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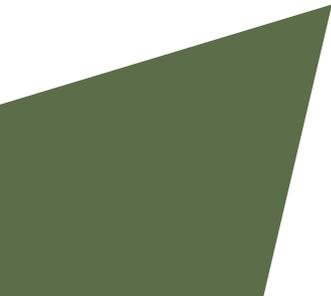
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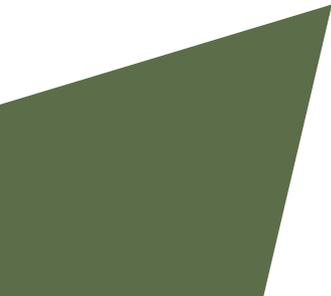
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**LEGALITY OF CAPITAL PUNISHMENT**

**Prabhav Pandey**

## INTRODUCTION

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Death penalty, also known as ‘capital punishment’, is the execution of an offender sentenced to death after his conviction by a court of law. As per Project 39A report on death penalty,<sup>1</sup> between 2000 and 2014 trial courts sentenced 1,810 people to death, more than half of which were commuted to life imprisonment and about a quarter of those, 443, were acquitted by the Supreme Court and high courts. The Supreme Court had upheld the death sentence of 73 of these prisoners, out of which many had already spent a decade on death row.

There have been a number of death penalties ever since independence. Approximately, 720 prisoners have been executed since 1947. The crimes, falling under various legislations, which account for capital punishment are The Prevention of Child Sexual Offences Act (POCSO) 2012, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Unlawful Activities (Prevention) Act 1967, Maharashtra Control of Organised Crime Act (MCOCA) 1999, Narcotic Drugs and Psychotropic Substances Act (NDPS) 1985, among others as well.

The first execution which ever happened in independent India was of Nathuram Godse and Narain D Apte, they were the ones who had assassinated Mahatma Gandhi. It was on 15th November, 1949, when they were hanged to death.

The last execution that had taken place in India was on July 30, 2015 of Yakub Memon, a convict in financing 1993 Mumbai bombings.<sup>2</sup> Although, quite recently the four accused of the Nirbhaya gangrape, who had committed the brutal gangrape of a girl in December 2012, were also hanged to death after 7 years of trial and suffering. Prior to these two convictions, Muhammad Afzal Guru was also hanged to death for the 2001 Parliament attack after 9 years of trial on February 9, 2013. Mohammed Ajmal Amir Qasab, the 2008 Mumbai attack gunman, was executed on November 21, 2012. Both of them were executed in secrecy without informing their family members and the nation. Everyone got to know about this after they had been hanged.

This is how executions take place in India and this is the amount of time required to deliver justice to the one who is innocent and also the punishment to the guilty. It was rightly said by Akshaye Khanna in his movie “Section 375” that “Justice is abstract, law is fact”. Here, the law is what decides whether the accused is guilty or not without keeping in mind that even justice plays a role in it. This is the ground reality which everyone knows but most of us intentionally avoid it.

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<sup>1</sup> Report, National Law University, Delhi

<sup>2</sup> <[www.deathpenaltyworldwide.org](http://www.deathpenaltyworldwide.org)> accessed 01 May 2020

## STATUS OF CAPITAL PUNISHMENT IN OTHER COUNTRIES

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Worldwide, 142 countries have either abolished the death penalty in law or in practice and that in the past five years 33 countries have carried out at least one execution.<sup>3</sup> In countries like China, the number of executions carried out in a year are far more than in any other country but are kept as a state secret. There are:

- 106 countries where use of the death penalty is not allowed by law
- 7 countries which permit the death penalty only for serious crimes in exceptional circumstances, such as those committed during times of war
- 29 countries which have death penalty laws but haven't executed anyone for at least 10 years, and a policy or more formal commitment not to execute
- 56 countries which retain death penalty laws and either carry out executions or the authorities have not made an official declaration not to execute.<sup>4</sup>

Death penalty has been officially abolished by countries which has been on a rise where in 1991 there were 48 and in 2017, there are 106 which have done the same. 105 States have abolished the death penalty for all crimes, 8 have abolished it for ordinary crimes and 50 have introduced a moratorium on executions, whether by law or de facto, for a total of 163 States.<sup>5</sup>

## HISTORY OF CAPITAL PUNISHMENT

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The initial phase of death penalty started its course which date as far back as the Eighteenth Century B.C. in the Code of King Hammurabi of Babylon, which codified the death penalty for 25 different crimes. The death penalty was also part of the Fourteenth Century B.C.'s Hittite Code; in the Seventh Century B.C.'s Draconian Code of Athens, which made death the only punishment for all crimes; and in the Fifth Century B.C.'s Roman Law of the Twelve Tablets. Death sentences were carried out by such means as crucifixion, drowning, beating to death, burning alive, and impalement.<sup>6</sup>

As tribal societies developed into social classes and humankind created its own self-governed republics, capital punishment became a common response to a variety of crimes, including sexual assault, treason, and various military offenses. Written rules were created to notify the people about

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<sup>3</sup> <[www.amnesty.org](http://www.amnesty.org)> accessed 01 May 2020

<sup>4</sup> <[www.amnesty.org](http://www.amnesty.org)> accessed 01 May 2020

<sup>5</sup> <[www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr)> accessed 01 May 2020

<sup>6</sup> <[www.deathpenaltyinfo.org](http://www.deathpenaltyinfo.org)> accessed 01 May 2020

the penalties they would face for participating in any of these misdeeds. One of the earliest written documents that supported the death penalty was the Code of Hammurabi, which was written on stone tablets around 1760 BC. It contained 282 laws that were collected by the Babylonian King Hammurabi, including the theory of an “eye for an eye.” Several other ancient documents supported capital punishment, including the Jewish Torah, the Christian Old Testament, and the writings of an Athenian legislator named Draco, who proposed the death penalty for a large variety of misdeeds in ancient Greece. Early forms of capital punishment were designed to be slow, painful, and torturous. In some ancient cultures, law breakers were put to death by stoning, crucifixion, being burned at the stake, and even slowly being crushed by elephants. Later societies found these methods to be cruel and unusual forms of punishment, and sought out more humane practices. During the 18th and 19th centuries, legal bodies found faster and less painful approaches to the death penalty, including hanging and beheading with the guillotine. While these were still violent and bloody practices that were often large public spectacles, the end result was usually instantaneous and therefore seen as more compassionate.<sup>7</sup>

Capital punishment has been in the United States since the origin of original colonies and was taken recourse to upon commission of various crimes such as burglary, treason, murder, counterfeiting and arson as well. After many deliberations, the policies relating to capital punishment were amended after the American Revolution. In a similar fashion, capital punishment had always been there in almost every country as a punishment for committing a grave and heinous crime.

Hanging and shooting are the two methods of death penalty in India. Hanging is the method of execution in the civilian court system.<sup>8</sup> The Army Act, 1950, however, lists both hanging and shooting as official methods of execution in the military court-martial system.

Majority of times, in India, death penalty has been awarded in “rarest of the rare” cases such as murder, gang robbery with murder, abetting the suicide of a child or insane person, waging war against the government, and abetting mutiny by a member of the armed forces<sup>9</sup> and also adding gang rape to the list as a result of the recent hanging of the Nirbhaya convicts.

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<sup>7</sup> <[www.crimemuseum.org](http://www.crimemuseum.org)> accessed 01 May 2020

<sup>8</sup> Criminal Procedure Code 1973

<sup>9</sup> <[www.betterindia.com](http://www.betterindia.com)> accessed 01 May 2020

## IS DEATH PENALTY CONSTITUTIONAL?

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The judgments in the **Bachan Singh vs State of Punjab**<sup>10</sup> play a crucial role in deciding whether any crime deserves death penalty or not. For example, using, carrying, manufacturing, selling, transferring, or testing prohibited arms or ammunition had a mandatory death sentence in case of casualty.<sup>11</sup> But an order in February 2012 had ruled this provision “unconstitutional in light of the judgments in Bachan Singh v. State of Punjab and Mithu v. State of Punjab”. This brings us back to the phrase “rarest of the rare” for deciding upon cases relating to capital punishment as decided in the Bachan Singh case. “Such legislation has come to India for the first time and the Parliament has given its approval,” then home minister Sushilkumar Shinde had said.<sup>12</sup>

The **Mithu vs State of Punjab**<sup>13</sup> judgment states that “death penalty is not a mandatory punishment for the above listed crimes”. The Supreme Court had also ruled that mandatory death penalty is unconstitutional.

Section 416<sup>14</sup> says “if a woman sentenced to death is found to be pregnant, the high court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to imprisonment for life”.

The Supreme Court has also held that mental illness is a “mitigating factor” sparing those with such disorders from the gallows.

## MERCY PETITION

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If one has to file a mercy petition, the death sentence which has been awarded to the accused person should be confirmed by a High Court first. The law says: “The death sentence convict has an option to appeal to the Supreme Court. If the Supreme Court either refuses to hear the appeal or upholds the death sentence, then the convict or his relatives can submit a mercy petition to the President of India<sup>15</sup> or the Governor of the State<sup>16</sup>”. The grounds for seeking a mercy petition can

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<sup>10</sup> *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

<sup>11</sup> Indian Arms Act 1950

<sup>12</sup> <<https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>> accessed 01 May 2020

<sup>13</sup> *Mithu v. State of Punjab*, AIR 1983 SC 473

<sup>14</sup> Criminal Procedure Code 1973

<sup>15</sup> Article 72, Constitution of India 1950

<sup>16</sup> Article 161, Constitution of India 1950

vary from case to case such as it can be based on physical fitness, age, convict is the sole bread earner of the family or the law was too harsh, etc.

According to Article 72<sup>17</sup>, the power to pardon — philosophy of which is “every civilised country recognises and provides for the pardoning power as an act of grace and humanity in course of law” — lies with the President of India. The article further states that “he/she can grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the convict”. The process moves on further before which it is reviewed by the Ministry of Home Affairs, which has to consult the state involved, before going to the President.

While former President Pranab Mukherjee had rejected 24 mercy pleas, his predecessor, Pratibha Patil, granted a record 30 pardons<sup>18</sup>, some of which were cases of brutal crimes.

President Ram Nath Kovind, who came to power in July 2017, has rejected at least two mercy petitions — that of Jagat Rai<sup>19</sup>, who burnt alive seven people, five of them children, and the most recent being 2012 Nirbhaya gang-rape convict Akshay.

The powers relating to mercy petition for the Governor of a State are almost the same as that of the President of India. According to Article 161<sup>20</sup> The governor can “grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends”.

## **LAWS ABOUT CAPITAL PUNISHMENT**

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The laws about capital punishment have always been debated upon in many parts of the world and is one topic where a common solution cannot be concluded with at the end. In most of the states, the death penalty has been challenged by many, mainly on grounds that it violates the constitutional prohibition against cruel and unfair punishment, and later on the procedural grounds that there were not enough due process protections for defendants accused of crimes leading to death

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<sup>17</sup> Constitution of India 1950

<sup>18</sup><<https://www.indiatoday.in/magazine/special-report/story/20120625-pratibha-patil-mercy-petitions-accepted-758790-2012-06-15>> accessed 02 May 2020

<sup>19</sup><<https://www.ndtv.com/india-news/president-ram-nath-kovind-rejects-first-mercy-plea-of-man-who-burnt-7-of-family-alive-1861721>> accessed 02 May 2020

<sup>20</sup> Constitution of India 1950

penalty. In general, it was held that since the sentence was so severe, the law must impose the strictest and most efficient standards of proof to sentence an accused to death.

Consequently, many states have gone through periods in which the death penalty was held as legal, then illegal, then revised and held as legal, then illegal again, and then further revised and held as legal once more. This shifting status often brought unbalanced—unjust—sentencing. For instance, in many of these states one of two defendants accused of identical unrelated crimes committed within weeks of each other drew the death sentence while the other did not, merely because the statute under which they were sentenced was ruled unconstitutional in the intervening time.<sup>21</sup>

The Supreme Court has since then handed down various explicit guidelines defining the legality of the capital punishment, enabling states to legislate a legal death penalty statute that is less likely to be ruled unconstitutional in the future. This does not necessarily mean that the process is not still open to attack and being debated upon. As of this writing, new cases on the capital punishment are currently making their way through the courts to the Supreme Court.

In other countries like the United States, United Kingdom, etc. capital punishment is still prevalent and is legal. But, in such countries, there are state legislatures which can revise and review such laws/legislations and even have the power of rewriting such laws if the need arises. In the last few years, the method of execution has become the most controversial and repetitive method of death penalty statutes. Four states have changed their method of execution. While three states of the US namely Kentucky, New York, and Ohio, have changed from electrocution to lethal injection, however, one state, Georgia, has changed from lethal injection to electrocution. Recent and pending judgments may motivate other states to change their existing methods of execution.

Despite the large number of capital offenses in some countries, in most years only about 30 countries carry out executions. In the United States, where roughly 60 percent of the states and the federal government have retained the death penalty, about two-thirds of all executions since 1976 (when new death penalty laws were affirmed by the Supreme Court) have occurred in just six states—Texas, Virginia, Florida, Missouri, Louisiana, and Oklahoma. China was believed to have executed about 1,000 people annually (no reliable statistics are published) until the first decade of the 21st century, when estimates of the number of deaths dropped sharply. Although the number of executions worldwide varies from year to year, some countries—including Belarus, Congo (Kinshasa), Iran, Jordan, Nigeria, Saudi Arabia, Singapore, Taiwan, Vietnam, and Yemen—

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<sup>21</sup> <<https://law.jrank.org/pages/11803/Capital-Punishment.html>> accessed 02 May 2020

execute criminals regularly. Japan and India also have retained the death penalty and carry out executions from time to time.<sup>22</sup>

## LAW COMMISSION REPORT ON CAPITAL PUNISHMENT

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The Law Commission of India chaired by Justice A.P. Shah submitted its 262nd report on 31st August 2015 on the issue of death penalty in India. The issue was referred to the Law Commission by the Supreme Court in **Santosh Kumar Satishbhushan Bariyar v. Maharashtra**<sup>23</sup>, and **Shankar Kisanrao Khade v. Maharashtra**<sup>24</sup>. The Law Commission has previously in its 35th report<sup>25</sup> recommended the retention of the death penalty in India. The Supreme Court has also, in **Bachan Singh v. Union of India**,<sup>26</sup> upheld the constitutionality of the death penalty, but confined its application to the ‘rarest of rare cases’, to reduce the arbitrariness of the penalty. However, the social, economic and cultural contexts of the country have changed drastically since the 35th Law Commission Report and arbitrariness has also remained a major concern in the adjudication of death penalty cases in the 35 years since the foremost precedent on the issue was laid down. Accordingly, realizing that death penalty is an issue of a very sensitive nature, the Commission decided to undertake an extensive study on the issue.

Lack of resources, outdated modes of investigation, over-stretched police force, ineffective prosecution, and poor legal aid are some of the problems besetting the system. Death penalty operates within this context and therefore suffers from the same structural and systemic impediments. The administration of capital punishment thus remains fallible and vulnerable to misapplication. It was also concluded that the exercise of mercy powers under Articles 72 and 161 have failed in acting as the final safeguard against miscarriage of justice in the imposition of the death sentence. The Supreme Court has repeatedly pointed out gaps and illegalities in how the executive has discharged its mercy powers. When even exercise of mercy powers is sometimes vitiated by gross procedural violations and non-application of mind, capital punishment becomes indefensible. Further the death row phenomenon is compounded by degrading and oppressive effects of conditions of imprisonment imposed on the convict, including solitary confinement, and the prevailing harsh prison conditions. The death row phenomenon has become an

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<sup>22</sup> <<https://www.britannica.com/topic/capital-punishment/Capital-punishment-in-the-early-21st-century>> accessed 02 May 2020

<sup>23</sup> *Santosh Kumar Satishbhushan Bariyar v. Maharashtra*, (2009) 6 SCC 498

<sup>24</sup> *Shankar Kisanrao Khade v. Maharashtra*, (2013) 5 SCC 546

<sup>25</sup> Law Commission, *Capital Punishment* (Law Com. 1967)

<sup>26</sup> *Bachan Singh v. Union of India*, (1982) 3 SCC 24

unfortunate and distinctive feature of the death penalty apparatus in India which breaches the Article 21 barrier against degrading and excessive punishment.<sup>27</sup>

Thus, the Law Commission has recommended that the jurisprudence on the issue has proceeded from “removing the requirement of giving special reasons for imposing life imprisonment instead of death in 1955; to requiring special reasons for imposing the death penalty in 1973; to 1980 when the death penalty was restricted by the Supreme Court to the rarest of rare cases; this shows the direction in which we have to head”. Thus, the time has arrived for India to move towards abolition of capital punishment. The commission has also recommended that although there is no valid penological justification for treating terrorism any different from other crimes, however, given the concerns raised by the law makers that the abolition of capital punishment for terrorism related offences and waging war, will affect national security, there is no reason to wait any longer to initiate towards abolition of the death penalty for all offences other than terrorism related offences.

Finally, the Commission recommended that it is essential that the State establishes effective victim compensation schemes to rehabilitate victims of crime. At the same time, it is also essential that courts use the power granted to them under the Code of Criminal Procedure, 1973 to grant appropriate compensation to victims in suitable cases. The voices of victims and witnesses are often silenced by threats and other coercive techniques employed by powerful accused persons. Hence it is essential that a witness protection scheme is established. The need for police reforms for better and more effective investigation and prosecution has also been universally felt for some time now and measures regarding the same need to be taken on a priority basis.<sup>28</sup>

## **ARGUMENTS IN FAVOUR OF CAPITAL PUNISHMENT**

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There are a number of individuals living in the society who believe that death penalty should not be abolished and thus, should continue as a form of punishment which is awarded to those who commit grave and heinous crimes. Arguments in favour of capital punishment are as follows:-

- **Justice**

An eye for an eye. The death penalty is reserved for the most heinous of crimes, such as murder, gang robbery with murder, abetting the suicide of a child or insane person, waging war against the government. Why should a murderer be allowed to live out the rest of their lives in relative

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<sup>27</sup> <<https://www.sconline.com/blog/post/2015/09/01/262-law-commission-report-on-death-penalty/>> accessed 02 May 2020

<sup>28</sup> <<https://www.sconline.com/blog/post/2015/09/01/262-law-commission-report-on-death-penalty/>> accessed 03 May 2020

comfort, paid for by the public? To continue to live, dress and eat for the remainder of their natural life at taxpayer expense makes a mockery of justice. They gave up their right to life when they took the life of another person, and justice can only be served by their lawful execution.<sup>29</sup>

- **Deterrence**

The death penalty saves a lot many lives. Would-be murderers will have a better reason to think and analyse twice if they know they have to risk their lives for it. At the end, only the most severe punishment possible will be able to contain the most violent of crimes. Only then it will be clear that the good guys aren't messing around, because taking an innocent's life would mean giving up your own.

- **Closure**

The execution of a criminal is the best way to provide closure to the family of their victim. They can finally put the crime behind them and move on, knowing that there is no possibility of the person who took away their loved one ever leaving prison and walking free.<sup>30</sup>

## **IN AGAINST ARGUMENTS**

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Now, there are also people living in the society who are against capital punishment and their desire is to get it abolished as soon as possible. So, various arguments against capital punishment are:-

- **Miscarriage of Justice**

You cannot un-execute someone. Miscarriages of justice are enough to be bad, but the wrongful and immoral execution of an innocent person takes it to the extreme level. If anyone is wrongfully imprisoned they should at least be released and compensated by the government. If they are executed, however, then a posthumous pardon won't mean anything.

- **Too Much Power to the State**

The three countries that executed the most people in 2016 were China, Iran, and Saudi Arabia.<sup>31</sup> There's a reason why the capital punishment is favoured in authoritarian regimes: it is the exclusive form of state control. Troublesome political dissidents can be mixed in with criminals and drug dealers on death row, and any criticism can be analysed as being "soft on crime".

- **Killing is wrong**

Two wrongs do not equal a right. Taking the life of anybody is unethical, whether it is committed as a crime or whether it is done in the name of 'justice' or even at times, done in the name of

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<sup>29</sup> <<https://www.debatingeurope.eu/focus/arguments-death-penalty/#.Xq5M-xMzb-Y>> accessed 03 May 2020

<sup>30</sup> <[http://www.bbc.co.uk/ethics/capitalpunishment/for\\_1.shtml](http://www.bbc.co.uk/ethics/capitalpunishment/for_1.shtml)> accessed 03 May 2020

<sup>31</sup> <<https://www.amnesty.org.uk/death-penalty-2016-statistics-facts-figures>> accessed 03 May 2020

“religion”. Everyone’s right to life should be honored and protected by law, including criminals. One should aim to set the example that execution is not the correct way and that there are always other alternatives. Life in prison is not an ‘easy’ way of living a life.

## **SHOULD CAPITAL PUNISHMENT BE ABOLISHED IN INDIA?**

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As a punishment, the death penalty makes no sense: how does killing a person who has killed another person show that killing is wrong? Most of the civilised countries have abolished it. India certainly does not require it as it serves no purpose. No study has shown that the death penalty deters murder more than life imprisonment. The evidence is all to the contrary. For deterrence to work, the severity of the punishment has to coexist with the certainty and swiftness of the punishment. The death penalty has not deterred any of the crimes such as terrorism, murder or even theft. The death penalty unfairly targets the poor and marginalised. Those without capital get the punishment. Penurious prisoners on legal aid get it the most, while others with private lawyers remain untouched.<sup>32</sup>

The moral foundation of judicial killing has been questioned and it has been judged untenable in many countries. In 2007, the UN General Assembly passed a resolution calling for a moratorium on the administration of the death penalty by the 59 countries that still retained it. India is one of them, even if it does not employ it as frequently as countries such as Iran, China, Pakistan, Saudi Arabia, and the U.S.<sup>33</sup>

The question in itself is broad enough for a number of opinions to flush in and thus not resulting in a conclusion worth acceptable to everyone and hence, there is no improvement in the law. This is what happens when a legislation which is very old, is tried to be amended. Capital punishment is one such punishment which is only taken recourse to in the “rarest of the rare” cases as discussed earlier. So, what is the need at all for abolishing it when it is used only in minimal cases? If one wants to abolish it for the sake of humanity then what about the consideration of humanity when that person committed the crime in the first place? Did he think even once before committing a crime of such brutal nature which one cannot even describe? The opinion which has been aforementioned is one which I believe and would wish that the law regarding capital punishment remains the same.

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<sup>32</sup> <<https://www.thehindu.com/opinion/op-ed/is-it-time-to-abolish-the-death-penalty/article25735508.ece>> accessed 03 May 2020

<sup>33</sup> Avi Singh, ‘SC will have to answer whether absence of political will is sufficient to override the right to life’ (*Is it time to abolish Death Penalty*, 14 Dec 2018) <<https://www.thehindu.com/opinion/op-ed/is-it-time-to-abolish-the-death-penalty/article25735508.ece>> accessed 04 May 2020

Thus, death penalty should not be abolished as also “90% of the states in India desire to retain capital punishment”, Minister of State for Home G Kishan Reddy had said in the Rajya Sabha. “No society wants to kill a person, but on the other side there are some heinous crimes like Nirbhaya also within the same society”, the minister said. He further said: "Death penalty is given only in exceptional and unavoidable situations."<sup>34</sup>

Citing the National Crime Records Bureau<sup>35</sup>, he said that capital punishment was given to only one person each in 2012 and 2013 respectively, while it was none in 2014 and one in 2015.

"The President of India has received 135 mercy petitions, in which 34 were dismissed, 91 were allowed and one file is still pending," he added.

All this was said referring to the incidents which have happened in the past and required action accordingly. E.g., there have been various demands from across the nation for capital punishment to be awarded to the Nirbhaya convicts for their brutality shown on a girl, when Afzal Guru had planned to attack the same Parliament in which these legislations are made and to protect this very Parliament, nine people were martyred and their families also had Fundamental Rights. 140 countries have no provisions regarding capital punishment and 33 countries have not even awarded capital punishment in the past decade.

Most of the civilized world has abolished it. India certainly does not need it as it doesn't serve any purpose. No study has shown that the death penalty deters murder more than life imprisonment. The evidence is all to the contrary. For deterrence to work, the severity of the punishment has to coexist with the certainty and swiftness of the punishment. The death penalty has not deterred terrorism, murder or even theft. Based on the evidence collected, the legal system cannot be trusted to take one's life. For example, between January 1, 2000 and June 31, 2015, the Supreme Court imposed 60 death sentences. It subsequently admitted that it had erred in 15 of them (25%). Those without 'capital' get the punishment. Poor prisoners on legal aid won't get good lawyers to defend them. Hence, the death penalty unfairly targets the poor and marginalized. The death penalty is impossible to administer fairly or rationally. The Supreme Court has repeatedly admitted that it has arbitrarily imposed this most extreme punishment. It

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<sup>34</sup><<https://economictimes.indiatimes.com/news/politics-and-nation/90-per-cent-indian-states-want-to-retain-death-penalty-kishan-reddy/articleshow/70397903.cms?from=mdr>> accessed 04 May 2020

<sup>35</sup><<https://economictimes.indiatimes.com/topic/Nation-Crime-Records-Bureau>> accessed 04 May 2020

depends overwhelmingly on the adjudicator's personal beliefs. Judges opposed to it never gave a death sentence; those in favour doled it out.<sup>36</sup>

## IT IS NOT THE TIME TO ABOLISH CAPITAL PUNISHMENT

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Its constitutionality has not only been upheld in India but also in liberal democracies like that of the U.S. Therefore, the retention of the death penalty is not a reflection of “uncivilized” polity in theocratic states [a political unit governed by a deity or by officials thought to be divinely guided] that have come to be defined by violence but also by a creation of the individual geopolitical circumstances of each state.

While the 35th Report<sup>37</sup> correctly called for its retention in order to see its impact on a new republic, the more recent 262nd Report could not recommend the punishment's absolute abolition despite a rather desperate attempt to do the same. The exception to abolition in cases of terror will also not work. Unlike Scandinavia, India's neighborhood is not peaceful, and it does not form the group of nations that facilitate common growth, unlike the European Union. On the contrary, every day, vested interests attempt to destabilize the very idea of our nation from across every border it shares, which makes it difficult to abolish this deterrent named death penalty. As noted by the Law Commission itself, cases of violent terror are constant reminders of the need to protect national stability by ensuring appropriate responses to such actions, and the death penalty forms part of the national response. A punishment cannot be judged by its impact on criminals but by its impact on those who are still innocent. Those who defend the death penalty often do it on the basis of retributive justice (a system of criminal justice based on the punishment of offenders rather than on rehabilitation). It determines that there are certain acts which the society so essentially detest that they justify the taking of the most crucial of rights – the right to life. For, the state acknowledges that the sacredness of life can only be seen to be protected if those who take it away are proportionately punished. The hanging of Ajmal Kasab and Yakub Memon strongly affirms India's commitment to the protection and respect for one's life.<sup>38</sup>

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<sup>36</sup> <<https://www.drishtias.com/daily-updates/daily-news-editorials/is-time-to-abolish-the-death-penalty>> accessed 04 May 2020

<sup>37</sup> Law Commission, *Capital Punishment* (Law Com. 1967)

<sup>38</sup> <<https://www.drishtias.com/daily-updates/daily-news-editorials/is-time-to-abolish-the-death-penalty>> accessed 04 May 2020