
CAPITAL PUNISHMENT IN INDIA AND THE CASE FOR ABOLITION

Amritha Nandini PJ, Symbiosis Law School, Hyderabad

CHAPTER - I

INTRODUCTION

“ There is a certain right by which we may deprive a man of life, but none by which we may deprive him of death; this is mere cruelty.”

- Friedrich Nietzsche (Human, All Too Human (1878))

India’s engagement with Capital Punishment exists preceding its pre-independence period, with judicial precedents historically mandating the execution by various methods of torture as the prescribed methods of execution. Etymologically, the term capital punishment is derived from the Latin word ‘capitalis’ meaning ‘of the head’, referring to the mode of execution during ancient times as a prescribed form of punishment. The debate following the legitimacy and application of capital punishment has persisted over an extended period of time and has continuously provoked substantial legal discourse over the years.

From a philosophical standpoint, the works of Immanuel Kant’s deontological framework poses that certain acts, notably the method of deliberately taking the life of a human are according to the philosopher intrinsically immoral irrespective of the outcomes that they may produce. Notwithstanding the ethical position the theoretical justification most frequently invoked in the imposition of death sentence is the deterrence theory of punishment. This theory seeks not only to incapacitate the offender permanently, but also preclude him from doing any crime in the future. The utilitarian theorist Jeremy Bentham, in his arguments widely supported the deterrence theory, grounding his theory on the principles of hedonism asserting that an individual would be effectively persuaded from not engaging in criminal behaviour, if the punishments were of severe nature and administered promptly. According to the theorist, this shall generate a sense of apprehension in individuals thereby restraining individuals from perpetrating criminal acts. But how effective is this method of capital punishment? From

ancient times to the present day execution have taken place in different distorted manners for various crimes, has this ever-stopped prospective offenders from committing crime even after being aware of the consequences? Or is it that despite the known threat of severe consequences the perpetrators override all rational thinking to commit the crime regardless. If so, what remains the point of having capital punishment other than to appease the public?

CHAPTER - II

1. CAPITAL PUNISHMENT: PRIMITIVE TO MODERN DAY INDIA

1.1. Historical development

India has been the land of philosophical viewpoints pertaining to the principles against inhumane acts, stemming from the ideals of Buddha and Mahavira, which surround the proposition of compassion; opposing the idea of killing any living beings. The principles of non-violence (*Ahimsa*) being of the core belief to achieve spiritual purity and enlightenment, teaching all living beings goes through the cycle of *karma*, a form of divine justice wherein all actions have an equal reaction regardless of whether it is in present or of the past existence.

A systematic change occurred after the 2nd century - common era (CE), wherein social conduct dictated over the action of individuals; the principle of retributive justice came into existence. In the compilation of the Manusmriti and the Arthashastra, the principles of ahimsa and karma were interpreted by the lawmakers to justify capital punishment by shifting the focus from spiritual practice into a state-regulated social order, which was called *Dharma*. While the principle of ahimsa was idealised as a supreme virtue the interpretation of it, sought for the punishment of wrongdoers as a necessary form as to achieve a higher form of non-violence, that is to protect the many from the harm of a few individuals. Later on, karma was interpreted as the king's duty to act as the dispenser of ultimate justice. Kautilya, in his book Arthashastra, made note of the concept of Danda Niti (दण्ड नीति), a concept wherein he emphasised the use of force (danda) by a ruler to maintain order. The danda symbolised purification; thereby, the use of danda purified the state and individual against wrongdoing. ¹Using such force to balance justice by stating that punishment should be just, fair and more importantly, proportional to ensure balance. Manusmriti on the other hand mentions capital punishment explicitly that is to

¹ Radha Krishna Choudhary, Theory of punishment in ancient India, 701 (March 26th April 3, 1998)

be explicitly prescribed for offences such as theft, murder and treason. In the context that severe crime causes disruption in societal harmony as well as cosmic order which calls for harsher punishment to restore the lost balance.

During the 3rd century CE, *Garuda Purana* one of the 18 Mahapuranas, encompasses texts on the concept of death, afterlife (*Pretakhanda*), cosmology and Yoga, literature was additionally added in the following years. According to the *Garuda Purana* the modes of execution in the afterlife was of extreme depravity in varied levels based on the sins committed by Man, the punishments included 28 types of hells (*Narakha*) by *Yama* (God of Death) and his servants, *Yamadutas*. The executions described in the book is not of final death but a continuous agonised destructions of ones soul. One of the punishments included *Taptamurti*², were the individuals who committed sins are roasted in furnaces, these punishments were intended to inflict both mental and physical torture mirroring the pain caused by the sinners to other individuals in their lifetime on earth. The *Garuda Purana* can be seen as a psychological mindset of individuals in the 3rd century CE, the penalties outlined in the texts are heavily influenced by the societal practices of the period.

Much of the execution method in the medieval India involved impaling stakes, beheading, the use of animals etc. in the Tamil epic *Cilapathikaram* (The tale an of anklet) by *Ilango Adigal*, in the 6th century CE entails the story of Kovalan, the husband of Kannagi, is seen unjustly killed by beheading on the order of the Pandya king of Madurai. Gives an insight on the method of execution the Pandya dynasty (present day Tamil Nadu).

1.1.1. British Era

Before the arrival of the British, the execution styles in ancient and medieval in India were varied as observed in the previous chapter, where lands were divided into princely states, the execution were often public and designed to be brutal. After the colonisation of the British empire, particularly in the 18th and 19th century were characterised to be public was often characterised by theatrical displays of force used to instil fear in the minds of individuals to deter revolutionary uprisings. The most infamous methods involved were execution by shooting, and the Jallianwala Bagh massacre stands tall as an example of colonial brutality involving the method of public shooting resulted in estimated deaths of 379, some sources

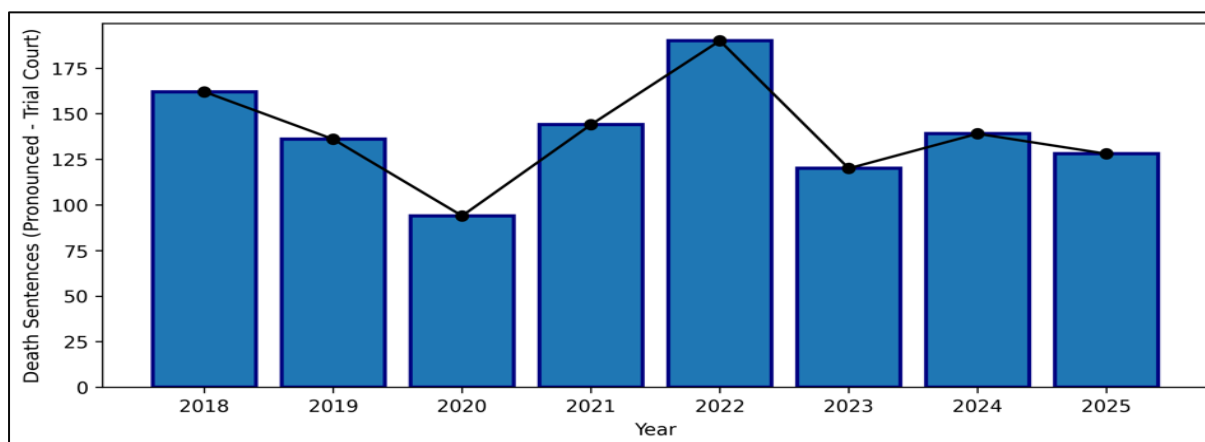
² Vigneshwar Bhat & Nimisha surendren, the *Garuda Purana*, Sacred Literature, Veda samskrita Acad.1(2022)

indicating even higher number of causalities. The British introduced hanging as a routine method of execution, often seen as a method of execution for freedom fighters such as Bhagat Singh, Khudiram Bose, Sukhdev.

1.1.2. Judicial independence post 1947

The constitution encompasses Right to life which is guaranteed to the citizens. Despite the drafters of the Constitution moving against the use of the death penalty, the constituent assembly retained the Indian Penal Code of 1861³, which allowed for capital punishment. Although right to life it includes the exception in the article itself “except according to procedure established by law” allowing the state to impose the death penalty in the occasion wherein the case classifies as “rarest of rare”. A landmark instance of judicial intervention post-independence was of *Mithu vs State of Punjab* ⁴wherein the Supreme Court of India struck down Section 303 of the Indian Penal Code ⁵as unconstitutional, thereby invalidating the mandatory imposition of death sentences on individuals convicted of murder while serving a life term.

In the data published by the National Crime Records Bureau (hereinafter NCRB) indicates a consistent downward trajectory in the number of capital punishment awarded to an individual by an Indian court over the recent years. Specifically, the total number of death sentences awarded declined from 162 in 2018 to 136 in 2019, falling further to 94 in 2020 but in its report the NCRB accounted in the year following 2020 they have been a steady increase in the capital punishments awarded in sessions courts from 2021 to 2025⁶, increasing the numbers of death row inmates.



³ Indian penal code, No.45 of 1860

⁴ *Mithu vs state of Punjab*, 1983 AIR 473

⁵ Section 303, Indian Penal Code, 1860

⁶ National Crime Records Bureau, Prison Statistics India 2025, Ministry of Home Affairs, Government of India

*Fig 1.1 – Trajectory of the individuals given - death sentence by the trial court in India*⁷

2. JURISPRUDENCE ON DEATH PENALTY: THE RAREST OF RARE DOCTRINE

2.1. Analysis on *Bachan Singh vs state of Punjab*

The Supreme Court in the case of *Bachan Singh vs State of Punjab* established a foundational framework for the imposition of capital punishment by stating the rarest of rare doctrine in its judgement⁸. This doctrine mandates a careful judicial assessment of both aggravating and mitigating factors prior to the pronouncement of the judgment. This decision of the court is widely characterised as a precedent referred to as the principled sentencing. Commonly the word principled sentencing is used to introduce a sense of rationality and consistency when it comes to pronouncing a judgment. Entirety of the case that right after the *Bachan* encompassed the principle of *Rarest of Rare*⁹ as a form of test. A critical inquiry that emerged in this context is whether the guidelines which were enumerated in the precedent is applied in the precise format.

A closer look of the *Bachan* case however reveals that the principled sentencing has progressively given away to more sentencing discretion up to the judge. Due to which the sentences that came subsequently was unstructured and inconsistent.

2.2. Sentencing discretion and judicial subjectivity

In the case of *Shankar Kisanrao Khade vs State of Maharashtra*, the supreme court of India while adjudicating the case which was an appeal concerning death penalty, articulated in the order the absence of a coherent and consistent statement in the framing guidelines on the grant of clemency and the award of capital punishment.¹⁰ The court observed that although the judiciary has been applying the principle of rarest of rare doctrine¹¹ as its standard for capital punishment; the executive has been exercising its commutation powers on the basis of consideration that remained undisclosed to the court. The court further pointed out in the case that the commutation and the sentencing must not be left for chances, rendering it inconsistent. The court further stated that the law commission must take up the matter to fix the ambiguity

⁷ NCRB Prisoners report 2018 - 2025

⁸ *Bachan Singh vs State of Punjab*, AIR 1980 SC 898.

⁹ *Id*

¹⁰ *Shankar Kisanrao Khade vs State of Maharashtra*, (2013) 5 SCC 546

¹¹ *Id* 20

of the precedents by examining whether the death penalty serves its deterrent nature. The nature of the sentencing must be such that the pith and substance behind a particular precedent must be studied in order to apply the same in the current judgement.

When such sentencing discretion is in the hands of several individuals, its bound to have consistencies. While having a checkbox system after hearing the arguments and the provided evidence, if the court is able to align with rules, fairly consistent judgment can be rendered. Considering the serious nature of the punishment, a greater need for consistency is required. In *Santa Singh vs State of Punjab*, the Supreme Court held that the provision for capital punishment is in accordance with the procedural requirement of contemporary penology. The court further elaborated that the proper means of sentencing is to necessitate comprehensive consideration which is relevant to the nature of facts.¹² Including the nature of the crime committed, the application of the rarest of rare test, whether the convict can be rehabilitated, age and social standing of the individual as well as the psychological and mental state of the accused are taken into consideration. Additionally, the court must emphasise on the potential deterrent effect of the judgement.

2.2.1. Rishi Malhotra – Guidelines for the Death Sentence

The case of *Rishi Malhotra*¹³ was brought before the court, sought to declare that the provision enshrined under Section 354(5) of the Code of Criminal Procedure¹⁴ to be held unconstitutional on the grounds that it was violative of the right to life and personal liberty enshrined under Article 21 of the Constitution, contrary to the authoritative pronouncement of the constitutional bench in *Gian Kaur vs State of Punjab*¹⁵. The petition further sought judicial recognition of the right to die by a *dignified and humane procedure* as a fundamental right enforceable under Article 21 of the constitution of India. It was submitted before the court that the process of execution by hanging is excruciatingly long (est. 40 mins) before death can be conclusively certified during which the convicts defecate, cause severe neck trauma, whereas execution by firing squad or lethal injection in contrast is completed within a significantly shorter duration of time.

Death by hanging “*till the person is dead*” constitutes a mode of execution that is not merely

¹² *Santa Singh vs State of Punjab*, (1976) 4 SCC 190

¹³ *Rishi Malhotra vs State (Nct) Of Delhi & Ors*, (2017) 16 SCC 767

¹⁴ Section 354(5), Code of Criminal Procedure, 1973

¹⁵ *Smt. Gian Kaur vs State of Punjab*, 1996 SCC (2) 648

barbaric and inhumane, but also stands in contravention of the United Nations Economic and Social Council, which expressly stipulates that where capital punishment is carried out it must be administered in a manner that inflicts the minimum possible suffering upon the convict.

In *Rishi Malhotra* the court held that a legislative provision that was constitutionally valid at a earlier point may subsequently be rendered unconstitutional based on the new scientific advancement¹⁶. The court also considered that a demonstrable shift in prevailing societal values can be a reason for the change. The court further acknowledged the force of the argument that even a person condemned to death retains the right not to be subjected to unnecessary pain or suffering in the course of execution. The legislature is at liberty to consider and adopt an alternative mode of execution that would condemn the convict to an alternate mode of execution.

2.3. Inconsistencies and arbitrary application

2.3.1. IN RE: Framing Guidelines regarding potential mitigating circumstances to be considered while imposing death penalty

The denial of an adequate hearing constitutes sufficient grounds for the commutation of a death sentence to life imprisonment. This gives rise to a question, what are the mitigating circumstances for commutation of death penalty? This question is answered in the Supreme Court initiative *In Re: Framing Guidelines regarding potential mitigating circumstances to be considered while imposing death penalty*¹⁷ where the court seeks to establish a uniform guideline for evaluating the mitigating circumstances surrounding death sentences. This uniform guideline would seek to prevent arbitrary death sentences.

Previously in the judgement in *Dattaraya vs State of Maharashtra* gave rise to a series of questions including, on what basis can the imposition of death penalty be justified and whether such judicial directions operate with retrospective effect, thereby extending their applicability to all individuals presently confined on death row¹⁸. A significant jurisdictional development followed in the case of *Manoj vs State of Madhya Pradesh*¹⁹, wherein the supreme court

¹⁶ Id 25

¹⁷ In Re: Framing Guidelines regarding potential mitigating circumstances to be considered while imposing death penalty, (Suo Motu Writ petition (Crl.) No. 1/2022)

¹⁸ Dattatraya vs State of Maharashtra, 1975 (1) SCWR 617

¹⁹ Manoj vs State of Madhya Pradesh, (2023) 2 SCC 353

endeavoured to introduce more clarity in the sentencing framework. Acknowledging the persistent uncertainty regarding the *Bachan Singh* case²⁰. Here the court expressed its concern that notwithstanding the passage of over four decades since the landmark ruling, that is almost 42 years there has been virtually no evaluation of the mitigating circumstances for the courts consideration.

The critical importance of these directives is further evident in the systematic deficiencies in the sentencing of trial courts. An analysis spanning the period from 2000 to 2014 disclosed that approximately 1,500 death sentences were pronounced and a mere 5% of the prisoners remained on the death row after commutation and acquittal by the High Court and Supreme Court. Compounding these concerns is the empirical study conducted by Project 39A – *Deathworthy* which revealed that more than 60% of the 88 death row prisoners surveyed were found to be suffering from a diagnosed mental illness²¹.

It is imperative to formulate practical principles for the adoption and implementation of such guidelines, especially in the trial courts. Between 2016 and 2025 the High Courts and Supreme Court have commuted 411 prisoners and have acquitted 285 individuals. In the year 2025, for the third consecutive year, the Supreme Court confirmed no death penalty for any prisoners and in fact, acquitted 10 prisoners facing the death penalty²². In fact, the High Court has confirmed only 8.31% of the cases involving the death penalty, with an acquittal rate of 34.65% over the decade.

2.3.2. Fallibility in Death Penalty

When the foundation itself is cracked, the structure built on the same may collapse over time. The same principle when applied to legal principles like the rarest of rare doctrine are applied inconsistently leading to incoherence in death penalty sentencing. In *Prajeet Kumar Singh vs State of Bihar*, the Supreme Court undertook a more precise circumstance that would qualify a case as falling within the ‘rarest of rare’ category²³. The court held that in order to attract the death penalty, the commission of the murder must be of such a character as to provoke an exceptional sense of moral outrage within society. The decision in *Amrit Singh vs State of*

²⁰ Id 20

²¹ Project 39A, National Law University Delhi, *Deathworthy: A mental perspective of the Delhi Penalty* (2016)

²² Id 19

²³ *Prajeet Kumar Singh vs State of Bihar*, 2008 ALL MR (Cri) 1390 (SC)

*Punjab*²⁴ further illustrates the case, involved the brutal assault and murder, leading to the conviction of the accused under Section 302 of the Indian Penal Code²⁵ and the imposition of the death sentence by both the trial court and the High Court. However, on appeal the supreme court held that the death of the victim was not the product of premeditated intent and accordingly set aside the capital sentence notwithstanding the extreme gravity of the sexual violence.

The Supreme Court reaffirmed that by virtue of its status as the most extreme sanction available within the criminal justice system. The imposition of death penalty must be governed by sentencing procedures that conform rigorously in the case *Santosh Kumar Satishbhusan Bariyar vs State of Maharashtra*²⁶. The court further emphasised that in every death sentence, the threshold of the 'rarest of rare' test is constitutionally informed by Article 14 and 21.²⁷

2.3.2.1. Trial Inconsistency: The Dhananjoy Chatterjee paradox

In order for the court to convict an individual for a criminal offence certain factors need to be considered; it should prove without reasonable doubt that the perpetrator has committed the crime. The adjudicatory framework goes another step when it comes to death penalty, wherein the crime that occurred must be of such depraved nature that there will be no room for rehabilitation for the offender. Even the slightest amount of doubt operating in the favour of the accused culpability, such as the absence of Mens Rea would be sufficient enough to prevent the death penalty. Such was seen in the case of *Raja Ram vs State of Bihar* case wherein the accused was found responsible for six murders. Notwithstanding the gravity of the offence the Supreme Court commuted the sentence to life imprisonment, primarily on the account of a single event that the sole eyewitness was a nine-year-old child having²⁸. Here the court went a further step from the evidence and found mitigating circumstances as to commute the death penalty to a life imprisonment.

The *Dhananjoy Chatterjee*²⁹ case has gripped society and holds a significant position in the discourse surrounding capital punishment. On 5th march 1990 the victim was left alone in the

²⁴ Amrit Singh vs State of Punjab, (2007) 1 SCC (Cri) 41

²⁵ Section 302, Indian Penal Code of 1860

²⁶ Santosh Kumar Satishbhusan Bariyar vs State of Maharashtra, (2009) 6 SCC 498

²⁷ Chapter III, Constitution of India

²⁸ Raja Ram Yadav and Ors vs State of Bihar, (1996) 9 SCC 287

²⁹ Dhananjoy Chatterjee alias dhana vs State of West Bengal, 2004 AIR SCW 3051

family's flat during the afternoon hours, as was customary the mother of the victim returned back to the flat from the temple, upon her return in the evening she was informed by the lift operator that the accused had visited the apartment to make a telephone call. The victim's mother, after reaching the door of the house, knocked on the door, but receiving no response. The door was then forcibly opened and the body of the victim was found lying on the floor, deceased. The accused in this case was a security guard of the flat where the victim resided in and was transferred to work on another flat on the same day, but he continued to remain in duty in violation of the order of his superior, the accused in the afternoon on the same day told the other security guard that the telephone is not working and that he will be going up to the house of the victim to use her telephone. When the supervisor subsequently visited the premise was informed of the action of the accused, took a few steps back from the premise and called out to the accused (who was allegedly inside the flat of the victim), the accused appeared in the balcony of the victims apartment, and stated personal reasons for his non-compliance. Medical examination of the victim was performed that led to a declaration that she had been subjected to rape and murder. The court found *Dhananjay Chatterjee*, the accused guilty based on the mounting circumstantial evidence and gave the death penalty. He was hanged in 2004 at Kolkata's Alipore jail³⁰.

Subsequently, the case was revisited which revealed substantial evidentiary issues that casted considerable doubt upon the reliability of the judicial finding. With respect to the rape charges, the forensic evidence was far from conclusive. The post mortem report established that the deceased was raped due to hymen tears and the presence of semen on the undergarments. Crucially however there were no indication of genital injuries with no signs which is evident to rape or forcible sexual assault. The medical expert who testified it was rape, subsequently stated that he influenced by the police characterisation of the incident as rape, thereby undermining the independence of the expert opinion. Further no fingerprints of the accused were recovered from within the apartment or from the body of the victim. Additionally, the eyewitness who claimed to have spoken to the accused from the balcony lacked credibility as the balcony was not physically visible from the vantage point of the eyewitness.

The integrity of the verdict in *Dhananjay Chatterjee's* case has been subjected to sustained critical scrutiny by legal practitioners.³¹ The evidentiary foundation upon which the ultimate

³⁰ Id

³¹ Id

penalty was imposed thus gave rise to concerns about the adequacy of the safeguards available to accused persons in proceedings in which the judicial errors cannot be changed. This case shed light on the broader systematic vulnerability of capital punishment and the irreversible nature of the punishment.

2.3.3. Potential gender discrimination for Capital punishment

As per the recent crime statistics published by the NCRB of the 571 death row inmates, 21 one is women, scattered across all the Indian states. The majority of which are from Uttar Pradesh accounting for up to 9 women in death row, followed by states like Kerala, Chhattisgarh, Bihar and Punjab.³² Notwithstanding the documented presence of aggravating circumstances sufficient to satisfy the threshold of the rarest of rare doctrine. The imposition and execution of capital punishment upon women have remained a conspicuously rare occurrence within the Indian criminal justice system, raising questions of uniformity with the sentencing framework.

A particularly illustrative case is that in regards to *Ram Shri*, who was sentenced to death in the year 1997 for the murder of four family members committed in 1989³³. Her execution initially scheduled on the 6th of April 1998 at Mathura in Uttar Pradesh, attracted nationwide attention owing to her pregnancy and the fact that she was a mother of an eighteen-month-old child. The case came to prominence largely due to media intervention prompting several organisations to advocate on her behalf. The Supreme Court of India in August 1998 ultimately commuted her death sentence to life imprisonment. The court also observed the follow

*“It seems, there was initially no move to approach this Court for some time after the pronouncement of the judgment by the High Court in appeal. But the print media flashed the news that Ramshree (mother of the suckling child) was facing execution of the capital sentence. Some organisations came forward taking up her cause. However, in the meanwhile appellants filed the special leave petition and leave was granted by this Court. Execution of the death sentence was stayed.”*³⁴

However, the disparity of the judgement is evident in its pronouncement; *Ram Shri* had wielded the weapon alongside her husband and father in the commission of the offences that resulted

³² NCRB Prisoners report 2018 - 2025

³³ State of Uttar Pradesh vs Ramshree and ors, AIR 1998 SC 49

³⁴ Panchhi and others, national commission for women vs. Respondent: state of up and others, AIR 1998 SC 2981

in the deaths of the family members, yet she along among the three accused was granted commutation of the death sentence to life imprisonment. This differential outcome invites critical reflection on whether there was a mitigating circumstance to warrant commutation.

3. UNDERSTANDING THE DEATH ROW PHENOMENON

The Constitution of India expressly vests in convicted persons the right to appeal their judgment, or the right to file a mercy plea. Such a mercy plea is within the discretion of the president and governor, and they are constitutionally obligated to give consideration to such petitions and to act upon them without undue delay. This prolonged pendency of the mercy petition, left unaddressed for inordinate delay for extended period of time, reflects an institutional failure on the part of the executive to discharge its constitutional mandate.

The psychological anguish faced by the convicted persons due to the prolonged uncertainty upon a pending death sentence has been recognised in the legal context as the “Death row phenomenon”. Even in cases where the condemned individual is subsequently commuted the psychological trauma endured during the period of uncertainty on death row remains a grave consequence of prolonged inaction.

3.1. Psychological and sociolinguistic reasoning

3.1.1. Does Capital punishment deter individuals from committing heinous crimes?

A significant lacuna in the area of law is the absence of framework for capital punishment and the absence of conclusive research demonstrated that the death penalty operates as an effective deterrent against the commission of heinous offences. In *Charles Sobraj vs The Superintendent Central Jail, Tihar New Delhi*³⁵ the Supreme Court of India reiterated that deterrence both specific and general constituting one of the foundational considerations informing the philosophy of punishment, alongside rehabilitation. A contrasting position was advanced in the case of *Furman vs Georgia* where Justice Stewart expressed the view that the death penalty serves a dual purpose of deterrence and retribution. In his assessment the justice stated that certain crime is extremely depraved that no amount of rehabilitation is going to help change the hard-set mindset of the criminal, removing any potential chance of rehabilitation. Notwithstanding the absence of conclusive empirical validation, only the penalty is capable of

³⁵ Charles Sobraj v The Superintendent Central Jail, Tihar New Delhi, 1978 SCC (CRI) 542

delivering the maximum deterrent effect in such cases.

Notwithstanding these judicial observations, capital punishment has increasingly been characterised contemporarily as costly and deeply divisive. The retention demands justification in terms societal benefits. The empirical evidence shown in countries such as United States of America and the Canada reveals no statistically significant correlation between the existence of the death penalty and measurable reduction in serious crime. The frequently used theory of retentionist states that the removal of the death penalty will cause an increase in rates of crime is unsupported. On the contrary there have been studies conducted by scholars which reveal that the death penalty and the retention can cause a brutalising effect on the society and such state sanctioned killing, rather than reducing violence perpetuate broader culture of violence.

The limitation of the deterrence theory can be seen in the case of *Mukhesh & ANR vs State for NCT of Delhi & Ors*³⁶, arising from one of the most heinous crime of such intense torture and brutalising of a young women in the Union Territory of Delhi garnering widespread international attendance. Here four men received death penalty and their execution was carried out in 2020. Notwithstanding the imposition of death penalty, the case did not produce any discernible reduction in crime rate. The observation draws attention to a well-established principle, that deterrence alone is not enough but the certainty and swiftness of its application.

The death sentence while reserved for circumstances that consist of extreme depravity including murders committed with cold bloodedness with an exceptional amount of barbarity and considered in light of the mitigating factors, has nonetheless failed to produce the deterrent outcome that it claimed.

3.2. Death Penalty for honour killings? Does it prevent it

Even in cases of Honour killing, death penalty is given. But is it a effective deterrent? Death penalty is not an effective deterrent for honour killings; such acts are rarely premeditated crimes of passion based on calculated risks. Rather they are typically vied by perpetrators as necessary actions to restore family's honour. The root cause of which is embedded in patriarchal systems were a women is solely responsible for the honour of her family. Legal punishments rarely fail to change these deep-seated cultural beliefs. It can be observed from

³⁶ Mukesh & ANR vs State for NCT of Delhi & Ors, (2017) 6 SCC 1

various cases including the *Udumalpet Honour Killing*³⁷, *Manoj and Babli case*³⁸, *Mettupalayam honour killing* etc were few case wherein death penalty was awarded.

3.3. If hanging is barbaric in public, how is it justified in private?

Article 21 of the Constitution of India which guarantees its citizens the right to life and livelihood, does not operate as an absolute prohibition upon the execution of the death sentence. The protective ambit of the article is confined to carrying out the capital punishment in a manner that is cruel and barbarous, degrading in nature. The execution of a lawfully imposed judicial sentence that does not in absolute terms constitute an unlawful act, provided that it is carried out in accordance with the procedure established by law. In this regard the method of execution which is prescribed under Section 354(5) of the Code of Criminal Procedure³⁹ namely, execution by hanging that has been held to be consistent with the constitutional guarantees enshrined in Article 21⁴⁰ and does not in the considered view of the courts amount to a violation thereof. The judicial assessment on the mode of execution proceeds on the basis of hanging, which to the court in several cases the court stated to be as the lesser barbaric way of killing an individual that is guaranteed to achieve the object. But science has advanced, and such contention stands refuted. The execution inherent in any other known and recognised method of execution does not involve any element of degradation compared to hanging. It bears emphasis however that this constitutional permissibility is not without merits. The court has unequivocally held that the execution of the death sentence in a public setting before an audience of onlookers would transgress the boundaries of Article 21 and constitute a violation of the constitutional right to dignity, thereby rendering public execution to be impermissible under the Indian constitutional framework.

3.4. Socio-economic profile of death row prisoners

There exists an intersection between socio-economic inequality and capital punishment in India, which has been the subject of grave concern among legal rights practitioners. In an interview recorded to amnesty International on 17th April, 2013, Justice A P Shah, the then chairman of the Law commission of India, observed that the imposition of the death penalty in India operates with a pronounced and disproportionate impact upon the poor and the

³⁷ State by inspector of police vs Chinnasamy & Ors, Crl. Appeal 550 of 2003

³⁸ State of Haryana vs Gangaraj and Ors, Crl. Appeal no. 479 of 2010

³⁹ Section 354, code of criminal procedure, 1973

⁴⁰ Art. 21, Constitution of India 1950

marginalised, who are vulnerable to the effects of class bias within the justice system. This observation exposes a structural issue, while economically disadvantaged persons frequently lack the resources to effectively cross examine witnesses, individuals of a higher economic standing have such social influence and are capable of subverting the investigation process by intimidation such as the infamous *Jessica Lal* case⁴¹. The empirical dimensions of this inequality are corroborated by the findings of the death penalty India report, which established that approximately 74.1% of individuals on death row in India belong to the economically weaker section of society.

The structural vulnerability of the justice system is influenced by the power and privilege is illustrated in the cases of *Priyadarshini Mattoo*⁴² and *Shivani Bhatnagar*. In the case of *Priyadarshini Mattoo* the victim had been subjected to sustained and persistent harassment at the hands of the accused, in response to which she filed various complaints to the police officer, but by reason of the accused being the son of an IPS officer was found to have wielded his official position and institutional influence to systematically compromise the integrity of the investigation. The court in its judicial pronouncement, explicitly recorded its finding that the investigation was directly attributed to the influence exercised by the accused's father.

3.4.1. Need for Fair Trial

The cases of *Ram Deo Chauhan* of Assam⁴³ and *Ankush Maruti Shinde*⁴⁴ serves as deeply troubling illustration of the grave consequences that may ensue from the failure of defence counsel to place material and potentially determinative facts before the court in capital proceedings. In *Ram Deo Chauhan's* case, wherein the accused was represented by an amicus curiae before the Supreme Court, while considering the review petition candidly acknowledged that at the time it upheld the death sentence on 31st July 2000.⁴⁵ The omission attributed to the apparent failure of counsel to advance the issue as a ground.

The case of *Ankush Maruti Shinde of Maharashtra*, the Supreme Court upheld his death sentence on 30th April 2009 without the question of juvenility having been raised before it, notwithstanding the existence of evidence establishing that the accused was a juvenile at the

⁴¹ Sidhartha Vashisht @ Manu Sharma vs State (NCT of Delhi), (2010) 6 SCC 1

⁴² State (CBI) vs Santosh Kumar Singh, 2007 CRILJ 964

⁴³ Ram Deo Chauhan @ Raj Nath vs State of Assam, (2000) 7 SCC 455

⁴⁴ Ankush maruti shinde v. state of Maharashtra, AIR 2019 SC 1457

⁴⁵ Id 55

time of the commission of the offence⁴⁶. It was not until July 2012, more than three years after the confirmation of the death sentence by the High Court, that the additional sessions court at Nashik formally recorded a finding that the accused was in fact a juvenile at the time of the commission of the offence. Had such a fact been brought during the initial proceeding the sentencing would have been different.

4. CLEMENCY, DELAY AND EXECUTIVE DISCRETION

These concerns were formally addressed by the Supreme Court in *Shatrughan Chauhan vs Union of India*, wherein the court commuted the death sentences of fifteen convicts to life imprisonment holding that inordinate and unexplained delays in the execution of capital sentences constitute a form of severe mental and physical suffering, thereby warranting commutation as a matter of necessity.⁴⁷

4.1. Mercy plea – constitutional power

A constitutional bench in the case of *Manu Ram*⁴⁸ established that the power vested in the president under Article 72 of the Constitution is exercisable solely on the advice of the Council of Ministers and is binding on the head of state. Importantly, Article 72 becomes operative only upon final confirmation of conviction and capital punishment by the Supreme Court, indicating that the grounds for clemency are conceptually distinct. The Law Commission of India 2015 report on the death penalty observed that condemned prisoners endure extensive delays across trial proceedings and then clemency procedures. Throughout this period the report, prisoners on death row experience acute psychological distress manifesting as extreme anxiety, arising from the prospect of an imminent yet uncertain execution.

4.1.1. Case laws on commutation and Delay

The supreme court of India has, across series of significant judgements affirmed that undue delay in the disposal of mercy petitions constitutes a grave infringement of the fundamental human rights of condemned prisoners. In *Shatrughan Chauhan vs Union of India*⁴⁹, the supreme court held that the executive is under a constitutional obligation to consider mercy

⁴⁶ Id 56

⁴⁷ *Shatrughan Chauhan & Anr vs Union of India & Ors*, (2014) 3 SCC 1

⁴⁸ *State of Rajasthan vs Kheraj Ram*, 1981 SCR (3) 195

⁴⁹ Id 59

petitions within a reasonable timeframe and that inordinate unexplained delay in doing so amounts to torture thereby violating both domestic and international legal standards. The court further issued comprehensive procedural guidelines governing the clemency process, stipulating that convicted individuals are entitled to legal assistance in preparing challenges to the clemency proceeding must be formally notified in writing of the outcome of their petitions and does not receive regular mental health assessments.

An earlier and equally significant pronouncement on this issue was rendered in *Triveniben vs State of Gujarat*⁵⁰, wherein the court was called upon to determine whether undue delay in executing a capital sentence amounts to a violation of the convicts human rights and whether such delay may indeed justify judicial commutation. The court clarified that delay constitutes one relevant factor among several rather than an independent in isolation.

5. INTERNATIONAL COVENANT AND UNITED NATIONS STANDARDS.

The United Nations General Assembly through resolution 62/149 adopted on 18 December 2007, called upon retentionist states to establish a worldwide moratorium on executions as a pioneer to the eventual abolition of capital punishment. This resolution reflects the culmination of a decade long evolution within the international legal order concerning the permissibility and continued application of the death penalty.

The foundational instruments of the post war international human rights framework laid the conceptual groundwork for this position. The charter of the United Nations (UN), while not addressing capital punishment expressly affirmed the value of human rights. Building upon this foundation in the Universal Declaration of Human Rights enshrined under Articles 3 and 5. The drafting of the International Covenant on Civil and Political Rights (ICCPR) which commenced at the first session of the Commission of Human Rights in 1947 gave rise to two competing approaches toward capital punishment. The abolitionist position, though supported in principle was ultimately deemed impractical as a blanket prohibition risked deterring ratification by numerous states. The restrictionist approach therefore prevailed and Article 6 of the ICCPR, as adopted by the general assembly through resolution 2200A (XXI) of 16 December 1966, affirmed the inherent right to life, prohibited arbitrary deprivation thereof and confined the permissible use of the death penalty to only “the most serious crimes” while

⁵⁰ *Triveniben vs State of Gujarat*, 1989 AIR 1335

encouraging eventual abolition.

Parallel to the drafting of the ICCPR, the UN undertook a substantive empirical inquiry into the justifications for capital punishment. Pursuant to General Assembly Resolution 1396 (XIV) of 1959, resulted in the landmark report by French jurist Marc Ancel on capital punishment was issued. The report offered what it described as a cautious but significant finding that the deterrent effect of capital punishment had not been empirically demonstrated. This conclusion was corroborated not only by abolitionist states but also by several retentionist ones. The Economic and Social Council in resolution 934 (XXXV) of 9th April 1963, consequently urged member states to critically reassess the deterrent efficacy of the death penalty and to remove it from their legal frameworks where it was not.

Subsequently reports further reinforced this trajectory. A report prepared by Norval Morris covering developments between 1961 and 1965 observed a consistent global movement toward legislative abolition and found that the elimination of capital punishment bore no discernible impact on homicidal rates. By 1971, the secretary General's report to the Economic and Social Council confirmed the most states were progressively narrowing the range of offences attracting the death penalty with some having abolished it entirely. General Assembly resolution 2857 of 20th December 1971 formally affirmed the objective of progressively restricting capital offence with a view to eventual universal abolition, a position subsequently reaffirmed by Resolution 32/61 of 8th December 1977.