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CAPITAL PUNISHMENT IN INDIA: A DEEP ANALYSIS

Author –

Yukta Joshi

B.A. LL.B (Hons),

Government New Law College, Indore

ABSTRACT

Capital punishment is the highest level of punishment inflicted on the convict for certain exceptionally brutal and harsh crimes. In India, it is practiced since ancient times. Sometimes the acts committed are so wicked and ruthless that death penalty becomes the only punishment which can be inflicted upon the convict. Hampton said that punishment represents the suffering and agony inflicted upon the victim and hence by giving equal punishment to the offender sets an example about the immorality of the action. In India, in the past 10 years, the judiciary has sentenced 1,303 people to death but only 4 have been executed¹. In India, the legal and execution procedure of carrying out the death sentence is governed by its Criminal procedural laws. India recognizes two methods of execution, namely-hanging by neck till death, and shooting. It is often a matter of debate that whether capital punishment needs to be kept in our justice system. While the central govt. has maintained it would keep the death penalty in the statute books to act as a deterrent, and for those who are a threat to society, the S.C. too has upheld the constitutional validity of death penalty in “rarest of rare” cases i.e., when the option of awarding the sentence of Life imprisonment is “unquestionably foreclosed” and no lesser punishment than death could serve the purpose and render justice. Therefore, there is a strong and dire need to keep up the provision of death penalty in our criminal justice system, and, it should in no way be abolished.

KEYWORDS: Punishment, Death Penalty, Capital Punishment, rarest of rare.

RESEARCH METHODOLOGY

This research is primarily based on doctrinal pattern. Doctrinal research is also known as traditional research. It is divided into different types such as analytical and descriptive method. It tends to identify and study the facts and analyze them thereafter. The researcher mostly used

¹¹ India Today, India’s History on Capital Punishment in the last decade (July30, 2015, 4:23 P.M), <https://www.indiatoday.in/education-today/gk-current-affairs/story/indias-history-of-capital-punishment-in-the-last-decade-285526-2015-07-30>

secondary sources viz. books, articles, journals, blogs, reports etc. as well as secondary data involving interviews of legal experts and scholars.

OBJECTIVE OF RESEARCH

Many researches, debates and deliberations are made by different researchers, jurists, scholars etc. but no one exactly conclude whether to favor capital punishment or abolish it? Capital punishment is to be given in only rarest of rare cases but this logic is creating a matrix for today's generation as today many people advocate human rights. The aims and objectives of this research is:

1. To deeply study and analyze concept of capital punishment.
2. To observe and analyze 2 differing views on the existence of capital punishment.
3. To find out whether the death penalty should be abolished?

INTRODUCTION

Punishment is the sanction imposed by court of law on an accused for the violation of law. It may be imposed on a person or property of accused depending on the nature and gravity of the crime committed by him.² In ancient times the sole object of punishment was Retributive justice. However in modern times the objectives of punishment include deterrence, retribution, rehabilitation, prevention and reparation. Indian legal system provides for various types of punishments. I.P.C prescribes death penalty, imprisonment (either simple or rigorous), forfeiture of property and fine as the punishment under sec 53 of I.P.C.

Capital punishment is regarded as one of the most important and serious parts of our criminal judicial system. It is awarded by the state via judicial institutions for the most extreme and heinous offences committed against humanity. Such crimes which result in death penalty are known as capital crimes. Capital punishment traces its root to the ancient times and finds its sources in the religious texts and scriptures. I.P.C. prescribes capital punishment for certain offences like waging or attempting to wage war against the state (includes terrorism), murder, abetment of mutiny, abetment of suicide of a minor or insane or intoxicated person who commits suicide thereof, dacoity accompanied by murder, kidnapping for ransom, rape resulting in death or persistent vegetative state etc. Apart from this, death sentence is also provided under various statutes such as

² KD GAUR, CRIMINAL LAW: CASES AND MATERIALS (7th ed.2013).

The Army Act,1950³, The Navy Act, 1957⁴, The Indian Air Force Act, 1950⁵, The Narcotic Drugs and Psychotropic Substances Act, 1985⁶ The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989⁷, The Commission of Sati (prevention) Act,1987⁸etc.

The term capital punishment is derived from a latin word *capitalis*, meaning ‘regarding the head’ and originally referred to beheading. The term ‘Capital Punishment’ is frequently used interchangeably with death penalty however there is a minute line of distinction. Death penalty refers to the penalty received and not necessarily its implementation whereas capital punishment refers to the execution itself.⁹Death penalty ought to be very sparingly inflicted upon the accused i.e. in the ‘rarest of rare cases’. However according to Amnesty international, as of 2017, there are *in toto*, 145 countries which have abolished death penalty either in law or in practice, and that in past 5 years 33 countries have carried out at least 1 execution. These are called abolitionist countries whereas those countries which have retained death penalty are known as retentionist countries and include countries like U.S.A., India, Iraq, Iran, Pakistan, Saudi Arabia, China etc. Amnesty states that china carries out thousands of executions each year.¹⁰In India, a total of 26 executions have taken place since 1991. The most recent one was in 2015 when Yakub Memon was hanged till death.

ORIGIN OF CAPITAL PUNISHMENT

Capital punishment has been in vogue since the time immemorial. We can trace the origin of capital punishment to the Ancient Greece. Capital punishment for murder, treason, arson, and rape was widely employed in ancient Greece under the draconian laws around 7th century BCE. Draco also known as drakon, was the first compiler of penal code of Greece. He was the first recorded legislator of Athens in ancient Greece. He replaced the prevailing system of oral law with a written

³Army Act, 1950, ss 34, 37, 38(1) and 67, No. 46, Acts of Parliament, 1992 (India).

⁴ Navy Act, 1957, ss 34-39, 43,44,49,50 and 59, No. 62, Acts of Parliament, 1957 (India).

⁵ Indian Air Force Act, 1950, ss 34 and 37, No. 45, Acts of Parliament, 1950 (India).

⁶ Narcotics Drugs and Psychotropic Substances Act, 1985, s 31A, No. 61, Acts of Parliament, 1985 (India).

⁷ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec. 3, No. 33, Acts of Parliament, 1989 (India).

⁸Commission of Sati (Prevention) Act, 1987, Sec. 4(1), No. 3, Acts of Parliament, 1987 (India).

⁹ PRATEEK JAIN, HANG TILL DEATH: INDIA’S MOST NOTORIOUS CASES OF CAPITAL PUNISHMENT, Bloomsbury 2020.

¹⁰ BBC News, ‘death penalty: how many countries still have it?’ BBC News, London (Oct 14, 2018).

code (draconian code of Athens) which made death the only punishment for all crimes. Romans also used capital punishment for a wide range of offences.

England also had a lengthy history of employing capital punishment. Death was formerly the penalty for a large no. of offences in England during the 17th and 18th centuries. In the 10th century A.D, Hanging in public became the usual method of execution in Britain. Some other methods of executions at that time were boiling, burning at stake, beheading by sword or axe etc. Public executions were banned in England in 1868, although they continued to take place in some parts of U.S until the 1930s.

The history of capital punishment in modern India can be traced back to the year 1860, when the practice was incorporated in I.P.C. It continued to remain in effect after independence in 1947. The first death sentence in independent India was executed on 15 Nov, 1949, when Nathuram Godse and Narayan Apte were hanged to death for assassination of Mahatma Gandhi and the latest execution was carried out in 2015 when Yakub Memon was hanged till death.

CAPITAL PUNISHMENT IN INDIA

Capital punishment in India has a long history. The execution of offenders was common in ancient India and the legal system was influenced by Hindu concept of Dharma or the rules of right conduct. India's contemporary and governmental and legal systems are also heavily influenced by its more recent past as a British colony. In 1947, India obtained independence and became a sovereign country, but the current criminal system is still based mainly on the English common law system, which allowed for capital punishment. For the crime of murder, Indian judges in the early 20th century could impose a sentence of death or of life in prison.

Capital punishment refers to execution of death penalty imposed on a person convicted of a crime which is of such an exceptional nature so as to shock the very conscience of judges and the general public. In other words, capital punishment is execution of an accused after being convicted in a legal trial. In India, capital punishment is prescribed under sec 53 of I.P.C. and it is also sanctioned by our law of land. Art. 21 sanctions deprivation of right to life and personal liberty through procedure established by law. However that procedure should be just, fair and reasonable¹¹. The

¹¹Bachan Singh v. state of Punjab A.I.R. 1980 SC 898 (India)

Indian judiciary adopts a pedantic approach while awarding death penalty. The accused has right to appeal at various levels of the court system followed by review and mercy petitions. Once the death sentence is awarded by a session's judge, the accused has right to criminal appeal to HC. If HIGH COURT. dismisses his appeal and confirms his conviction, he has further right to appeal to the S.C of India (the apex court). If S.C. also upholds his conviction, then he can file a review petition in S.C. If the review petition is also dismissed then he can file a curative petition under art.137 of constitution. A Bench of 3 senior most judges of S.C. and the judges who passed the concerned judgment if available decides by majority that whether the matter needs to be reviewed. Only when the majority of judges conclude that matter needs hearing should it be listed before the same bench. The bench can at any time/ stage can ask a senior counsel to assist it as amicus curiae. The petition is generally considered in-chamber unless a specific request for an open-court hearing is allowed. In order that his matter be considered, the accused has to establish that there was violation of principles of natural justice and that he was not heard by court before passing an order. A Curative petition is required to be certified by a senior advocate and then it is circulated to the bench. If the bench holds at any stage that the petition is without merit, it may impose a penalty on the petitioner. The object of provision of curative petition is two folds:-

1. To avoid miscarriage of justice.
2. To prevent abuse of process of law.

The concept of curative petition evolved for the first time in *Rupa Ashok Hurra v. Ashok Hurra*¹² on the question whether aggrieved person is entitled to any relief against the final judgment/order of S.C., even after dismissal of a review petition. This is the last resort in any case which if rejected further bars the resort to judiciary. In such a case the only option available with the accused is filing a mercy petition to the executive head i.e. President or Governor of state concerned under art. 72 and 161 of constitution respectively, who in consultation with council of ministers may grant pardon, reprieve, respite etc. in the case at hand.

DIFFERENT METHODS OF CAPITAL PUNISHMENT

The capital punishment or the execution procedure can be carried out by following methods:

¹² Rupa Ashok Hurra v. Ashok Hurra A.I.R. 2002 SC 1771 (India)

HANGING

This is the most common method of execution. In this the accused is hanged till he dies on the spot. A noose is put around his neck and the liver is pulled by the executioner. The rope is boiled and stretched before using it so that the purpose is served. The countries where this method is prevalent are Iran, Afghanistan, Bangladesh, India, Japan, Iraq, Kuwait, Malaysia, Nigeria etc.

In India, Cr.P.C. under Sec. 354(5), calls for the method of execution to be hanging. It provides that,

“When any person is sentenced to death, the sentence shall direct that the person be hanged by the neck till the person is dead”¹³

In *Deena v. UOI* (1983)¹⁴, the S.C. adjudicated upon whether the execution of death penalty by hanging by rope is constitutional. It held the method under Cr.P.C. valid.

SHOOTING

It is the most preferred method in Indonesia. 12 armed executioners shoot the prisoner in chest. If the prisoner is not dead, the commander then issues a final bullet to the head. Other countries that carry out executions by firing squad include China, India, North Korea, Taiwan, Yemen, Saudi Arabia, Somalia etc. It is also preferred method in United Arab Emirates. In India death by shooting is contemplated under the Army Act, Navy Act, and the Air Force Act. They provide for the discretion of court martial to either provide for the execution of death Penalty by hanging or by shooting. In India, executions are carried out by either of these methods.

BEHEADINGS

Saudi Arabia is the only country in the world where beheadings are used as a method of capital punishment. The beheadings are performed publicly with a sword. This form of execution was quite popular in Germany and England during 16th and 17th centuries. An executioner, usually hooded, would chop off the person’s head with an axe or sword. The last beheading took place in 1747 in U.K.

¹³ The Code of Criminal Procedure, 1973, No.2, Acts of Parliament, 1974 (India).

¹⁴ *Deena v. UOI* 1983 A.I.R. 1155 (India)

LETHAL INJECTION

It is often considered as the least cruel method of execution process. In this method a fatal dose of drugs is injected into a death-row inmate. This has become a primary method of execution in United States. In 2013, lethal injection was also used in China and Vietnam.

ELECTROCUTION

United States is the only country in the world to follow this method of execution. The accused is made to sit on an electric wooden chair whereby the person is strapped and electrocuted through electrodes fastened on the head and leg. In 1997, convicted murderer Pedro Medina was executed by using an electric chair in Florida. His head burnt into flames during the procedure. In 2008, Nebraska S.C. declared execution by electrocution illegal for being cruel and unusual punishment.

SOCIAL STIGMA ATTACHED TO CAPITAL PUNISHMENT IN INDIA

In India, capital punishment is often condemned with a bone of contention that it violates human's most basic and embraced fundamental right of right to life conferred by Constitution of India. It has been contented that every human life is valuable and sacrosanct that even the state is not entitled to take away regardless of whatever a person has done, but let us not forget that life of other human being (victim) is also valuable and not ought to be put to threat. The notion of capital punishment do not offend the sanctity of life. It has its roots in the ancient texts and instances. Capital punishment is allowed and followed under Hindu tradition. Lord Rama, The wisest soul and an embodiment of Dharma killed King Bali, who had stolen his own brother's wife.¹⁵ In Bhagwat Gita, it is supported that a murderer should be condemned to death so that in his next life, he will not have to suffer for the great sin he has committed.¹⁶ Also in the Vishnu Smriti, an ancient law book of the Hindus¹⁷, it is stated that "Great criminals should all be put to death. Let the king put to death those who forge royal edicts". Also in Islam, Quran Mandates that everyone has a

¹⁵Parmatmananda Saraswati, Co-ordinator of the Hindu Dharma Acharya Sabha, *Capital punishment: Time to Abandon it?* (Aug 26, 2006).

¹⁶ Srimla Prabhupada, founder of the International Society for Krishna Consciousness (ISKCON), Also known as Hare Krishna Movement, *Bhagwat-Gita*, 1968.

¹⁷Translated by Julius Jolly and printed in 1880 as the 7th vol. of sacred books of East collection.

right to life unless a court of law demands to kill: “nor take life which Allah has made sacred- except for just cause”.¹⁸

CONSTITUTIONAL VALIDITY & JUDICIAL PRONOUNCEMENT

The question of constitutional validity of capital punishment is invoked and challenged several times. It is often contended that it is infringement of our fundamental right of right to life conferred by Art. 21 of Constitution of India. Even the state cannot deprive a person from his life. However it should be noted that no fundamental right under the Constitution is Absolute. Everything in this current world is so co-related to each other that no right can be Independent and Absolute. They are subjected to the law of land and the will of the state which serves greater purpose of maintaining order in the society. If we scrupulously examine Art.21, it states that,

“No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

So technically, Capital punishment is a part of our legislative and judicial system and comes within the purview of ‘procedure established by law’. Hence technically, there is no violation of Art. 21.

While the central govt. has consistently maintained that it would keep death penalty in the statute books to act as a deterrent and for those who are a threat to society, the S.C. too has upheld the constitutional validity of capital punishment in various judicial pronouncements. In *Jagmohan Singh v. State of U.P.*¹⁹, the constitutional validity of death penalty was challenged for the first time. Jagmohan Singh was convicted under sec. 302 of I.P.C. and sentenced to death by Allahabad H.C. During the trial the death sentence awarded by Session’s judge was challenged in H.C. which was confirmed by it as just and proper. The 5-judge bench of S.C. by a unanimous verdict, upheld the constitutional validity of death penalty and held that capital punishment is not violative of Art. 14, 19 and 21. Hence Jagmohan was hanged. In *Asgar v. State of U.P.*²⁰, the S.C. reaffirmed that the death penalty though constitutional should be used only in the exceptional cases. In *Bachan Singh v. State of Punjab*²¹, while upholding the constitutional validity of death penalty, the bench by a majority of 4: 1 (with Bhagwati J. dissenting) expressed the view that death penalty as an

¹⁸ Abdullah Yusuf Ali, THE MEANING OF HOLY QUR’AN 17:33(11 LED. 2004) (1425 A.H.)

¹⁹ *Jagmohan Singh v. State of U.P.* (1973), 1 SCC 20

²⁰ *Asgar v. State of U.P.* AIR 1977 SC 2000 (India).

²¹ *Bachan Singh v. State of Punjab* AIR 1980 SC 898 (India)

alternative punishment for murder is not unreasonable and hence not violative of art. 14, 19 and 21. Also S.C. ruled that Death penalty should only be imposed in the “rarest of rare cases” and includes honor killings within this category. In *Mithu Singh v. State of Punjab*²², sec. 303 of I.P.C which provided for mandatory Capital punishment in case of murder committed by a life convict was struck down as unconstitutional and void since it was violative of Art.14 and 21 of the Constitution of India. Further in the case of *Macchi Singh and ors. v.Stateof Punjab*²³, the 3 judge bench followed the decision of Bachan singh and stated that only in the rarest of rare cases when collective conscience of the community is in such a way that it will expect the holders of the judicial powers to inflict death penalty , then it can be awarded if-

1. The murder is committed in an extremely brutal, revolting, dastardly manner so as to arouse intense and extreme indignation to the community.
2. The murder of a member of Scheduled Tribe or Scheduled Caste is committed which arouse social wrath.
3. The case is of “bride burning” or “Dowry Death”.
4. The crime is enormous in proportion.
5. The victim of murder is-
 - a. An innocent child.
 - b. A vulnerable woman or an aged or ill person.
 - c. Murderer was in relation of trust / in fiduciary relationship with the victim.
 - d. Injured party is a civic or political figure and murder is committed for political rather than personal reason.

Further in the case of *State of Punjab v. Dalbir Singh*, S.C. ruled that mandatory death penalty as punishment for the crimes under sec. 27(3) of the Arms Act, 1959, was unconstitutional.

CLEMENCY POWERS

The Constitution of India confers on President and Governor of states pardoning powers also known as clemency powers under Art. 72 and Art.162 respectively. When all the avenues and remedies and recourse to the judiciary is exhausted, resort to executive by submitting mercy petition to President or Governor is the only remedy which remains with the accused. According

²²Mithu Singh v. state of Punjab, AIR 1983 SC 473 (India)

²³Macchi Singh v. State of Punjab, 1983 AIR957 (India)

to Art. 162, the President Shall have the power to grant pardons, reprieves, or remission of punishment or to suspend, remit, or commute the sentence of any person convicted of any offence.

In *Dhananjay Chatterjee v. State of West Bengal*²⁴, S.C. held that “the power under Art.72 and 161 of Constitution can be exercised by central and state governments not by president or Governor on their own”. In *People’s Union for Democratic Rights v. UOI*²⁵, the Allahabad H.C. gave the guidelines which hold that a death-row convict must be given free legal aid for drafting a mercy petition and if it is rejected, an intimation to the prisoner and his family is imperative. A minimum of 14 days’ notice for execution must be given to let him “prepare himself mentally for execution to make his peace with god, prepare his will and settle other earthly affairs”, besides also allowing him “to have a last and final meeting with his family members”. An execution can be stopped owing to convict’s physical or mental ill health.

Former President Mrs. Pratibha Patil made over 35 pardons during her tenure²⁶. While her successor, Mr. Pranab Mukherjee had rejected 22 mercy petitions out of 24 including that of Ajmal Kasab and Yakub Memon.²⁷

WHY WE NEED TO KEEP CAPITAL PUNISHMENT?

The researcher seeks to establish that there is a need to keep Capital punishment in our legal and judicial system and there’s no firm point in abolishing it. Hardly any other punishment can serve as a substitute to it, to its motive, its benefits and to its deterrent effect. One of the reasons why the researcher supports it is that it is constitutionally valid and somewhere, it is felt that today crimes are even more heinous than those in past so this is not the right time to abolish it. The abolishing of capital punishment will further increase the crime rate as it would relax the criminals and the like-minded people and this would lead such criminal forces to flourish in society. Furthermore, abolishing it would outrage the general public since crime affects not only the victim but the society as a whole. Whenever a brutal and heinous crime is committed such as to shock the conscience of people, not only the victim and family but the whole society demonstrates and cry for justice because certain acts are so wicked, harsh and unbearable that it leaves deep imprint in

²⁴ *Dhananjay Chatterjee v. State of West Bengal* (1994) 2 SCC 220 (India)

²⁵ *People’s Union for Democratic Rights v. UOI* (1982) AIR 1473 (India)

²⁶ http://articles.timesofindia.indiatimes.com/2012-06-22/india/32367604_1_pardons-mercy-petitions-molai-ram

²⁷ <http://www.catchnews.com/national-news/the-maths-of-mercy-which-president-would-have-been-most-likely-to-grant-yakub-a-pardon-1438183159.html>

the minds of people. The committer(s) of such brutal and heinous crime should be appropriately punished in accordance with the nature and harshness of the crime. If judiciary does not satisfy public then they respond in their own ways. Many times people curse the judiciary and government for their indecisiveness or delay in action and in giving the punishment which he deserves. Which example could best be suited here then the Nirbhaya case *per se*.

Nirbhaya Fearless

The 23 years old girl (Nirbhaya) on the horrendous day of Dec 16, 2012 was brutally gang-raped in a bus in Delhi. Almost two weeks after the incidence i.e. on Dec 29, 2012, she died²⁸. She made two police statements before she died that all the six attackers should be punished and she should be given justice. After her death, many demonstrations and protest spread to almost every corner of the country. People flooded the streets and grounds with the posters “ HANG THE RAPIST, WE WANT JUSTICE” , ”INDIA WANTS CAPITAL PUNISHMENT”, “ KANOON KO MAZBOOR NAHI MAZBOOT BANAQ” etc. Afterwards, the five men and the bus driver were spotted and arrested. They were charged with rape, murder, destruction of evidence, and the attempted murder of the woman’s male companion. Ram Singh (one of the accused) committed suicide in the prison and the teenager was given three years in a reformatory. The rest of the accused went on a trial fast track court. On 10 Sept, 2013, the four remaining adult defendants were found guilty of rape and murder and three days later were sentenced to death by hanging. After taking recourse to judiciary and executive thereafter and exhausting all the defense remedies available to them, they faced rejection. The Delhi court issued a death warrant for the 4 convicts in the Nirbhaya case on Dec17, 2020 for the third time. The convicts were to be hanged on March 2, 2020 but it is now extended by 14 days. Before it, Feb 1 and even before it Jan 22, 2020 were declared as execution dates, however both hangings were delayed.²⁹ This was the case which shook India from slumber. It broke all the limits of brutalism, barbarism and cruelty. The pity and shame changed India to strengthen its criminal law and justice system. The Criminal Law (Amendment) Act, 2013 and The Criminal Law (Amendment) Act, 2018, were passed which provided increased and hardened punishments for Gang rape, rape including rape of minors.

²⁹<http://www.legalserviceindia.com/legal/article-1465-review-petition-v-s-curative-petition-v-s-mercy-petition-with-special-reference-to-nirbhaya-case.html>

Besides this, death penalty is also needed to be kept in our criminal justice system because it satisfies the theories of punishment namely-deterrent theory, preventive theory and retributive theory. Capital punishment serves the following purposes – deterrence, prevention and retribution. It consoles and contents the rage and fire for justice in the public.

A. DETERRENCE

Capital punishment serves as a deterrent for preventing crimes. It discourages or is intended to discourage not only the persons to commit appalling and heinous crimes in the society but also sets an example in the society. The mere conscience of executing someone can shudder one to his feet. Human by virtue of his nature fear death. Just to imagine and feel that one's death is near, one could completely be shaken. How restless the convict could be, just to think of it? He could by all means try only to somehow save his life, but when all the remedies are exhausted and all his petitions are dismissed, he is left with no option but to face the death. When the news channels and newspapers feature the death-row convict(s) and inform the people about the execution, it creates an atmosphere of tension and curiosity at the same time. It trembles the criminals and similar criminal forces flourishing in the society and make them realize the power of law. Hence, capital punishment justifies deterrent theory of punishment. It creates fear in the criminals. Hence, it should be kept and abolished.

B. PREVENTION

Capital punishment justifies preventive theory of justice. It intend to prevent the criminal tendencies to survive in the society altogether. The punishment tends to strictly eliminate such wicked and hardened criminals in the society. Thus in order to maintain law and order and to keep society free from evils and the heinous crimes, we need to keep up the provision of death penalty in our legal and judicial system.

C. RETRIBUTION

Whenever a crime is committed so as to shock the very conscience of judges and the general public, where not only the victim and family's but the whole society's cry for justice is heard, Retribution is the only remedy which appears prima facie to console the increasing outrage and fire in the people. Retribution honors the victim and gives solace to the grieving families and ensures that the prepators of the heinous crimes never have an opportunity to cause future tragedy.

In the views of H.L.A Hart, punishment should not be for the sake of denunciation only but an appropriate or deserved punishment does serve as denunciation. He further elaborated that, we do not live in a society in order to condemn though we may condemn it in order to live. Morris opined that by punishing wrongdoers every individual gets the education about the particular significance of the evil underlying offences and the degree of seriousness and understands the actions that are off-limits. Hampton gave his views that punishment represents the suffering and agony inflicted upon the victim and hence by giving equal punishment to the offender sets an example about the immorality of the action.

CROSS-CONTENTIONS ON CAPITAL PUNISHMENT

There are often two contrary views regarding the existence of capital punishment in India. Those who favor capital punishment contends that it is a deterrent and helps in serving the purpose of punishment. It is not unconstitutional and therefore should not be abolished. Moreover it is given only in rarest of rare cases. But Human rights' advocates and critics of death penalty contend that it is against Human rights, but where do these advocates go when a horrendous or a severe crime against *humanity* is committed? Is it not against humanity then? They also assert that in awarding death penalty, there is a risk involved of executing innocents. However this contention is quite unreasonable and absurd because we have a long justice system to seek vindication with several appellate courts and also the judges are very pedantic and careful while awarding the death penalty. They deeply analyze the facts and circumstances, identify the possibilities thereof and use their discretion keeping in mind the welfare of public at large. This negates the possibility of an innocent being executed. The abolitionists of death penalty argue that human life is valuable and sacrosanct and it cannot be taken even by the state, while the other side contend that those who take innocent lives and commit pre-mediated cold-blooded murders and cross all boundaries of humanity have no right to live. What less punishment could be given to a terrorist or a brutal rapist then death? Law is for punishing the wrong-doers and for maintaining peace, harmony and order in the society either by putting them in prisons or eliminating them altogether from the society. Abolitionists also assert that life-imprisonment is even worse than death penalty so it is much better option, however it is submitted that no lesser punishment than death can be a substitute for such horrendous and brutal crimes against humanity. Furthermore, life-long imprisonment includes

feeding and clothing the prisoners which is intolerable as it means spending tax payer's money on the hardened criminals of the nation which are threat to itself.

INDIA'S MOST NOTORIOUS CASES ON CAPITAL PUNISHMENT TILL DATE (IN BRIEF)–(FROM 1949-2015)

1. Nathuram Godse and Narayan Apte

Nathuram Godse and Narayan Apte were hanged till death for assassination of Mahatma Gandhi. Nathuram Godse, the son of Vinayak Godse (a postal employee in British India) was fascinated by Mahatma Gandhi and used to avidly follow his activities. He kept a close eye on the freedom Movements headed by Gandhi ji. He respected Gandhi's defiance of imperial laws and supported the Civil Disobedience Movement but did not agree with his methods. Nathuram joined Hindu Mahasabha where he met veer savarkar. In 1944, while Gandhi was staying at panchgani in Maharashtra, a group of around 25 young men staged a protest against his policies under the leadership of Narayan Apte. In 1939, Narayan Apte had joined Hindu Mahasabha, where he met his ally Nathuram Godse. Savarkar's Book 'The Indian War of Independence' made its own way to many revolutionary youths and eventually to Godse too. Godse and Apte found themselves gradually shifting from Gandhi's principles to the revolutionary ideas of savarkar. They gradually came to believe that Mahatma Gandhi supported Muslim minority at the cost of Hindus. Both Men felt Gandhi's way to be Anti-National. Various social Reform programs conducted by Gandhi viz. inter-caste marriage, highly distressed Godse who believed Gandhi's actions always evinced a bias for minority groups. The partition of India brought havoc, tears and death. Estimates of death ranged from 200,000 to 2 million. Many were killed in communal riots, contagious diseases were swept through refugee camps. Almost 100,000 women were raped or abducted. Godse and Apte watched the partition and the horrors that ensued. They believed that Gandhi was responsible for it. Gradually, their hatred towards him started turning into an insidious conspiracy to assassinate him. On 30th Jan, 1948, when Gandhi ji was returning to his Ashram for his evening prayers, the usual crowd gathered and wanted to greet him. Godse and Apte were the part of the crowd looking for the opportunity, Godse stepped out of the crowd to block Gandhi's path, confronting him face to face. He bowed

and pretended to touch his feet and quickly raised himself, stepped back, pulled the trigger of the pistol and shot him thrice in the chest. Gandhi ji collapsed and fell uttering the words 'Hey Ram'. Godse and Apte were arrested along with 6 other conspirators involved in the assassination. Godse was kept in Ambala jail and his trial lasted for over a year. He along with his co-conspirator Narayan Apte was sentenced to death on 8 Nov, 1949. Both of them were hanged on 15 Nov, 1949.

2. Kairon Assassination³⁰

On the fateful day of 6 Feb. 1965, Chief Minister of Punjab, Pratap Singh Kairon was killed in an attack along with 3 other people travelling with him in his car. The investigations led to the prosecution of 3 people-Sucha Singh, Baldev Singh and Nahar Singh who were charged under Sec. 120-B, 302, 302/34 of IPC. The trial court found accused guilty of murder and sentenced them to death.³¹ Pratap placed Punjab on the industrial map of India. He was behind the creation of the city of Chandigarh and the industrial township of Faridabad. In 1964, during his II term as Chief Minister, corruption charges were leveled against him. Kairon was the man of vision, a man of strong likes and dislikes and the allegations were a serious blow to him, he thus resigned from his position as the Chief Minister of Punjab.³² Meanwhile, a conspiracy was being hatched by three assassins with Sucha Singh as their ring leader. Their target was Pratap Singh Kairon. Sucha Singh was convinced that Kairon had played a crucial role in the conviction of two culprits in a murder case. Ajit Singh and his father Bir Singh. Sucha believed that Kairon had taken a personal interest in securing the convictions of both the criminals. On 6 Feb, 1965, while Kairon was on his way from Delhi to Chandigarh, Sucha Singh and his friends Baldev Singh and Nahar Singh had been following them and seized the opportunity when it was presented to them. They took out their guns and started shooting at car. Pratap Singh was assassinated on the spot along with his driver, personal assistant and the IAS in the car. Sucha Singh, Baldev Singh, Nahar Singh were hanged to death in 1969.

³⁰ Suchha Singh Bassi v. State of Haryana, AIR 1972 P H 114.

³¹ <http://indian.kanoon.org/doc/634895/>.

³² Manraj Grewal Sharma, *Builder of Punjab: The Lost Legacy of Pratap Singh Kairon* (Dec 16, 2016, 5:58 PM), <https://www.hindustantimes.com/punjab/builder-of-punjab-the-lost-legacy-of-sardar-pratap-singh-kairon/story-LgBkUb0ttLrpMYISj2o9zH.html>.

3. Ranga and Billa Case³³

Kuljeet Singh (alias Ranga Khush) and Jasbir Singh (alias Billa) were hanged to death in Tihar jail on 31 January, 1982 i.e. 4 years later the incidence. The appellants were charged-sheeted for various offences. The trial judge hanged the appellants under IPC Sec.365/34, 364/34 and 366/34. Each of them was individually charged under IPC Sec. 376. Two charges under 302/34 were also framed against them for committing the murder of Sanjay and Geeta respectively. Geeta Chopra was a 16 years old II year student in Jesus and Mary College, New Delhi. Her brother, Sanjay, 14 years old, was in 10th grade, studying in Delhi's renowned modern school. Their father Madan Mohan Chopra was a captain in Indian Navy. On the fateful day, both the children were kidnapped by Ranga and Billa who assaulted them in the car. After discovering the fact that their father was a Navy officer and also that he wouldn't be able to pay huge ransom. Ranga and Billa thought of killing them. They stabbed Sanjay several times with a long Kirpan and further turned on to rape Geeta. Subsequently, the duo abandoned the dead bodies of the children in the nearby bushes and fled the scene. Four years later, Ranga and Billa were hanged till death in Tihar jail.³⁴

4. Indira Gandhi assassination

On 6 January, 1989, Satwant Singh and Kehar Singh were convicted for the assassination of Prime Minister Indira Gandhi and were subsequently hanged in Delhi's Tihar Central Jail. It was the culmination of the most sensational murder case ever in India. Kehar Singh (uncle of Beant Singh) was convicted of conspiring with Beant Singh who, along with Satwant Singh, had shot Indira Gandhi dead on 31 October, 1984. Satwant Singh was an excellent sharpshooter. From the period of 1981 to 1984, he was the personal bodyguard of Indira Gandhi. It was during this time that he became familiar with Beant Singh. Jarnail Singh Bhindrawale who was a leader of the Damdami Taksal- a Sikh religious authority and a political revolutionary in the early to mid-1980s gradually came in power and dominated people with his cruel activities. He and his supporters increasingly came to be associated with acts of violence. In the early 1980s, there were a series of murders in

³³ State v. Jasbir Singh and Kuljeet Singh, ILR 1979 Delhi 571; 17(1980) DLT 404.

³⁴ PRATEEK JAIN, HANG TILL DEATH: INDIA'S MOST NOTORIOUS CASES OF CAPITAL PUNISHMENT, 20-32 (Bloomsbury, 2020)

Punjab. He was arrested by Punjab government but later released on lack of evidence. The men continued with the violent acts of murders and bombings in Punjab. In June, 1984, Bhindrawale and his armed supporters took refuge inside the Amritsar Harmandir Sahib Complex, which housed the Golden Temple. Negotiators failed to convince Bhindrawale to abandon the hideout. Indira Gandhi took an aggressive stand on it. She ordered the Indian army to enter into the holy shrine to carry out the Operation Blue Star. From 1 to 6 June, 1984, Indian army troops systematically attacked the militants hiding in the Akal Takht with tanks, artillery, helicopters, armoured vehicles and tear gas- all mobilised to remove Jarnail Singh Bhindrawale and his armed followers. The heavy and focused attack was successful. Bhindrawale was dead but this came at the cost of the lives of innocent civilians who were trapped in the temple crossfire. Indira Gandhi's orders and the military action, esp. the demolition of Akal Takt, was conceived as sacrilegious and sparked a huge uproar amongst the Sikh community not only in India but worldwide. Indira Gandhi's political image was tarnished heavily and she was severely criticized for the operation that eventually led to her death. In ten years of service to the prime minister, Beant Singh had earned a reputation for being a dutiful bodyguard. But the sheer loss of lives and assault to the Sikh faith that happened because of operation blue star severely distressed him and he held his boss, prime minister Indira Gandhi, entirely responsible. This sowed the seeds of revenge in him. Beant Singh was looking for a partner in crime. Eventually, Beant Singh's eye fell on Satwant Singh, who was in Indira Gandhi's protection force with him. When he carefully approached Satwant Singh, he responded by saying, "elder brother, for this sacred task, not only this life but even if I have to sacrifice several lives, I would, to kill a brutal murderer like Indira Gandhi". The prime minister, on that fateful day, had an engagement with Peter Ustinov, who wanted to interview her for an Irish documentary on her. At about 9:10 AM, Indira Gandhi emerged from her house with head constable Narayan Singh just behind her holding an umbrella to protect her against the sun. When Gandhi, at the head of the entourage on the cemented pathway, approached the TMC Gate, both Beant Singh and Satwant Singh were waiting for her. Beant Singh was armed with his service revolver while Satwant Singh held his SAF carbine. The moment Gandhi reached the TMC Gate, Beant Singh fired five rounds at her. When she collapsed on the ground, Satwant Singh proceeded to fire 25 more rounds. Indo-Tibetan border police commandoes, who were guarding the

premises, immediately apprehended the two and other commandos opened fire at them. Beant Singh was shot dead and died on the spot while Satwant Singh was seriously injured. On December, 1984, Satwant Singh was said to have arrested. The sessions Court convicted and sentenced Satwant Singh, Balbir Singh (co-conspirator) and Kehar Singh to death. On appeal to the Delhi High Court, the verdicts and sentences were confirmed. On appeal to S.C., Satwant Singh and Kehar Singh were sentenced to death once again. However, Balbir Singh was acquitted of all the charges in August 1998. The other two convicts filed a mercy petition which was rejected thereafter. Finally on the cold morning of 6 January, 1989, around 7:30 A.M., both men were taken to the gallows and hanged to death.

5 Dhananjay Chatterjee

Dhananjay was posted as security guard of Anand apartment. He was accused of the rape and murder of an 18 years old student, Hetal Parekh when her parents were not at home. Dhananjay had been eve-teasing her for many days and had even proposed to her to accompany him for a movie. When the girl informed to her parents about it, her father complained and requested Shyam Karmakar(who hired him)to replace the guard. This replacement made him to make the motive for the crime. All the circumstantial evidence directed towards guilt of Dhananjay. The Session Court sentenced him to death on 12 August 1991³⁵, which was confirmed by Calcutta H.C. on a criminal appeal thereto. Further on appeal to S.C., the case was marked in rarest of rare category and the death sentence was confirmed. The apex court also dismissed the review petition filed by him. Furthermore, his mercy petition to the governor of West Bengal and then to President was also rejected on 24 June 1994 but his execution was indefinitely deferred. Meanwhile, a writ petition³⁶ was filed against Governor's dismissal of his Mercy petition in Calcutta H.C. for not having being reviewed. But consequently, the same was also dismissed on 14

³⁵ See [https:// indiankanoon.org/doc/1351933/](https://indiankanoon.org/doc/1351933/).

³⁶ A writ petition can be filed in the High Court (art. 226) or the Supreme Court (art.32) of Indian constitution when any of our Fundamental Rights are violated.

November, 2004, almost a decade later. Finally, the date of execution was finally set. After spending 14 years at Alipore Central. Jail, he was hanged at 4:30 AM on 14 August, 2004.

6. Ajmal Kasab

Ajmal was one of the 10 terrorists who were involved in 26/11 Mumbai terrorist attack. They had set sail from Karachi in Pakistan where they had been trained in urban warfare by the terrorist outfit Lashkar-e-Taiba(LeT). On Landing, in the evening of 26 November, 2008, the group all armed with automatic rifles and hand grenades splitted into different directions. One group headed towards Taj Mahal Palace in South Mumbai. Another went to Chabbad House while 2 teams headed towards the trident and Oberoi hotels in Nariman Point. The last group, a two-member team, which included Ajmal Kasab, targeted the iconic Chhatrapati Shivaji Maharaj Terminus (CST) railway station. Mumbai's historic railway terminus was teeming with people, most returning home after the day's work. Kasab and his friend Ismail Khan, slipped in without being noticed. Suddenly, there was a noise of rapid gunshots and before people could process what was actually happening, bodies were falling to the ground. Kasab had achieved what he has been told to do. Both men ended their assault around 10:00 PM and fled the scene. The attack killed 58 people. The Police encountered and fired at them when they left, trying to stop them but eventually both the men shot a number of police men dead. Finally kasab, the only terrorist captured alive, was arrested and tried in the Court. On 3 May 2010, Kasab was found guilty of 80 offences, including murder, waging war against India, processing explosives, and other charges. On 6 May, 2010, the same trial court sentenced him to death on four counts and life imprisonment on five counts. Kasab appealed to Bombay High Court to avoid a death penalty. The bench comprising of Justice Ranjanaa Desai and Justice Ranjit More, upheld the verdict of the trial Court on 21 February 2011. He further challenged his conviction at the S.C. of India on 30 July, 2011. On 29 August, 2012, S.C. found him guilty and sentenced him to death yet again. On 5 November, 2012 his Mercy Petition to the President was rejected, till then 4 years since the incident had passed. On 10 November, the Ministry of Home Affairs and the Maharashtra government declared that Kasab will be hanged on 21 November 2012. On the morning of 21 November 2012, at 7:20 A.M., Kasab was finally brought to the gallows. The executioner pulled the lever at 7:30 A.M. and he was declared

dead to the nation. The Court. On 3 May 2010, Kasab was found guilty of 80 offences, including murder, waging war against India, processing explosives, and other charges. On 6 May, 2010, the same trial court sentenced him to death on four counts and life imprisonment on five counts. Kasab appealed to Bombay High Court to avoid a death penalty. The bench comprising of Justice Ranjanaa Desai and Justice Ranjit More, upheld the verdict of the trial Court on 21 February 2011. He further challenged his conviction at the S.C. of India on 30 July, 2011. On 29 August, 2012, S.C. found him guilty and sentenced him to death yet again. On 5 November, 2012 his Mercy Petition to the President was rejected, till then 4 years since the incident had passed. On 10 November, the Ministry of Home Affairs and the Maharashtra government declared that Kasab will be hanged on 21 November 2012. On the morning of 21 November 2012, at 7:20 A.M., Kasab was finally brought to the gallows. The executioner pulled the lever at 7:30 A.M. and he was declared dead to the nation.

7. Yakub Memon

Yakub was involved in the Mumbai blasts of 12 March, 1993. It killed more than 200 people and leaving about 1400 injured.³⁷ During his interview he stated that Tiger Memon (his elder brother) and Taufiq Jaliawala, a Dubai- based agent were the masterminds of the Mumbai Blasts. He also revealed the role of Dawood Ibbrahim, the notorious Mumbai underworld criminal, and his complicity in the attacks. Tiger Memon had his own underworld empire and Yakub became a part of this world when he started handling Tiger's funds. As per the case files, he funded the training of the 15 young men who were sent to Pakistan to learn arms and ammunition handling. S.C. confirmed his participation in financing Mumbai blasts. Investigation showed that he had a major role to play in serial blasts. He was hanged to death on 30 July, 2015.

³⁷ PRATEEK JAIN, HANG TILL DEATH: INDIA'S MOST NOTORIOUS CASES OF CAPITAL PUNISHMENT, 20-32 (Bloomsbury, 2020).

SUGGESTIONS

1. The executions should be carried publicly and not secretly. The people should be invited to see the execution. This will create fear in the minds of criminals or like-minded people and will act as a deterrent for preventing further crimes in the society.
2. There must be strict and proper laws. Laws determining rarest of rare category cases should be made so that jurists do not carry any confusion while awarding penalty.
3. Speedy disposal of cases and speedy Justice should be served. Death Penalty should not be delayed after its pronouncement. Once the sufficient time for appeal to the final authority is lapsed or the appeal to the S.C. and Executive is dismissed consequently, the accused must be executed without delay.
4. No pardons for terrorist should be granted. If the accused is found to be a terrorist who affected public at large, then he must not get the right to file mercy petition. It unnecessary delays the execution.
5. No age limit must be prescribed for awarding of death penalty. If a juvenile commits grave and heinous offence being rape, murder etc. which falls within the rarest of rare category, then he should not be spared but be treated in the same way as others are, because if he could intentionally commit such an act, he essentially possess the sufficient amount of understanding to know the nature and consequences of the act.

CONCLUSION

The concept of Capital punishment is ancient and since then it is in practice. The researcher established that capital punishment is constitutionally valid and justified, and that it serves the ends of justice and object of punishment. Hence it needs to be kept in our legal and judicial system and need not be abolished. India still observes rapid increase in crime rate. This is not the right time to abolish it. It is submitted that though reformative and restorative reforms are an effective way of rehabilitation, it is no substitute for capital punishment and the object fulfilled by it. Judges scrupulously follow a pedantic approach in awarding death penalty after analyzing deeply the facts and possibilities in such a case. The apex court ruled that death penalty should be awarded only in

the rarest of rare cases where no less punishment to the convict could be inflicted in apportionment to the nature and gravity of the offence committed by him. We have a long judicial system to seek vindication with several appellate courts. The death penalty awarded by the session court needs confirmation from H.C. Further appeal lies to the S.C. until every resort to judiciary is made and all remedies are thereby exhausted. The constitution confers pardoning powers to the President and governor of state under Art. 72 and 162 of the Constitution respectively. In India, it is an accepted notion of the society that if a person commits a vile or a despicable act, he has to bear the brunt of it and face the consequences of it. The Dictum that Human life is precious and valuable undoubtedly is correct yet there are exceptions too. Even the highest court of India affirms that some acts are so wicked that capital punishment becomes worth giving.

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