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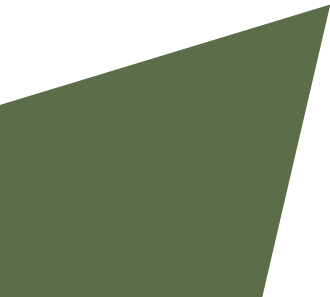
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**Capital Punishment - Whether retention of it is justified? And a Bizarre Tale  
of Three Death Row Convict Facing Different Fates in Same Case**

**Pallabi Paul**

## ABSTRACT

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*This article highlights the how capital punishment is used as a form of sentence to various countries. a dispassionate analysis of criminological jurisprudence would reveal.that capital punishment is justified only in extreme cases in which the degree of culpability is involved causing grave danger to society.This article highlights various laws on Death Penalty and the views of abolitionist and retention of Capital Punishments and what are the various modes used for execution in various countries.Discussion regarding whether the capital punishment is justified if so how far is made along with the Law Commission's report on Capital Punishment as well as the view of Dr.A.P.J.Abdul Kalam regarding the sentence and the incident of thre death row convict is mention.*

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## ABBREVIATIONS USED IN THE ARTICLE

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- [1] Art - Article
- [2] Sec - Section
- [3] Vs - Versus
- [4]UK - United Kingdom
- [5]US - United States
- [6] USSR - Union of Soviet Socialist Republics
- [7]I.P.C - Indian Penal Code
- [8] Cr.P.C - Criminal Procedure Code
- [9] SC - Supreme Court

## CASES

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- (1) Lachma Devi Vs State of Haryana
- (2) Furman Vs State of Georgia
- (3) Gregg Vs George
- (4) Bachan Singh Vs State of Punjab
- (5) Rex Vs Govinda
- (6) K.M.Nanavati Vs State of Bombay
- (7) Rathinam Raghbhusahan Patnaik Vs Union of India
- (8) Dhananjay Chatterjee Vs State of West Bengal
- (9) Fazal Ali Vs D.Tuljapurak
- (10) Allaudin Moan Vs State of Bihar
- (11) T.V.Vateeswaran Vs State of Tamil Nadu
- (12) Sher Singh Vs State of Punjab
- (13) Rabbit Singh Vs Union Territory of Chandigarh
- (14) Mithu Vs State of Punjab
- (15) Harbans Singh Vs Union of India



## INTRODUCTION

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Every Society has their certain rules, regulation, norms made by the people which are too followed by the people at common. Any act or omission in contravention of these rules, custom, norms violate it and is considered anti-social behaviour. Many writers tried to define crime according to their thoughts.<sup>1</sup>

Death sentence has been considered as effective for retributive justice, an is inflicted upon the criminals convicted of a heinous crime. As is considered justified on the ground that the life of the person should be eliminated who has taken another's life. But the death sentence was inflicted upon several consideration- like considering the circumstances behind the incident, the gravity of the crime, his attributes have to be taken into consideration. The motive behind the death sentence may include vengeance which is compensatory and reparatory satisfaction for an injured party, group of society.

## MODES OF EXECUTION

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The various modes used for the conflicting death sentence on the offender includes crucifixion, drowning, burning, beheading, throwing before wild animals, boiling, hurling the offender from rock, stoning, strangling, impelling, amputation, shooting, flaying or skinning off live. These draconian and barbaric methods were justified on the ground that they were the quickest and easiest modes of punishment which carried with them the ideology of deterrence and retribution. At present, the common mode of execution of death sentence which is in vogue in different parts of the world are electrocution, guillotine, shooting, gas chamber, lethal injection, asphyxiation(strangulation)

In **Lachma Devi Vs State of Haryana**<sup>2</sup>, The court held the public hanging is now held to unconstitutional in India. Though few countries are still practising the method.

The method of execution by electrocution which involves the convicted one to suffer heavy charge if an electric current was first used at Auburn State Prison, New York on 6th August 1890 and even now it's being used in U.S.A, UK, USSR, Japan and other European countries. Moreover, in 1792 for the execution of the criminals, the use of Guillotine was introduced in France. It was a kind of machine erected for the execution of criminals in western countries like France, Scotland,

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<sup>1</sup> PROF.N.V.PARANJAPE,CRIMINOLOGY ,PENOLOGY ,VICTIMOLOGY, Pg- 344(CENTRAL LAW PUBLICATION, SEVENTEEN EDITION,2017)

<sup>2</sup> Id pg -8

and England. Even the shooting as a mode for executing death as a penalty is commonly followed in Russia, China and some European countries. Even the gas chambers are used, where the condemned prisoners are taken and stripped by the chair in a sealed gas chamber into which poisonous fumes of cyanide are injected with the sole purpose of execution of death. The death sentence by using lethal injection is relatively a later development. It was first adopted in Oklahoma (USA) in 1977. This mode of execution is preferred as it ensures instantaneous death without any suffering. It is used in the USA, UK, Canada etc.

In Iran, the offenders of serious crimes like rape are publicly hanged to crane used for lifting heavy loads and put to death.<sup>3</sup>

## **SEVERAL LAWS ON DEATH PENALTY**

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### **ENGLISH LAW ON DEATH PENALTY**

#### **CEYLON**

The penal law of Ceylon abolished capital punishment in 1956 but it had to be reintroduced as a measure of social defence consequent to the gruesome murder of Late Prime Minister Mr. Bandaranaike.

#### **FRANCE**

After a huge debate among the smaller as well as the law reformers, they came to conclusions that retention of death sentence is not in keeping with the modern reformatory trend of penology and then in France, the capital punishment was abolished.

#### **U.S.A**

The execution of the death-sentenced is not altogether abolished on the United States and is considered as morally and legally just and its practice takes place in rare heinous cases of crime. American Penologists justify the retention of capital punishment for two reasons -1) As every human are fond of their life and always want to be alive, the death penalty provides a warning to prevent the potential murders. 2) It also accomplishes the retributive object of punishment since a person who kills another has perhaps forfeited his claim for life. Recent trend in America is to restrict capital punishment only to the offence of rape and murder as well as to change in the trend is to make the process of execution private, painless and quick as against the old methods of public execution which were brutal, painful and time-consuming. Justice Brennan and Justice Marshall of

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<sup>3</sup> (1986) Cri.L.J.364

the U.S Supreme Court in a landmark decision **Furman Vs The State of Georgia**<sup>4</sup>, observed that the death penalty should be outlawed on the ground that it was an anachronism degrading to human dignity and unnecessary in modern life. But most of the Judges did not agree with the view that the Eighth Amendment of the American Constitution which prohibits capital punishment for all crimes and under all circumstances, is a good law, In the American decision in **Gregg Vs George**<sup>5</sup> held that the court is convinced that death penalty of the United States per second is no violation of the Constitution.

## **SAFEGUARDS AGAINST THE POSSIBILITY OF MISCARRIAGE OF JUSTICE DUE TO IRREVOCABILITY OF CAPITAL PUNISHMENT**

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The safeguards provided under the law to eliminate any possibility of erroneous judgment regarding the award of death sentence which may briefly be stated -

- (1) In very rare cases the death penalty is awarded like Murder, brutal rapes, and offence against the state under the provisions of law.
- (2) The Judge who is awarding capital punishment must record in writing why he considers there wouldn't be alternative punishment like life imprisonment, that can be given to the offender in the case before him.
- (3) The conferment of the right of a pre-sentence hearing under Sec 235 (2) to the accused person offers him an opportunity to put forth his plea for an award of life imprisonment as an alternative punishment for the death sentence.
- (4) The cumulative effect of the provisions contained in Sec 354(3) and Section 235(2) is the sentencing is completely individualized and there is hardly any scope for the error of judgment in sentencing the accused person
- (5) The sentence of death awarded by the Court of Session should be sent for confirmation by the High Court as the provision under Sec 366 to 370 Cr.P.C, even the High Court has the power the direct further enquiry or additional evidence to be taken if necessary.
- (6) There is a provision given the law for appeal against the decision of Session Court and High Court awarding death penalty to the Supreme Court under Sec 379, Cr.P.C and Art 136 of the Constitution.

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<sup>4</sup> (1972)408 US 238.

<sup>5</sup> (1976)428 US 153 ,(1976)428 US 243

(7) The Governor and the President of the country have the power to grant pardon and to commute the sentence if death penalty under the provisions of law.<sup>6</sup>

Penologists in India have reacted to capital punishment differently, some of them have supported the retention of this sentence while others have advocated its abolition on humanitarian grounds.

### **RETENTIONIST VIEW 'SUPPORTING 'DEATH PENALTY**

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Several arguments were made in favour of the death penalty -

- One who has taken a person's life, his life should be eliminated or forfeited as it would provide relief to the victims, family members of victims and will give courage to the society to face and take steps to prevent such activities.
- The death penalty is society's reaction towards the heinous crime and criminals. Even some authorities still consider that the death penalty would be a lesser punishment for several heinous crimes like rape, murder etc.
- Another reason supporting the death penalty is that whatever punishment inflicted upon the offender by the court must be made based on the consideration like the gravity of offence and worst crimes should be severely death with for the sake of security of the people.
- Moreover, removing the murderers from society by the execution of fair retribution serves the end of justice.
- It prevents overcrowding in prisons and helps in the elimination of the offenders who are a potential danger to the institution thereby making maintenance of discipline in prison easy.
- It upholds rule of law because it discourages vigilantism or self-help on the part of the victims' family.<sup>7</sup>

### **'ABOLITIONISTS' 'AGAINST' THE DEATH SENTENCE**

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There are several arguments made the abolitionist against the death sentence -

- Ultimately death sentence is killing and all form of killing either legal or illegal are wrong as it is a vengeance which brutalized the society and thus it will not serve justice to the victims and its family members in case of occurrence of any crime.

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<sup>6</sup> PROF N.V.PARANJAPE, CRIMINOLOGY, PENOLOGY, VICTIMOLOGYId pg-352(CENTRAL LAW PUBLICATION, SEVENTEEN EDITION,2017)

<sup>7</sup> Ibid Pg -352

- The death penalty is unjust and often discriminatory against the poor, they are unable to hire strong advocate, to defend himself in the cases filed against him.
- Death penalty can't prevent the serious offence as the criminals who hired as murderers do take chance with the criminal justice system whatever be the consequences.
- Keeping a person alive in maximum security solitary confinement without the prospect of bail is a far greater punishment than death.
- Another reason is the death penalty violates human rights which are conferred upon a human under being human. It denies the possibility of reformation and rehabilitation of the offender.<sup>8</sup>

### **CAPITAL PUNISHMENT IN INDIA**

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deterrence, unequal in its application in an uneven society,' the death penalty has become a symbol of a state's political strength, the book argues.

The 19th-century German philosopher Friedrich Nietzsche has mentioned the punishment as a force of law and he focused that the death penalty is not acting as deterring factor of crimes. The use of pain as a means of retribution stemmed out of innate human desires, which are often incongruous and ultimately self-defeating. The same urges that led the Romans into creating a system of law where the injury caused were to be compensated by the payment of damages — a product of contractual relationships between creditor and debtor — by Nietzsche's reckoning, translated into the criminal justice system, where a false equivalence is drawn between injury and pain. In other words, when the law views something as tantamount to a wrong the earlier days, in case a person was unable to pay the debt on time was forced to pay by inflicting of punishment to the offenders. In the case of the death penalty, its philosophical weakness, therefore, arises from an urge to associate the victim's injury with the convict's pain; punishment, Nietzsche wrote, is seen as "recompense to the injured party for the harm done," an altogether absurd proposition when you consider that in the case of the death penalty the compensation made is to us, the society at large.<sup>9</sup>

In his forthcoming book, *Abolishing the Death Penalty: Why India should say no to capital punishment*, Gopalkrishna Gandhi does not specifically invoke Nietzsche. He has not mentioned anything about the view of Nietzsche. But he shows, with astounding clarity, much like Nietzsche

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<sup>8</sup> Id pg - 352 - 353

<sup>9</sup> www.thehindu.com

did, that the foundation for the death penalty, in a modern moral state, unravels on the face of both fact and theory. Gandhi dedicates this essay-length book — an essential read, especially given the times we live in — to the men and women on India’s death rows, and also to the growing number of devoted lawyers defending death row convicts and espousing the cause of the abolitionists. Although 140 of the 195 countries in the world might have ended the use of the death penalty, be it through law or practice, India sees capital punishment as not only legal but also as somehow necessary. It is this latter claim that Gandhi chiefly rebuts, in writing which is sharp, elegant, and precise.

The book is divided into six, short chapters, each of which seeks to dispel the legitimacy of the various foundations that proponents of the death penalty often invoke. “Cruel in its operation, ineffectual as deterrence, unequal in its application in an uneven society, liable like any punishment to be in error but incorrigibly so,” writes Gandhi, “the death penalty compounds these grievous flaws by yet another. It leaves the sentiment for retribution...unrequited by creating new thirsts for the same sentiment.” We are consigned, therefore, as he shows us, to circling in a dizzily vicious cycle of vengeance, which, in the final analysis, can only be seen as depressingly futile

‘Cruel in its operation, ineffectual as deterrence, unequal in its application in an uneven society,’ the death penalty has become a symbol of a state’s political strength, the book argues.

The 19th-century German philosopher Friedrich Nietzsche, who understood, perhaps more than most, how punishment as a force of law is “overdetermined by utilities of every sort,” was among the first to show us how the death penalty lacked a basis in any unfailing penological theory. The use of pain as a means of retribution, he argued, stemmed out of innate human desires, which are often incongruous and ultimately self-defeating. The same urges that led the Romans into creating a system of law where the injury caused were to be compensated by the payment of damages — a product of contractual relationships between creditor and debtor — by Nietzsche’s reckoning, translated into the criminal justice system, where a false equivalence is drawn between injury and pain. In other words, when the law views something as tantamount to a wrong, it sees the act as creating a debt, which can only be repaid by punishment. In the case of the death penalty, its philosophical weakness, therefore, arises from an urge to associate the victim’s injury with the convict’s pain; punishment, Nietzsche wrote, is seen as “recompense to the injured party for the harm done,” an altogether absurd proposition when you consider that in the case of the death penalty the compensation made is to us, the society at large.

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anything Nietzschean in his larger conclusions. But he shows, with astounding clarity, much like Nietzsche did, that the foundation for the death penalty, in a modern moral state, unravels on the face of both fact and theory. Gandhi dedicates this essay-length book — an essential read, especially given the times we live in — to the men and women on India’s death rows, and also to the growing number of devoted lawyers defending death row convicts and espousing the cause of the abolitionists. Although 140 of the 195 countries in the world might have ended the use of the death penalty, be it through law or practice, India sees capital punishment as not only legal but also as somehow necessary. It is this latter claim that Gandhi chiefly rebuts, in writing which is sharp, elegant, and precise.<sup>10</sup>

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Despite the book’s brevity, the range of Gandhi’s intellectual study is breath-taking. He cites from both ancient western and Indian philosophy — from the likes of Kautilya’s Arthashastra to Plato’s Dialogues — from the reigns of Indian empires of the past to that of the colonising powers of the West, from literature and films alike, to display to us, in his words, the sense of why a need for retribution is “as physical as it is psychological.” Retribution, he writes, is otiose plainly because it is a “cannibal,” where the eater has to be eaten.

Gandhi also provides a valuable synopsis of the history of the death penalty in India, from the relative philosophical stances of the country’s various presidents — and their use of the power of clemency — to the Supreme Court’s enunciation, in the Bachan Singh case of 1980, of a doctrine through which the death penalty is now granted only in what is termed as the “rarest of rare” cases. The only quibble that one might mention is that while it might indeed be true that the “rarest of rare” canon has reduced the number of instances in which the death sentence is awarded, the principle has equally had a deleterious impact on Indian penological jurisprudence.

For this, Gandhi doesn’t place enough blame on the courts. Not only was the Supreme Court wrong in upholding the death penalty as a constitutionally valid form of punishment, but it also erred in creating this standard that has proved far too arbitrary for judges from the lower judiciary

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<sup>10</sup> [www.thehindu.com](http://www.thehindu.com)

to apply with any sense of rigour and care. But, as Gandhi correctly points out, the ultimate blame lies in the larger Indian state's belief that its sovereignty accords it a power to take life. "The death penalty," he writes, is seen as "a symbol of a state's political strength, even as a nuclear weapon is a sign of its military strength."

In his concluding chapter, Gandhi lays to rest the argument. A punishment, he writes, has five purposes: the punitive, the preventive, the retributive, the normative and the experiential. Leaving aside the first four purposes, and even assuming they are fulfilled by the award of capital punishment, the final purpose, which has to be seen as the most vital in a state that believes in reformation, is not achieved for the simple reason that death comes in the way. Or, as Gandhi brilliantly asks: "What possible purpose has been served by punishment if the one punished can feel it coming, but not know its end?"<sup>11</sup>

## **MERCY PETITION, PRESIDENTIAL POWER OF PARDONING**

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As per the Constitutional framework in India, mercy petition is the last remedy granted or rejected to the convict of a heinous crime, after the highest court of India confirms the death penalty. A convict can present a mercy petition to the President of India as per under Article 72 of the Constitution of India.

Similarly, the Governors of States has the pardoning power under Article 161 of the Constitution of India.<sup>12</sup>

Article 72 provides:

(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.

Thus, Article 72 empowers the President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

While Article 161 provides:

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<sup>11</sup> Ibid

<sup>12</sup> www.indialegallive.com



Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Process of making a mercy petition:

no written process for dealing with mercy petitions has been made till now, but in practice, after the end of all the remedies in the Court, either the convict himself or his relative on his behalf may submit a written petition to the President for the granting of mercy and to reduce the death sentence to life imprisonment or imprisonment for a certain period. When the petitions are received by the Presidents secretariat, he then forwards to the Ministry of Home Affairs for their recommendations on the matter.<sup>13</sup>

A convict under the sentence of death is allowed to make the petition within seven days after the date on which the Superintendent of jail informs him about the dismissal of the appeal or special leave to appeal by the Supreme Court. The Home Ministry in consultation with the concerned State Government discusses the merits of the petition. After the consultation, recommendations are made by the Home Minister and then, the petition is sent back to the President for his decision.

Note: Even though the President and Governor are the executive heads, but they cannot exercise their discretion concerning their powers under Articles 72 and 161. Both the executive heads are required to act on the advice of the appropriate government—Central and State Government. The advice of the appropriate Government binds the Head of the state.

The President can either accept or reject the plea of mercy based on the advice by the council of ministers. In Indian Constitution, no specified period as prescribed within which the mercy can be granted or rejected by the President or Governors of the State and can keep the petition in abeyance for an indefinite period if he wishes to.

What happens when a convict moves a mercy petition?

In case, the petition is filed within seven days then it is the duty of the Jail Superintendent to stay the execution of the death sentence. However, this does not mean that after the expiry of seven days a convict cannot file a mercy petition. In such exceptional cases or intervening circumstances, it is the concerned state government that will decide the question of deferring the death sentence.

What do the laws of other countries provide?

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<sup>13</sup> [www.indialegallive.com](http://www.indialegallive.com)

## USA:

The Constitution of America gives the President the similar powers to grant reprieves or pardon for offences under Federal law, except in cases of impeachment. However, in cases of violation of state law, the power has been given to the concerned Governor of the state.

## UK

In the UK, the Constitutional monarch can pardon or reprieve for offences on ministerial advice.

## CANADA:

In Canada, to grant mercy to the convict there is

The National Parole Board under the Criminal Records Act which is empowered to grant such reliefs.<sup>14</sup>

## **RETENTION OF CAPITAL PUNISHMENT - HOW FAR JUSTIFIED**

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The Supreme Court of India in **Bachan Singh Vs State of Punjab**<sup>15</sup> observed that there are many sociologists, legislators, jurists, Judges and administrators who firmly believe that the death penalty shouldn't be abolished as it is required for the protection of society. Death penalty is still considered as one of the sanctions for serious offences and the Indian Parliament has repeatedly rejected all the proposal for abolition of the death penalty.

The following generalisation may, however, be useful in referring in which case and circumstances, the death penalty should be awarded-

- (1) In **Rex Vs Govinda**<sup>16</sup> and the **K.M. Nanavati Vs State of Bombay**,<sup>17</sup> it was observed by the court that there are a huge number of cases where the offences like murder take place as they offender become a prey to the surroundings and in fact due to the passion to commit a crime, they commit the offence, even due to the permeable of racial, religiopolitical cultures effects a lot. In a country like India where sex taboos are so constricted and strict and the marital. Relationships are likely to be disturbed on slightest suspicion or provocation.
- (2) The retention and presence of awarding capital punishments are required to stop the hardened criminals or the criminals those who are hired to commit serious offences like

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<sup>14</sup> Ibid

<sup>15</sup> AIR 1980 SC 898

<sup>16</sup> ILR 1876 Bombay

<sup>17</sup> AIR 1961 SC 497

murder, they while committing the crime never think ones about the gravity and consequences of the crime.

- (3) In many instances, it is found the offences like murder takes place in. such situations that the offenders are well aware of the consequences of the act but they fall prey to criminality due to anger for the victim whom they want to get rid of their lives.<sup>18</sup>

## **RETENTION PREFERRED TO ABOLITION**

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Indian parliamentarians are struggling to abolish the provisions of capital punishment from Acts for a long. In 1949, the first proposal regarding repealing of the capital punishment was made in Lok Sang a but it was withdrawn at the instance of Home Minister, Sardar Vallabhbhai Patel who characterized it as the most inopportune proposal. Later in 1962, the subject was accepted for discussion in Rajya Sabha, but ultimately they wanted the retention of the death penalty. The question of the abolition of the death sentence was considered in a seminar which was held in Delhi in October 1969.,where a large number of Jurists, Judges, eminent lawyers and Legislators attended and decided in favour of retention of Death sentence. The Report of the Convention of International Congress of Criminal Law which was sponsored by International Law Association was held in New Delhi on 8,9 and 10 Feb 1982 concluded that consensus was in favour of retention of death penalty though its use may take place in "rarest of rare cases". Even Justice V.R.Krishna Iyer, the former Judge of Supreme Court of India was in favour of retention of Capital Punishment.<sup>19</sup>

## **LAW COMMISSION'S REPORT ON CAPITAL PUNISHMENT**

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The Law Commission presented its report to the Lok Sang an in 18th November 1971, as the Indian Government sent the matter for deciding it separately for revision of the general Criminal Law by recommending no to change existing law in the offences which are made punishable with death under Indian Penal Code 1860. Moreover, the Law Commission in its 42nd Report published in 1971 suggested that -

- Children below 18 years of age at the time of the commission of the crime should not be sentenced to death.
- It is not necessary to exempt women generally from the death penalty.

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<sup>18</sup> Supra Note 1 pg - 355

<sup>19</sup> Id pg - 356- 357

- It is unnecessary to insert a statutory provision relating to "diminished responsibility" in the statute book.
- An attempt to commit suicide should cease to be an offence in India.<sup>20</sup>

In **Rathinam Nagbhusan Patnaik Vs Union of India**<sup>21</sup>, the court held that the current law about "harsh and unjustifiable and it should be replaced".

The Law Commission strongly felt that capital punishment acts as an effective, deterrent "which is the most important object and even if all objects were to be kept aside, this object would by itself furnish a rational basis for its retention".

The Law Commission of India by Justice A.P. Shah in its recent report of 2015 has recommended the abolition of capital punishment. The rarest of rare principle followed in India in awarding the death sentence appears to be the correct approach to this intricate problem.

## **INDIAN LAW ON CAPITAL PUNISHMENT**

### **INDIA VOTES AGAINST THE RESOLUTION MADE BY UN GENERAL ASSEMBLY**

In 2015, UN General Assembly has resolved the abolition of the death penalty in which India has filed against the resolution on the ground that in the Statute enacted in India don't support the abolition of it, but rather it is applicable in rarest of the rare case of crime.

The draft resolution was approved with a recorded vote of 123 in favour, 36 against and 30 abstentions.

India was among the countries that voted against the resolution, which would have the Assembly call on all States to respect international standards on the rights of those facing the death penalty and ensure that it is not applied based on discriminatory laws or as a result of discriminatory or arbitrary

First Secretary in India's Permanent Mission to the U.N. Paulomi Tripathi, explained the reason behind voting against the draft resolution that it is beyond the laws passed in India.

In India, the death penalty is exercised in 'rarest of rare' cases, in those crimes where the crime committed is heinous one. Indian law provides for all requisite procedural safeguards, including the right to a fair trial by an independent Court, the presumption of innocence, the minimum guarantees for defence, and the right to review by a higher court

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<sup>20</sup> Id pg - 358

<sup>21</sup> AIR 1994 SC 1844

The draft resolution's passage followed an intense debate and Singapore introduced an amendment on behalf of 34 countries that reaffirmed the countries' sovereign right to develop their legal system.

The Committee then approved this amendment by a recorded vote of 96 in favour to 73 against, with 14 abstentions. India voted in favour of this amendment.

By its terms, the Assembly would reaffirm the sovereign right of all countries to develop their legal systems, including determining appropriate legal penalties, by their international law obligations.

Ms Tripathi said the Indian laws have specific provisions for commutation of the death penalty in the case of pregnant women and have rulings that prohibited executions of persons with mental or intellectual disabilities, while juvenile offenders cannot be sentenced to death under any circumstances.

Death sentences in India must also be confirmed by a Supreme Court and an accused has the right to appeal to a High Court or the Supreme Court, which has adopted guidelines on clemency.

Not only this, poverty, socio-economic, psychic compulsions but undeserved adversities in life also constituted new mitigating factors to be considered by courts in commuting a death sentence to life imprisonment.<sup>22</sup>

### **DR.A.P.J ABDUL KALAM, THE FORMER PRESIDENT OF INDIA AND THE LEADER KANIMOUZI FAVOURED THE ABOLITION OF CAPITAL PUNISHMENT**

**Former President Dr.A.P.J Abdul Kalam** was also in favour of the abolition of the death penalty on the statement on the ground that human beings are the creation of God, and another human being may not be competent to take the life of another person based on evidence and crime.

**Kanimouzi** also favoured the abolition of the death penalty. In 2007, Abdul Kalam had to confirm death penalty in the case of **Dhananjay Chatterjee Vs State of West Bengal**,<sup>23</sup> which was a rape case occurred in West Bengal, The Bharat Ratna awardee mentioned in his book "Turning Point" where he mentioned about his difficulty in confirming the death penalty. According to his book, he found most of the death penalty case where socio-economic biased and the person who was least involved in the enmity and did not have the direct motive for committing the crime.

### **OFFENCES PUNISHABLE WITH DEATH SENTENCE UNDER IPC**

- 1) Under Section 121IPC, Waging of war against the Government.

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<sup>22</sup> ibid

<sup>23</sup> www.dnaindia.com

- 2) Section 132IPC, Abetment of mutiny.
- 3) Section 194IPC Giving or fabricating false evidence leading to procure one's conviction.
- 4) Section 302IPC Murder
- 5) Section 305IPC Abetment of suicide by a child or insane person.
- 6) Section 307 IPC Attempt to murder by a life convict, if the hurt is caused.
- 7) Section 396 IPC Dacoity with murder.
- 8) Section 364- A Kidnapping for ransom etc.<sup>24</sup>

Delivering the judgment on behalf of **JJ. Murtaza Fazal Ali, Vs D. Tulzapurkar<sup>25</sup>, Varadarajan** ,Justice Chinnappa Reddy delivered a separate but concurring judgment) **Justice Chandrachud (CJ)** ruled that Section 303 IPC violates the guarantee of equality contained in Art 14 as also the right conferred by Art 21 of the Constitution.

The Code of Criminal Procedure.,1973 also contains a provision. regarding the death sentence.Sec 354(3) the Cr.P.C States that during awarding death penalty by the Court to the convict, they must record in writing the reason justifying the sentence and to state why any other sentence can't be awarded instead of the death penalty.

Sec 235(2) Cr.P.C provides that the Court have to hear the accused on the point of the sentence and the Court should call upon the State, the Public Prosecutor to mention giving reasons whether or not that extreme penalty prescribed by law is called for a view of the facts and circumstances of the case.

In **Allaudin Moan Vs State of Bihar**,<sup>26</sup> the Apex Court held that when the Court has to choose between the convicts cry to live and the prosecutors demand that he deserves the death penalty, in such situation's high degree of concern and assertiveness in the choice of sentence.

Besides this, the Constitution of India also empowers the President and Governor to grant pardon to the condemned offenders in appropriate cases.

## JUDICIAL TRENDS

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The Supreme Court in its decision in **T.V.Vatheeswaran Vs State of Tamil Nadu**<sup>27</sup> held that due to prolonged delay in execution of the death sentence awarded by the Competent Court, it will lead to the quashing of the death sentence on the sufficient ground that such delay is unjust

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<sup>24</sup> Id Pg 364

<sup>25</sup> AIR 1983 SC 473

<sup>26</sup> AIR 1989 SC 1456

<sup>27</sup> AIR 1983 SC 361

and unfair and unreasonable and the only way to undo the wrong is to quash the death sentence, as well as the cause of delay, would be irrelevant in the case where the convict claims fundamental rights under Art 21 of Constitution.

**Sher Singh Vs State of Punjab**<sup>28</sup>, the Supreme Court overruled its earlier decision in **Vetheeswaran's case**,<sup>29</sup> Chief Justice **Y.V.Chandrachud** observed that only the rarest cases the death sentence should be awarded, apart from that death sentence upheld by the Supreme Court should not be allowed to be defeated by applying any rule of thumb.

**Ranjit Singh Vs Union Territory of Chandigarh**<sup>30</sup>, In this case, murder was committed by the appellant who was a life convict earlier and reduced that punishment by parole. The accuracy was awarded death on conviction under Sec 303 IPC and the co-accused were sentenced to life imprisonment. Agreeing with the contention of deceased's counsel the Supreme Court commuted the sentence of death to that of imprisonment for life as Sec 303 IPC had been declared unconstitutional in the **Mithu Vs State of Punjab**.<sup>31</sup>

### **A BIZARE TALE OF THREE ROW CONVICTS FACING DIFFERENT FATES IN THE SAME CASE**

The death penalty cannot be executed separately against a single convict when legal proceedings filed by other co-convicts in the same case are pending - this is one of the arguments raised by lawyers for the convicts in the Nirbhaya case to seek deferral of their executions.

The lawyers cited Rule 836 of the Delhi Prison Rules to buttress this argument.

The Prosecution, however, contended that there is no legal issue or restrictions in executing a convict of a rape case, where the incident took place on 16th December 2012, who has exhausted all his legal remedies, regardless of the pendency of proceedings of the co-convicts in the same case.

The Central Government has even filed an application in the Supreme Court seeking clarification in the death sentence guidelines laid down in the Shatrughan Chauhan judgment to allow such segregated executions of co-convicts.

In this regard, it is pertinent to recall a case, which is a bizarre and shocking tale of three death row convicts facing different fates in the same case.

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<sup>28</sup> AIR 1983 SC 465

<sup>29</sup> AIR 1983 SC 361

<sup>30</sup> AIR 1984 SC 45

<sup>31</sup> AIR 1983 SC 473

This was in the case **Harbans Singh v Union of India AIR 1982 SC 849**,<sup>32</sup> which reveals the role of chance in determining the death penalty.

Harbans Singh, Kashmira Singh and Jeeta Singh were convicted for the murder of four persons and were given the death penalty as a sentence by the Session Court and this was confirmed by the High Court.

Three of them filed special leave petitions in the Supreme Court, at different stages.

Jeeta Singh's petition got dismissed on April 15, 1976.

Almost a year later, another bench considered the petition of Kashmira Singh and commuted his death penalty to life imprisonment on April 10, 1976, without noticing the dismissal of SLP of Jeeta Singh. This commutation was done by a bench consisting of Justices Bhagwati and Fazal Ali. After one more year, Harbans Singh approached SC against his death penalty. This was considered by another bench consisting of Justices Sarkaria and Shinghal. This bench dismissed the petition, confirming the death penalty. The commutation of co-convict Kashmira Singh's death penalty was not brought to the notice of the bench. Harbans Singh's later sought a review but met with no success. Later, the President rejected his mercy petition. Curiously, his special leave petition, review petition and mercy petition had no mention of the commutation of Kashmira Singh's sentence.<sup>33</sup>

Following this, death warrants were issued for the executions of Jeeta Singh and Harbans Singh on October 6, 1981.

As a last attempt to escape the noose, Harbans Singh filed a writ petition in the Supreme Court against the death warrant, by pointing out the commutation of Kashmira Singh's sentence. The Court stayed his execution. However, Jeeta Singh, who did not file any writ petition in the SC, was executed on the scheduled date!

Harbans Singh's petition was later considered by a bench comprising Justices Y V Chandrachud and Amarendra Nath Singh. The bench could not hide its pain, anguish and sadness at the fact that one among the convicts got executed, just because he did not approach the Court at the right time.

"The course which this case has taken makes a sad reading. Three persons were sentenced to death by a common judgment and, regretfully, each one has eventually met with a different fate. One of those three persons, Jeeta Singh, who did not file any Review Petition or Writ Petition in this Court was executed on October 6, 1981. The other person, Kashmira Singh, succeeded in having his death sentence commuted into life imprisonment. The petitioner was to be executed on the same day on which Jeeta Singh was executed but, fortunately, he filed this Writ Petition on which we

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<sup>32</sup> AIR 1982 SC 849

<sup>33</sup> [www.deathpenaltynews.blogspot.com](http://www.deathpenaltynews.blogspot.com)



passed an order staying the execution of his death sentence", Justice Chandrachud said in the judgment.

The Court said that no distinction could have been made concerning the roles of three convicts in the crime. Therefore, the benefit of commutation given to Kashmir Singh has to be necessarily extended to Harbans Singh as well.

"It is unfortunate that Jeeta Singh could not get the benefit of the commutation of Kashmira Singh's sentence. Were he to approach this Court like the petitioner, the sentence imposed upon him would have been commuted into life imprisonment because no distinction could have been made between his case and that of Kashmira Singh whose sentence was commuted before the execution of Jeeta Singh", the Court said.

Although the Court observed that Harbans Singh's death sentence deserved commutation, it stopped short of ordering so and disposed of the petition by recommending the President to commute his sentence exercising his mercy powers by taking into account the case of Kashmira Singh.

The Court also noted that the case of Jeeta Singh had a "posthumous moral to tell".

"He cannot profit by the direction which we propose to give because he is now beyond the process of human tribunals", it said.

Taking note of the startling fact that three convicts had to face different fates - one of them being irreversible- the Court ordered that before the actual execution of any death sentence, the Jail Superintendent should ascertain personally whether the sentence of death imposed upon any of the co-accused of the prisoner who is due to be hanged, has been commuted. If it has been commuted, the Superintendent should appraise the superior authorities of the matter, who, in turn, must take prompt steps for bringing the matter to the notice of the Court concerned.

As much as this case is an example for the randomness in the results of legal proceedings, it also exposes the arbitrariness in the death penalty.<sup>34</sup>

## CONCLUSION

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The capital punishment may be against the notions of modern rehabilitation processes of treating the offenders as it does provide the criminals with an opportunity to reform but as a matter of policy, the act of taking another's life should never be justified by the State except in extreme cases of dire necessity and self-preservation. The retention of capital punishment is required in the current deteriorating scenarios in our society. to control order and peace Time has not yet ripe

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<sup>34</sup> *ibid*

when complete abolition of capital punishment can be strongly supported without endangering the social security.