penalty. Indian legislation has several provisions that provide death penalty for some serious type of offences. During the 1980s the Supreme Court sought to restrict the use of the death penalty by characterizing it as a punishment reserved only for the "rarest of the rare" cases. This category is no where defined in the constitution or any other legislative provision. It"s all judicial creativity based on facts and circumstances of the case and subjected to judicial mindset and judicial creativity.

Here, we have examined various case laws and tried to find the reasonability behind the category of rarest of rare. In a case, for a crime, a person is awarded death sentence and for the same offence in another case, accused is given life imprisonment, proving the theory of rarest of rare as vague. It is subjected to arbitrary practices which infuses corruption in system. Provisions of mercy petition by President and governor proves to be inconsistent with the criteria of awarding death penalty. India is a land of customs, beliefs and superstitious traditions. This paper examines and elucidates strong reasons as to why

the existence of death penalty is important to the peace and tranquility of the society at large. As against the common belief that an innocent person may be sent to the gallows by false conviction, this paper goes on to explain the various checks and balances available, that ensure that no innocent person is condemned while at the same time ensuring that no person who s guilty of the most heinous crimes is allowed to go scot – free. The paper ends by advocating the existence of death penalty, as it deters and helps lower the crime rate.

Keywords: Crimes, death penalty, executive, judiciary, pardon

Acknowledgement

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LIST OF CASES

26. *State of Andhra Pradesh v. Chalaram Krishna Reddy* AIR (2000) 5 SCC 712

27. *Sher Singh v. State of Punjab* (1983) 2 SCC 344.

28. *T.V Vatheeswaran v. State of Tamil Nadu* (1983) 2 SCC 68.

29. *vikram Singh v. Union of India* Criminal Appeal No. 824 of 2013 (SC), dated 21 August, 2015, at para 49.

RESEARCH METHODOLOGY

STATEMENT OF PROBLEM-

From the last decade, death penalty has gathered concerns from the Supreme Court. Apex Court many a times had to struggle with the much needed application of legislations on death penalty and constitutional unbiasness of it. Death penalty has always been the subject-matter of contention, and ethical debates. With the global nourishment of human rights, various moves has been a made to abolish such kind of punishment or at least, sub stand the marginal international law standards focusing the protection of rights of those facing death sentence.

Sanctions always existed to build up fear in the minds of wrongdoer throughout the history in every societies for the crimes being committed, death penalty is one of a kind in which the accused is awarded sentence of death for concluding some of the heinous crimes like for that of, waging or attempt to wage war against the Government of India, murder by a life convict, abetment of mutiny actually committed abetment of suicide of a child or an insane or intoxicated person, murder, attempt to murder by a life convict, giving or fabricating false evidence upon which an innocent person suffers death dacoity with murder. Capital punishment is founded on the theory of punishment that life should go for life and eye for eye.

The execution free run of Ajmal Kasab, Afzal Guru and Yakub Memon for long duration has made many believe and debate that India must contemplate the efficacy and profitability of holding this most remarkable absolute penalty. This has led to giving rise of the speculation about the end result of keeping such penalty in the legislations. This issue has, thus, congregated extensive deliberation in the conventional media.

OBJECTIVE AND SCOPE OF RESEARCH

Broadly, this paper attempts to analyse the various issues and challenges of death penalty along with the detailed study of the constitutionality and the morality behind the punishment of death being awarded by the courts in India for many a years. This paper would also examine that whether or not the Death Penalty is a deterrent to crime in general.

RESEARCH QUESTIONS

How far the law commission's 262nd report on narrowing the scope of death penalty is justified?

Whether it is morally right to deprive a human being of its life?

Whether capital punishment acts as a deterrent for future crimes?

HYPOTHESIS:

Crime is regarded as an evil not only against an individual but also against public. So, in order to balance the scales of Justice, it is important that court should impose punishment befitting the crime so that judiciary reflects the public abhorrence of the crime. Death sentence does not assist the penological goal of deterrence any more than life imprisonment. The contention of immorality of the retributive theory is just a darker form of vengeance. As the matter of focus, death penalty as the concluding path of justice to victims, the restorative and rehabilitative aspects of justice are lost sight of.

METHODOLOGY

The methodology for research for the completion of the research paper would be doctrinal. The research methodology for this paper requires gathering relevant data from the specified documents and compiling databases in order to analyse the material and arrive at a more complete understanding of the concerned topic with the help of various statutes, norms, regulations, scholarly articles of different authors, journals and books. This project will utilize the deductive method of research as the general findings have in the end been concluded to lay about a result summing up the entire research.

SURVEY OF EXISTING LITERATURE

BOOKS

Debating Capital Punishment in Strangled Democracy of India by Mritunjay Kumar Yadavendu

The book is a pivotal encounter with varied discussions, regarding death penalty in India and in other countries also. It examines the approaches of retentionist and abolitionist through a compound form of the arguments revolving around death penalties awarded to Afzal Guru (Parliament Attack Case) and Dhananjoy Chatterjee (rape and murder).

ARTICLES

ACHR's submission to the Law commission of India on Capital Punishment|The case for abolition of death penalty in India| ISBN: 978-81-88987-46-7k l 7|May 2014| last accessed on October 29th, 2015

This report is publication by Asian Centre of Human Right's in reference to "National Campaign for Abolition of Death Penalty in India". The funding of this project is done by European Commission under the European Instrument for Human Rights and Democracy. It is a programme to facilitate and support human rights and democracy worldwide. The prevailing contention of this paper is retention of death penalty effective as a deterrent. The data analysed by the National Crime Records Bureau (NCRB) of the Government of India depicts that even after the vast number of executions there is decadal increase of murder cases which clearly shows that executions had not acted as deterrent.

Gargi Roy |Corvinus University| International Journal of Humanities and Social Science- Is Capital Punishment Acceptable?- - Vol. 4 No. 2 |[Special Issue – January 2014]|last accessed on October 29th, 2015

In this article the author has discussed about the various theories of punishment and has also expressed his views for and against the capital punishment. We still get to read about death penalties in newspapers even after entering the twenty first century, which is a barbarous act of civilized society. The discussion on death penalty raises many questions from the moral, humanitarian and philosophical points of view. The sanction of the wrongdoer is very ancient. Punishment is necessary to maintain law and order in society.

Critical Analysis Of Abolition Of Death Penalty In International Law: An Analysis Of Death Penalty Under The United States And Nigerian Laws

Capital punishment has always been a debatable issue for decades because of several reasons, such as, that it serves as a deterrent for future crimes. More serious arguments have been given for its abolition, such as, that it violates human rights. The central idea leading the development of human rights law at international level is abolition of death penalty. In this article the author has examined the issues of death penalty in some states especially the United States and Nigeria and concludes abolition of death penalty is the global need and that alternative to the death sentence exists.

International Journal of Academic Research- A Critical Study on Abolition of Capital Punishment |ISSN: 2348-7666 Vol.2, Issue-1(4), January-March, 2015|

Being the citizens of 21st century which is not the era of inhumanity the death punishment should be abolished. The illiteracy and unemployment along with many other reasons have led to transformation of ordinary human beings into criminals. This paper provides proper analysis of different factors which conclude that death penalty is not a way to reform the criminals and bring law, justice and order in the society. Social behaviour of the individuals should be improved by the government. The article also sheds light on the Constitutionally or legal validity of death penalty as well as reflecting on the question as to whether procedure established by Indian Penal Law both substantive and procedural for imposition of death penalty is not fair, just and reasonable.

Law Commission Of India| Government Of India| Report No.35| Capital punishment| September 1967|

In its 35th Report, the Law Commission of India has affirmed the deterrent effect of death penalty. Whether or not death penalty acts as deterrent for future crime is a difficult question which cannot be proved even statistically because it is not possible to calculate that how many potential murderers have deterred from committing it.

The Commission undertook an extensive study towards the issue of abolition of death sentence from the books of statute. Based on its analysis of the existing socio-economic cultural structures (including education levels and crime rates), it made a conclusive recommendation for the retention of death penalty for the rarest of the rare case.

Law Commission Of India| Government Of India| Report No.187| Mode of Execution of Death Sentence and Incidental| 2003

The law Commission of India in its 187th report once more dealt with the issue of death penalty on the "Mode of Execution of Death Sentence and Incidental Matters" in 2003.This time it was a suo motu issue taken up by the Commission. The scope of this report was confined to the mode of execution and did not dealt much with the question of the constitutionality of death penalty as a deterrent punishment.

Law Commission Of India| Government Of India| Report No.262| The Death Penalty| August 2015|

Among the 59 countries India is one where the death penalty is still awarded by courts considering it deterrent to the future crimes. Recently, this problem was debated after the execution of 1993 Mumbai blasts convict Yakub Memon on July 30. Death sentence does not assist the penological goal of deterrence any more than life

imprisonment. Retribution plays an important role in the punishment of crimes. It should not be reduced to vengeance. The notion of “an eye for an eye, tooth for a tooth” has no place in our constitutionally mediated criminal justice system. The report is concluded by recommendation abolishing death sentence except for the cases of terrorism and wagering war.

CHAPTER 1- INTRODUCTION

1.1 Death Penalty in India

Sanctions always existed to build up fear in the minds of wrongdoer throughout the history in every societies for the crimes being committed, death penalty is one of a kind in which the accused is awarded sentence of death for concluding some of the heinous crimes like:-, waging or attempt to wage war against the Government of India, murder by a life convict, abetment of mutiny actually committed abetment of suicide of a child or an insane or intoxicated person, murder, attempt to murder by a life convict, giving or fabricating false evidence upon which an innocent person suffers death Dacoity with murder. Capital punishment is founded on the theory of punishment that life should go for life and eye for eye.

From the last decade, death penalty has gathered concerns from the Supreme Court. Apex Court many a times had to struggle with the much needed application of legislations on death penalty and constitutional biasness of it. Death penalty has always been the subject-matter of contention, and ethical debates. With the global nourishment of human rights, various moves has been a made to abolish such kind of punishment or at least, sub stand the marginal international law standards focusing the protection of rights of those facing death sentence.

The execution free run of Ajmal Kasab, Afzal Guru and Yakub Memon for long duration has made many believe and debate that India must contemplate the efficacy and profitability of holding this most remarkable absolute penalty. This has led to giving rise of the speculation about the end result of keeping such penalty in the legislations. This issue has, thus, congregated extensive deliberation in the conventional media.

Capital punishment fills in least event valuable needs. The first is to rebuff the individuals who have carried out appalling violations, generally murder or genocide,

against different people or a general public. Fundamentally capital punishment, which is coordinated against such extreme crime, contrasts from different types of punishment in harshness.

Thus, there is nothing inherently unethical about it. Without a doubt in numerous societies, the idea that a "man who takes other's life must pay with his own" remains acknowledged guideline. The second and more vital reason capital punishment serves is to be a deterrent against future culprits. Definitely on account of the value of life, capital punishment expands the likelihood of making the potential criminals perpetrate such acts.[1]

1.2 Meaning of the Death Penalty

The death penalty is lawful killing of an accused as punishment for his/ her heinous crime inflicted upon somebody. Whereby, a man is killed by the state as a punishment for a wrongdoing. It is considered to effect on the future perpetrators. Imposing punishment on the offenders always stood as the fundamental part of every judicial system. And when it comes to the highest punishment which can be awarded to an offender is to take his life for his wrongs i.e. the death penalty. Death sentence has been considered the most rigorous and terrible punishment.

1.3 Indian law on death penalty

The judges are strongly separated on the critical issue of death sentence. Judiciary of any nation is vital part of interpreting and applying the law and settling upon dispute between an individuals and the state. It is the duty of the court to keep up rule of law in the nation and to guarantee the working of the government in accordance with the law. Nation

[1] Death Penalty: Another View *(Economic and political Weekly , May 9, 1998)*

where the constitution is written one, courts have extra capacity of preserving the constitution. Judiciary is partitioned on the significant issue of capital punishment.

The argument of the individuals who bolsters abrogation and contends that capital punishment is corrupting and against human dignity, has no say in cutting edge penology. The Retentionist, then again, legitimizes the death penalty as a social need having an extraordinary deterrent power.[2]

The moving pattern towards burden of capital punishment for the offense of murder is clearly recognizable from the changes made in criminal law time after time. Before 1955, legal watchfulness in granting a lesser punishment rather than capital punishment was outlined by requiring the judge to record his purpose behind honoring a lesser punishment. In any case, it was in this way understood that it was unnecessary to restrict the power of the court and again it invalidated the accomplishment of the judge if his purpose behind granting life imprisonment rather than capital punishment, did not contend well despite the fact that he may be eventually right in his judgment.

1.4 Constitutionality of death penalty

According to Article 21[3] of the Indian constitution states unconstitutional the deprivation of right to life of any person, it enshrines protection of life and personal liberty of every individual. It states that a person can be deprived of is life and liberty only by procedure established by law. Attempts have been made by many countries to abolish capital punishment; it was fruitful for some of the countries. Indians possess different view on death penalty. Some support Retentionist view and some support abolitionist view. Justice Gangly has referred death penalty as a barbaric and anti-life act.

[2] Supreme Court Journal 2012 (Vol.6)

Considering the constitutionality, according to Article 21, state may take the life of a person acting within the preview procedure established by law. The act of taking the life of person is always questioned as there is no prescribed procedure for such an act is mentioned under any law. It was in *Jagmohan Singh v State of U.P* ,[4] in which the constitutionality of the death penalty was upheld by a five judge bench. The constitutionality of death penalty was again upheld in the case of *Rajendra Prasad v. State of U.P*[5].

[4] Jagmohan Singh v, State of Uttar Pradesh, AIR 1973 SC 947: (1973) 1 SCC 20

[5] AIR 1979 SC 916.

CHAPTER 2- HISTORICAL BACKGROUNDS

Imposing punishment on the offenders always stood as the fundamental part of every judicial system. And when it comes to the highest punishment which can be awarded to an offender is to take his life for his wrongs i.e. the death penalty. The age of civilization shoulders history of death penalty. The origin of such punishment can be traced from that of Vedic era. The criteria upon which the death penalty can be inflicted have undoubtedly changed with changing circumstances, place, and time. Based on the nature of the crime the Indian Penal code has provided various principles of punishment. Death sentence is one of such punishments provided under Indian Penal Code. This is arranged to be given to the most serious crimes. Death sentence has been considered the most rigorous and terrible punishment.

2.1 Death Sentence in ancient period

Numerous numbers of offences were awarded with death sentence under the ancient law of crimes. The great Indian sagas like the Ramayana and the Mahabharata also accommodate citations about the wrongdoer being punished with vadha-dand. This stands for the unhurried procedure of amputation by bits. As much as, fourteen such modes of amputating the criminals to death are known to have prevailed.

Justifying the object of punishment the primitive law-giver Manu also positions the element of fear as an underlying attribute of judicial phenomenon. Manu states that to depart people from such a sinful offence, death penalty was the only and most essential

form of punishment to create fear in the minds of people. Otherwise, people would not let one survive the other like a Hungary fish acts under the water.[6]

The emergence of Indian law **is** from religious prescription and customary practices, though the indicated history of law starts from the Vedic period, it is widely assumed that even primitive India had some set of legal system in place during the Indus Valley civilization. The Vedic period, the Islamic period, the British period and post-Independence have been found to be the background behind the emergence of Indian law.

In Vedic era, practice of the death sentence was the most sever and harsh in nature. In Hindu law, it is believed that the origin of the method is from the Vedas. Vedic period mentions the four Vedas. The source of law during this period was Sruti, Smriti and Acharas (custom), usage. Sruti consisted of the four Vedas namely- 1-Rigveda, 2-Yajurveda, 3-Samveda and 4-Atharvaveda.

For introducing the system of penalties the first ancestor of mankind i.e. Manu is responsible. When compared to modern law the ancient laws of Hindu was an unusual kind of legal system which follows a unique scheme of values along with law and policy. Preservation of Dharma was the basic aim of Vedic period.[7]

***Manusmriti*:** The Manusmriti is the Hindu code of ancient India, which managed the relationship in the middle of social and ethnic gatherings, in the middle of men and

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[6] Prof .V .N Paranjape, *Criminology & Penology with Victim logy 336 ,(Central Law Publication Allahabad,16th 2014)*

[7]History of law,http://www.cbseacademic.in/web_material/doc/Legal_Studies/XI_U3_Legal_Studies.pdf.last visited last visited on 22.03.2016

women, the association of the state and the legal framework, rebirth, the workings of karma, and all parts of the law.

The criminal justice framework in ancient India was observed to be founded on the Varna framework and the Manusmriti characterized wrongdoing and punishment for every Varna in a various leveled mode. The present paper is a basic investigation of the criminal justice principles found in the code[8].

The statute of Ancient India, which was basically Hindu-ruled, was formed by the idea of `Dharma'. The distinction between a common wrong and a criminal offense was clear. While common wrongs related principally to debate emerging over prosperity, the idea of sin was the standard against which wrongdoing was to be characterized. The Maurya Dynasty, which had reached out to some of the parts by the fourth Century, B.C., had a thorough punitive framework, which endorsed mutilation and also capital punishment for even insignificant offenses.

2.2 The Eighteen Causes of Legal Action

Manusmriti partitions wrongdoings into 18 sorts. They are (1) non-fulfillment of obligations, (2) store and vow, (3) deal without proprietorship, (4) worries among accomplices, and (5) resumption of endowments (6) Non-fulfillment of wages, (7) non-execution of understandings, (8) rescission of offer and buy, (9) debate between the proprietor (of dairy cattle) and his workers, (10) question in regards to limits, (11) strike and (12) criticism, (13) burglary, (14) theft and viciousness, (15) infidelity (16) Duties of man and wife, (17) allotment (of legacy) (18) betting and wagering.

Punishment: Manu unequivocally trusted that the "danda" "the scepter ", an image of the force and power was made by God and just trepidation alone would make the people to refrain themselves from wrongful acts. Manu sturdily has supported the hypothesis of

[8]*Manusmriti :A critique of the criminal justice Tents in the ancient India Hindu code, K Jaishankar.* Available at: www.erces.com *(last visited on 20.03.2016)*

prevention as the motivation behind punishment; the punishment ought to be as per the standards of natural justice.[9]

Manu felt that no one but punishment can control all the individuals in the earth and gave most extreme significance to punishment. In any case, he is careful of punishment given without appropriate judgment and felt that it might pulverize the nation.

Manu cautions the king that if he does not punish the offenders who are worthy of punishment, then, the stronger would roast the weaker, like fish on a spit and a situation will arise, where, might may overrule the right. Only the fear of punishment runs the world. Manu also feared that if there was no punishment then all castes (Varna) would be corrupted (by intermixture), all barriers would be broken through, and all men would rage (against each other) in consequence of mistakes with respect to punishment.

Manu has identified ten places on the body in which punishment may be inflicted. The sexual organ, the belly, the tongue, the two hands, and fifthly the two feet, the eye, the nose, the two ears, likewise the (whole) body is the ten places in a body fit for punishment.[10]

From this perspective, we additionally come to realize that Manu bolstered retributive equity. Manu is against low punishment and cautions that leaving an offender without punishment will devastate notoriety among men. Manu gives phases of punishment, to a hoop individual in the event that he keeps on doing the wrongs, first by (delicate) advice, a short time later by (unforgiving) impugning, thirdly by a fine, after that by corporal rebuke.

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[9]Bose, S. and P. Varna., (1982) Philosophical significance of Ancient Indian Penology, *Journal of Indian Philosophy* 10(1) pp 61-100.

[10]Buhler, G. (1984).*The Laws of Manu.* Delhi: Banarsidass. (Reprint from Oxford University's 1886-edition)

2.3 Pre independence move

An early endeavor for annulment of the awarding capital punishment occurred before the independence of India, when Shri Gaya Prasad Singh endeavored to present a Bill annulling capital punishment for the offenses under IPC in 1931. But it was unfruitful. By the same time, in 1931, after the execution of Rajguru, Sukhdev and Bhagat Singh by the then British government, the congress in its Karachi session moved a resolution, which incorporated an interest for the annulment of the passing capital punishment. India's Constituent Assembly Debates somewhere around 1947 and 1949 additionally brought up issues about the judge-driven nature of death penalty, discretion in imposition, its oppressive effect on individuals living in poverty, and the likelihood of mistake.

Dr. B. R Ambedkar was in for nullification of such punishment stating:-

"My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. That, I think, is the proper course to follow, so that it will end this controversy. After all, these countries by and large believe in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether"[11].

[11]Constituent Assembly Debates on 3 June, 1949 Part II, available at http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm (last viewed on 16.03.2016).

Nevertheless, he left this issues open for parliament to decide upon the desirability of death sentence in India. This suggestion was followed by the parliamentarians.

Laws such as Code of Criminal Procedure, 1898 ('Cr.P.C. 1898'), and the Indian Penal Code, 1860 ('IPC') of British government were still operative in India even after the independence, Along with death there were 6 types of punishments given under the Indian penal code. Under section 367(5) of the CrPC 1898 where the death punishment was an option, the courts were required to state reasons for not imposing such punishment.

Repeal of Section 367(5), CrPC 1898 was made by parliament in 1955 considerably changing the stand of death penalty in India. It was now no longer required for the courts to state reasons for not imposing the prescribed sentence. The reenacted CrPC of 1973 also made several changes in section 354(3) now; judges were to provide special reasons for imposing the death sentence. Thus, there was a gradual shift from 1989 to 1973 i.e. from why not imposing death sentence to why imposing death sentence respectively.

2.4 Previous Law Commission Reports

35th report of the Law Commission on Capital Punishment

In 1967, 35th report of the Law Commission on Capital Punishment was published which after taking into account the contentions abolitionists and Retentionist, recommended the retention of death penalty in India with judges stating the reason for doing so stating:

"Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment[12]".

The justification given by the commission for retention of capital punishment was its deterrent purpose as the most essential object.

Whereas, Judges Discretion while awarding death punishment was accepted in the 35th Report, the apex court have stated why such a discretion was problematic[13]. Retention of section 303 of the Indian Penal Code was also recommended in the report which mandates the death penalty. But the Supreme Court took a different view on this point and held unconstitutional the case of *Mithu v. State of Punjab*[14] in 1987.

The 187th Report of the Law Commission

The Law Commission In 2003 on the "Mode of Execution of Death and Incidental Matters released its 187th Report[15]. Because of the "technological advances in the field of

[12]Law Commission of India, 35th Report, 1967, at para 293, available at http://lawcommissionofindia.nic.in/1-50/Report35Vol1and3.pdf (last viewed on 16.03.2016).

[13]See AlokeNath Dutta v. State of West Bengal, (2007) 12 SCC 230; SwamyShraddhananda v. State of Karnataka, (2008) 13 SCC 767; Santosh Bariyar v. Stateof Maharashtra, (2009) 6 SCC 498; Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641.

[14](1983) 2 SCC 277

[15]Law Commission of India, 187th Report, 2003, available at http://lawcommissionofindia.nic.in/reports/187th%20report.pdf (last viewed on 16.03.2016).

science, medicine, technology, anesthetics the issue suo moto taken up by the commission. This report was not directly on desirability of death penalty. Apart from that, it has 3 major issues:-

a) modus of execution of death sentence
b) elimination of difference of opinions among judges while imposing such punishment and
c) Right of appeal to the accused to the Supreme Court in matters of death sentence.

After taking opinion of the public and doing a comparative study of the precedence of India other the countries, the Law Commission recommended that Section 354(5) of the CrPC should stand amended to incorporate the use of lethal injection as modus of execution, in addition to hanging. On the second issue, it recommended that right of appeal to Supreme Court should be a statutory right when High Court confirms enhances the sentence to death sentence. Cases of death sentence should be heard by at least a 5-judge Bench of the Supreme Court was recommended on the third issue[16].

Law Commission of India 262nd report, 2015

The Law Commission of India led by Justice A.P. Shah presented its 262nd report on 31st August 2015 on the issue of capital punishment in India. The issue was alluded to the Law Commission by the Supreme Court in *Santosh Kumar Satishbhushan Bariyar v. Maharashtra, (2009) 6 SCC 498* and S*hankar Kisanrao Khade v. Maharashtra, (2013) 5*

[16]Law Commission of India, 187th Report, 2003, at page 3, available at http://lawcommissionofindia.nic.in/reports/187th%20report.pdf (last viewed on 16.03.2016).

SCC 546. The Law Commission has beforehand in its 35th report ("Capital Punishment", 1967) suggested the maintenance of capital punishment in India.

The Supreme Court has additionally, in Bachan Singh v. Union of India, (1982) 3 SCC 24, maintained the legality of capital punishment, however kept its application to the 'rarest of uncommon cases', to diminish the arbitrariness of the punishment. Be that as it may, financial and social positions of the nation have changed definitely since the 35th report arbitrariness has remained a noteworthy worry in the capital punishment cases in the 35 years since the premier point of reference on the issue was set down. In like manner understanding that capital punishment is an issue of an exceptionally delicate nature, the Commission chose to embrace a broad study on the issue.

The Commission finished up in the wake of concentrating on the issue widely that capital punishment does not serve the penological objective of discouragement any more than life imprisonment. Indeed it neglects to accomplish any unavoidably substantial penological objectives. The Law Commission additionally presumed that in concentrating on capital punishment as extreme measure of equity to casualties, the helpful and rehabilitative parts of equity are dismissed.

It was likewise presumed that to a great degree uneven use of Bachan Singh has offered ascend to a condition of vulnerability in capital sentencing law which plainly falls foul of sacred due procedure and equity standard. In this manner, the established regulation of the death penalty endeavored in Bachan Singh has neglected to keep capital punishments from being discretionary and stunningly forced.

In Fact, obsolete methods of examination, over-extended police power, insufficient arraignment, and poor lawful guide are a portion of the issues assailing the framework.

Capital punishment works inside of this connection and consequently experiences the same auxiliary and systemic obstructions.

Thus the organization of the death penalty consequently stays frail and powerless against misapplication. It was likewise inferred that the clemency power under Articles 72 and 161 have flunked in going about as the last resort against unsuccessful justice in the burden of capital punishment.

The Supreme Court has more than once brought up voids and illegalities in how the officials have exercised the pardoning powers. At the point when even practice of leniency forces is once in a while vitiated by gross procedural infringement and non-utilization of brain, the death penalty gets to be weak punishment form. Further the degrading condition of prison has aggravated the capital punishment. The death row phenomenon has become an unfortunate and distinctive feature of the death penalty apparatus in India which breaches the Article 21 barrier against degrading and excessive punishment.

Subsequently the Commission has suggested that the statute on the issue has continued from evacuating the necessity of giving exceptional explanations behind forcing life imprisonment rather than death in 1955; to requiring extraordinary purposes behind forcing capital punishment in 1973; to 1980 when capital punishment was confined by the Supreme Court to the rarest of rare cases; this demonstrates the course in which we need to head. Accordingly the time has desired India to move towards elimination of capital punishment.

The commission has likewise prescribed that despite the fact that there is no legitimate penological defense for treating terrorism uniquely in contrast to different wrongdoings, in any case, given the worries raised by the administrators that the annulment of capital

punishment for terrorism related offenses and wagering war, will influence national security, there is no purpose to hold up any more to make the main step towards elimination of capital punishment for all offenses other than terrorism related offenses.

CHAPTER 3-JUSTIFICATION OF THE PENOLOGY

The Supreme court after the ruling of *Shankar Kisanrao Khade v. State of Maharashtra*[17] that it is essential that the court should state reasons for awarding death sentences when there is no other alternative available, pointed out towards the need of analysis of desirability of death sentence in India as deterrent to society. Therefore, the law commission in its 265th report examined the penological object for awarding death sentence. Thus, the report has analyzed different theories of punishment used by the Courts in its death penalty adjudication.

There are various theories of punishment which is generally used and is also published in law commission's 35th and 262nd report:-

3.1 Deterrence

The 35th law commission report has stated that the deterrent effect of the punishment is the main purpose not only in cases of death sentence but for all other sentences. The Deterrent theory of punishment seeks to protect the people of the society from doing wrongful act by instigating the fear of punishment.

It is believed that a person will commit a crime only when the profit for doing such a crime is much greater than that of suffering of punishment via penal consequences. The deterrent operation is encouraged when the sanction also stands on the equal footing as that of the crime believing that no individual will do an criminal act which would risk his/her own life.

[17] *(2013) 5 SCC 546*

In case of *Bachan Singh v. State of Punjab*[18] the Supreme Court was of the finding that India along with some other countries of world death sentence is more deterrent than the life imprisonment and this is the beliefs of the eminent jurists, judges, legislators, etc. The court has observed many other cases where death sentence is considered the most deterrent punishment of all.

Efficiency of deterrence accelerated after the study report by Isaac Ehrlich released in 1975 the report states that there is no evidence to point that death punishment is more deterrent than its alternative i.e. life imprisonment.

Ehrlich report was restudied for efficacy deterrence theory by a panel headed by (Nobel Laureate) Lawrence of National Academy of Sciences, United States,. The panel gave its report in 1978 summarizing that "*the available studies provide no useful evidence on the deterrent effect of capital punishment*".

3.1.1 The Case of Terrorism

For deterring the similar crimes in future and for securing the sovereignty and integrity of the nation along with security of its citizen, the question of awarding capital punishment in the cases of terrorism should be considered independently.

Terrorism related crimes are way more different from the other crimes as it contains grave motive and are much more serious, therefore, the assumption of death sentence to be deterrent towards the terrorism needs to be re-brushed.

[18] (1980) 2 SCC 684

It is often believed and is somewhat true also that death sentence is not at all deterrent for the terrorists since they already are on a suicide mission all set to give up their lives for their object.[19] Sometimes avoiding death penalty in the cases of terrorism in fact may increase rate of terrorism activities. In fact, sometimes, awarding death sentence to a terrorist may also be one of the reasons for the terrorism activities.

The execution of death penalty is sometimes desired by the terrorist as it instigates their political aims. They also get nations and public as well organizations support which are against the sentence of death as it happened in Yakub Memon's case.

A pre-eminent expert on the cases related to terrorism Jessica Stern, states[20] : "That the effectiveness of the death penalty in general is arguable but talking about terrorism, national security must be of utmost importance". But people now days are so judgmental towards the execution of terrorist also they declare strike to commute the death sentence and the execution of minor operative go beyond retribution or justice".

These criminals become martyr after execution and will become favorite face of employers of terrorist organization. And those who consider their criminal act of terrorism to lead them to paradise, this martyr will become their idol and inspiration.

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[19] *See also President George W. Bush's 2002 National Security Strategy, released roughly one year after 9/11, stating that ''Traditional concepts of deterrence will not work against a terrorist enemy whose avowed tactics are wanton destruction and the targeting of innocents; whose so-called soldiers seek martyrdom in death and whose most potent protection is statelessness…Deterrence-the promise of massive retaliation against nations-means nothing against shadowy terrorist networks with no nation or citizens to defend''- Commencement Address at the United States Military Academy in West Point, New York, 38 WEEKLY COMP. PRES. DoC. 944, 946 (June 1, 2002);*

[20] Jessica Stern, *Execute Terrorists at Our Own Risk*, NY Times, 28th February, 2001.

It would be appropriate here to quote Jeremy Bentham from one of his publications i.e. *Bentham's Utilitarian Critique of the Death Penalty*, a distinguished jurist of the deterrence theory punishment. Talking about the rebellion who can be placed on the same footing with that of terrorists, he has said that punishing them with death will not deter the future aspirants of the same act rather it will equate the execution of the terrorist with that of the death of a soldier on a war field and will make the executed one an idol for the followers.

However, considering terrorism differently from other forms of criminal act is vague justification. But it is strongly considered that those kill hundreds of people for their own selfish objective should be awarded death punishment just to secure national security. Moreover, it will be deterrent for the minor operatives of such activities. Like those who do not actually involve themselves into killing or violence but supports it by supplying guns or bomb's etc.

Although the execution of Yakub Memon (Bombay 1993 blast) was pretty much controversial but according to authors opinion it would surely have created a fear in the minds of the minor operatives to rethink their act and its consequences. The 262nd report of the law commission also supports that death penalty should be retained for terrorism related crimes.

3.2 Retribution

The literal meaning of retribution is punishment inflicted in the spirit of moral outrage or personal vengeance. The 35th law commission report has also suggested it as a

justification for death punishments. In the report it was not stated to be revengeful like an eye for an eye but the denunciation of the crime by the public[21].

Retributive theory of punishment focuses on treatment of the offender instead of prevention of the offence[22]. Retribution theory has two types of accounts one which stands for revenge and the other which apart from mirror punishment believes in an appropriate level of punishment for the criminal.

3.2.1. Retribution as Revenge

When retribution is treated as revenge it is believed that the inflicted evil on the victim by the offender should be matched with a similar account of punishment. Thus, the quotation "an eye for an eye," is well spoken for this approach.

But the Supreme Court has taken a different view disapproving the revengeful approach of the retributive theory of punishment. The ruling of the court in case of *Deena v. Union of India*[23] was that the quotation "an eye for an eye" has no place in civilized society of law.

In *Shatrughan Chauhan v. Union of India*[24] the Supreme Court was of the opinion that the retributive theory has no constitutional value in our country and the offender derives a de-facto right of protection from the constitution of India and the courts are duty bound to protect him. Therefore, the courts have now clinched their hands back from the support of the retributive theory of punishment.

[21] Law Commission of India, 35th Report, 1967, Ministry of Law, Government of India,at para 297.

[22] R. Wasserstrom, *Some Problems with Theories of Punishment, in* JUSTICE AND PUNISHMENT 189 (J. Cederblom & W. Blizek eds., 1977).

[23] (1983) 4 SCC 645.

[24] (2014) 3 SCC 1.

The court has further extended the protection to death convicts also[25]. Thus, the Supreme Court has now clearly recognized that "*the retributive theory had an era but is no longer valid in India*[26]." But the court took a different view in Bachan Singh's case[27] observing that the retributive form of punishment is more of condemnation of the offender rather than the revenge and is not "an eye for an eye" approach.

Supreme Court in the case of *Dhananjoy Chatterjee v. State of West Bengal*[28] ruled that being revengeful toward the accused is no solution to the societies cry but prescribing appropriate punishment will meet with the needs of both the society's demand and the civilized jurisprudence of law[29].

Punishment deserved by the accused should never be based on the societies need for the justice; rather it should be based on the proportionality of the offence. Because the main purpose of the justice is not only to meet society's demand of justice but also and majorly to eliminate crime from the society.

Further, the retributive theory lacks calibration. It fails to provide that where to put an end i.e. what should be the amount of punishment or how much should be the punishment.

[25] Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1, at para 245.

[26] Rajendra Prasad v. State of U.P., (1979) 3 SCC 646, at para 88.

[27] Supra, note 18

[28] (1994) 2 SCC 220.

[29] Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220, at para 15.

3.3. Incapacitation

There is another theory of punishment which decides the punishment for the offender basis of his/her general nature or character. It was also stated in law commission's 35th report that there exist categories of criminals who are so wicked or so cruel that they can never be reformed. Supporting the report the commission has Cited Sir James Fitzjames Stephen, who is of the view that allowing such people to live would be like leaving a hungry wolf in a civilized society[30]. Such person is a consistent threat to the society; therefore, taking his/her life would be the most feasible option.

To give the reasoning for incapacitation the court should test the dangerousness of the accused towards the society and the probability that he/she would re-commit the crime. The predicting act of possibility to reoffend can also be an arbitrary exercise which will be ancillary to the arbitrariness of awarding death sentence.

But there are theorists who have argued that the predictability that the accused will reoffend is impossible. They say that law cannot take the life of an offender merely because there are chances that he/she can reoffend in future.

Opposing this view the author supports the 262nd report of the law commission that death penalty should be there for the cases of terrorism. The rationale behind the support is that a terrorist who encroaches upon the life of others just to cause violence, they already have motive to die for their so called jihad or whatever they support. So if capital punishment

[30] Law Commission of India, 35th Report, 1967, Ministry of Law, Government of India, at para 300.

is not awarded to them, then they will surely reoffend. Therefore, in certain cases there are possibilities to predict the likeliness of the convict to reoffend.

Further, punishing an offender on the basis of the incapacitation theory is not fair as it is like awarding sentence today on the basis of the future act of the offender which he/she may or may not commit. It is no justice for the accused as well according to authors view.

Another contradictory argument against the rationale of awarding punishment on the basis of incapacitation theory is that it eliminates the chances of reformation of the offender which is the most important pillar of the Indian penological jurisprudence.

When a person is already convicted the possibility of re offending is limited to situation when he/she kills his/her prison inmates, the authorities of jail, etc. In case of *Mithu v. State of Punjab*[31] compulsory death sentence in such cases were held to be unconstitutional taking into account the Indian scenario.

After adopting 35th law commission recommendation, the courts were to apply rarest of the rare doctrine while sentencing a accused to analyze whether death is the most apt option of punishment. A person cannot be convicted merely on the rationale of the incapacitation.

Rationale of incapacitation is unjust and excessive when used for awarding death penalty. Imprisonment for life can also serve the purpose of incapacitation as the offender under the custody of the police might not get the chance to re-commit a crime[32].

Therefore, the author is of the view that incapacitation should not be used to justify the capital punishment because of all of the above discussed reasons rather it may be taken as a valid reason for awarding life imprisonment.

[31] 1983) 2 SCC 277.

[32] Furman v. Georgia, 408 U.S. 238 (1972).

3.4. Proportionality

Theory of Proportionality talks about awarding a sentence in proportion to crime or evil which has been inflicted upon the victim. Admonition of the accused and conveying it to him/her that the society is against his/her conducts is the foremost agenda of this theory. Not imposing a greater punishment to the accused than his own act is the way of conveying him societies discards.

The sina quo non for this theory is that the punishment should not be greater than the crime, it should be proportionate and the most deserved one. The object of the communication in the proportionate theory of punishment is to make the accused repent for all of his acts. It is a method of facilitating him the opportunity to remorse for his/ her act.

Under U.K. Criminal Justice Act, 2003 section 143(1) provides an illustration of the same principle. It states that "*In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused*."

The seriousness of the punishment is an aspect Of the theory of proportionality punishment, because disproportionate or much serious sentence than the crime would degrade the faith on law and justice from the side of accused as well. Moreover, this theory of punishment favours less serious levels of conviction and favours reduction of penal scales.

Sometimes the supreme courts have treated the proportionality as the justification for inflicting death sentence on an accused[33].It observed: -

"*the doctrine of proportionality has a valuable application to the sentencing policy under the Indian criminal*
jurisprudence…[T]he court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large."

Courts have also stated that awarding a sentence without analyzing its effect on the social orders would be a dead end in reality has also stated that.

A three-judge Bench of the Supreme Court in the case of *vikram Singh v. Union of India*[34] has given some guide lines on the applicability of the doctrine of proportionality in the death sentences.

To get an comprehensive and more accurate view of the applicability of the proportionate theory of punishment the case of *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*[35] must be looked at in which the court have provided in a very lucid manner the how the exercise of sentencing to a accused to be taken into consideration. According to which, the very first act of the court should be comparing the facts of different cases of death sentences, secondly, the form of the crime i.e. its nature should be

[33] Shivu v. Registrar General, High Court of Karnataka, (2007) 4 SCC 713, at para 25; Lehna v. State of Haryana, (2002) 3 SCC 76, at para 27; State of U.P. v. Satish, (2005) 3 SCC 114, at para 29; Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561, at para 21; Lehna v. State of Haryana, (2002) 3 SCC 76; State of U.P. v. Satish, (2005) 3 SCC 114; Mohan Anna Chavan v. State of Maharashtra, (2008) 7 SCC 561.

[34] Criminal Appeal No. 824 of 2013 (SC), dated 21 August, 2015, at para 49.

[35] (2009) 6 SCC 498,at para 131.

taken into consideration. And at the third stage the motive should be considered. The supporting and the eliminating circumstances of the crimes should also be considered.

This exercise before awarding a death sentence would ensure that the court has not possibly left any point unconsidered which would favor the accused or which would unnecessarily lead him to a grave conviction. And placing similar cases together to analyze the gravity of the facts of the other case also would certainly help the court to decide the punishment for the accused with more accuracy.

This would also minimize the excessiveness of a sentence along with elimination of arbitrariness while sentencing. This exercise should necessarily be taken into account so as to confirm and reconfirm the sentence which a court is going to award. Also, reason as to sentence of death is sina qua non for the awarding courts.

The stated earlier also that the main focus this theory is elimination of crime and conveying the disregard the public to the accused. This objective can also be achieved by inflicting life imprisonment on him and not only by imposing death sentence. And if life imprisonment is an alternative to death sentence than why not choose it over the later.

The secondary goal of this theory is to reduce the scale of penology so by inflicting life imprisonment rather than capital punishment the courts would provide a opportunity to repent to the offender which will not be there in case of death sentence when his life is already taken away. Therefore, imprisonment for life serves the purpose of this theory of punishment more efficiently.

Also awarding death sentences so frequently without considering the alternatives would erode the value of life both in the eyes of the justice and the wrong doers.

3.5.Reformation

The reformative theory of punishment concerns to transform the offender into well civilized and peaceful citizen of the society. The assumption of the reformative theory is that once the reason for doing an offence is removed from the life of the offender he is transformed into a normal person of the society transforming them to lead an ordinary life.

This clearly means that the reformative theory of punishment does not support the sentence of death. As it the scope of transformation of the offender is lost. Therefore, death sentence should be for those offenders who by their conducts have shown that they have lost all hope of transformation.

Way before the Bachan singh's case was considered to adjudicate death sentence on the basis of reformation, this policy was adopted by the courts while dealing with case of both the kind i.e. involving death and not involving death.

Similar ruling was there in the case of *Sunil Batra v. Delhi Administration*[36] that reformation is the essential part of criminal justice system the court in this case leaned toward the transformation of the accused into a well civilized citizen.

It was observed that:-

[36] (1978) 4 SCC 494.

"[a] rehabilitation purpose is or ought to be implicit in every sentence of an offender unless ordered otherwise by the sentencing court."

The court in *Batra's case*[37] also referred to *Mohammad Giasuddin v. State of A.P*[38] in which the court has stated that every man is born good and if eventually an evil is developed into him it can be eliminated by giving him another chance. The reformative theory of punishment is supported by the Supreme Court in various other case as the means to develop the personality of an offender and to erase the stigma of crime from his forehead giving him a new life.

With this background only the case of Bachan Singh's was evolved through which the rarest of the case doctrine emerged.

In Bachan Singh case[39] the Supreme Court has held that reformation is a most convenient form of punishment and is a proper justification for the adjudication of the case of the death sentence. Death sentence must be taken as least viable alternative, "except in the rarest of rare cases when the alternative option is unquestionably foreclosed."

The court has made the test of rarest of the rare doctrine into two parts:-

First:- it the stage to decide the that whether this belongs to rarest of rare case.

Second:- whether death punishment is the only option to serve the justice or if life imprisonment could do suffice the facts of the present case.

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[37] Supra, note 19

[38] (1977) 3 SCC 287

[39] *Ibid, 27*

The Supreme Court has ruled that for not choosing the option of life imprisonment when available to court for the offence the accused, the courts will have to state valid reason for it[40].

Therefore, for the case to not to fall into category of rarest of rare test the nature of the accused should be beyond reformation. Plethora of circumstances should be taken into account while sentencing an accused to death. The circumstance which is to be considered should be of both i.e. the crime and the criminal. As in India, our criminal jurisprudence believes that hundreds of guilty must be freed but one innocent should never be subjected to punishment.

The mandate of the Bachan Singh's case[41] , which makes it necessary for the courts to assess whether the offender is capability of reform of the accused and whether life imprisonment is unquestionably foreclosed, has often been ignored often in death penalty adjudication.

Offender's capabilities beyond reform have often been produced in court of law and are considered. It is often not possible to conclude that an accused beyond reformation unless there are very strong evidence of his conducts which shows that he be given another chance, it would be like to free a wild beast into the civilized society of individuals.

In Justice Bhagwati's words:

"There is no way of accurately predicting or knowing with any degree of moral certainty that murderer will not be reformed or is incapable of reformation. All we know is that there have been many successes even with the most vicious of cases…[M]any…examples

[40] Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498.

[41] *Id, 39*

clearly show that it is not possible to know beforehand with any degree of certainty that a murderer is beyond reformation" [42].

[42] Madhu Mehta v. Union of India (1984) 4 SCC 62.

CHAPTER 4- LAWS DEALING WITH DEATH PUNISHMENT

Under British colonial India, death sentence was one of the punishments IPC 1860. Even after several amendment made into this Code, there are many provisions which are still in force. An addition to the Indian Penal Code, a series of legislation enacted by the Parliament of India have provisions for the death penalty.

4.1 Provisions of IPC:- Offences under Indian penal code 1860 for which death sentence may be awarded are as follows:-

Section of IPC	Description
Section 120-B	Party to a conspiracy or a abettor to commit an offence punishable with death.
Section 121	Whoever wages or attempts to wage war against the Government of India
Section 132	Abetment of mutiny if actually committed

Section 194	Perjury resulting in the conviction and death of an innocent person.
Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
Section 302	Murder
Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
Section 307 (2)	Attempted murder by a serving life convict
Section 364A	Kidnapping for ransom (inserted after the criminal law Amendment Act, 1993)
Section 376A	Rape and injury which causes death or leaves the woman in a persistent vegetative state

Section 376E	Certain repeat offenders in the context of rape
Section 396	Dacoity with murder

4.2 Provisions of other law- Apart from IPC, 1860, there are some other laws which also talks about imposition of death sentence as follows:-

S. No	Section	Act	Description
1)	**Sections 34, 37, and 38(1)**	**The Air Force Act, 1950**	• **Section 34-** Offences Related To Enemy And Punishable With Death. • **Section 37-** Mutiny • **Section 38(1) -** Desertion Or Aiding Desertion.

2)	**Section 3(1)(i)**	**The Andhra Pradesh Control of Organised Crime Act, 2001.**	• **Section 3(1)(i)-** Whoever commits an offence of organised crime shall, (i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees one lakh;
3)	**Section 27(3)**	**The Arms Act, 1959**	**(Repealed)**

4)	Sections 34, 37, and 38(1)	The Army Act, 1950	• **Section 34-** Offences Related To Enemy And Punishable With Death. • **Section 37-** Mutiny • **Section 38(1) -** Desertion Or Aiding Desertion.
5)	**Section 21,24,25** (1)(a), and 55	The Assam Rifles Act, 2006	• **Section 21-** Offences in relation to the enemy and punishable with death. • **Section 24-** Mutiny. • **Section 25-** Desertion and aiding desertion • **Section 55-** Civil offences
6)	Section 65A(2)	The Bombay Prohibition (Gujarat Amendment) Act, 2009	• **Section 65A(2) -** punishment for laththa

7)	Sections 14, 17, 18(1)(a), and 46	The Border Security Force Act, 1968	• **Sections 14-** Offences in relation to the enemy and punishable with death. • **Section 17-** Mutiny. • **Section 18(1)(a)-** Desertion and aidig desertion. • **Section 46-** Civil offences
8)	Sections 17 and 49	The Coast Guard Act, 1978	• **Section 17-** Mutiny • **Section 49-** Civil Offences.
9)	Section 4(1)	The Commission of Sati (Prevention) Act, 1987	• **Section 4(1)-** Abetment of Sati

10)	Section 5	The Defence of India Act, 1971	**Section 5-** Enhanced penalties
11)	Section 3	The Geneva Conventions Act, 1960	**Section 3-**Commission or abetment for breach of convention
12)	Section 3 (b)	The Explosive Substances Act, 1908	**Section 3 (b)-** Punishment for causing explosion likely to endanger life or property.

13)	Sections 16, 19, 20(1)(a), and 49	The Indo-Tibetan Border Police Force Act, 1992	• **Sections 16-** Offences in relation to the enemy or terrorist and punishable with death • **Section19-** Mutiny**,** • **Section 20(1)(a)-** Desertion and aiding desertion., • **Section 49-** Civil offences
14)	Section 3(1)(i)	The Karnataka Control of Organised Crime Act, 2000	**Section 3(1)(i)-** Punishment for organized crime
15)	Section 3(1)(i)	The Maharashtra Control of Organised Crime Act, 1999	**Section 3(1)(i)-** Punishment Of Organised Crime.

16)	Section 31A(1)	The Narcotics Drugs and Psychotropic Substances Act, 1985	**Section 31a(1)-** Death Penalty For Certain Offences After Previous Conviction.
17)	Sections 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2), and 59	The Navy Act, 1957	• **Sections 34-** Misconduct By Officers Or Persons In Command, Section 35- Misconduct By Other Those In Command, • **Section 36-** Delaying Or Discouraging Services Commanded • **Section 37-** Disobedience In Action, • **Section 38** – Penalty For Spying,

			• **Section 39-** Corresponded Etc. With The Enemy, • **Section 43-** Punishment For Mutiny, • **Section 44** – Persons On Board Ships Or Aircraft Seducing Naval Personnel From Allegiance, • **Section 49(2)(A)-** Desertion To The Enemy , • **Section 56(2)-** Offence By Officers In Charge Of Convey, • **Section 59-** Arson.

18)	Section 15(4)	The Petroleum and Minerals Pipelines (Acquisition of rights of user in land) Act, 1962	**Section 15(4)-** Whoever, with the intent to cause or knowing that he is likely to cause damage to or destruction of any pipeline laid under section 7, causes by fire, explosive substance or otherwise damage to the pipeline being used for transportation of petroleum products, crude oil or gas with the intent to commit sabotage or with the knowledge that such act is so imminently dangerous that it may in all probability cause death of any person or such bodily injury likely to cause death of any person, shall be punishable with rigorous imprisonment which shall not be less than ten years but may extend to imprisonment for life or death

19)	Sections 16, 19, 20(1)(a), and 49	The Sashastra Seema Bal Act, 2007	• **Section 16,-** Offences Related To Enemy And Punishable With Death. • **Section 19-**Mutiny • **Section 20(1)(A)-** Desertion And Aiding Desertion, • **Section 49-** Civil Offences.
20)	Section 3(2)(i)	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	**Section 3(2)(I)-** Punishment For Atrocities (Presentation Of Fabricated Or False Document Who Is Not A Schedule Caste Or Schedule Tribe.)

21)	Section 3(1)(i)	The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002;	**Section 3(1)(I) –**Offences Against Ship Fixed Platforms Cargo Of A Ship Maritime Navigation Facilities Etc (The Suppression Of Unlawful Acts Against Safety Of Maritime Navigation And Fixed Platforms On Continental Shelf Act, 2002;)
22)	Sections 10(b)(i) and Section 16(1)(a)	The Unlawful Activities(prevention) Act, 1967	• **Sections 10(B)(I)-** Penalty For Being Member Of An Unlawful Association (Continuing To Be Member Even After The Declaration That Such Activity Is Unlawful) • **Section 16(1)(A)-** Punish For Terrorist Act.

Apart from all these laws there is also bill which is yet not passed by the parliament and is pending in the i.e. the Anti-Hijacking (Amendment) Bill 2014. This bill also talks about the sentence of death for the hijackers[43].

4.3 Crimes not involving homicide and death sentence

These are the offences for which the death sentence is prescribed but it does not meet the requirements of section Article 6(2), ICCPR, which states that those nations in which death penalty are still persistent, infliction of such award shall only be made for the offence which falls under the category grave offences in consonance with the legislation prevalent at that time in that country when the act was committed. It should not be contrary to the sections of the ICCPR and to the Convention on the Prevention and Punishment of the Crime of Genocide.

S. No	Section	Law	Description.
(1)	Section 34, Section 37 and Section 38	The Army Act, 1950	• **Section 34-** Offences Related To Enemy And Punishable With Death. • **Section 37-** Mutiny **Section 38(1) -** Desertion Or Aiding Desertion.

[43] See PRS India, Anti-Hijacking Bill, 2014, available at http://www.prsindia.org/billtrack/the-anti-hijacking-amendment-bill-2014-3500/ (last viewed on 16.03.2016).

(2)	Section 34, Section 37 and Section 38)	The Air Force Act, 1950	• **Section 34-** Offences Related To Enemy And Punishable With Death. • **Section 37-** Mutiny **Section 38(1) -** Desertion Or Aiding Desertion.
(3)	Section 17, Section 49 ,	The Coast Guard Act, 1978	• **Section 17-** Mutiny • **Section 49-** Civil Offences.
(4)	Section 3	The Explosive Substances Act, 1908	**Section 3 (b)-** Punishment for causing explosion likely to endanger life or property.
(5)	Section 21, Section 24 and Section 25	The Assam Rifles Act, 2006	• **Section 21-** Offences in relation to the enemy and punishable with death. • **Section 24-** Mutiny. • **Section 25-** Desertion and

			aiding desertion • **Section 55-** Civil offences
(6)	Section 14, Section 17 and Section 18	The Border Security Force Act, 1968	• **Sections 14-** Offences in relation to the enemy and punishable with death. • **Section 17-** Mutiny. • **Section 18(1)(a)-** Desertion and aidig desertion.
(7)	Section 31	The Narcotic Drugs and Psychotropic Substances Act, 1985	**Section 31a(1)-** Death Penalty For Certain Offences After Previous Conviction.
(8)	Section 34, Section 35, Section 26, Section 37, Section 38, Section 39, Section 43, Section 44, Section 49, Section 56, Section 59	The Navy Act, 1957	• **Sections 34-** Misconduct By Officers Or Persons In Command, Section 35- Misconduct By Other Those In Command, • **Section 36-**

			Delaying Or Discouraging Services Commanded • **Section 37-** Disobedience In Action, • **Section 38** – Penalty For Spying, • **Section 39-** Corresponded Etc. With The Enemy, • **Section 43-** Punishment For Mutiny, • **Section 44** – Persons On Board Ships Or Aircraft Seducing Naval Personnel From Allegiance, • **Section**

			49(2)(A)- Desertion To The Enemy , • **Section 56(2)-** Offence By Officers In Charge Of Convey, • **Section 59-** Arson.
(9)	Section 15	The Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962	**Section 15(4)-** Whoever, with the intent to cause or knowing that he is likely to cause damage to or destruction of any pipeline laid under section 7, causes by fire, explosive substance or otherwise damage to the pipeline being used for transportation of petroleum products, crude oil or gas with the intent to commit sabotage or with the

			knowledge that such act is so imminently dangerous that it may in all probability cause death of any person or such bodily injury likely to cause death of any person, shall be punishable with rigorous imprisonment which shall not be less than ten years but may extend to imprisonment for life or death
(10)	Section 3	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	**Section 3**-Punishment for offences of atrocities.
(11)	8. Section 16, Section 19 and Section 20	Indo-Tibetan Border Police Force Act, 1992	• **Sections 16**-Offences in relation to the enemy or terrorist and punishable with death • **Section19-** Mutiny**,** • **Section 20(1)(a)-** Desertion and aiding desertion.,

(12)	Section 120B, Section 121 (waging war), Section 132, Section 194, Section 195A, Section 364A	(added by Criminal Law (Amendment) Act, 1993, Section 376E (added by Criminal Law (Amendment) Act, 2013) The Indian Penal Code, 1860	• **Section 120B-** Punishment of criminal conspiracy • **Section 121-** Waging War. • **Section 132-** Abetment of mutiny, if mutiny is committed in consequence thereof. • **Section194-** Giving or fabricating false evidence with intent to procure conviction of capital offence. • **Section 195A-** Threatening any person to give false evidence. • **Section 364A-** Kidnapping for ransom, etc.

(13) -	Section 16, Section 19 and Section 20	The Sashastra Seema Bal Act, 2007	• **Section 16,-** Offences Related To Enemy And Punishable With Death. • **Section 19-** Mutiny

4.4 Mandatory death sentence

Even after the Supreme Court has disregarded the mandatory death sentence to be arbitrary, the parliament has still made laws impose mandatory death sentence. Laws like-

- Section 3(2)(i) under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which states- Punishment for offences of atrocities

- Section 3(g)(i) of the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.

- Section 3(2)(i) and Section 27(3) of the Arms Act, 1959:- Section 27 (3) – Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and use or act results in the death of any other person, shall be punished with death.

- Section 31 (a) (1)- Narcotics and Psychotropic Substances Act 1985 by amendment in 1989 Death Penalty For Certain Offences After Previous Conviction. But in 2010 this section was declared unconstitutional by the Bombay High Court in the case of *Indian Harm Reduction Network v. The Union of India*[44], and the final amendment to remove the section was made in 2014.

4.5 Death sentence in terrorist related activities

There are many terrorist related laws which imposes death sentence mandatorily. Such as:-

- UAPA- Unlawful Activities Prevention Act, 1967
- TADA - Terrorist and Disruptive Activities Act, 1987
- POTA- Prevention of Terrorism Act, 2002.

Death sentences under these Acts are still implemented even though some of these Acts have lost their validity (lapse or repeal). POTA was an improvement over TADA. TADA underwent repeal because it was facing disregard from public, from jurists and others. The Act lacked the procedure of fair trial and was against law of natural justice. The Act provided immense power in the hand of the police. There were immense cries of the innocent people who were detained under this Act.

4.5.1 Loopholes in the TADA, POTA and UAPA:-

- They have explained the offence in a very vague manner.

[44] Criminal Appeal No.1784/2010, Bombay High Court

- Provisions under the POTA, UAPA and TADA does not provided fair trial mechanism,

- The tenure of detention under these Acts without filled charge sheet was very long

- It curtailed the right to appeal by only limiting it only to Supreme Court.

- Confession to the police/executive was made admissible evidence under these Acts.

4.6 Clemency Power

The disposition of the clemency powers of the president under Article 72 and of the Governor under Article 161 was discussed by the Supreme Court in the case of The *Shankar Kisanrao Khade v. State of Maharashtra*[45] (‘*Khade*’).

After the final judicial confirmation death sentence may be commuted by the central and the state governments. This power of the President and the Gervorner of the country is subject to judicial review but is not limited in amplitude, except the exercise of the power should be bona fide. While exercising these powers even the most irregular context of the case is considered reason is stated earlier that this power is not limited in its amplitude. The clemency power of the President and the Governor to commute death sentences is to diagnose the loopholes in the strict law of the nation.

[45] (2013) 5 SCC 546, at paras 147-150.

Article 72[46]:-

"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) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause 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.

Article 161 states:-

"Power of Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases – The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the

[46] The constitution of India

sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends"[47].

These powers are not the absolute powers of the President or the Governor. These powers are subject to the aid and advice of the council of ministers as under Article 74[48] and 163[49] of the constitution. Clemency power stated under these Articles is subjected to clemency only after the sentence of the conviction. The views of the President and the Governor may differ from that of the judicial view. Fresh evidences which were not adduced before the court of law may also be taken up by the President.

A Constitution Bench of five judges held In *Kehar Singh v. Union of India* ('*Kehar Singh*')[50] as follows:

"7. …To any civilized society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental

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[47] The constitution of India

[48] Article74. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. (2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

[49] Article 163. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

[50] (1989) 1 SCC 204.

ascendancy over all other attributes of the political and social order, and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of the deprivation of life by the action of the State are in most civilised societies regarded seriously and, recourse, either under express constitutional provision or through legislative enactment is provided to the judicial organ. But, the fallibility of human judgment being undeniable even in the most trained mind, a mind resourced by a harvest of experience, it has been considered appropriate that in the matter of life and personal liberty, the protection should be extended by entrusting power further to some high authority to scrutinize the validity of the threatened denial of life or the threatened or continued denial of personal liberty. The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the State... The power to pardon is a part of the constitutional scheme, and we have no doubt, in our mind, that it should be so treated also in the Indian Republic. It has been reposed by the people through the Constitution in the Head of the State, and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when occasion arises in accordance with the discretion Contemplated by the context...

10. We are of the view that it is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on, the accused. In doing so, the President does not amend or modify or supersede the judicial record. The judicial record remains intact, and undisturbed. The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it. This is so, notwithstanding that the practical effect of the Presidential act is to remove the stigma of guilt from the accused or to remit the sentence imposed on him...It is apparent that the power under Article 72 entitles the President to examine the record of evidence of the criminal case and to determine for himself whether the case is one deserving the grant of the relief falling within that power. We are of opinion that the President is entitled to go

into the merits of the case notwithstanding that it has been judicially concluded by the consideration given to it by this Court.

16. …Indeed, it may not be possible to lay down any precise, clearly defined and sufficiently channelized guidelines, for we must remember that the power under Article 72 is of the widest amplitude, can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assisted by Prevailing occasion and passing time. And it is of great significance that the function itself enjoys high status in the constitutional scheme.[51]*"*

The clemency power is exercisable for variety of cases and functions as a check and balance for the judicial pitfalls. Therefore, these powers should be exercised with utmost care and taking into account all the facts, circumstances, nature of the crime, and the evidence of the case.

4.7 Challenges Involved

Retentionist View

- Removal of slaughters by execution is reasonable reprisal and serves well to the justice.

- Punishment must match the gravity of offense and most exceedingly unacceptable violations ought to be seriously managed for the purpose of discouragement and security of the general public.

- Death punishment demonstrates society's response to shocking criminal Acts.

[51] 1 SCC 204, at paras 7, 10 and 16.

- Death sentence ought to be looked as types of retributive equity seeing that it gives fulfilment and true serenity to victims and their families or relatives.

- It is the best approach to secure society against censured guilty parties. This is the motivation behind why capital punishment has been held to be defendabiliy legitimate.

- Some authorities trust that capital punishment is less cruel than imprisonment for life.

- Considered from the monetary perspective likewise it is for less costly to execute a convict than to house him/her in a jail.

- It curtails the number of prisoner in a jail making its management easy.

Abolitionist view

- Death punishment is slaughtering and all killings aren't right and in this manner, capital punishment is likewise off-base.

- An execution emerging out of premature delivery of equity is irreversible and along these lines, it might bring about extraordinary bad form to the individual wrongly sentenced to death.

- It is a deadly retaliation which brutalizes the general public.

- Death punishment is treacherous and regularly prejudicial against poor who can't stand to shield themselves appropriately against a manslaughter allegation.

- It is a confusion to surmise that capital punishment has an impediment impact in light of the fact that enlisted killers do bring risk with the criminal equity framework whatever be the outcomes.

- Death punishment is against human rights, especially 3 and 5 of the UN Declaration of Human Rights.

- Large numbers of homicide are carried by feelings or rashness. In this way, capital punishment in such cases does not serve the ends of equity.

- It precludes the likelihood from claiming renewal and restoration of the wrongdoer.

CHAPTER 5- JUDICIAL APPROACH

India has strong judicial system and judicial system of a nation is the back bone of its growth and development. Judiciary is like the observing and the guarding force in a country. In the hierarchy of Courts in India the High Court is subordinate to Supreme Court. Supreme Court is the Apex Court of the court and the final authority to interpret law and preserve the rights of the individual its nation. Supreme Courts is the court of appeal for the criminal and the civil cases, it the apex court of the country who have maintain balance between several laws of the land.

Talking about the issue of death punishment the Supreme Court and the High Courts have judged plethora of cases. Some of them are discussed below:-

In *Dhananjoy Chatterjee alias Dhana V. State of West Bengal*[52] the appellant was executed in Alipore Jair, W.B for the offence of rape and subsequent murder committed on a 18 year school going girl.

Hetal parekh a 18 year old girl was raped by the appellant on 5th March,1990 in her Flat. The appellant was tried for rape and subsequent murder of the victim. The appellant was also charged for the offence of theft as he stole the wrist watch from the premises of the girl.

The appellant was found guilty and was convicted by the session judge to death under Section 302, IPC, for life imprisonment under Section 376, IPC and rigorous imprisonment for five years under section 380, IPC. The punishment awarded under section 376 and 380 were to run parallel but will become ineffective if the sentence gets confirmation from the

[52] Criminal Appeal Nos. 393-394 of 2004 decided on 26-3-2004

High Court of the State. High Court confirmed the conviction of death. The appellant made an appeal to High Court. Special leave being granted the appellant filed an appeal. His appeal was rejected by the court on account that the prosecution has proved his case beyond reasonable doubt and was guilty of murder and rape of the victim.

The contention of the appellant submitted that he is a married man of 27 years and no unique ground for sentencing him to death was found. The state's council on the other hand contended that all the evidences adduced by the prosecution are pointing toward the direct and sole involvement of the appellant. And the crime of the appellant is of such a grave nature that he has become a threat to the society. The appellant's counsel then took the shade of the section 235(2) and Section 354(3) of CrPC contending that if the court have option of imposing a lessor amount of punishment than it may award that so that the appellant gets the chance of reformation and a become a civilized individual of the society and repent his acts.

But the state's council on the other hand contended that sentencing him to death will have deterrent effect for the future perpetrators. The council further contended that case of the appellant falls into the box of rarest of rear category. Therefore death sentence would be the most justified one.

The Court observed as follow:-

"*We observed given our anxious consideration to the question of sentence keeping in view the changed legislative policy which is patent from Section 354(3) Cr.P.C. We have also considered the observation in this Court in Bachan Singh case. But in recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing by the courts a subject of concern".*

Nothing left in hand; the appellant filled a mercy petition to the governor of the west Bengal and the president of India. This was also rejected by them. Lastly the brother of the appellant

filed a petition in the Apex Court to stay the execution his brother. This petition was also refused by the five judge bench of the Supreme Court refusing to review the decision of the Hon'ble President of India. Therefore the appellant Dhananjoy was executed in 2004.

As a last ditch to save his life, the appellant filed a mercy appeal with the Hon'ble President of India which was rejected by an order of the President dated 4th August, 2004. Thereafter, the brother of the appellant filed a petition in the Supreme Court seeking stay of execution of death sentence. But the five judges Bench of Apex Court refused to review the President decision to reject appellant's mercy Central Jail in West Bengal on 14th August, 2004 by hanging him till death.

Another case which has put the issue of death sentence into limelight is the case of *Mohd. Ajmal Mohammadamir Amir Kasab v. State*[53] kasab's appeal was was rejected by High Court and the Supreme Court. His mercy petition to the Governor of the Maharashtra was also rejected. His mercy petition was even rejected by the President of India.

The ministers of the ruling party were forcing that the execution should be fast track and should take place within a year to carb out the continuous pressure from the victims. Before the execution the Union Home Minister P. Chidambaram stated that the normal procedure of execution should be followed.

Sushil Murmu v. State of Jharkhand [54] in this case Supreme Court gave the guideline as to what cases would fall into the category of rarest of the rare one. Factually, A child of 9 years of age was sacrificed out of the superstitious belief in front of idol of Goddess Kali

[53] AIR 2012 SC 3565, Criminal Appeal Nos. 1899-1900 of 2011

[54] AIR 2004 SC 394

in the greed to get prosperity. Death sentence was awarded by the Supreme Court. Conditions for the cases to fall under the category of rarest of the rare:-

- If the motive of the murder is complete depravity and meanness;
- If the member of the schedule cast or schedule tribe is murdered.
- If the modus of murder is extremely brutal, grotesque, diabolical, revolting or dastardly
- If the murder is of a child or of an insane person, helpless woman or an old person.
- If the murder is a mass murder or murder of enormous proportion

State of U.P v. Satish[55] Stressing that leniency in punishing grave crimes would have serious consequences the Supreme Court has awarded the death penalty to a man for the rape and murder of a six year old girl.

4.1 Human Rights

Article 21 of Indian Constitution guarantees each individual right to Life and personal Liberty. The expression "life" has been given an extremely broad importance. The term 'individual freedom' has been given wide connotation covering an assortment of rights which constitute individual freedom of a national.

The procurement of capital punishment as a punishment for murder in rare of the rarest case is likewise does not violate Article 21. This Article plainly draws out the privilege of state to deny a man of his life or individual liberty as based on reasonable and just

[55] [Cri.] 256-257 of 2005

procedure which is also according to the procedure that is established by law.. The methodology gave in the Criminal Procedure Code for forcing the death penalty for murder can't be said to be completely nonsensical and arbitrary. The court in any case, has opined that capital punishment is an extrance culpability' and is given in the exceptional circumstances when there is no question of any other alternative.[56]

BHAGWATI, J. disagreeing from the majority decided that under Art. 19, the onus to demonstrate that the restriction imposed by the State on the Fundamental right is on The State which also has to demonstrate the confinement of restriction to permitted limits.. In his view, the State had neglected to release this onus.

In Declaration of Human Rights it is stated that-: "Everyone has the right to life, and liberty and security of the person."[57] The International Convention on Civil and Political Rights which was enacted 18 years later to the declration limits the imposition of the death penalty.

Article 6 of the treaty deals with juvenile offender. It states that-

"*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women*.[58]

Today, 148 countries along with US are signatory to the ICCPR .This clearly shows the worldly acceptance it has received. Many countries have even adopted it with ratification. Ratification of a treaty shows a nation's ability to respect the treaty and to be bound by it. Reservations cut out some special clauses to the complete adherence by a nation. Substantive reservations are the most controversial, for example, the one the U.S. took to the ICCPR to permit Death sentence of adolescents. The U.S. was one of the three

[56] [56] Prof M. P Jain. *(Indian Constitutional Law, Lexis Nexis Butterworths Wadhwa Nagpur 2011*) p.1214
[57] Universal Declaration of Human Rights, G.A. Res. 217 A (III) (1948).
[58] International Covenant on Civil and Political Rights, 999 UNTS 171 (1976), at Art. 6

nations which took reservations to Article 6 of the ICCPR in sanctioning the Covenant. The reservation by U.S has been criticized all over the world. The U.S. Reservation to Article 6 is very wide:-

"The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age".[59]

In *State of Andhra Pradesh v. Chalaram Krishna Reddy* [60] referring to the countries like Canada, U.S.A, U.K, Brazil, Russia, and Denmark the petitioner urged about the right of conjugal visits while in the custody. The petitioner also argued about the human rights of the convicts and the criminals. He contended that these individuals apart from their acts do have fundamental rights consisting of right to life enshrined under Article 21 of The Indian Constitution. Such rights are called fundamental rights not because they have fined a place under The Indian Constitution but because they are the basic human right of every living individual.

4.2 Cases challenging the constitutionality of death penalty

In Jagmohan Singh v. State of U.P.[61] the validity of the death sentences were challenged in this case stating that it was against the fundamental right given under Article 14 and 21 of the Constitution procedure of sentencing death was also challenged in this case. it was held that option of awarding death sentence is taken into account in accordance with the procedure established by law. The choice between the death sentence and the life imprisonment is taken by the judges on the basis of the facts and circumstances of each case. A five judge bench of the Supreme Courts held that the capital punishment is not violative Arts. 14 19 and 21.

[59] U.S. Reservation to Article 6 of the ICCPR, UN Doc. ST/LEG/SER.E/13, p.175

[60] AIR (2000) 5 SCC 712

[61] AIR 1973 SC 947, 1973 Cr. L.J. 330, 1973 SCC (Original) 162.

In Rajendra Prasad v. State of U.P.[62] V. R. Krishna Ayer, J. observed:

"The humanistic imperative of the Indian Constitution, as paramount to the punitive strategy of the Penal Code, has hardly been explored by the courts in this field of 'life or death' at the hands of the Law. The main focus of our Judgment is on this poignant gap in human rights Jurisprudence within the limits of the Penal Code, impregnated by the Constitution…..in the Post-Constitutional period section 302, IPC and section 354(3) of the Code of Criminal Procedure have to be read in the human rights of Parts III and IV, further illuminated by the Preamble to the Constitution."

It was held In this case that the life of a criminal must only be taken when he is a threat to the security of the nation, against maintain public order and against interest of the general public. Social justice of the society must be reasonable as under Article 19 and non-arbitrary as that of Article 14. Thus, Justice V. R. Krishna Ayer was against death penalty except in the cases of white collar crimes. He also observed that the if the crime of the accused is of such grave nature that he become a threat to the society and progress of the nation than he must be hanged till death.

In Bachan Singh v. State of Punjab[63] the Supreme Court was of the finding that India along with some other countries of world death sentence is more deterrent than the life imprisonment and this is the beliefs of the eminent jurists, judges, legislators, etc. The court has observed many other cases where death sentence is considered the most deterrent punishment of all. This case also held that death sentence under section 302 IPC does not violate article 21 until the court is following the procedure established by law.

[62] AIR 1979, Cri. L J. 792

[63] AIR 1980 SC 898. See also (1980) 2 SCC 684, 715 para 88.

In this case the Court held that:-

> *"Judges should not be blood thirsty. A real and abiding concern for the dignity of human life postulates resistance to taking a life through laws' instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."*

I*n T.V Vatheeswaran v. State of Tamil Nadu*[64] the question arised in this case was that whether the delayed execution of capital punishment violates Art 21 of the Constitution secondly, whether delayed execution can be a ground of commutation to life imprisonment.

Division bench of the R B. Misra and JJ.Chinnappa Reddy held that a long delay in the execution of the death sentence is against the right of the accused,. It is violative Art. 21 of the Constitution as it is unfair, unreasonable, unjust and against humanity inshort it deprives the accused from right to life and personal liberty.

Mr. Reddy and Mr. Mishra JJ. Observed thus,

> *"Making all reasonable allowance for the time necessary for appeal and consideration of reprieve, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 of the Constitution and demand quashing of the sentence of death."*

[64] (1983) 2 SCC 68.

The due process doesnot end by just being reasonable and fair by the courts but also that their the court is elimination the unnecessary delay from the process of execution. The right to speedy trial is the part of the constitution under part III our Constitution and it is included under article 21. Prolonged delay in execution is against the fundamental right enshrined under Article 21 of the Constitution as it terrorizes the convict till every moment of his execution.

I*n Noel Riley v. A.G. of Jamaica*[65] in this case it was held that there is no yardstick to decide the time by which the execution of the convict must take place rather the tenure should be reasonable so that it does not threatens the accused till his execution neither violates his fundamental right.

In Sher Singh v. State of Punjab[66] (Y. V Chandrachud C.J.; V.D. Tulzapurkar and A. Varadrajan, J.J.) in this case the conversion of death sentence into life imprisonment was not justified by the Chief Justice on account of delay of 2 years, Whenever there is any delay in execution the court must firstly find out reasons for delay

4.3 "Rarest of Rare case" doctrine

The rarest of the rare doctrine emerged from the case of *Bachan Singh v. State of Punjab*[67]. *The Apex Court of* country upholding the validity of the sentences of death under the constitution held that it must only be impose in the rarest of the rare case. Court pointed out some of the instances of the doctrine of the rarest of the rare case:-

[65] (1982) 3 WLR 557.

[66] (1983) 2 SCC 344.

[67] AIR 1980 SC898

- When the murder is inflicted with a plan and with grave brutality.

- Murder of the person when the person was in discharge of his lawful duty under section 43, 37 & 129 of the CrPC.

- If the commission of the murder involves exceptional depravity, or armed force and is committed while on discharge of lawful duty.

Macchi *Singh v. State of Punjab*[68] Keeping in mind the doctrine of rarest of the rare case t the Supreme Court in this case held that if the criminal act of the accused is of such a grave nature that it is technically unacceptable to the society and the nations has laid its eye and hope on the judges to justice to the victim and deter the future perpetrator also than the court should not hesitate in awarding death sentence to the accused. It would also fall under the category of rarest of the rare crime. Because the nature of the crime is of such nature that it is not tolerable by the society.

In the above mentioned crime Supreme Court came up with some broad guidelines in accordance with the case of the *Bachan Singh* which courts should consider while awarding a death sentence and while fitting a case in the rarest of the rare category. The Supreme Court laid down such guideline on the basis of motive of the accused, gravity of the infliction of the crime, nature of the accused and the.

(1) **Modus of the Commission:** If the murder is committed in an extremely brutal, revolting, grotesque, diabolical or dastardly manner to intense indignation of the community.

[68] AIR 1983 SC 957.

(2) **Motive**: If the motive of the murder is complete depravity and meanness

(3) **Socially unacceptable** characteristic of the crime.

(4) **Gravity** of the crime.

(5) **Personality of Victim:** If the murder is of a child or of an insane person, helpless woman or an old person

(6) If the member of the schedule cast or schedule tribe is murdered

Kehar Singh v, Delhi administration[69] in this the than Prime Minister Smt. Indira Gandhi was murdered by her security guard. Such a crime is of an extreme grave nature. Murder of the one of the head of nation is un acceptable to the society. Therefore, the Supreme Court held that such an act falls under the category of the rarest of the rare doctrine.

State of Maharashtra v. Sukhdeo Singh[70] like the Indira Gndhi case in this also the head army i.e the army chief was murdered. In this case also the Supreme Court gave the death sentence to the accused. This case was held to be fall under the category of rarest of the rare doctrine. Killing of the army chief is like the accused becoming the enemies of the nature and are also the threat to the democracy of the country. Therefore, death penalty is most acceptable form of punishment.

Lax man naik v. state of Orissa[71] *the Supreme court* in the present case held that the murder of a girl of 7 year of age after the rape falls with the category of rarest of the rare case. For which the death sentence would be the most appropriate crime. Because such individual is

[69] AIR 1988 SC 1883

[70] AIR 1992 SC 2100

[71] AIR 1995 SC 1387

not even able to understand that what is happening with her and then the subsequent murder is of a heinous nature.

In *Madhu Mehta v. Union of India*[72] the clemency petition of the convict was pending before the president of India for 9 years. The court commuted the sentence to life imprisonment as there was no ground of justication for further reconsideration of the case. The speedy trial such matters was asked to include under Article 21 of the constitution. In another case naming, Sabyosachi Mukharji J. and B.C. Roy J. approved and relied on Triveniben[73] there was delay of 9 years in the execution of the accused. Therefore the curt held: -

> *".....undue long delay in execution of the sentence of death would entitle the condemned person to approach this court or to approach under article 32 of the constitution, but this court would only examine the nature of delay caused and circumstances.... No fixed period of delay can be considered to be decisive. It has been emphasised that article 21 is relevant here. Speedy trial in criminal cases though may not be fundamental right is implicit in the broad sweep and context of article 21. Speedy trial is part of one's basic fundamental right i.e., right to life and liberty. This principle is no less important for disposal of mercy petitions. It has been universally recognised that a condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture....."*

[72] (1989)4 SCC 62.

[73] See supra note 19.

CHAPTER 6 - INTERNATIONAL TRENDS

Death penalty as a form of punishment has emerged both internationally and nationally decades ago. After the report of law commission in 1967 and Bacchan singh's[74] ruling the ideology regarding the award of death punishment slightly changed. When compared to other countries India has still retained the idea of death sentence till the day. There are countries in this world that have abolished death as a form of punishment considering it against the human right to life.

The present chapter does not talk about the relevance of international treaties on India, rather, it just signifies the trends of death punishment globally.

Countries have segregated their current scenario of death sentence in a following manner[75]:-

- Retentionist
- Abolitionist for all crimes
- Abolitionist *de facto*
- Abolitionist for ordinary crimes

By the end of 2014 total of 140 countries of the world abolished death punishment from law and practice. That is to say, Ninty eight countries of the world abolished death

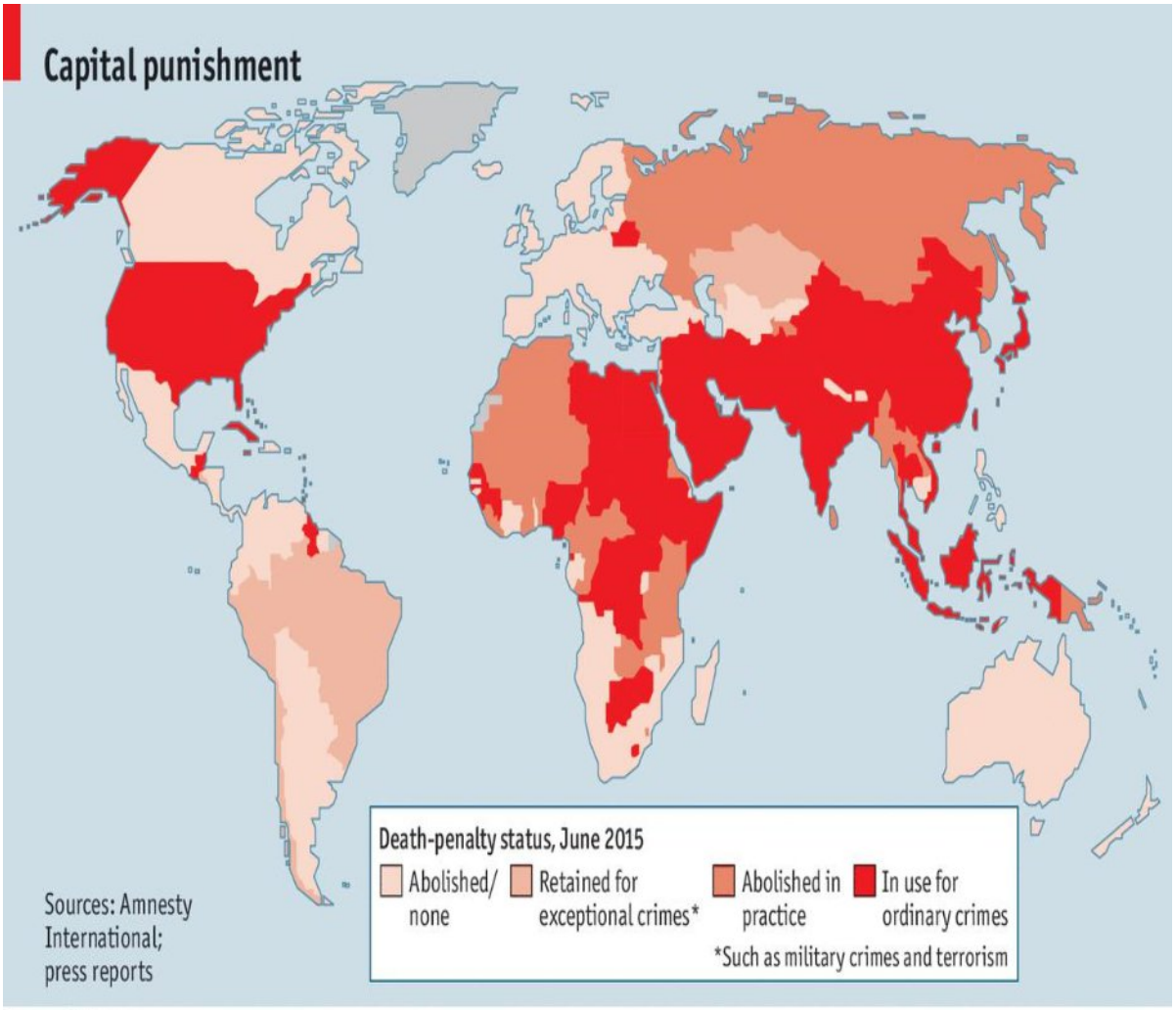
[74] (1980) 2 SCC 684.

[75] This system is followed by the United Nations and by non-governmental organizations like Amnesty International. See for example, "Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty" Report of the Secretary-General, E/2015/49 [advance, unedited version] at page 4; See Annex II, Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015.

sentence for every crime, Thirty five nations of the world were in practice to abolish such punishment, seven countries abolished for crimes of ordinary nature.

From among the list of 140 countries 3 of them have totally and formally negated the concept of death sentence in 2015, these countries Suriname, Madagascar and Fiji. There are fifty eight countries apart from that 140 who have retained death sentence into their legislation and still in practice[76] these countries are China, India, U.S, Indonesia.
The picture given below depicts countries that have either abolished or retained the punishment of death.

[76] See *On the way out—with grisly exceptions*, The Economist, 4 July 2015, available at http://www.economist.com/news/international/21656666-few-countries-areapplying- death-penalty-more-freely-global-trend-towards (last viewed on 18.03.2016). Annex II, Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015



Source: The Economist: "On the way out—with grisly exceptions" The Economist, 4 July 2015, available at http://www.economist.com/news/international/21656666-few-countriesare-applying-death-penalty-more-freely-global-trend-towards

Capital Punishment in International Human Rights Treaties

5.1 International Covenant on Civil and Political Rights

There are 168 countries who are signatory to the International Covenant on Civil and Political Rights. According to International Covenant on Civil and Political Rights ('ICCPR') Capital Punishment is one of the major features of the right to life. Capital

punishment is found to be inhuman, rude, and violative of human dignity. The first international legal tool to abolish death sentence was the second protocol of ICCPR.

The ICCPR is one of the important documents talking about the death punishment and its impact on human rights. ICCPR does not abolish death penalty but provides safeguards for the countries that still retain death penalty under its Article 6.

Article 6(2) states:

"In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This Penalty can only be carried out pursuant to a final judgment rendered by a competent court".

Article 6(4) impose requirement on the state to undertake that:-

"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases", and Article 6(5) mandates that a *"Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."*

The authority for the interpretation of the article of International Covenant on Civil and Political Rights (ICCPR) is UNHRC i.e. UN Human Rights Committee. While interpreting article 6 of ICCPR the committee was of the view that abolishment of the

death sentence would be in favour of right to life of the human. The committee considered death penalty as the most exceptional option.

It stated that wherever there is need to award death sentence it should be awarded in accordance with procedure established by law in that country at time of the commission of such offence. The accused's right of fair trial should not be infringed; presumption of innocence should be maintained. Right of appeal to higher body of justice, etc. These requirements should also be maintained even if a country is making any law the matter of death sentence.

In 1996, the UNHRC after the analysis of the report of India on imposition of death sentence gave recommended that India should:-

"Abolish by law the imposition of the death penalty on minors and limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate Abolition."

India, although is a signatory to ICCPR have committed to negate death punishment but such punishment is still there in statue as well as in practice on a different pretext even after the recommendation of UNHRC.

The Convention against Torture and Cruel, Cruel or Degrading Treatment or Punishment Progressively, there is an investigation of the capital punishment as abusing standards against cruel and corrupting treatment or punishment[77]. In this connection, the Convention against Torture and cruel, Inhuman or corrupting Treatment or Punishment

[77] Office of the High Commissioner for Human Rights, Death penalty increasingly viewed as torture, UN Special Rapporteur finds, 23 October 2012, available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12685&LangID=E#sthash.Gu6NTA2d.dpuf (last viewed on 18.03.2016).

('the Torture Convention') and the UN Committee against Torture have been wellsprings of law for impediments on capital punishment as a addition important shields.

The Convention on Torture does not primarily put emphasis on capital punishment fundamentally as cruel or inhuman, debasing treatment or discipline ('CIDT'). In any case, a few techniques[78] for execution and the reach of death sentences have been seen as types of CIDT by UN bodies. While India has signed the Torture Convention, it has yet not sanctioned it.

5.2 International Treaty Obligations in Indian Law

India has endorsed the ICCPR and the CRC, and is signatory to the Convention on torture, yet has not endorsed it. Under universal law, treaty commitments are obligatory on states once they have endorsed the treaty[79]. Even where a treaty has been marked yet not ratified, the state is bound to "cease from acts which would crush the article and the purpose behind a treaty[80]".

Domestic laws of India are required to make provision for the enforceability of treaty law into the country.

Through section 2(d) and 2(f) of the Protection of Human Rights Act, 1994, it tries to incorporates International Covenant on Civil and Political Rights into the Indian laws

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[78] The Committee against Torture was "*specially troubled by the recent cases of botched executions in Arizona, Oklahoma, and Ohio*" and asked the US to "*review its execution methods in order to prevent pain and prolonged suffering*", in para 25, Concluding observations on the combined third to fifth periodic reports of the United States of America, 19 December 2014, CAT/C/USA/CO/3-5.

[79] Article 26, Vienna Convention on the Law of Treaties (VCLT): "*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*."

[80] Article 18, Vienna Convention on the Law of Treaties (VCLT).

Section 2 (d):-

"*Human rights" means the rights relating to life, liberty equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India*. Section 2(f) states that, *"International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the United Nations on the 16th December, 1966*.

In accordance with Article 51(c) of the Constitution of India,:-

"the state shall endeavour to *foster respect for international law and treaty obligations in the dealings of organised peoples with one another."*
Even after the Article under the constitution depicts that the principle of *pacta sand servnda* must be followed but there is not strict implication of the Article of now.

5.3 Safeguards regarding capital punishment in international law

Resolutions by assortments of the United Nations, and additionally remarks and reports by UN unique techniques, have likewise added to global law principles in regards for the safe guards of death sentence where it is being awarded. The pattern in the greater part of this mechanism is towards restricting the extent of the capital punishment and empowering total negation wherever conceivable.

5.4 ECOSOC Guidelines.

The UN ECOSOC i.e. Economic and Social Council have come up with a few resolutions endorsing shields with respect to how capital punishment ought to be forced in nations where it is held. These shields involve constraints to the degree of capital punishment in worldwide laws.

The very initial ECOSOC resolution was named as *"Safeguards guaranteeing protection of the rights of those facing the death penalty"* and was adopted in 1984. It has provided certain safeguards for the protection of death convicts.

1. "*In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.*

2. *Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.*

3. *Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.*

4. *Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.*

5. *Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.*

6. *Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.*

7. *Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.*

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

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

5.5 UN Human Rights Council

The UN Human Rights Council at a later stage started another enquiry on capital punishment, analysing the privileges of the children whose parents are executed at an initial. In a 2013 UN Human Rights Council recognized:-

"the negative impact of a parent's death sentence and his or her execution on his or her children," asked *"States to provide those children with the protection and assistance they may require," and made compulsory a report on the issue*[81].

It is also required by the states to:-

[81] Human Rights Council, *Panel on the human rights of children of parents sentenced to the death penalty or executed*, 15 March 2013, A/HRC/22/L.18.

"To provide those children or, where appropriate, giving due consideration to the best interests of the child, another member of the family, with access to their parents and to all relevant information about the situation of their parents[82]*."*

Human Rights Council resolution in 2014 recognized that:-

"States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use" and have shown regrets on the fact that *"the use of the death penalty leads to violations of the human rights of those facing the death penalty and of other affected persons."*

[82] supra, note 69

CONCLUSION AND RECOMMENDATION

After going through a plethora of cases and articles, the author is of the view that death penalty should be retained in India. The rarest of the rare doctrine which emerged in the case of Bachan Singh has a wide spread scope. It is on the judges to decide that what case should fall under the doctrine. There is no straight jacket formula to this doctrine to decide the reach of the cases, which is why it is open to arbitrariness. But Article 72 and 161 is a check if there exist any arbitrariness.

Analysing the law commissions 262nd report which talks about the retention of death penalty but only for terrorism and wagering war related cases, the author is of the view that instead of adopting such a recommendation which will curtail the scope of death punishment for other heinous crimes, the verdict of Bachan Singh's case should be carried forwarded. Reason for such an opinion is that, if the doctrine of rarest of the rare case be followed than the cases of terrorism and wagering was will also fall under it.

"India is one country which reports a lot of crime – with a crime rate of 581.1 per 100,000 of the population"[83]. Abolishing death punishment in a country where crime rate is increasing day by day would hamper the maintenance of law and order in the society. People will have no fear of the law machinery and it will lead to loss of humanity character from the society.

The author is not a *stricto senso* supporter of death punishment and believes in reformation theory also. If it can be possibly proved that the accused can feasibly be subject to reform than he should be given a chance to reform and become a well behaved

[83] See http://www.thequint.com/india/2015/08/25/crime-data-suggests-india-is-becoming-more-violent-by-the-day

member of the society but in cases where there is no chance of reformation of the accused and he is also an eminent threat to the society that he should be awarded with death punishment.

The author suggests that death penalty is the need of the era. For instance, is any of the organ of the body is damaged and spoiled, and is beyond the scope of treatment, than the most feasible option available with the doctor is to remove that organ and save other parts of the from getting effected by such an infection. Similarly, if a accused is threat to the society and beyond reform, and the nature of his crime is so grave that the society cannot Condon it than it would be best in the interest of the public that such an element be removed from the society. Allowing he to be a part of the society would be like leaving a hungry beast in between the humans. Removing him from the society will act as social hygiene, preventive of further crime and the preservation of the interest of the public.

"*Mighty rules the weaker*". If a criminal of brutal minded nature is left unpunished with a serious punishment than he will degrade the human nature of the society. He will corrupt the society. People have faith in the justice system of their country and if justice is not provided to them by the authorities than they will take the law into their own hand will they start killing those who are not safe for the society. It will hamper the peace with in the country and will affect the development of the country globally.

Many of the jurist and lawmakers argue that death penalty doesn't have deterrent effect. But the author believes that had death penalty been not deterrent to the society than the crime rate would have been much higher. Since childhood we are taught that, we should not this because it leads to such a consequence and don't do that because it leads to such a consequence. So a fear in the mind is created from childhood. With this people lead their lives forward. Therefore people deterrent the consequences of the crime. Had it not been deterrent then the parliament would not have made amendments in criminal law in 2013.

Arguments stating that the terrorist who do such an act of violence already have the mind set to die. They do have a mind set to die but not with punishment. They consider their act as the ultimate way to get paradise. They consider themselves as soldiers fighting for their particular object. People behind their brain wash convey it to them that they will be doing a sacred act. They kill others considering them their enemy treating themselves as soldiers. The author is not suggesting that they are innocent. They do have the chance to rethink their acts and may refrain doing it using their own brain.

Therefore saying that they have the mind set to die is would be not be wrong but it should also be considered that want to die on battle field and not get executed in an enemy country. Whoever washes their brain to become such an unacceptable element of the society never tells them the consequence of it. They lie them only about its good consequences.

It is also true that death sentence of a terrorist now days get the most of the lime light. They get the support of the public, NGO's etc. But one should also keep in mind that a long execution free run of such an element will also lead to other crimes such as, hijacking, further attacks, Etc.

Death punishment for terrorism related case would be deterrent for the minor operative also. Moreover, few unacceptable elements killing hundreds of innocent people of a country should not be left unaffected. They should be given the highest punishment available in that country. Be it as revenge or deterrence for future crimes. Sometimes revenge should also be there to meet the interest of the public at a large.

The author further opined that rigorous life imprisonment would serve the purpose of justice in the society for an offender who not such an element of the society who necessarily needs to be eliminated from the civilization.

Therefore, the author concludes that death penalty should be retained to in our country but the under the preview of rarest of the rare doctrine. As the fear of the consequences is the most a vital element to eradicate the pillars of crime from the society.

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