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# India's Capital Punishment: An Inefficacious Exercise or a Vindictive Move?

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## ABSTRACT

*Capital punishment is highly altercated around the world and not only in India. The Indian legislation has made it a law by putting emphasis on it by various judgments and is even prescribed in the Indian Penal Code and various other statutes however whenever it is imposed, wave of discernment follows. Where on one hand the retentionists favor the punishment, the abolitionists probe through it. This disciplinary punishment is ought to be the most serious punishment ever known to the mankind to diminish the crime percentages and depends upon the malfeasance done by the miscreants. Despite the tsunami of crime rates in India, capital punishment is one of last punishment prescribed to the perpetrators. Is it because of the Constitutional guarantees under Article 14, 19 and 21 or is it unjustified to punish the criminal just to dissuade future criminality? There is no direct mention of capital punishment being held as unconventional under the Indian Constitution however it is at times said to be unconstitutional. Through this research paper, we will discuss about the current status of capital punishment around the country as well as in other nations. Furthermore the paper will characterize the idea of capital punishment i.e death penalty with human rights and the constitution too. This paper will aim to mention the alternative methods of punishments and whether the Indian judiciary has encompassed adequate convictions and acquittals in place of death penalty. The paper will conclude with the observation of various cases and will endeavor to resolve the question that 'Is death penalty a cruel and inefficacious exercise?'*

*This research paper is our effort towards the nitty-gritty view about capital punishment, its history, relevance and significant strategies for execution in India.*

**Keywords:** death penalty, punishment

## I. INTRODUCTION

India being a democratic country mandates human right under fundamental rights to each & every citizen which is why the debate on capital punishment is the most controversial yet

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relevant debate in the Indian judicial system. Capital punishment is the highest and ultimate repression intended to execute the law of the land that serves as one of the cornerstone of modern governance. Before the formation of the Indian penal code, even the most trivial crimes had the punishment of death penalty and this kind of punishment was of very prominence in the 'draconian era'. The magnitude of the punishment in that era depended upon the King and thus it is an overt of the deterrence. However in the current scenario the controversy is around the fact whether the modern era should allow capital punishment.

Increment of human rights activism has defined capital punishment to be unscrupulous, debauched and objectionable. India being a developing nation simultaneously heaps crime percentages year by year and the variegated enactments are unable to stop and control violations. The certitude that the lawlessness in the society toppled with the argument of keeping one perpetrator alive at the cost of numerous victims is a matter of contention. On the other hand this highest level of punishment is opposed by the United Nations as it quoted '*Life is precious and death is irrevocable*'. In United Nations moratorium on the death penalty resolution passed by the European Nations along with 8 other member states in 2007 addressed the general suspension of death penalty throughout the world.<sup>3</sup> "*The death penalty has no place in the 21<sup>st</sup> century*" – UN Secretary General Antonio Gueterres.

India is one of the 58 countries whose statute books include the death penalty and has used it in modern times. The Law Commission had argued in 1967 to perpetuate the death penalty but in 2015 it clarified that 'retribution cannot be reduced to vengeance'<sup>4</sup>. When Indira Jaising, an advocate and human rights activist solicited the mother of the Delhi gang rape victim to absolve the offenders, she received immense counterblast from the public as well as the mother who had been fighting tooth and nail for justice. Many contended that the miscreants should be given the capital punishment yet many have opined that the dissuasion from such heinous crime cannot be stopped by the death penalty. The only aggregate of the capital punishment may only be retributive justice for the public and not for the deterrence of crime rates.<sup>5</sup>

Lest the extent of crimes in India which exists in the top 10 countries of the world, the capital punishment had opinionated the public as well as the International Court of Jurists (ICJ) which condemned the Centre not to hang the 'Nirbhaya' convicts.

### **(A) Meaning of Capital Punishment in India**

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<sup>3</sup> <https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIIndex.aspx>

<sup>4</sup> <https://www.thehindu.com/news/cities/Delhi/getting-the-hang-of-death-penalty/article31086083.ece>

<sup>5</sup> <https://www.mondaq.com/india/crime/882448/india-and-its-regressive-step-in-crime-and-punishment>

Capital Punishment, also known as the death penalty, is the execution of an offender sentenced to death on conviction of a serious felony by a court of law. Capital punishment should be distinguished from extrajudicial killings which lack the appropriate judicial procedure.<sup>6</sup> The term ‘death penalty’ is often used conversely with ‘capital punishment’ but the application of the sentence is not necessarily accompanied by the execution (even if it is upheld on appeal) because of the likelihood of a clemency to life imprisonment.<sup>7</sup>

Death Penalty is a very serious problem, since it involves taking the life of a person which proves to be a very vulnerable problem. That is why concerns are being posed against countries apart from India such as China, the United States and Arabic countries for awarding the death penalty. The word "capital punishment" reflects the harshest possible form of punishment. It is the sanction to be given for the most horrific, egregious and contemptible crimes against humanity. Although the description and severity of such crimes differs from country to country, state to state, age to age, death sentence has always been the consequence of capital punishment.<sup>8</sup> The punishment is the legal killing of the person who has committed the crime prohibited by the law.<sup>9</sup>

According to Encyclopedia Britannica, the death penalty is the execution of an offender sentenced to death after conviction by the court for a criminal offence. The ancient legal system calls it the highest penalty prescribed. The death penalty is provided under the Indian Penal Code for various offences such as “Waging a war or attempting to wage a war against the Government of India” (*Section 121*), Abetting the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India (*Section 132*), Giving or fabricating false evidence with intent to procure conviction of capital offence (*Section 194*) and threatening or inducing to give false evidence is made punishable under *section 195-A*<sup>10</sup>. *Section 302 of the Indian Penal Code, 1860* provides that whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. The section provides punishment for murder. *Section 304* for culpable homicide not amounting to murder. Except in case where there were extenuating circumstances, the normal punishment under this section was death. However, pursuant to *section 354(3) of the 1973 Criminal Procedure Code*, a new provision has been added to ensure that, where the punishment is

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<sup>6</sup> <http://newindialaw.blogspot.in/2012/11/constitutional-validity-of-capital.html>

<sup>7</sup> International Journal of Academic Research and Development, *Capital punishment in modern era in reference to Indian context by Ganesh Ji*

<sup>8</sup> Lok Sabha Secretariat, Parliament Library and Reference, Documentation and Information Service

<sup>9</sup> Roger Hood, Capital Punishment, Encyclopaedia Britannica,  
<https://www.britannica.com/topic/capitalpunishment>

<sup>10</sup> Shodhganga.inflibet.ac.in

punishable by death or, instead, by imprisonment for life or imprisonment for a term, the judgment shall specify the reasons for the sentence handed down and, in the case of death penalty, the reasons for the penalty<sup>11</sup>. It seems, therefore, that standard punishment for murder is no longer a death penalty, but imprisonment for life, and a death punishment can be awarded in 'rarest of rare' cases only for specific circumstances to be documented in judgment.<sup>12</sup>

### **(B) Theories of Capital Punishment**

As this punishment has already been deemed as a social security mechanism multiple times, the correlation of punishment with other steps involving deprivation by the legally accepted rights of the state is evident. The justifiability of these steps may very well be contentious in particular circumstances, but is hardly on investigation. Punishment may be used as an opportunity to educate the incidences of nefarious activities either by persuading criminals, or by neutralizing and prohibiting them from committing a serious crime, or by converting them into virtuous individuals.<sup>13</sup> The theories typically include aspects relating to punishment theories, namely: Deterrent, Retributive, Preventive, and Reformative. The core dilemma that most penologists address is whether truly 'humane' methods of punishment are inherent in their target, such as the reformist success. Prisons are recognized to have been a place for the raising of offenders, not as a site of reformation as it was supposed to be.

In the Theories of Punishment it can be said that Reformative theory have a based paradigm of benefit over Deterrence Theory. Since there is a dimension of transformation present in Reformative Theory while this scope is entirely absent in Deterrent Theory. In India, the Tihar Jail prisoners make 'Essence Sticks' and 'DhoopBatti' which is a good way to make them adaptable or versatile to society.<sup>14</sup> These theories are usually kept in consideration the courts give their judgments.

## **II. HISTORY OF DEATH PENALTY IN INDIA**

To be more systematized the history of death penalty in India is deliberated under the following four heads –

### **(A) Death Sentence under the Hindu Law:**

Since the earliest era of existence punishment has been an integral part of society. Together with exile, Death Penalty was present as two easiest places of suppressing the antisocial

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<sup>11</sup> Code of Criminal Procedure, 1973

<sup>12</sup> [https://shodhganga.inflibnet.ac.in/bitstream/10603/127654/16/10\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/127654/16/10_chapter%203.pdf)

<sup>13</sup> <http://www.legalserviceindia.com/articles>

<sup>14</sup> *Capital Punishment: A comparative study by Abhinav Narayan*

elements of society which were the best examples of punishment and dissuasion for society. Cases of death penalty are as old as those of the Hindu community. References to the death penalty can be found in the old scriptures and books. The Hindu law system did not find the execution of the death penalty barbaric and was reimbursed with the infliction of torture as much as possible in order to have a draconian effect on society. Death penalty fragments were uncovered as far back as the 4th century. Kalidas has demonstrated beautifully the need for the death penalty<sup>15</sup>. The need for the death penalty has been expressed in historical, mythological epics such as Ramayana & Mahabharata that it is the King's highest priority to protect society from any kind of threat, and this can be done by taking the life of the wrongdoer. Katyayana and Brahaspati are also proponents of the death penalty. Katyayana and Brahaspati are also proponents of the death penalty. Essential for the protection of all and possible only through the execution of the perpetrator on the grounds of religious merits. The Buddhist period when Ahimsa was the law of conduct, even then Ashoka did not consider capital punishment to be false. Deterrence and mental health were the rudimentary foundation of the dandniti in India. Clearly, the idea of social security and non-correctional philosophy is a very clear element in the Hindu criminal system. Manu has taken very good note of the objective and subjective circumstances. The crime and weakness of the perpetrator in his legendary work Manu Smriti. Even in the work of Kautilya, the reference to the death penalty was there as according to him it was a fundamental means of maintaining public protection.<sup>16</sup> According to some law scholars, Brahmans had been excluded from the death penalty and otherwise removed, but however there were some references in the history of the Brahman's death penalty and could not therefore be regarded as fully excluded<sup>17</sup>.

### **(B) Death sentence under Muslim Law:**

Muslim law or Islamic law maintains that the primary purpose of punishment is to have a punitive effect on society. The Islamic Doctrine mainly promotes the good of society and protects against wrongdoing by imposing punishment on the wrongdoer.

There are 3 types of crimes under the Islamic law:

1. **Had Crimes:** The crimes that influenced the community were called Had or Huhud, i.e. the penalty prescribed by Allah himself. Crimes in this group include murder, murder, larceny drinking wine, bloodshed, apostasy, and revolt. These offences shall be dealt with very

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<sup>15</sup> Quoted in Shukla Das, Crimes and Punishment in Ancient India, Abhinav Publications, New Delhi, 1977, p.56

<sup>16</sup> Arthshastra of Kautilya, 4.11

<sup>17</sup> Dr. Sen P.N. Hindu Jurisprudence p.242-43

strictly, and neither the judge nor the victim has the right to pardon the crime or to enforce the penalty.<sup>18</sup>

2. **Tazir Crimes:** The second group of such offences shall be that for which tazeer or a criminal offense has been committed. Punishment shall apply. For these categories of offenses, the courts are able to determine whether to prosecute them, unlike the first group of offenses.

3. **Qisas Crimes:** The third group of social crimes is those involving Qisas (retaliatory) and Diyut blood money or paid mullet. The cases of murder and intentional or accidental injury or, to be precise, the crimes protected by Qisas were intentional or felonious murder, attempted intentional murder or accidental murder, intentional or unintentional injury. This crime shall be punished with Qisas or diyut and, in such cases, the victim or his legal guardian or heir can forgive or change the amount of the penalty.

All these 3 types of crime have a definite prescribed punishment and these differ in the gravity of offence and punishment both.

(C) **Death sentence under the Mughal Empire:** The medieval history of India was dominated by the mighty Mughal rule. They are administered primarily based on the Laws of the Quran. There was no uniformity in the law enforced in the different parts of the world and the disputes were addressed and the judges were mostly focused on the Quranic beliefs, but they also had discretionary penalties with the officer who determined the case. The Indian Quzes had their own rundown of all the Islamic law that was going on proposed outside the world. There were many such digests that were being prepared and the last one was the "Fatwa-i-Alamgiri" compiled under the order of Aurangzeb.

The views of Akbar were very lenient and, according to him, the death penalty should be the last order after all mature deliberations and, according to Akbar 's rule, only severe offenses of sedition of death could be ordered and given by the emperor himself and no death should be accompanied by mutilation and other cruelties. Same was the laws of Jahangir and Aurangzeb. The final order of the death penalty was executed with furious and excruciating methods, such as tossing the prisoner in the scorching sun as he was wrapped in freshly slain fluffed thin to shrink raw hide and finally collapsing in misery and pain, or the prisoners were mailed in the walls together with lively corpses. These approaches have been overtaken by the mandatory imprisonment of the criminal to death under the Modern British Criminal Justice and Administration Scheme.

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<sup>18</sup> [https://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/219582/11/11\\_chapter-2.pdf](https://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/219582/11/11_chapter-2.pdf)

**(D) Death Sentence under the British rule in India:**

The advent of the British East India Company to the Indian Territory during the Mughal reign in India saw the statutory modifications in the Muslim criminal law that was in practice at the time of British. The Bengal Resolution of 1773 made some improvements in the case of murder, and there were only slight amendments that were very important to eradicate the current defeats. Now the most critical factor was the purpose of the offense, not the process of the execution of the crime that would dictate the penalty. The sentence of execution can now be applied to the death penalty even though it is prescribed by Muslim law. Now the government has been given the power to amend the death penalty, too. Murder & Culpable Homicide was distinguished for the first time by statute. Commission in 1846, after a series of alterations and references by eminent scholars. In 1857, for the first time, the Code was read, adopted by the Legislative Council and authorized by the Governor General on 6 October 1860. The British have been responsible for the implementation of a formal criminal code and criminal prosecutions. Capital crimes were narrowly restricted under this penal code of India and thus the British could be held accountable for the partial abolition of the death penalty. The Parliament has seen the abolition of the death penalty many times, but still the criminal law on the issue of capital punishment and death sentences both technically and in practice.<sup>19</sup>

**1. The Infamous Cellular jail of Andaman & Nicobar Islands:**

The colonial prison of Andaman & Nicobar island also known as 'Kala Pani' was best known for the exiling and then execution of political prisoners and the 'rebels' of the nation. It is said that about 80,000 prisoners were held by the British and very few had survived. Solitary confinement was enforced as the British government wanted to ensure the separation of political prisoners and the revolutionaries from each other. The Andaman Island acted as the East India Company's perfect environment to do this. The remorseless and diabolical punishment was the one of horrid disparage of penalties ever known to the country.

**(E) Death sentence post-Independence (1947 – 2000):**

The first hanging in Independent India was that of Nathuram Godse and Narayan Apte for the assassination case of Mahatma Gandhi on 15 November 1949. However the records of execution of the death penalty after independence are not confirmed by the government and there is an obvious difference of opinion on the total number of executions since the independence. Dhananjay Chatterjee, charged with the rape and murder of a 15 years old Hetal Parekh, was judicially executed in 2004, the first execution after a long break since 1995.

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<sup>19</sup> [https://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/219582/11/11\\_chapter-2.pdf](https://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/219582/11/11_chapter-2.pdf)



Another execution to be carried out in India was on 30 July 2015 which was the hanging of Yakub Memon, who was accused of funding Mumbai in 1993 bomb blasts. In India, capital punishment is a civil offense.<sup>20</sup> It has been carried out in 16 cases since 1995, while a total of 30 executions have been carried out in India since 1991.<sup>21</sup>

In *Mithu vs. State of Punjab*, the Supreme Court abolished Section 303 of the Indian Penal Code, which provided for a mandatory death penalty for prisoners who committed murder while serving a life sentence.<sup>22</sup> The number of people executed in India since the nation gained independence in 1947 is a matter of dispute; official government figures say that fifty-two people have been executed since independence. However, research by the People's Union for Civil Liberties suggests that the real number of executions is, in fact, much higher, considering the record of 1,422 executions in the decade from 1953 to 1963 alone<sup>23</sup>. Research reported by National Law University, Delhi on death row convicts since 2000 found that of the 1,617 prisoners sentenced to death by Indian courts, only seventy-one cases accepted the death penalty<sup>24</sup>. NLU Delhi has reported 755 executions in India since 1947<sup>25</sup>. According to the Law Commission of India (1967), the total number of cases in which the death penalty was imposed in India from 1953 to 1963 was 1410.<sup>26</sup> National Law University, Delhi investigated 1,414 prisoners who had been executed on the list of convicts who had been hanged post-Independence since 1947.<sup>27</sup>

### III. INDIA'S TRIBULATION WITH CAPITAL PUNISHMENT

There has already been a worldwide initiative towards the abolition of the death penalty; however, the stance has not been embraced by India. What excludes this type of punishment from the others is the prominent area of it linked to arbitrariness. An individual once executed for an offense would never come alive again. Therefore any fallacy done while deciding the matter cannot be ameliorated. A close review of the discussions in British India's Legislative Assembly indicates that there was no question asked concerning capital punishment until 1931, when one of Bihar representatives, Shri Gaya Prasad Singh, proposed to introduce a Bill to

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<sup>20</sup> Majumder, Sanjoy. "India and the death penalty." BBC News 4 August 2005.

<sup>21</sup> *Ibid*

<sup>22</sup> VENKATESAN, V. (7 September 2012). "A case against the death penalty". *Frontline*. Retrieved 30 July 2013.

<sup>23</sup> "Number of executions much higher than 52." *Times of India*. 10 March 2005

<sup>24</sup> <https://timesofindia.indiatimes.com/india/Death-penalty-cannot-be-arbitrarily-imposed-Expert/articleshow/48151808.cms>

<sup>25</sup> [https://en.wikipedia.org/wiki/Capital\\_punishment\\_in\\_India#cite\\_ref-13](https://en.wikipedia.org/wiki/Capital_punishment_in_India#cite_ref-13)

<sup>26</sup> <https://timesofindia.indiatimes.com/india/Death-penalty-files-lost-eaten-by-termites/articleshow/48322218.cms>

<sup>27</sup> <https://www.newindianexpress.com/thesundaystandard/2015/jul/26/72-Muslims-Hanged-in-India-against-1342-Hindus-and-Others-791801.html>

eliminate the death penalty for crimes under the Indian Penal Code. The Home Minister at the time, however, rejected the motion.<sup>28</sup>

Section 367(5) of the Code of Criminal Procedure 1898 before the amendment of 1955 stated that "If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed."<sup>29</sup> The amendment later on deleted this provision, however there was no difference in the Indian Penal Code of 1860 or the CRPC which could tell the offences which had life imprisonments and which had death penalties. The Law Commission 1967 in its 35<sup>th</sup> report decided to look into this matter.

The report suggested that the punishment should not be interpreted as an "eye for an eye" but as a public condemnation of crime in its distilled form. It also specified that there is a category of "cruel and evil" individuals who are unwilling to improve. A significant explanation reported in the study was India's peculiar situation for the preservation of capital punishment, and the community then resided.

Almost two decades later, the Law Commission, in its 262nd Report, stressed that the death penalty serves nothing more than life imprisonment for the legitimate state of retaliation.<sup>30</sup>

#### **(A) Statutory Provisions of Death Penalty**

- Indian Criminal jurisprudence is based on a mixture of dissuasive and reformist theories of punishment. While penalties need to be enforced in order to dissuade the perpetrator, the perpetrator must also be given the opportunity to reform. The courts, when imposing a death penalty, must document their specific reasoning as to why the court came to a decision.

#### **Capital punishment is laid down as a penalty in several legislative act such as:**

**Indian Penal Code 1880:** Eleven convictions are punishable by death under the IPC. For example - Murder, abettement of suicide by a minor or insane person, dacoity with murder, etc.

- **Army Act 1950, Air Force Act 1950 & Navy Act 1956:** A death penalty can also be levied for a variety of crimes committed by members of the armed forces.

- **The Commission of Sati (Prevention) Act 1987:** Prescribes death penalty for any person who is either directly or indirectly subject to the commission of sati (immolation of a widow).

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<sup>28</sup> Ibid.

<sup>29</sup> 35<sup>th</sup> Report of Law Commission of India, p. 354

<sup>30</sup> <https://www.thehindu.com/news/cities/Delhi/getting-the-hang-of-death-penalty/article31086083.ece>

- **The Narcotics, Drugs and Psychotropic Substances Act, 1988:** Narcotics, Drugs and Psychotropic Substances (Amendment) Act, 1988 introduced death penalty as a punishment for funding or participating in the manufacturing, manufacturing or selling of narcotics or psychotropic substances of a specified quantity (e.g. opium 10 kg, cocaine 500 grams) on the basis of previous convictions.

- **The Scheduled Castes And Scheduled Tribes (Prevention of Atrocities Act, 1989:** Death penalty has been imposed for fabricating false evidence that results in the conviction and execution of an innocent member of a scheduled caste or tribe.

**The endeavor to nullify death penalty-** Several constitutional efforts to abolish the death penalty have failed in India. Until independence, a private bill was presented in the National Assembly in 1931 to remove the death penalty for criminal offences. At the time, however, the British Home Secretary opposed the motion.<sup>31</sup>

The Government of Independent India has opposed a similar bill presented in the first Lok Sabha. Attempts were made in Rajya Sabha to move a resolution to abolish the death penalty in 1958 and 1962 but were withdrawn after some debate.

In its study reported to the Government in 1967 and to Lok Sabha in 1971, the Law Commission concluded that the death penalty should be preserved and that the Executive (President) should continue to have the power of mercy.

### **1. Procedure When Capital Punishment is Imposed<sup>32</sup>**

(a) **Confirmation by High Court:** The Court of Session shall refer the case to the High Court after the death penalty has been handed down, and the penalty shall not be executed until approved by the High Court. The sentencing court shall then submit the convicted person to jail under a warrant. (*Section 366 CRPC*)<sup>33</sup>

(b) **Enquiry and Additional Evidence:** The High Court could, in the case of conviction, order further investigation or additional evidence to be taken on any point relating to the guilt or innocence of the convicted person. (*Section 367 CRPC*)

(c) **No Order for Confirmation:** No order for clarification shall be issued until the time limit for preferring an appeal has expired or, if any appeal is made after that time limit, until such appeal has been disposed of. In each case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court shall be made, passed and signed by at

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<sup>31</sup> <http://www.legalserviceindia.com/articles/dsen.htm>

<sup>32</sup> CrPC, 1973

<sup>33</sup> Ibid

least two of them, if that court is composed of two or more judges. (*Section 368 & Section 369 CRPC*)<sup>34</sup>

(d) **Copy of order sent to the Court of Sessions:** In cases submitted by the Court of Session to the High Court for confirmation of the death penalty, the ordinary officer of the High Court shall, without delay after the order of confirmation or other order has been issued by the High Court, send a copy of the order under the seal of the High Court of Session to the High Court of Session and attested to by its official signature. Where a person is sentenced to death and an appeal is based on his decision, the execution of the penalty shall be deferred until the time limit for choosing such an appeal has expired, or if an appeal is desired after that time limit, until such appeal is disposed of. (*Section 371 CRPC*)<sup>35</sup>

(e) **Postponement of Death Sentence on Pregnant Women -** If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be suspended and can, if it finds fit, convert the sentence to life imprisonment. (*Section 416 CRPC*)<sup>36</sup>

## 2. Mode of Execution

The question of the constitutionality of hanging as a method of execution was brought before the Supreme Court in *Deena v. Union of India [(1993) 4 SCC 64]*, even though the court believed that it was a judicial duty to examine the reasonableness of the mode of punishment, it declined to recognize the mode of hanging as violating Article 21 of the Constitution<sup>37</sup>.

This question was presented again in *Shashi Nayar [1992 SCC (CRI) 24]*, the court held that since the question had already been considered in *Deena*, there was no reasonable reason to take a different view.<sup>38</sup> Public hanging as a method of execution is another problem that needs consideration. The question of public hanging was brought before the Supreme Court by a writ petition, *Attorney General v. Lachma Devi [1989 SCC (CRI) 413]*, in that case, by order of the High Court of Rajasthan concerning the execution of the petitioner by public hanging in compliance with the applicable rules of the Jail Manual. The Supreme Court that held that public hanging, even if allowed under the law, would infringe Article 21 of the Constitution.

## 3. Legitimacy of Death Sentences

In the case of *Jagmohan v. U. State of Uttar Pradesh, 1973* the issue of the constitutional validity of the death penalty was raised before the Supreme Court, and it was claimed that the

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<sup>34</sup> Criminal Procedure, CK Takwani

<sup>35</sup> Ibid

<sup>36</sup> Code of Criminal Procedure, 1973

<sup>37</sup> Ibid

<sup>38</sup> <https://www.sconline.com/>

right to live was central to the rights granted under Article 19 of the Constitution.<sup>39</sup> The Honorable Supreme Court rejected the claim and held that the death penalty could not be considered as unreasonably in itself or not in the public interest and thus could not be said to be in breach of Article 19 of the Constitution.

### **(B) Constitutional Validity and Landmark Cases**

*Article 21* of the Indian Constitution guarantees the basic right of all persons to life and liberty. It adds that no person shall be deprived of his life or personal liberty except in compliance with the procedure laid down by law.<sup>40</sup> This was legally understood to mean if there is a reasonable and legitimate process, then the state may deprive a person of his or her life by passing a rule. In *Article 72* of the Constitution, it states:

*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 subclause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.”*

Likewise, the Governor of a State's pardoning powers are stated in Article 161. These regulations indicate the perpetrator is only condemned to death after there is no space left for misconduct. The accused gets various opportunities to appeal and now life imprisonment has become the norm while the exception is death penalty.<sup>41</sup>

The case which first dealt with the constitutionality of capital punishment was in ***Jagmohan Singh v. State of Uttar Pradesh 1973***, in which the Constitutional bench of Supreme Court said the awarding the death sentence could not obliterate the purpose of all freedoms

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<sup>39</sup> [indiankanoon.org](http://indiankanoon.org)

<sup>40</sup> Constitution of India

<sup>41</sup> <https://www.lawctopus.com/academike/death-penalty-an-overview-of-indian-cases/>

guaranteed under Article 19(1)(g), Article 14 and Article 21 of the Constitution and upheld the validity of the death penalty.

The counsel put forward 4 contentions too which negated Section 302 of the IPC. First that it was in violation with Article 19(1)(g). Secondly, the volition of the judge to award either one of the two punishments, that is, life imprisonment and death penalty, does not hinder any legislative policy.

The counsels also said that the sentencing of death penalty to both the accused is violating the Article 14. One of them could be sentenced to life imprisonment and the other to be given the capital punishment. And lastly the absence of procedure established by law could violate Article 21. The bench failed to be induced by the US Supreme Court's decision in *Furman v. Georgia* which had declared that such a punishment would be contradicting the Eighth Amendment.

In *Ediga Anamma v. State of Andhra Pradesh 1974*, Justice Krishna Iyer said that the death penalty can be commuted to life imprisonment, citing factors such as the accused's age, gender, socio-economic background and psychological compulsions. In this case it was reported that apart from reviewing the facts of the crime and determining on the nature of the atrocities caused, the judges could also analyze the convict and his vulnerability or obliviousness when committing the offence. The court said the question of life and death cannot be left to "ad hoc mood or individual predilection".<sup>42</sup>

Section 354(3) was also added to the 1973 Code of Criminal Procedure, which explicitly states that, in prosecution of cases convicted either with death or life imprisonment, the judgment will specify the grounds for the execution of the penalty and, in the event of a death sentence, describe the specific reasons for that decision. India ratified also the International Convention on Civil and Political Rights (ICCPR) in 1979. Article 6(2) of the ICCPR states: 'In countries which have not abolished the death penalty, the death penalty can only be applied for the most serious offences in accordance with the law in effect at the time of the crime and not in contravention of the provisions of the present Covenant *to the Convention on the Prevention and Punishment of the Crime of Genocide*.'<sup>43</sup>

An important advancement was the Maneka Gandhi case, which held that any law of punitive detention must pass the reasonableness test obtained from the "Golden Triangle" joint

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<sup>42</sup> [https://indianexpress.com/article/explained/when-supreme-court-has-ruled-on-life-death-5619779/#:~:text=In%20Jagmohan%20\(1972\)%2C%20the,hoc%20mood%20or%20individual%20predilection%20%80%9D.](https://indianexpress.com/article/explained/when-supreme-court-has-ruled-on-life-death-5619779/#:~:text=In%20Jagmohan%20(1972)%2C%20the,hoc%20mood%20or%20individual%20predilection%20%80%9D.)

<sup>43</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

interpretation, these include Articles 14, 19 and 21.<sup>44</sup>

Thus the Supreme Court in *Rajendra Prasad v. State of Uttar Pradesh 1979*, Sen held that the special reasons for granting the death penalty must not depend upon the crime but the criminal. And it would only be awarded after the security of the state and society, public order and interests of the general public are kept in mind.<sup>45</sup> Justice Sen stated his concern about the broad scope of interpretation left to the judiciary by Section 302 of the IPC and Section 354 of the CrPC. He said in this case "There is no need for this Court to try to examine the factual merits of the murder cases for and against the death penalty. It is, in my opinion, a matter for the Parliament to decide and not for this Court to decide."<sup>46</sup>

### (C) Doctrine of 'Rarest of Rare'

In India determining the death penalty case is based on the theory of "the rarest of the rare test" which was stated in the case of *Bachan Singh v. State of Punjab*. That means that only in the rarest of rare cases can death penalty be enforced.<sup>47</sup> A bench of five judges said "A true and persevering respect for human life's integrity postulates opposition to taking a life through the instrumentality of law. That should not be done except in the most extreme of situations where the alternative opinion is certainly foreclosed."

In this case, it was challenged not only the statutory validity of the death penalty but also the validity of Section 354(3), on the grounds that it gives the Court unguided power and permits arbitrary awarding of the death sentence. The majority is of the opinion that capital punishment violates neither Article 19 nor 21. It is proved by the existence of provisions for appeal (Article 134) and the President's pardoning power (Article 72) that our Constitution makers were well aware of the fact that death penalty can be imposed in such serious crimes.<sup>48</sup> To challenge the validity of Section 302 of IPC it was argued that:

1. Death penalty is irreversible and the failure of law could injure innocent persons.
2. There is no evidence that it serves as a means of deterrence and that reformation and rehabilitation of the criminal is the main purpose of this kind of punishment.
3. The execution of this penalty by whatever mode is horrid and inhumane.

It was also stipulated that in order to determine the presence or absence of "special

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<sup>44</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

<sup>45</sup> 1979, AIR 916

<sup>46</sup> (1979) 3 SCC 646

<sup>47</sup> *Bachan Singh vs State Of Punjab*, AIR 1980 SC 898 (Y Chandrachud, A Gupta, N Untwalia, P Bhagwati, R Sarkaria)

<sup>48</sup> <https://www.lawctopus.com/academike/death-penalty-an-overview-of-indian-cases/>

circumstances" in a case, the Court must give due attention to the defendant as well as the offense equally. The aggravating or mitigating factors and points such as age, mental state, age of the perpetrator and if the act was carried out under a superior's order must be taken into account when deciding on the punishment. In a specific case, a balance sheet of aggravating and mitigating factors must be drawn up to determine if justice will not be served if any penalty is awarded less than the death sentence. Two prime questions can be asked and answered, the top court held. Firstly, there is something unique about the crime that makes the life sentence ineffective and calls for the capital punishment. Second, are there statutory conditions such that there is no choice but to enforce the death penalty even after the mitigating factors that speak in favor of the criminals have been weighted to the maximum?<sup>49</sup> Justice P.N Bhagwati too cited the statistics and the finding of criminologists that after the abolishment of capital punishment in various other countries, there has been neither a decrease nor an increase in the crime rates, proving the retentionists' presupposition inexact.

In *Mithu v. State of Punjab*, the death penalty under Section 303 IPC was declared as unconstitutional as it infringes the guarantee mentioned in Article 14 & 21 of the Constitution. It was thus deleted from the Indian Penal Code.<sup>50</sup> In the later decisions of *T.V. Vatheeswaram v. Tamil Nadu*<sup>51</sup> and *Sher Singh v. State of Punjab*<sup>52</sup> the Supreme Court was challenged with the dilemma of delay in the execution of the death sentence and whether a substantial delay was reasonable basis to commute the death sentence to life imprisonment. In *Macchi Singh v. State of Punjab*,<sup>53</sup> the court was forced to elucidate the 'rarest of rare' doctrine as it was rarely enforced. In the case of *Santosh Kumar Bariyar v. State of Maharashtra 2006*<sup>54</sup>, the Supreme Court further clarified that 'the rarest of rare dictum serves only as a guideline for the implementation of the provisions referred to in Section 354(3) of the CrPC and provides an exception of death penalty to the policy that life imprisonment is the law.'

#### IV. THE LAW COMMISSION OF 2015 – ADMINISTERING DEATH PENALTIES IN INDIA

The Law Commission has proposed the abolition of the Capital Punishment, except in cases involving terrorism, said Minister of State for Home Affairs **Hansraj Ahir** to Rajya Sabha. He added that the Commission, in its 262nd report in 2015, stated that death penalty does not achieve the purpose of preventing offenses. The Law Commission of India, headed by **Justice**

<sup>49</sup> Indian Express, New Delhi, dated 27.5.2015

<sup>50</sup> <https://www.casemine.com/judgement/in/5609ac0fe4b014971140deb8>, 1983 SC

<sup>51</sup> *T.V Vatheeswaram v. State of Tamil Nadu*, 1983 AIR 361, 1983 SCR (2) 348

<sup>52</sup> *Sher Singh v. State of Punjab*, 1983 AIR 465, 1983 SCR (2) 582

<sup>53</sup> *Macchi Singh v. State of Punjab* (1983) 3 SCC 470

<sup>54</sup> *Santosh Kumar Satishbhushan Bariyar vs State Of Maharashtra*, 2009 (6 SCC 498) (S.B. Sinha, Cyriac Joseph)



**A.P. Shah**, issued its 262<sup>nd</sup> report on the subject of the capital punishment in India on 31 August 2015. The matter was referred to the Law Commission by the Supreme Court in **Santosh Kumar Satishbhushan Bariyar v. Maharashtra, (2009) 6 SCC 498** and **Shankar Kisanrao Khade v. Maharashtra, (2013) 5 SCC 546**. Previously, the Law Commission recommended the continuation of the capital punishment in India in its 35th report ('Capital Punishment,' 1967). The Supreme Court also affirmed the constitutionality of the capital punishment in **Bachan Singh v. Union of India, (1982) 3 SCC 24**, but restricted its scope to 'rare cases' in order to mitigate the arbitrary aspect of the sentence. However, the social, economic and cultural context of the country has changed dramatically since the 35th report and the arbitrariness has also remained a major concern in the 35 years since the first precedent on the issue was created. Consistent with the fact that the issue of the death penalty is of a very delicate nature, the Commission agreed to conduct a comprehensive study on the subject. After researching the topic thoroughly, the Commission found that the death penalty would not fulfil the penological purpose of punishment better than life imprisonment. The Law Commission has found that, by focusing on the death penalty as the sole measure of punishment for victims, the restorative and rehabilitative dimensions of punishment have been lost sight of. It was also argued that the highly unequal implementation of **Bachan Singh** led to a state of confusion in the law on capital punishment, which obviously lapses in the statutory due process and the concept of equality. As a result, the constitutional enforcement of death penalty undertaken in **Bachan Singh** did not prohibit the execution of cruel and inhuman death penalties. And there is no rational way to eliminate such arbitrary nature from capital punishment. The Commission also suggested that, while there is no credible penological rationale for treating terrorism differently from other offences, there is no need to delay any longer to take the first step towards abolition, considering the concern posed by the lawmakers that the abolition of the death penalty for terrorism related crimes and the conduct of war would impact national security. Finally, the Commission concluded that it be necessary for the State to develop successful victim compensation programmes to rehabilitate victims of crime. At the same time, it is also important that the courts exercise the powers bestowed on them by the Code of Criminal Procedure of 1973 to provide victims with adequate compensation in appropriate cases. Victims and witnesses' voices are frequently distorted by intimidation and other coercive tactics used by influential accused individuals. It is therefore necessary to create a framework for the security of witnesses. There is a need for police reforms for stronger and more efficient investigation and prosecution has also been widely felt for some time now, and steps on the very same need to be taken on an immediate basis.

## V. INTERNATIONAL SCENARIO AND TREATIES

### (A) International Scenerio (United Kingdom)

The death penalty in the United Kingdom was used from ancient times until the second half of the 20th century. The last executions in the United Kingdom were by hanging which took place in 1964, until the death penalty was suspended for murder in 1965 which eventually abolished in 1969 (1973 in Northern Ireland).<sup>55</sup> Between 1770 and 1830, an unprecedented 35.000 death sentences were handed down in England and Wales, of which 7,000 were executed<sup>56</sup>. Crimes qualified for the capital punishment would include shoplifting and stealing cattle, livestock and stallions, and before the abolition of the death penalty for robbery in 1832, "English law was notorious for prescribing the death penalty for a wide range of offences as small as theft of goods valued at twelve pence."<sup>57</sup> While death sentences for murder, robbery and burglary were frequent, there were often no executions for minor offenders. A death penalty may be commuted or respited (permanently postponed) for purposes such as the benefit of the priests, official pardons, pregnancy of the offender or the efficiency of military or naval duties.<sup>58</sup> The death penalty was necessary (though sometimes by the government) until the Judgment of Death Act, 1823, granted judges the right to abolish the death penalty, apart from treason and assassination. The sentence of death, etc. Act 1832 decreased the number of capital offences by two thirds. In 1832, the death penalty was abolished for fraud, forgery and counterfeiting, with the exception of forgery of wills and some powers of advocate.<sup>59</sup>

### (B) Suspension/Abolition Of Death Penalty In UK

The last executions occurred in England (and the United Kingdom) on 13 August 1964. *Peter Anthony Allen* was beheaded in Liverpool's *Walton Prison* and *Gwynne Owen Evans* was sentenced to death in Manchester's *Strangeways Jail*, both for the assassination of John Alan West on 7 April 1964<sup>60</sup>. The last execution in Scotland was that of *Henry John Burnett* in *Craiginchies Prison, Aberdeen*, on 15 August 1963, for the assassination of sea man *Thomas Guyan*. The last execution in Northern Ireland was that of *Robert McGladdery* in *Crumlin Road Gaol, Belfast*, on 20 December 1961, for the killing of *Pearl Gamble*.<sup>61</sup> The Murder (Abolition

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<sup>55</sup> Hoffman & Rowe 2010, p. 148

<sup>56</sup> Gatrell, V. A. C., *The Hanging Tree*, OUP, Oxford, 1994

<sup>57</sup> Manta, Irina D. (2011). "The Puzzle of Criminal Sanctions for Intellectual Property Infringement" (PDF). *Harvard Journal of Law & Technology*. 24 (2): 474

<sup>58</sup> "Punishments at the Old Bailey—Late 17th Century to Early 19th Century". *The Old Bailey Proceedings Online*. 2003. Archived from the original on 10 March 2007.

<sup>59</sup> Coinage Offences Act 1832 and Forgery, Abolition of Punishment of Death Act 1832

<sup>60</sup> Royal Commission in 1953, s12 of the Homicide Act 1957

<sup>61</sup> Hansard volumes in HC Debates and HL Debates

of the Death Penalty) Act 1965 came into force on 9 November 1965<sup>62</sup>. The death penalty for capital murder in England, Scotland and Wales has been banned for a period of five years, and the 16 men who were sentenced to death at the time have been punished<sup>63</sup>. The 1965 Act replaced the death penalty with a compulsory life imprisonment term. Section 1(3) provided that, for the purposes of any trials on or after a person has been tried on a charge of capital murder, the charge and any conviction or finding of guilty of capital murder should be considered as having been brought against him or to have been a charge, or an admission, or a finding of guilt, of murder only, and, if so, of murder at the beginning of the Act, a person was sentenced to death for murder, and the penalty would have the effect of life imprisonment.

The capital punishment was eventually abolished in 1998 in the United Kingdom, with the promulgation of the Crime and Disorder Act 1998, Section 36<sup>64</sup> and the Human Rights Act 1998, Section 21(5)<sup>65</sup>. These laws were introduced largely because of the adoption by the United Kingdom of international treaties banning the death sentence.

### **(C) International Scenerio Under UAE**

Under Emirati rule, numerous offences are subject to the death penalty, and executions are carried out either by a firing squad, by hanging, or by stones<sup>667</sup>. Current law technically requires the capital punishment for treason, sabotage, assassination, the effective inciting of an individual to commit suicide "with complete loss of free will or purpose," arson resulting in death, acts of indecent assault resulting in death, the manufacture of radioactive substances / waste in the state system, adultery, apostasy, blasphemy, perjury causing wrongful execution, abuse, Aggravated stealing, abduction, extremism, sodomy, prostitution, drug trafficking and entering the Islamic State of Iraq and the Levant.<sup>6869</sup> Overseas and UAE citizens have also been executed for offences.

#### **1. Important Cases:**

- *Sarah Balabagan*, a Filipino woman, captured the attention of the public living in the UAE in 1995. She was claimed to have killed her employer in Al Ain's building, although she has always stated that she murdered him in self-defence just after he attempted to rape her.

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<sup>62</sup> 3 1965 c. 71

<sup>63</sup> <http://www.capitalpunishmentuk.org/abolish.html>

<sup>64</sup> Treason and piracy.

<sup>65</sup> Military offences

<sup>66</sup> "UAE: Death by stoning/ flogging | Amnesty International"

<sup>67</sup> "Timeline of executions in UAE".

<sup>68</sup> "UAE sentences four to death for joining IS". The New Arab. 15 February 2016. Retrieved 6 December 2017

<sup>69</sup> "UAE sentences 'jihadi teenager' to death for joining IS". The New Arab. 10 January 2016. Retrieved 6 December 2017

After the UAE President himself had been involved, *Balabagan* was set free and had to pay compensation afterwards. However, she was sent back to her homeland, and her privilege to stay in the country was revoked<sup>70</sup>.

- On February 10 2011, *Rashid Al Rashidi* was executed by firing squad, and on 27 November 2009 *Rashid Al Rashidi* was charged with rape and murder of a four-year - old boy, *Moosa Mukhtiar*, in the mosque bathroom.<sup>71</sup>

- In June 2015, the Federal Supreme Court sentenced *Alaa Bader al-Hashemi*, an Emirate terrorist woman, to the capital punishment for the killing of *Ibolya Ryan* and the installation of a "handmade bomb" in an Egyptian-American doctor's residence in Abu Dhabi. The woman committed the crime in December 2014 and was executed at sunrise on 13 July 2015<sup>72</sup>. This is the first time a criminal has been executed within such a small time period, and this is one of the few examples of a woman being executed.

- On 23 November 2017, *Nidal Eisa Abdullah*, a prisoner who raped and murdered an eight-year - old Obaida boy in May 2016, was executed<sup>73</sup>.

#### **(D) DEATH PENALTY IN USA**

- The death penalty is a mandatory penalty in the United States, currently used by 28 states, the U.S. Samoa, the federal government and the military<sup>74</sup>.

Its presence can be traced back to the beginning of the American colonies. The United States is the only industrialized Western country to apply the death penalty on a daily basis.<sup>75</sup> It is among the 55 nations in the world implementing it and was the first to introduce lethal injection as a method of execution that has since been adopted by five other countries<sup>76</sup>. Since then, the Philippines has abolished executions, and Guatemala has done so for civil offences, leaving the United States (along with China, Thailand, and Vietnam) as one of the four countries continuing to use this process<sup>77</sup>. No executions took place in the United States between 1967 and 1977. In 1972 the US Supreme Court overturned the death penalty statutes in *Furman v. Georgia*, decreasing all death sentences pending at that time to life imprisonment<sup>78</sup>. On July 2,

<sup>70</sup> "Judicial caning, Arab Emirates, Oct 1995 - CORPUN ARCHIVE aeju9510".

<sup>71</sup> "Child killer is executed by firing squad". The National. Retrieved 29 December 2019.

<sup>72</sup> "UAE woman sentenced to death for killing US teacher". Express Tribune. 29 June 2015. Retrieved 30 June 2015

<sup>73</sup> "Man, who raped, killed eight-year-old boy Obaida executed". gulfnews.com

<sup>74</sup> "States and capital punishment". National Conference of State Legislatures. Retrieved June 23, 2017.

<sup>75</sup> Leigh B. Bienen (2010). *Murder and Its Consequences: Essays on Capital Punishment in America* (2 ed.). Northwestern University Press. p. 143. ISBN 978-0-8101-2697-8.

<sup>76</sup> "Lethal injection". capitalpunishmentuk.org. Retrieved March 16, 2016. China...Guatemala, Philippines, Thailand...Vietnam

<sup>77</sup> "A secret theater: inside japan's capital punishment system". www.japansociety.org. Japan Society. Retrieved June 16, 2020

<sup>78</sup> Barry Latzer (2010), *Death Penalty Cases: Leading U.S. Supreme Court Cases on Capital Punishment*, Elsevier,

1976 the US Supreme Court ruled in *Gregg v. Georgia*<sup>79</sup> and upheld the process of 7–2 Georgia in which the prosecution of capital offenders was divided into guilty-innocence and sentence phases.

- Consequently, a majority of states passed new death penalty laws and the court upheld the validity of the death penalty in the 1976 case of *Gregg v. Georgia*. Since then, more than 7,800 defendants have been condemned to death, of which more than 1,500 have been executed. A total of 170 people who have been sentenced to death since 1972 have been found innocent<sup>80</sup>. As of December 17, 2019, 2,656 convicts were already on the death row<sup>81</sup>.
- The United States Department of Justice announced plans to begin executions of federal prisoners in 2019. On 14 July 2020, Daniel Lewis Lee became the first inmate to be hanged by the federal government since 2003. There are also 57 other inmates on the federal death row<sup>82</sup>.

## VI. AMNESTY INTERNATIONAL AND ABOLISHMENT OF CAPITAL PUNISHMENT

The capital punishment is the most barbaric, unethical and dehumanizing punishment. Amnesty prohibits it in all cases without exception, irrespective of who is charged, the existence or circumstances of the crime, the guilt or innocence or the method of execution. Nearly every day, citizens are executed and condemned to death by the state as penalties for a number of crimes – even for actions that should not be criminalized. In some nations, it could be for drug-related crimes, while in others, it is reserved for terrorist acts and killing. Amnesty International argues that the death penalty violates human rights, in particular the right to life and the right to live free from violence or barbaric, inhuman or degrading treatment or retaliation. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, guarantees all rights.<sup>83</sup>

Over time, the international community has adopted various laws restricting the use of capital punishment, including the following:

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p.37.

<sup>79</sup> *Gregg v. Georgia*, 428 U.S. 153 (1976)

<sup>80</sup> Barry Latzer (2010), *Death Penalty Cases: Leading U.S. Supreme Court Cases on Capital Punishment*, Elsevier, p.37

<sup>81</sup> "The Death Penalty in 2019: Year End Report" (PDF). Death Penalty Information Center. p. 2. Retrieved January 26, 2020.

<sup>82</sup> "List of Federal Death-Row Prisoners". [deathpenaltyinfo.org](http://deathpenaltyinfo.org). Death Penalty Information Center. Retrieved June 16, 2020

<sup>83</sup> <https://amnesty.org.in/>

- The Second Optional Amendment to the Universal Covenant on Civil and Political Rights on the abolition of the death penalty
  - Protocol No 6 to the European Convention on Human Rights on the abolition of the death penalty and Protocol No 13 to the European Convention on Human Rights on the abolition of the death penalty under all circumstances.
  - Protocol to the American Convention on Human Rights on the abolition of the death penalty.

While international law specifies that the use of capital punishment must be restricted to the most heinous crimes, i.e. deliberate killings, Amnesty argues that capital punishment is never the solution. Amnesty International registered at least 657 executions in 20 countries in 2018, down 5 per cent from 2018 (at least 690 executions). This figure reflects the lowest number of executions reported by Amnesty International in at least ten years.

#### (A) **Reasons to abolish the death penalty**

1. **It is irreversible and mistakes happen:** Execution is the final, irrevocable punishment: the chance of an innocent person being executed can never be removed. Since 1973, for example, more than 160 inmates sent to the death row in the USA have been either exonerated or released from the death row on grounds of innocence. Others were executed facing severe questions about their guilt.

2. **It does not deter crime:** Countries that enforce the death penalty are usually referred to as a method of preventing individuals from committing crime. This argument has been consistently debunked, and that there is no proof that the death penalty is no more effective in mitigating crime than life imprisonment.

3. **It is often used within skewed justice systems:** In several cases reported by Amnesty International, citizens were executed after being convicted in grossly unjust courts, on the basis of false evidence and with insufficient legal protection. In certain nations, death sentences are enforced as a statutory penalty for some crimes, which means that judges are not in a position to recognize the nature of the case or of the offender prior to the sentencing.

4. **It is discriminatory:** The burden of the capital punishment is overwhelmingly borne by those with less advantaged socio-economic backgrounds or belonging to a racial, ethnic or religious minority. This involves, for example, having insufficient access to legal services or being more vulnerable in their view with the criminal justice system.

5. **It is used as a political tool:** The regimes in some nations, such as Iran and Sudan, use the death penalty to prosecute political rivals.

**(B) What is Amnesty doing to abolish the death penalty?**

Amnesty has been promoting the abolition of the death penalty globally for 40 years. Amnesty monitors its use by all nations to recognize and maintain accountable regimes that continue to use the unsympathetic, inhuman and degrading punishments. A new report by Amnesty, *Death Sentences and Executions in 2019* was released in April 2020. The mission of the organization to condemn the death penalty takes many forms, including targeted, active and campaign-based campaigns in Africa, Asia-Pacific, the Americas and Europe and Central Asia; strengthening national and international standards against its use, including by promoting the successful adoption by the UN General of resolutions on the moratorium on the use of capital punishment. They support the policies and actions of the abolitionist movement at national, regional and global level. When Amnesty started its work in 1977, only 16 countries formally abolished the death penalty. Today, the figure has risen to 106—more than half of the world's nations. More than two-thirds of them are abolitionists in law or practice.

**VII. THE NIRBHAYA CASE EXECUTION: A QUESTIONABLE DEBATE**

The death sentence of the four convicts—Mukesh Singh (32), Pawan Gupta (25), Vinay Sharma (26) and Akshay Kumar Singh (31) for the 2012 gang rape and murder of the 23-year-old physiotherapy intern who later became identified as 'Nirbhaya'—was executed in Delhi's Tihar Jail at 5.30 am on Friday, March 20, 2020<sup>84</sup>. Their execution was the talk of the entire country and many also questioned whether the capital punishment is a deterrent. Whenever such a heinous crime occurs in the country most people demand the execution of the perpetrator. After the execution of Nirbhaya convicts, several groups protested the continued implementation of the death penalty in India shortly after the execution. The International Commission of Jurists (ICJ) denounced the hanging of the four, saying the perpetrators' execution was "an affront to the rule of law and does not improve women's access to justice." The ICJ urged the Center to abolish the death penalty and introduce "systematic modifications" to the legal framework to deter violence and improve women's access to justice. Similarly, on India's human rights record, Amnesty International India called the hanging of the four convicts a 'dark stain'.<sup>85</sup>

The question now arises will death penalties stop crimes in India? The simple answer that comes to mind is No. Over the statistics states otherwise that the crime have increased rather than decreasing. According to new National Crime Records Bureau estimates, in 2018 police

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<sup>84</sup> <https://mediaindia.eu/society/death-penalty-in-india-a-questionable-debate/>

<sup>85</sup> Ibid.

recorded 33,977 cases of rape – that's an average of 93 every day. These are the statistics of recorded crimes, activists believe thousands of rapes and sexual harassment reports are not even reported to the police.

*Avinash Kumar*, the executive director of Amnesty International India said that what is actually needed are effective, long-term solutions like prevention and protection mechanisms to reduce gender-based violence, improving investigations, prosecutions and support for victims' families. "Far-reaching procedural and institutional reforms are the need of the hour," he added.<sup>86</sup>

## VIII. CONCLUSION & SUGGESTION

Viewing the above discussions, it is obvious that India's contentions in regards to capital punishment is still disarranged. The discussion is not only on the validity and the constitutionality of the capital punishment, but also on the moral and social dimensions relevant to this subject. The efficacy of capital punishment is a matter of dubiousness and must be contemplated with public sentiments and morals rather than just law. Death penalty is unfair, oppressive and inhuman. A greater portion of democratic society is at all times opposed to the death penalty-regardless of who is convicted, the crime, guilt or innocence or execution process. Therefore, the veracity of the capital punishment will proceed to be questioned and, probably eventually, the Supreme Court will have to address if there is ample room for lack of political will to circumvent the right to life.

*"Criminals do not die by the hands of the law. They die by the hands of other men. Assassination on the scaffold is the worst form of assassination because there it is invested with the approval of the society.....Murder and capital punishment are not opposites that cancel one another but similars that breed their kind."* – Bernard Shaw<sup>87</sup>

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<sup>86</sup> news.rediff.com

<sup>87</sup> <https://www.theatlantic.com/past/docs/unbound/flashbks/death/dpshaw.htm>, June 1948