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# Capital Punishment in India: Is it Time to Outstrip it?

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ADHIP NARAYAN BANERJEE<sup>1</sup> AND DR. SUNITA SINGH KHATANA<sup>2</sup>

## ABSTRACT

*The death penalty is a government and judiciary-imposed practice to deter crime, give justice to the victims, and purge the criminals from society to refrain them from doing such crime again. It dates back to the antediluvian when the law and order synonymized with the monarchy. If the death penalty is carried out has an irreversible effect. China has the highest number of executions per annum. In India capital punishment is awarded for the most heinous crimes committed. The researcher has cited various reliable and independent sources, statistics, and judgments which are employed to either debunk or prove a theory. The researcher has also employed several precedents and quotes to establish his viewpoint. This research is based on a doctrinal type pattern, based on information that has been already available and analyzed those facts to make an evolution of this research and involves both primary and secondary data from articles, legislation, parliament bills, and reports. The main object of this study is to interpret capital punishment in India, India's stance on capital punishment from a global perspective and if an alternative to capital punishment is plausible.*

**Keywords:** death penalty, capital punishment, criminology, criminal law, execution.

## I. INTRODUCTION

*“Power is of two kinds. One is obtained by the fear of punishment and the other by acts of love. Power based on love is a thousand times more effective and permanent than the one derived from fear of punishment.”*

- **Mahatma Gandhi**

Capital Punishment that is also called the death penalty, is a punishment for wrongdoing. It must be isolated from extrajudicial execution that is carried out without the due procedure of law. It is the most severe form of punishment for the most heinous crime done upon mankind affecting the society at large. The magnitude of such criminality is distinguished for each

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<sup>1</sup> Author is a student at School of Arts and Law, Manipal University, Jaipur, India

<sup>2</sup> Author is an Assistant Professor at School of Arts and Law at Manipal University, Jaipur, India

country according to their established law.

Capital punishment for murder, treason, arson, and rape was implemented in ancient Greece on behalf of the principles of Draco (fl. 7th century BCE), though Plato asserted that it ought to be employed only for the incorrigible. The Romans also maneuvered it for a wide range of crimes or wrongdoings, though citizens were liberated for a short time during the republic. It also has been backed by the lion's share of the world's major religions.

Capital punishment is now a center of widespread debate all around the world, as changing times, change the minds of the common world. People develop their principles which are also coupled with usually noble views, practiced for more than numerous decades or centuries. With the development of the idea of human rights, mankind has become much aware of their power and their rights, for what they deserve and for what they live and if they also deserve to live, with some dwelling upon the beliefs that keeping one alive at the expense of other lives is morally believed to be wrong.

## II. DEATH PENALTY AND RELIGIONS: TETHER IN ANTEDILUVIAN

1. Hinduism: The atavistic religion has no definite ascription on the death penalty, despite that many of the rulers in the past followed it other than emperor Ashoka. The concept of Hinduism is based upon ahimsa and has credence upon the idea of Karma, which is the idea that if someone effectuates a crime in one's present life, the individual will reimburse for it in the present or next life. However, the death penalty is mentioned in the Manusmriti, which is a Hindu legal text among the innumerable Dharmasastras<sup>3</sup> of Hinduism. In the theological text verse 8.323 states that-

*“puruṣāṅgāṃ kulīnāṅgāṃ nārīṅgāṃ ca viśeṣataḥ |  
mukhyāṅgāṃ caiva ratnāṅgāṃ haraṇe vadhamarhati ||”*

Translation: For stealing noblemen, and especially women, and the precious gems, the thief deserves 'immolation.'

The punishment was limited to the three castes other than Brahmins, laid down in verse 8.124 of the text-

*“daśa sthānāni daṇḍasya manuḥ svayambhuvo'bravīt |  
triṣu varṇeṣu yāni syurakṣato brāhmaṇo vrajet ||”*

Translation: Manu Svāyambhuva has named ten places for punishment, where it should be

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<sup>3</sup> Dharmasastras: (Sanskrit: “Righteousness Science”) ancient Indian body of jurisprudence that is the basis, subject to legislative modification, of the family law of Hindus living in territories both within and outside India (e.g., Pakistan, Malaysia, East Africa)

inflicted in the case of the three castes; but the Brāhmaṇa shall depart unscathed.

2. Christianity: The acolytes of Christianity plinth their vista on the death penalty on their theological text of Bible for proving the legitimacy of it and at the same time defend it from its arbiters. In the Old Testament, death is commended forty times for more than twenty 'sins' which included crimes against religion, order, family, and the community, in the law codes of the books of Pentateuch<sup>4</sup>.

There are copious ways of execution as mentioned in Pentateuch. The most quotidian way of execution was stoning which involved at least two witnesses to substantiate a capital charge. If the charges were proven, the offender was taken out of the station, followed by the scapegoat rituals which involved the witnesses to place their hands on the head of the offender and were given the privilege to cast stones on them, then the whole community was given the chance. Another common form of execution was burning. The less popular forms, given for special sins were the use of the sword, hanging, spear, arrow, and beheading which was particularly reserved for the royalty.

The New Testament has very little to talk about the death penalty but was considered as a legitimate practice for good conduct to prevail. The royalty punishes the individual if he/she sinned, as it is an authority granted by God himself. If a death penalty is wrongly pronounced, then as a natural judicial practice the institute is questioned, as can be understood from St. Paul's assertion in a Roman Trial.

3. Islam: Religion of Islam is governed by the Sharia law, which was crafted from the Qur'an, the Sunnah (Hadith), the Ijma'<sup>5</sup>, 'Urf<sup>6</sup>, the Masalih al-Mursala<sup>7</sup>, and the Qiyas<sup>8</sup>.

In verse 2:30 of the Qur'an it is averred that "Your Lord said to the angels, 'I am appointing a vicegerent on earth'." The text also promulgated that "Your Lord said to the angels: 'I am about to create a human being out of clay; when I have fashioned him and breathed of My spirit into him, kneel before him in prostration'." The Qur'an thus denies the carte blanche to take away human life. Islamic philosophies describe ijad, the act of giving life and i'dam, the act of taking it away, as wholly Divinity's entitlement.

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<sup>4</sup> The term "Pentateuch" comes from the Greek term pentáteuchos meaning "five-volumed (book) after the Jewish designation, "the five-fifths of the law"<sup>1</sup>

C. The Jews called it "Torah" (instruction) which is often rendered in English by "Law" (Matt 5:17; Luke 16:17; Acts 7:53; 1 Cor 9:8)

<sup>5</sup> General consensus, based on individual jurist views by interpreting the laws of Sharia, which were later subject to referendum in order to establish ijma'.

<sup>6</sup> Social consensus on an issue which is subjected to referendum in order to establish law.

<sup>7</sup> For public good or public interest, which keeps Sharia law flexible for developments and changes in society, open for an option of amendments.

<sup>8</sup> Laws based on analogical reasoning which does not have any relation with the Qur'an or the Sunnah

The Qur'an allows taking life away by other authorities other than Allah, by the due procedure of law and justice to prevent further gruesome crimes in society, as ordained in the Sharia Law. The crimes identified in Sharia law are given below in Figure 1

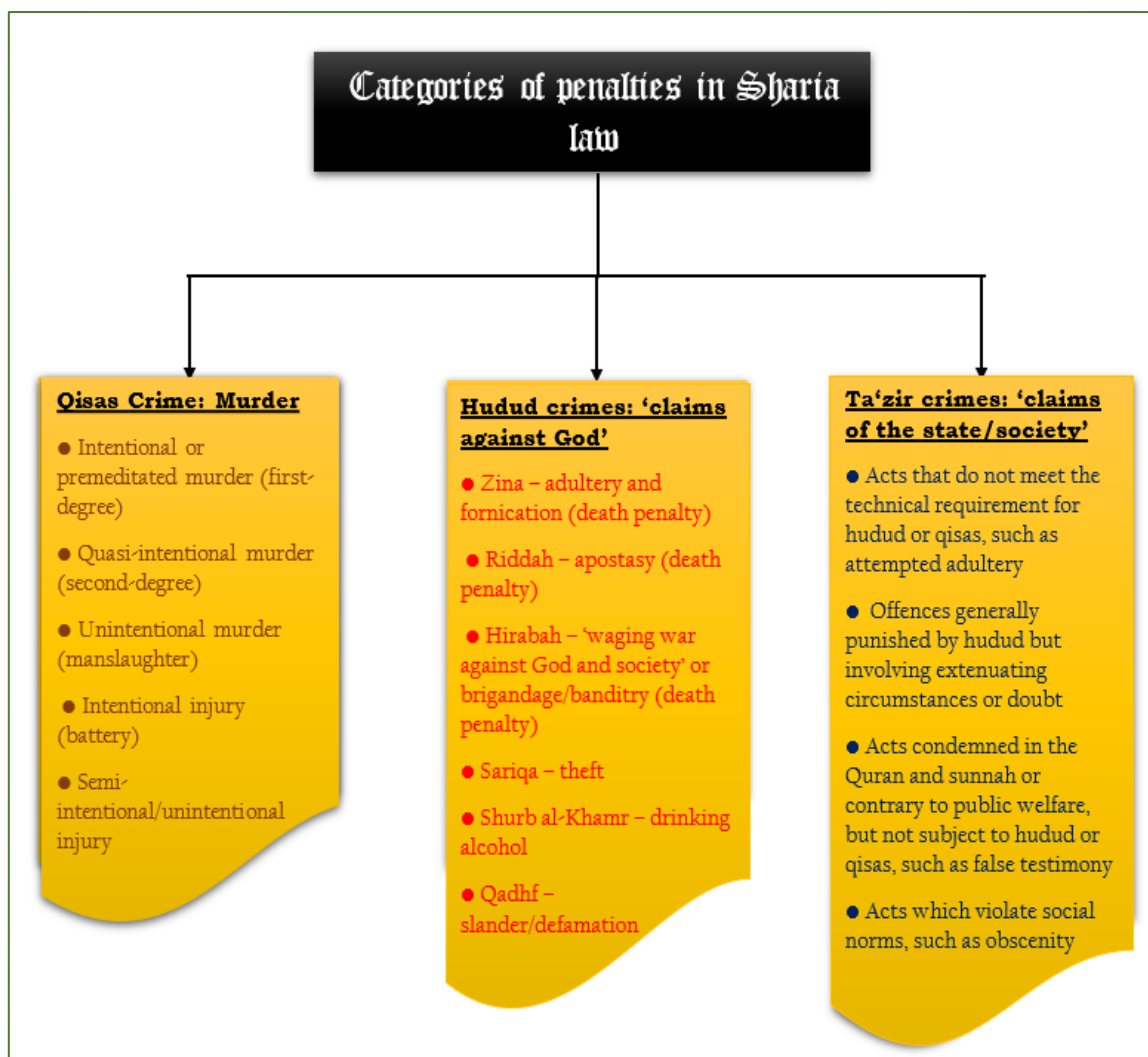


Figure 1

### III. DEATH PENALTY IN INDIA: PRE-INDEPENDENCE AND POST-INDEPENDENCE ERA

The death penalty was legally enforced by the colonial power of the British in the bill of Indian Penal Code, 1860 and Code of Criminal Procedure 1898. After a careful examination of Legislative Assembly Debates, 1931<sup>9</sup>, no issues regarding the same were raised, until a member from Bihar, Shri Gaya Prasad Singh pushed a motion to the House for the abolition of the death penalty which remained unfruitful as then Home Minister Sir John Thorne retorted that the Government does not support and brood the same.

<sup>9</sup> *Legislative Assemble Details*, PARLIAMENT DIGITAL LIBRARY (Jan. 20, 2020, 03:04 PM), [https://eparlib.nic.in/bitstream/123456789/764199/1/clad\\_04\\_01\\_14-01-1931.pdf](https://eparlib.nic.in/bitstream/123456789/764199/1/clad_04_01_14-01-1931.pdf)

After independence, the Republic of India adopted various laws as crafted during the colonial era, inclusive of the Code of Criminal Procedure 1898, and Indian Penal Code, 1860. The IPC had imposed six punishments inclusive of capital punishment. The offenses in which the IPC prescribes capital punishment is given below as Figure 2<sup>10</sup>.

<b>Capital Offences in IPC</b>		
Sl. No.	Section Number	Description
1.	Section 121	Treason, for waging war against the Government of India
2.	Section 132	Abetment of mutiny actually committed
3.	Section 194	Perjury resulting in the conviction and death of an innocent person
4.	Section 195A	Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
5.	Section 302	Murder
6.	Section 305	Abetment of a suicide by a minor, insane person or intoxicated person
7.	Section 307 (2)	Attempted murder by a serving life convict
8.	Section 364A	Kidnapping for ransom
9.	Section 376A	Rape and injury which causes death or leaves the woman in a persistent vegetative state
10.	Section 376E	Certain repeat offenders in the context of rape
11.	Section 396	Dacoity with murder

**Figure 2**

Section 367(5) of Code of Criminal Procedure, 1898 required the Hon'ble Courts to profess the reasons not to impose capital punishment on the convict(s) in the records. The section was repealed in the parliament in 1955, which conspicuously transposed the republic's stance regarding capital punishment, which as a consequential benefit, was no longer the norm. The amendment to section 354(3) required the Hon'ble Courts to divulge the reasons in their Lordships' judgments, to impose death sentence which engendered in the interchange of the position of the legislation compared to the one prevailing in 1898.

A further amendment to Section 235(2) of the Code opened the avenues for the convicted for post-conviction hearings in the Hon'ble Court counting death sentence. It is enshrined that the Judge shall pass a sentence adhering to law after hearing the accused unless he/she walked the way of the provisions laid down in Section 360 of the Code of Criminal Procedure.

The offenses which prescribe the death sentence as a punishment in Indian Laws are given below as Figure 3<sup>11</sup>

<sup>10</sup> Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.31-32

<sup>11</sup> Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.31-32

<b>Capital Offences in other laws</b>		
<b>Sl. No.</b>	<b>Section Number</b>	<b>Description</b>
1.	Sections 34, 37, and 38(1)	The Air Force Act, 1950
2.	Section 3(1)(i)	The Andhra Pradesh Control of Organised Crime Act, 2001
3.	Section 27(3)	The Arms Act, 1959 (repealed)
4.	Sections 34, 37, and 38(1)	The Army Act, 1950
5.	Sections 21, 24, 25(1)(a), and 55	The Assam Rifles Act, 2006
6.	Section 65A(2)	The Bombay Prohibition (Gujarat Amendment) Act, 2009
7.	Sections 14, 17, 18(1)(a), and 46	The Border Security Force Act, 1968
8.	Sections 17 and 49	The Coast Guard Act, 1978
9.	Section 4(1)	The Commission of Sati (Prevention) Act, 1987
10.	Section 5	The Defence of India Act, 1971
11.	Section 3	The Geneva Conventions Act, 1960
12.	Section 3 (b)	The Explosive Substances Act, 1908
13.	Sections 16, 19, 20(1)(a), and 49	The Indo-Tibetan Border Police Force Act, 1992
14.	Section 3(1)(i)	The Karnataka Control of Organised Crime Act, 2000
15.	Section 3(1)(i)	The Maharashtra Control of Organised Crime Act, 1999
16.	Section 31A(1)	The Narcotics Drugs and Psychotropic Substances Act, 1985
17.	Sections 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2), and 59	The Navy Act, 1957
18.	Section 15(4)	The Petroleum and Minerals Pipelines (Acquisition of rights of user in land) Act, 1962
19.	Sections 16, 19, 20(1)(a), and 49	The Sashastra Seema Bal Act, 2007
20.	Section 3(2)(i)	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
21.	Section 3(1)(i)	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

Figure 3

#### IV. DEATH PENALTY IS USED VERY SPARINGLY: FACT OR SHAM?

To understand the statement, it must be sequestered into numerous parts and ought to employ Hon'ble Courts' precedence to be explicated, and various statistical data collected over the years by independent organizations and international organizations.

In the case of *Bacchan Singh v. State of Punjab*<sup>12</sup>, the five-judge bench of the Hon'ble Supreme Court laid down the rule that the death penalty must be employed in the rarest of the rarest case where other remedies seem unquestionable and unjust for the victim and/or his family. It was observed that human life dignity acts as a resistance to taking life by the way of laws laid down in a civilized nation, thus it must be used in the rarest of rarest cases when an alternative option looks dim and stoppled.

In the case of *Macchi Singh & Ors. v. State of Punjab*<sup>13</sup> the Hon'ble Supreme Court employed the doctrine of rarest of rare cases laid down in the case of *Bacchan Singh v. State*

<sup>12</sup> *Bacchan Singh v. State of Punjab* 1980 Cr. LJ at pp. 653- 657 (SC)

<sup>13</sup> *Macchi Singh & Ors. v. State of Punjab* 1983 SCR (3) 413

of Punjab. In this case, Macchi Singh and 11 others, gruesomely killed 17 people by raiding their homes. While awarding death sentence employing the doctrine of rarest of rare cases the Hon'ble Court laid down certain conditions in this case that ought to be fulfilled for awarding death punishment which is stated herein below:

- (i) Abominable murder which engendered outrage in the community and/or society.
- (ii) Dowry deaths or terrorize people for vengeance and make them give up their assets and/or benefits.
- (iii) Multiple members of a family caste, race, or creed.
- (iv) A victim is an innocent child, aged person, or decrepit individual.
- (v) A victim is a public figure who was murdered other than personal feuds.

The spheres which the Hon'ble Court will examine carefully in the doctrine of 'rarest of rare cases' are stated herein below:

- Motive
- Manner of commission
- The extent of crime
- Nature of crime
- The personality of the victim

The rarest of rare cases doctrine was further segregated into two parts in the case of Ramnaresh and Ors. v. State of Chhattisgarh<sup>14</sup>, where the victim was gang-raped by the accused and his brothers and then brutally murdered by strangulation. The two parts are:

- Aggravating Circumstances- The Hon'ble Court may award capital punishment on His/Her/Their Lordship's discretion when the following conditions are fulfilled:
  - The murder is pre-planned and entails cruelty with extraordinary depravity.
  - Murder of a public servant on the line of duty.
  - Any consequence rendered by the lawful discharge of the duty of a public servant as under provision<sup>15</sup> enshrined under Code of Criminal Procedure, 1898.

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<sup>14</sup> Ramnaresh and Ors. v. State of Chhattisgarh AIR 2012 SC 1357

<sup>15</sup> The Code of Criminal Procedure, 1898, Act no. V of 1898, § 43



- Mitigating Circumstances- Circumstances presented in front of the Hon'ble Court that lessens the charges pressed against the accused and the sentence pronounced in the verdict.
  - The act is committed under mental or emotional imbalance.
  - Accused is young.
  - The likelihood that the accused would not commit a crime against society.
  - The act was done under coercion.
  - Hon'ble Court believes the act was morally justified.

When the mitigating circumstances are superseding in the presented facts, the Hon'ble Court will not walk in the way of awarding a death sentence to the accused.

In *Jagmohan Singh v. State of U. P*<sup>16</sup>, constitutionality of the death penalty was challenged in the Hon'ble Supreme Court as it was believed that the death penalty is a violation of Article 21 of the Indian Constitution which ordains that no one should be disadvantaged of his life and idiosyncratic autonomy except the rule established by law or due process of law. In *Deena v. Union of India*,<sup>17</sup> the Hon'ble Court ruled that the usual method of execution in India, i.e., hanging is not cruelty and hence it does not violate Article 21 of the Constitution.

In the case of *Maneka Gandhi v. Union of India*<sup>18</sup>, the Hon'ble Supreme Court ordained several standards to be followed before pronouncing the death penalty:

- Must be pronounced in cases with extraordinary circumstances and facts.
- Capital punishment should be treated as an exceptional punishment to be imposed for extraordinary reasons.
- Accused has the freedom to speech and expression in trial custody
- Accused has the right to appoint a lawyer.
- The accused must have the right to a hearing and the right to appeal.
- The accused must not undergo cruelty under due process of law.
- Individuals must be considered for individual circumstantial perspective.
- Accused has right to pray for a pardon under article 72 and 161 of Constitution of India before President of India and Governor.

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<sup>16</sup>*Jagmohan Singh v. State of U. P* AIR 1973 SC 947 Cr. LJ 3301973 SCC162

<sup>17</sup>*Deena v. Union of India* 1983 AIR 1155

<sup>18</sup>*Maneka Gandhi v. Union of India* AIR 1978 SC 597

Figure 4 given below shows the number of death penalties awarded in India from 2009 to 2018.

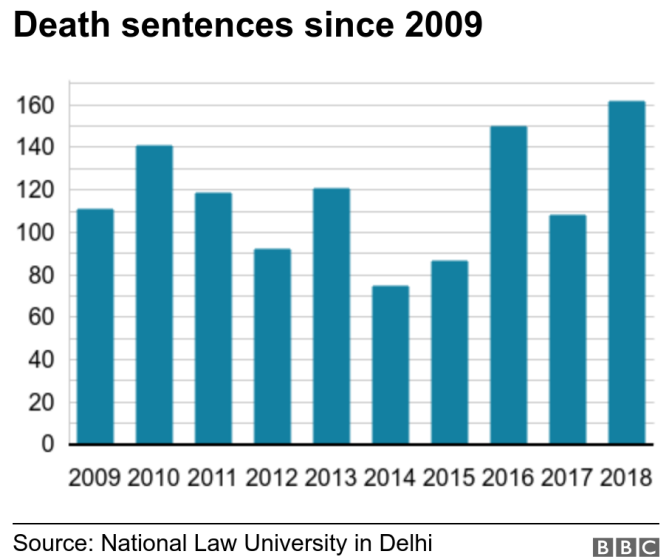


Figure 4

Figure 5 below shows the number of death penalties given by India in 2014 compared to other countries in the same year.

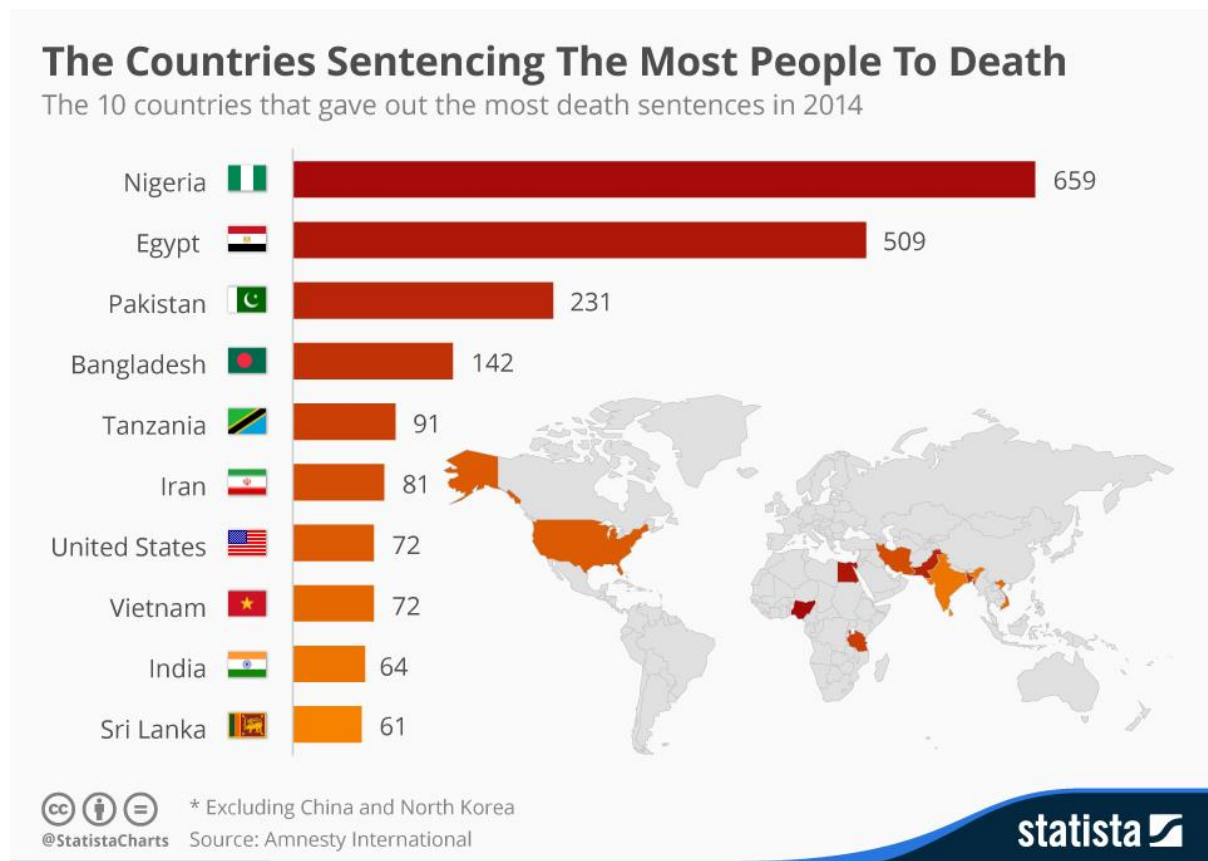


Figure 5

The statistics thus prove that the judiciary in India awards the death penalty in the 'rarest of rare cases' with extraordinary circumstances. The accused can be executed by hanging as stated under Section 354(5) of the Code of Criminal Procedure, 1898 and by shooting as stated in The Army Act, The Navy Act, and the Airforce Act for the offenses mentioned in Section 34 of the Airforce Act, 1950.

## **V. CLEMENCY PROCESS: JUSTICE DELAYED/DENIED FOR THE VICTIM OR GIVING THE ACCUSED CHANCES?**

In *T.V Vantheswaran v. State of Tamil Nadu*,<sup>19</sup> a question arose that whether deferral of execution of capital punishment violates Article 21 of the Indian Constitution. The Hon'ble Court observed that the delay must be reasonable.

The nature of the death penalty is such that it cannot be undone and thus, it is irreversible. The Indian laws provide chances of inspection of the decision. If the same is awarded by the lower court it must be given assent to by the Hon'ble High Courts to avoid any error, as enshrined in Section 366(1) of the Code of Criminal Procedure, 1898. After thorough analysis, the Hon'ble High Court can pronounce its judgment accordingly. The accused still have a chance to appeal in the Hon'ble Supreme Court under Article 134(1) (a) and (b) of the Indian Constitution. After the final verdict, the accused still has a chance of acquittal for the convict by the process of clemency.

Article 72 and Article 161 of the Indian Constitution has enshrined provisions that the President and the Governor hold the jurisdiction to pardon, commute or remit the death sentence. In the case of Union Territories and States, the mercy petition is first sent to the Lieutenant Governor and the Governor respectively. If it is rejected, the same is forwarded to the Ministry of Home Affairs who provides advice to the President, and he/she is bound to act within it. In the case of *Kehar Singh v. Union of India*<sup>20</sup>, the apex court held that the judiciary has no rights to review the decision of the President of rejecting the plea. In the case of *Shatrughan Chauhan v. Union of India*, then courts may scrutinize if all the areas were looked upon by the functioning executive as the failure of the same and the rejection of mercy may result in the violation of Article 21 of the Constitution. In the same case, the bench admonished the executive for delay of functioning which may render in violation and torture under the law and the sentence could be lessened under the grounds of execution, insanity, solitary confinement, dependence on judgment *per incuriam*, and procedural failure.

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<sup>19</sup>*T.V Vantheswaran v. State of Tamil Nadu* 1983 SCR (2) 348

<sup>20</sup>*Kehar Singh v. Union of India* 1989 AIR 653

Figure 6 and 7 shows the number of death penalty cases disposed of and the percentage of commutations of the death penalty in India.

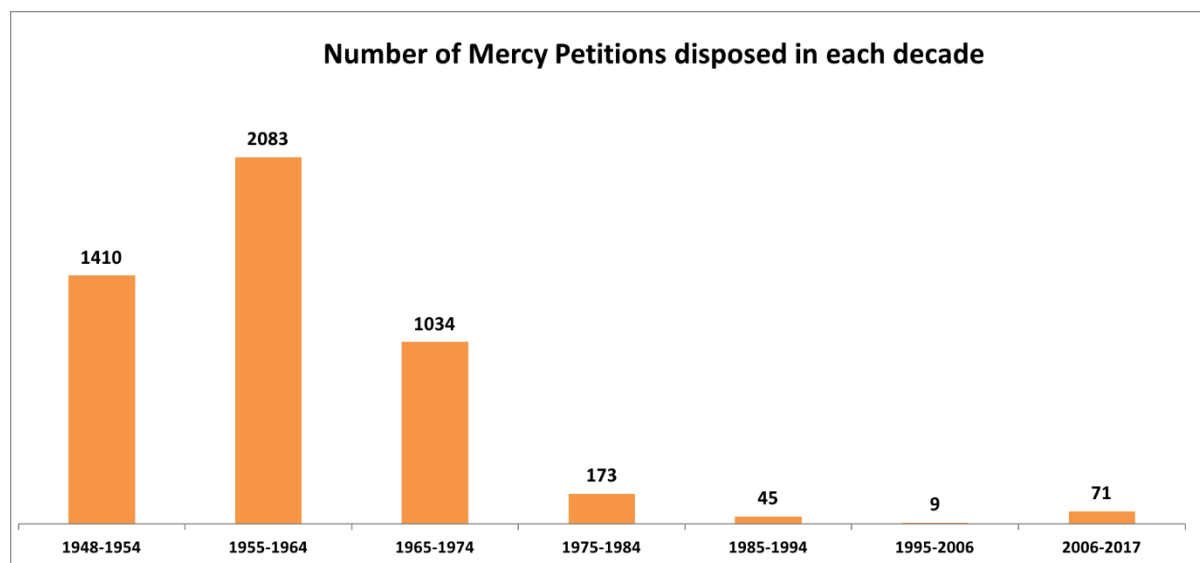


Figure 6

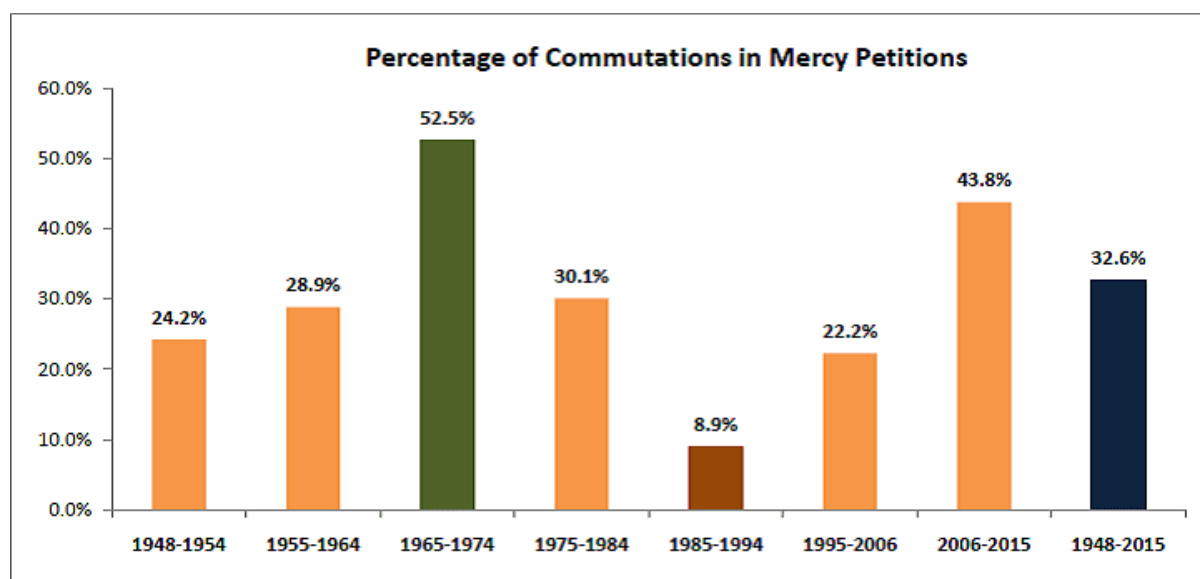


Figure 7

The prisoners also have a right to die with dignity, they are entitled to legal aid, mandatory regular health check-ups, a copy of the answer to the mercy petition. After the death of the accused, the court also laid down the guideline that a post-mortem must be carried out to examine whether the execution was carried out according to the guidelines.

## **VI. THE INTERNATIONAL STATUTES AGAINST THE DEATH PENALTY AND INDIA: COMPLIANCE OR IGNORANCE?**

On the international stage, countries are sorted into four different categories based on their

stance on the death penalty which is given hereinbelow:

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

The countries that are classified into the four categories as of 2014 are given below<sup>21</sup>.

1. **ABOLITIONIST FOR ALL CRIMES (Countries whose laws do not provide for the death penalty for any crime):** Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Bhutan, Bolivia, Bosnia and Herzegovina, Bulgaria, Burundi, Cambodia, Canada, Cabo Verde, etc.

2. **ABOLITIONIST FOR ORDINARY CRIMES ONLY (Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances):** Brazil, Chile, El Salvador, Fiji, Israel, Kazakhstan, Peru.

3. **ABOLITIONIST IN PRACTICE (Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions):** Algeria, Benin, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Congo (Republic of), Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Madagascar, Malawi, Maldives, Mali, etc.

4. **RETENTIONIST (Countries that retain the death penalty for ordinary crimes):** Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, the Democratic Republic of the Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, etc.

The International Covenant on Civil and Political Rights ('ICCPR') is among the major records propounding the applicability of capital punishment in compliance with human rights. The ICCPR does not rule against the employment of capital punishment, but Article 6 acts as a protecting sphere of the right to life and covers essential safeguards to be followed by the countries who retain the death penalty.

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<sup>21</sup> Amnesty International Report 'Death Sentences and Executions, 2014' pp.64-65

The Second Optional Protocol to the ICCPR, that eyes the only treaty directly concerned with abolishing the death penalty, access to participation from all countries in the world. Enacted in 1991 and has 81 state parties and 3 signatories.

Article 37(a) of the Convention on the Rights of the Child ('CRC') expressly advocates against the use of the death penalty against persons under the age of 18. As of July 2015, 195 countries had implemented and backed the CRC.

The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CIDT) ('the Torture Convention') and the UN Committee against Torture have acted as limitations to the mode of execution. However, some methods of execution and the phenomenon of death row are looked at as forms of CIDT by UN bodies.

Several resolutions of the UN General Assembly (UNGA) have called for a delay in the use of the death penalty. In 2007, the UNGA urged the countries to gradually reduce and restrict the use of capital punishment at the same time reducing the kind of offenses it will be employed for and opined that a delay must be implemented on executions with a perspective of abolishing it, at the back of the head. In 2008, the GA reaffirmed its stance, which was re-enacted in subsequent resolutions in 2010, 2012, and 2014. Many of these resolutions mentioned that the delay will bestow respect for human life and act as a propeller in the development of human rights. In 2014, 117 States had voted in favour of the most recent resolution. India did not favor these resolutions.

In 2013, a resolution was enacted, UN Human Rights Council acknowledged the ill ramifications on the child or children of the death-sentenced parent(s) and urged that the Government must provide those children with the required assistance and protection. Human Rights Council resolution, 2014 kept in mind that countries with different laws, judiciary system, traditions, and cultures have either abolished it or applied suspension on its use and abhorred the fact that that the implementation of capital punishment leads to the transgression of human rights of those under the ambit of the same or the affected individuals.

The Human Rights Council urged states to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

## **VII. CONCLUSION AND RECOMMENDATIONS**

The Indian Criminal law has prescribed the death penalty as mentioned earlier. The Constitution drafters and the founding fathers of our republic have opposed it as early as the 1950s, as Dr. B.R. Ambedkar said in the legislative assembly debate that people may not

practically follow the practice of non-violence as uttered by the father of our nation, Mahatma Gandhi, people still value those principles: “they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can.....the proper thing for this country to do is to abolish the death sentence altogether.”

The sentencing of the death penalty is a lengthy and tiring process with the chances given to the accused for clemency petitions, which can further delay justice for the victim. In the high-profile Delhi gang-rape ‘Nirbhaya’ case there were various instances of delay by the accused parties as a result of filing repeated pleas and clemency petitions, what we know as ‘justice delayed is justice denied’. The victim also must fight with his/her conscience and face severe psychological trauma for sending someone known, if facts of the case are such, to the gallows of death. In the case of *Triveni Bai v. the State of Gujarat*<sup>22</sup> Death penalty does not result in deterring crime, which can be understood from a report of Amnesty International which states<sup>23</sup> that, in 2004 in the USA, the average murder rate for states that used the death penalty was 5.71 per 100,000 of the population as against 4.02 per 100,000 in states that did not employ the same. In 2003 in Canada, 27 years after the country abolished the death penalty the murder rate had fallen by 44 percent since 1975, the period pre-abolition of capital punishment.

Humans are meant to make faults in judgments and decisions and our judiciary system does not fall out of its ambit, no matter how developed it is. A study by the Asian Centre for Human Rights said that “conscience” depends upon his “attitudes and approaches, predilections and prejudices...”. In 2015 two professors at Indian Statistical Institute published an exhaustive study of the case of *Dhananjay Chatterjee v. State of West Bengal*<sup>24</sup> in which the accused was sentenced to death. The publication<sup>25</sup> expounded the wrongs in the police investigation and claimed that the convict was innocent. In 2009 the Hon’ble Supreme Court admitted its mistake of judgment that sentenced 15 people to death. In 2012, 14 retired Supreme Court judges, wrote to the president regarding the same<sup>26</sup>. In 2019, the Hon’ble Supreme Court admitted mistake again in another case and commuted a death sentence to a

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<sup>22</sup>*Triveni Bai v. the State of Gujarat* (1983)2 SCC 68

<sup>23</sup> *Fact check: No proof the death penalty prevents crime*, ABC NEWS (Jan. 20, 2020, 03:04 PM), <https://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030?nw=0>

<sup>24</sup> *Dhananjay Chatterjee v. State of West Bengal* 1994 SCR (1) 37

<sup>25</sup> *Dead Wrong*, PEOPLE’S UNION FOR DEMOCRATIC RIGHTS (Jan. 20, 2020, 03:04 PM), [https://puodr.org/sites/default/files/2019-01/Dhananjay\\_Report.pdf](https://puodr.org/sites/default/files/2019-01/Dhananjay_Report.pdf)

<sup>26</sup> *Manoj Mitta, 9 death penalties wrongly imposed: Ex-judges to President*, THE TIMES OF INDIA (Jan. 20, 2020, 03:04 PM), <https://timesofindia.indiatimes.com/india/9-death-penalties-wrongly-imposed-Ex-judges-to-President/articleshow/15552912.cms>

life sentence<sup>27</sup>.

Our judiciary has marched forward and changed its requirement of furnishing reasons to not impose the death penalty, to requiring furnishing reasons for imposing the death penalty, as it was restricted by the doctrine of 'rarest of rare' cases. A bill was also moved in the parliament in 2019 by Dravida Munnetra Kazhagam MP Kanimozhi Karunanidhi, backed by Congress MP, Shashi Tharoor, advocating the abolition of the death penalty.

I believe that the death penalty is unjust and unfair as once life is taken away it cannot be given back. The alternative to capital punishment may be rigorous life imprisonment or life imprisonment, as ordained in the case of *Swamy Shraddhananda v. State of Karnataka*<sup>28</sup> where the same was prescribed. It was followed in numerous cases such as *Haru Gosh v. State of West Bengal*<sup>29</sup>, *State of U.P v. Sanjay Kumar*<sup>30</sup>, *Sebastian v. State of Kerala*<sup>31</sup>, *Gurvail Singh v. State of Punjab*<sup>32</sup> where life imprisonment was ordained instead of the death penalty. The 262<sup>nd</sup> report of the National Law Commission also recommended the abolishment of the death penalty other than terrorism. But the researcher believes that parliament should abolish for one and all.

On the land of Mahatma Gandhi and Gautam Buddha, the land that is an ambassador of non-violence practice, capital punishment is a stain on its glorious white cloth of peace. Hence it is necessary to abolish this primitive and barbaric age-old practice and accustom selves to the growing changes evident internationally.

*"I can recall the punishment of detention. I can make reparation to the man upon whom I inflict corporal punishment. But once a man is killed, the punishment is beyond recall or reparation. God alone can take life, because He alone gives it."*

*-Mahatma Gandhi*

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<sup>27</sup> Amit Anand Choudhary, *SC admits mistake in awarding death sentence, commutes it to life imprisonment*, THE TIMES OF INDIA (Jan. 20, 2020, 03:04 PM), <https://timesofindia.indiatimes.com/india/sc-admits-mistake-in-awarding-death-sentence-commutes-it-to-life-imprisonment/articleshow/71411563.cms>

<sup>28</sup> *Swamy Shraddhananda v. State of Karnataka Appeal (cr.) 454 of 2006*

<sup>29</sup> *Haru Gosh v. State of West Bengal CRIMINAL APPEAL NO. 1173 OF 2008*

<sup>30</sup> *State of U.P v. Sanjay Kumar SLP (Cr.) No.6467/2012(Cr.L.M.P.No. 17082/2012)*

<sup>31</sup> *Sebastian v. State of Kerala Cr.L.MC. No. 6675 of 2015*

<sup>32</sup> *Gurvail Singh v. State of Punjab (1980) 2 SCC 684 : AIR 1980 SC 898*