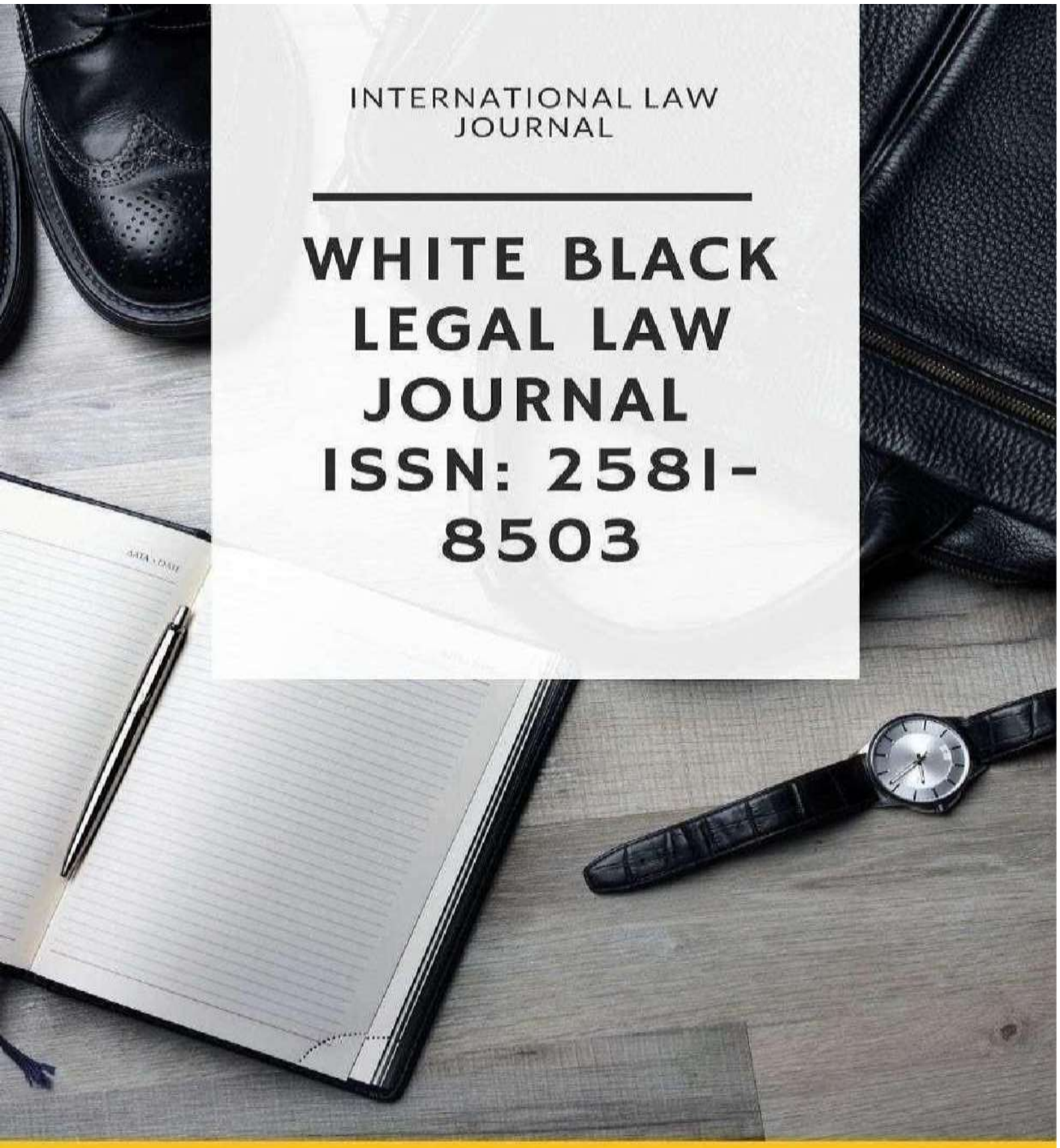

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With this thought, we hereby present to you

CAPITAL PUNISHMENT: AN IN-DEPTH ANALYSIS OF THE INDIAN LEGAL SYSTEM

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ABSTRACT

Capital Punishment is the most extreme form of legal penalty that is ordered against a malefactor for committing grotesque and hideous offences against society. In India, thedoctrine of the 'rarest of the rare' cases is followed wherein the perpetrator is hanged to deathonly when the act committed is an extremely brutal, ridiculous, diabolical, revolting, or reprehensible manner so as to awaken intense and extreme indignation of the community.[1] Since this criterion is subjective in nature and left to the discretion of the judges, the applicationof the doctrine in courts has been subject to multitudinous debates and discussions by many prominent jurists. This paper is an attempt to critically examine the constitutional validity of capital punishment as well as the criterion applied to adjudicate while awarding the death penalties. It does this by analysing various judicial precedents in this regard as well as scrutinizing the law commission reports on the death penalty in India. Furthermore, it also sheds light on the question of how the notion of capital punishment has changed shape historically. Lastly, the relevance of retaining this punishment in India is also discussed. This is especially relevant considering that the international trends suggest a shift towards the abolition of capital punishment.

Keyword(s):- Capital Punishment, Constitutional validity, Judiciary, Rarest of the Rare Cases.

INTRODUCTION

Since pre-independence times, India has awarded capital punishment, with a number of judgments ordering the perpetrator to be hanged till death. The term "capital punishment" comes from the Latin word "*Capitalis*," which means "regarding the head," and was formerly referred to as beheading. In India, discourse on capital punishment has been continuing for a long time,

[1] Machhi Singh And Others vs State Of Punjab, (1983) AIR 957.

with different groups of people holding opposing viewpoints on whether it should be retained or not. While the objective behind the punishment is to create a deterrent effect that aims to prevent individuals from offending by using the fear or threat of punishment, there isa marked global shift towards the abolition of the same.[2] The side which supports the retention of capital punishment argues that there are certain categories of individuals, the wicked and cruel ones, who are not capable of being reformed, and hence death penalty to them is necessaryfor society.[3] But most importantly, the government has tilted towards retaining it in India due to the peculiar circumstances of Indian society that necessitate such a punishment. The alternative viewpoint has rather lately developed, claiming that capital punishment is unethical and violates an individual's human rights, and hence should be abolished. A recent report on capital punishment by the Government of India suggests gradually phasing out capital punishment except for terrorism-related acts and wars that endanger national security.[4]

HISTORICAL BACKGROUND

The history of the death penalty can be traced back to the ancient civilizations where executions were carried out almost as a norm. There were different modes of the death penalty such as crucifixion, drowning, beating to death, burning alive, and impalement. In the Eighteenth Century B.C., the first-of-a-kind death penalty laws were codified in the Code of King Hammurabi of Babylon for 25 different crimes. Subsequently, laws on the death penalty couldbe found in many other civilizations like in the Hittite Code, the Draconian Code of Athens, and the Roman Law of the Twelve Tablets. By the Tenth Century A.D., the common method of execution that was followed in Britain was death by hanging.[5]

Even in the Indian context, specifically with regard to Hindu society, the existence of capital punishment can be detected in the writings of renowned writers and philosophers like *Kalidasa* and *Kautilya*. With the establishment of the Mughal empire, the death penalty was awarded according to the doctrines and principles of *Islamic law*. As the empire lost its glory with the arrival of Britishers, gradual changes were made to the laws prescribing the death penalty.

Two major legacies pertaining to criminal laws of capital punishment are the Benthamite

[2] Andrew Ashworth, *Sentencing And Criminal Justice* 75 (4th ed. 2005); Raymond Paternoster, *How Much DoWe Really Know About Criminal Deterrence*, 100 Journal of Criminal Law and Criminology 765, 766 (2010).
[3] Law Commission of India, 35th Report, 1967, Ministry of Law, Government of India, at para 297.
[4] Law Commission of India, 262nd Report, 2015, Ministry of Law, Government of India, Chapter VII, at para7.2.4.
[5] https://deathpenaltyinfo.org/facts-and-research/history-of-the-death-penalty/early-history-of-the-death-penalty.

codification period of 19th century British rule: the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1898.[6] They mark the foundation of the present legal jurisprudence on capital punishment. Close to 10 offences under the IPC prescribe the death penalty which to date remains the same. The position of courts has significantly altered since the inception of the punishment as mentioned in IPC. Previously, courts were required to record grounds for not delivering capital punishment, but now they must provide specific reasons for why the death sentence should be imposed. This is further detailed in the subsequent section.

Section 367(5) of the CrPC 1898 requires courts to record reasons for not imposing the death penalty for offences where the death penalty was an option:

"*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"*

Section 367(5), CrPC 1898, was repealed by Parliament in 1955, drastically modifying the position of the death penalty. The death penalty was no longer the norm, and judges didn't require special justifications for not enforcing it in circumstances when it was a mandatory punishment. In 1973, the Code of Criminal Procedure ('CrPC') was re-enacted, with significantamendments, most notably to Section 354(3):

"When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasonsfor the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence."

This was a substantial change from the position after the 1955 amendment (when the death penalty and prison sentences were both options in a capital case), and a reversal of the position under the 1898 statute (where death sentence was the norm and reasons had to be recorded if any other punishment was imposed). Judges were now required to establish specific reasons for imposing the death penalty.

Section 235(2), which stipulates that a post-conviction hearing on sentence, including the death sentence, may be held, was also amended.

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[6] Chaitanya Shah, *Capital Punishment In Indian Legal History*, VOLUME 6 ISSUE 4 111, 113-116, (July 2020).

CAPITAL PUNISHMENT OFFENSES IN IPC AND OTHER LAWS

The following are the offences for which the death penalty is prescribed under Indian laws:

Capital Offences in IPC

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

Capital Offences in other laws

Sl. No.	Section Number	Description
1.	Sections 34, 37, and 38(1)	The Air Force Act, 1950
2.	Section 3(1)(i)	The Andhra Pradesh Control of Organised Crime Act, 2001
3.	Section 27(3)	The Arms Act, 1959 (repealed)
4.	Sections 34, 37, and 38(1)	The Army Act, 1950
5.	Sections 21, 24, 25(1)(a), and 55	The Assam Rifles Act, 2006
6.	Section 65A(2)	The Bombay Prohibition (Gujarat Amendment) Act, 2009
7.	Sections 14, 17, 18(1)(a), and 46	The Border Security Force Act, 1968
8.	Sections 17 and 49	The Coast Guard Act, 1978
9.	Section 4(1)	The Commission of Sati (Prevention) Act, 1987
10.	Section 5	The Defence of India Act, 1971
11.	Section 3	The Geneva Conventions Act, 1960
12.	Section 3 (b)	The Explosive Substances Act, 1908
13.	Sections 16, 19, 20(1)(a), and 49	The Indo-Tibetan Border Police Force Act, 1992
14.	Section 3(1)(i)	The Karnataka Control of Organised Crime Act, 2000
15.	Section 3(1)(i)	The Maharashtra Control of Organised Crime Act, 1999
16.	Section 31A(1)	The Narcotics Drugs and Psychotropic Substances Act, 1985
17.	Sections 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2), and 59	The Navy Act, 1957
18.	Section 15(4)	The Petroleum and Minerals Pipelines (Acquisition of rights of user in land) Act, 1962
19.	Sections 16, 19, 20(1)(a), and 49	The Sashastra Seema Bal Act, 2007
20.	Section 3(2)(i)	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
21.	Section 3(1)(i)	The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002;
22.	Sections 10(b)(i) and Section 16(1)(a)	The Unlawful Activities Prevention Act, 1967
Source: India. Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.31-32		

THE APPROACH OF CRIMINOLOGY IN CAPITAL PUNISHMENT

There are two kinds of theories regarding the justification of capital punishment i.e., the Reformative and Preventive theories.

1. Reformative theory

According to Lillie, "the aim of punishment is to reform the character of the offender himself." (Lillie, ibid., p. 253).[7] The objective behind this theory is "to restore a convicted offender to a constructive place in society through some combination of treatment, education, and training." (Clear & Cole, 2000, p, 513).[8] It is also known as the educational or rehabilitation theory of punishment wherein the aim is to reform the offender by educating him. All kinds of capital punishment are at odds with this theory and are severely criticized.

a) Criminal Anthropology: According to contemporary criminal anthropology, crime is a disease. According to criminal anthropology, rather than punishing a criminal, it is vital to cure him. Hospitals and welfare homes are more adequate places to adopt than behind the bars for reducing crime.

b) Criminal sociology: According to criminal sociology, it is far more important to improve social and economic circumstances and eliminate inequities than to punish criminals. Crimes cannot be altered by punishment, but they may be changed by justice and equality.

c) Psychoanalysis: criminal anthropology and criminal sociology are both tied to psychoanalysis. Reformative theory is supported by psychoanalysis. To prevent crimes, education and psychoanalysis therapy are required instead of punishment.

2. Preventive theory

According to Mackenzie, the aim of the preventive theory of punishment is "to deter others from committing a similar offense (Mackenzie, 1929, p. 375).[9] Hence, it seeks to set an example for the offenders who would meet the same fate if a crime is repeated.It is also called the deterrent

[7] Lillie, William. (1948). An Introduction to Ethics. London: Methuen and Co. Ltd.
[8] Clear, Todd R., & Cole, George F. (2000). American Corrections. Belmont: West Wadsworth.
[9] Mackenzie, J. S. (1929). A Manual of Ethics. London: University Tutorial Press Ltd.

theory or exemplary theory of punishment. “Punishment is said to have a deterrent effect when the fear or actual imposition of punishment leadsto conformity. Specifically, punishments have the greatest potential for deterringmisconduct when they are severe, certain, and swift in their application.” (Miethe & Lu, 2005, p.20).[10] It is ordered as a preventive measure against society. It is a forward-looking theory that aims to deter the behavior of future offenders.

In India, the preventative theory of punishment is followed, with capital punishment being handed down as a method of deterring similar acts in the future. It serves as an example so that others do not commit the same or similar offences.

CONSTITUTIONALITY OF THE DEATH PENALTY IN INDIA

In India, the death penalty is meted out by strangulating a person. According to Section 354(5)of the CrPC “When any person is sentenced to death, the sentence shall direct that he be hangedby the neck till he is dead”.

This method has prevailed since times immemorial and has not changed to date. Provisions related to the death penalty are contained in Section 53 of the Indian Penal Code,1860 and Section 368 of the Code of Criminal Procedure which deals with the definition as well as the power of the High Courts to confirm death sentences respectively. There is a growinginclination against the death penalty, and as a result, there has been a significant shift to life imprisonment, yet capital punishment persists due to the occurrence of exceptionally heinous crimes. The constitutionality of Section 302 of the Indian Penal Code,1860 came to be examined before the Supreme Court in the case of **Bachan Singh v State of Punjab**[11] whereinthe validity of section 354(3), CRPC, and articles 14,19 and 21 was upheld.

However, there are certain provisions of sections 360-61 of the CrPC which lay due emphasison the good conduct of the offender in specific cases. These provisions are given dueconsideration before deciding the culpability of the offender.

[10] Miethe, Terance D., & Lu, Hong. (2005). Punishment a Comparative Historical Perspective, Cambridge: Cambridge University Press.
[11] Bachan Singh vs State Of Punjab, AIR (1980) SC 898.

I. Hanging In Public View Not Permissible

Article 21 of our Constitution only interdicts the execution of the death sentence in a cruel, barbarous, and degrading manner but does not ban the execution of the death sentence. It is not unlawful in the abstract and in the absolute to execute a lawful order on the command of a judicial verdict. The method prescribed by s 353(5), CrPC for executing the death sentence byhanging does not violate Article 21 of the Constitution. The system of hanging is as painless as is possible in the circumstances; it causes no greater pain than any other known method of executing the death sentence and it involves no barbarity, torture, or degradation. Hanging in public view would, however, amount to a violation of Article 21 of the Constitution.

II. Confirmation Of Death Sentence

A sentence of death passed by a Sessions Judge or an Additional Sessions Judge is subject to confirmation by the High Court. It shall not be executed unless it is confirmed. There were various grounds on the basis of which the constitutional validity of section 354(5) of the Codeof Criminal Procedure was challenged. These are as follows: -

(i) It is verboten to take human life even when the Court allows it since it is atrocious to take life come what may;

(ii) Adhering to the provisions mentioned in Article 21, it is forbidden to cause any sort of pain or suffering of any sort while executing a death sentence.

(iii) The method of hanging by strangulating as has been prescribed in Section 354(5), CrPC is abhorrent, detestable, and deplorable.

(iv) The Constitutional obligation of providing a humane and acceptable method for execution rests on the shoulders of the State and if no such viable method exists then the death sentence cannot be executed in any manner.

Sarkaria, J. opined in the majority judgment in Bachan Singh's case that "with regard to the onus, no hard and fast rule of universal application in all situations could be deduced from thedecided cases. It was observed that a sincere attempt has been made to show that cases croppingup under Article 14 are governed by the rule of burden of proof that is vastly different from thenorm that applies in cases arising under Articles 19 and 21 of the Constitution.

The burden of proving the constitutionality of Section 302 rested on the shoulders of the State and the State was successful in discharging that burden. Therefore, Bachan Singh is tantamountto an authority that propagates that in case of all the cases arising under Article 21 of the Constitution, the burden rests on the State to establish the Constitutionality of the law in question. The burden herein also includes the obligation to prove that the procedure is not harsh, barbaric, or cruel.

The constitutional validity of the death sentence was questioned in the case of **Jagmohan Singh v State of UP.**[12] The Constitutional Bench while upholding the constitutionality of the death penalty examined that if the statute does not provide any guidelines as to how to exercisethe same then can the discretion be conferred on the judges or not. The decision in Jagmohan Singh (supra) was rendered when Cr PC, 1973 was not in existence. However, the aforesaid position substantially changed with the introduction of a changed sentencing structure under CrPC, 1973. In **Rajendra Prasad v State of UP,**[13] it was held that the special reasons necessaryfor imposing the death penalty must be linked to the criminal and not to the crime.

In **Santa Singh v State of Punjab,**[14] the Supreme Court held that this very provision of Capital Punishment is in synchronization with the penalizing and sentencing procedures of modern times. It was further contended that "Proper procedure of sentencing discretion calls for consideration of various factors like the nature of the offence, the circumstances—both extenuating or aggravating, the prior criminal record, if any, of the offender, the age of the offender, his background, his education, his personal life, his social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of his rehabilitation in the life of the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others."

There are various tests that are applied while awarding the death sentence. These include the Crime Test, Criminal Test, and RR Test. In order to award the death sentence, the crime test has to be 100% satisfied and the criminal test has to be 0%, that is there should be no mitigating circumstances or any doubts pointing toward the accused's innocence. An iota of doubt

[12] Jagmohan Singh v State of UP 1973 SCR (2) 541.
[13] Rajendra Prasad v State of UP 1979 AIR 916.
[14] Santa Singh v State of Punjab 1976 4 SCC 190.

favouring the accused like lack of *mens rea* on his part to commit the crime, accused being a minor, etc. can go in the accused's favour in avoiding the death penalty as it would increase the percentage of the If there is any circumstance favouring the accused, like lack of intentionto commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc., the "criminal test" may favour the accused to avoid the capital punishment.

Even if the aggravating circumstances fall within the ambit of fulfilment and there are no mitigating circumstances supporting the accused then also the application of the Rarest of Rare Case Test is required. One should be "Society Centric" and not "Judge Centric" while applying this test because there are various tests that need to be paid attention to. These include society's indignation, abhorrence, and castigation towards certain crimes like sexual assault, homicide of girls who are challenged intellectually, and even some infirm and old women. There have been various cases where justice was held at its helm and the death penalty was not awarded. Some of these are **Amrit Singh v State of Punjab,[15] Rameshbhai Chandubhai Rathod v State of Gujarat,[16] Surendra Pal Shivbalak v State of Gujarat [17]etc.**

A three-judge bench of the Honorable Supreme Court in **Swamy Shraddananda vs the Stateof Karnataka[18]** held that the death sentence should be substituted for life imprisonment. But this had been further challenged in cases like **Sangeet vs the State of Haryana[19] and Sahib Hussain @ Sahib Jan vs State of Rajasthan.[20]**

DOCTRINE OF THE RAREST OF THE RARE CASE

It was duly observed by the Constitutional Bench in **Bachan Singh vs State of Punjab** that for the convicts, life imprisonment is the rule, and the death penalty is an exception. The courtwas asked whether the death penalty is unconstitutional and whether the sentencing procedure provided in Section 354(3) of the CrPC, 1973(Act 2 of 1974) is unconstitutional on the grounds that it gives the court excessive power and allows a full-fledged death sentence to be imposed

[15] Amrit Singh v State of Punjab, (2007) 1 SCC (Cri) 41.
[16] Rameshbhai Chandubhai Rathod v State of Gujarat, (1980) 3 SCC 5.
[17] Surendra Pal Shivbalak v State of Gujarat, (2000) 4 SCC 168.
[18] Swamy Shraddananda vs the State of Karnataka, (2008) 13 SCC 767.
[19] Sangeet vs the State of Haryana, (2013) 1 ACR 545.
[20] Sahib Hussain @ Sahib Jan vs State of Rajasthan, 2013 V AD 138(SC).

on a person found guilty of murder or any other crime punishable under the Indian Penal Code,1860. The trial Court, High Courts, and even the Supreme Court are duty-bound to follow the doctrine of the "Rarest of the Rare Case". The Court explained, in this case, some of the relevant factors as follows: Both the doctrines that include the doctrine of proportionality and doctrine of rehabilitation should be kept should be taken into account as far as sections 354(3), CrPC,173, and Article 21 are concerned. When there is no trace of evidence regarding the reformation and rehabilitation of the appellant-accused then the mere manner in which the body has been disposed of, howsoever abhorrent it was should not by itself be sufficient to make the case fall within the purview of the rarest of the rare category.

Death Punishment stands on a very different footing from other categories of punishments. One has to take into account the fact as to how other countries are reacting to the death penalty. According to the latest statistics, 138 nations have done away with the death penalty. Moreover,on 18 December 2007, the United Nations General Assembly adopted Resolution 62/149 beaconing the countries retaining the death penalty to establish a worldwide embargo on executions with a view to doing away with the death penalty. India has still chosen to stick to its guns as it is out of those 59 nations retaining the death penalty.

In the 262nd Report of The Law Commission of India titled "The Death Penalty," there have been recommendations regarding the abolition of the death penalty for all crimes other than offences related to terrorism. There were certain questions regarding the fact as to whether thedeath penalty can be imposed in cases based on circumstantial evidence, the Hon'ble SupremeCourt held that if the circumstantial pieces of evidence are based on an unimpeachable character in putting forward the guilt of the accused, that comprise the foundation for conviction and that has nothing to do with the duration of the sentence. The mitigating circumstances and the aggravating circumstances have to be balanced well in the balance sheetof such circumstances.

CRIMES PUNISHABLE BY THE DEATH PENALTY IN INDIA

1) Aggravated Murder

As per Article 302 of the Indian Penal Code, murder is a punishable offense. The Hon'ble Supreme Court in Bachan Singh vs State of Punjab held that the death penalty can only be

regarded as constitutional if and only if it is applied in exceptional cases like the rarest of the rare cases.

The cases of murder where the death penalty can be awarded are as follows:-

(i) As per Section 396 of The Indian Penal Code,1860 the death penalty can be meted out to a group even if one of the members in the process of doing a collaborated robbery commits murder.

(ii) As per Section 364A of the Indian Penal Code,1860 if a person who is kidnapped for ransom gets killed, the perpetrator is liable for death penalty.

(iii) It has been stipulated in Article 6 of the Unlawful Activities (Prevention) Amendment Ordinance, 2004 that those who are a member of an association which uses guns or ammunition and results in the death of a person will be awarded a death penalty.

(iv) The State Laws mention that any sort of engagement in any kind of organized criminal activities which cause the death of a person shall be punished with death penalty.

(v) Article 4(1) of the Commission of Sati (Prevention) Act stipulates that the act of Committing or assisting someone in committing Sati is an act punishable by death itself.

2) Offences Related to Terrorism

According to Section 3(b) of the Explosive Substances (Amendment) Act, 2001 using any explosive of a special category that can endanger the lives of people or cause serious damage to property is punishable by death.

3) Aggravated Rape

(i) Under the Criminal Law (Amendment) Act, 2013, a rapist who causes the victim to be left in a “Persistent Vegetative State” would be punished under the aforementioned provision.

(ii) After the Nirbhaya Gang Rape Case in 2012, many gang rapes were held to be punishable under the Criminal Law (Amendment) Act, 2013.

4) Treason

As per Articles 121 and 136 of the Indian Penal Code,1860 Waging or attempting to wage war against the government and assisting officers, soldiers, or members of the Navy, Army, or Air Forces in committing mutiny are punishable by the death penalty.

5) Kidnapping

As per Section 364A of the Indian Penal Code,1860 unlawfully detaining or kidnapping a person is punishable by death even when the kidnapper only threatens to harm the victim or does so. But the death-eligibility of these offences must be considered in the light of the Supreme Court's decision in Bachan Singh vs State of Punjab.

RECOMMENDATIONS

The Law Commission in its 262nd Report abolished held that the death penalty should be abolished in all the cases excluding those related to terrorism. This happened in the wake of the death sentence which was meted out to Yakub Abdul Razak Memon who was hanged on 30th July 2015. His advocates had tried hard to convert it into a case of life imprisonment. Legislations put forward by the Tripura Assembly had also favoured the abolishment of deathpenalty in India.

Certain recommendations have to be entailed as the execution warrants within a specified time limit. Except in the cases of terror, if there is any unconditional delay, then a provision must be stipulated whereby considering the mental condition of the convict, his death sentence shallbe converted into life imprisonment.

POSITION OF DEATH PENALTY IN INDIA

Over the last 20 years, the execution rates have drastically reduced in India. Article 21 of the Constitution of India guarantees its citizens the right to life and personal liberty which includes the right to live with dignity. If we go on interpreting this article, then the essence which it conveys lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This means that the state can take away or abridge even the right to life in the name of law and public order abiding by the procedure established by law. But this procedure must abide by the doctrine of "due process" as has been held in **Maneka Gandhi vs Union of India.**[21] It laid down that the procedure must be just, fairand reasonable and must not be arbitrary.

In India, many Non-Governmental Organisations are fighting against inhuman, abhorrent and deplorable punishment and protection of human rights. According to Justice Iyer, an eminent

[21] Maneka Gandhi vs Union of India, 1978 AIR 597.

Supreme Court judge, Life is given by God and taken by God Himself and the State is no oneto take one's life into its own hands.

The condition of people undergoing the death sentence is quite appalling at the moment. It has been found by various studies that the death row convicts face both physical and mental torture while waiting for the anticipated outcome. Considering the case of Devendra Pal Singh Bhullar, the accused in the 1993 Delhi bomb blast case, was languishing in jail till his life imprisonment was changed to life imprisonment in 2014.

CONCLUSION

The author solemnly believes that capital punishment for murder and various other capital offences serves as a much greater disincentive than life imprisonment. Courts must direct and conduct shock therapy to prevent certain crimes as the threat of death to the offender might stillbe a promising strategy in some areas of murderous crime. Some of the crimes are so appallingthat society persists in an apposite punishment, because the offender deserves it, irrespective of the fact as to whether it is a disincentive or not. Retribution continues to remain a socially acceptable function of penalty or punishment. The premonition for nemesis and retribution is intrinsically linked to the nature of man. The fact however remains unchanged, that wheneverthere is a grave crime, the society feels a sense of disapprobation. It is laudable that the Law Commission of India in its recent report had proposed a humane mode for execution of the death sentence by giving three choices to the condemned prisoner. The Report of the Justice Malimath Commission had made meritorious postulations for making the criminal law more effective, by taking into consideration the modern trend of crimes. However, therecommendations relating to rape require careful consideration, as the Report of the MalimathCommission had not concentrated on the fetters imposed by the "Rarest of Rare cases" theory,wherein the perpetrators successfully escape from a death sentence and continue to enjoy the hospitality of the State. It is quintessential and paramount for the Parliament to consider the imperative need to reconsider and arduously tackle the "Rarest of Rare cases" theory, having regard to the urgency in dealing with vile crimes.