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# **RATIONAL OF DEATH PENALTY: A CONSTITUTIONAL ANALYSIS**

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## **ABSTRACT**

Death penalty has been a mode of punishment from time immemorial which is practiced for eliminating of criminals and is used as the punishment for heinous crimes. Indian Criminal jurisprudence is primarily based on a mixture of deterrent and reformatory theories of punishment. While the punishments are to be imposed to create deter amongst the offenders, the offenders are additionally to be given chance for reformation. There has been numerous opinion related to the dying penalty as some are in the favour of the retention of the punishment whilst others are in the favour of its abolishment.

## INTRODUCTION

Death penalty, is a government sanctioned practice whereby a person is put to death by the state as a punishment for a crime. It is a highly debated issue worldwide. Every modern society has its paragon and. Protagonists. The death penalty has been a staple in the justice system of India since its inception. Though very controversial, it has stood the test of time as the ultimate punishment. However many countries are currently abolishing their death penalty practice. India, on the other hand, awards death penalty to victims in rarest of the rare cases. The 'rarest of rare' standard has at its core the conception of the death penalty as a sentence that is unique in its absolute denunciation of life. Death sentences in our country largely came into effect by the kings who were thinking their enemies should be killed and also it should be lawful. These became profusely large with the Mughals when they came to power. The British also went to the extent of giving this punishment to conserve their position. As of now there are 22 legislations and acts which mention death penalty in their penal clause. The Indian Penal Code 1860, having 11 offences defined in various sections in which death penalty can be awarded. In Toto, at present, there are 61 offences for which death penalty can be awarded. In the past Law Commission's conclusions in the<sup>1</sup> 35th Report rejecting the abolition of capital punishment were linked to the "conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country. However the constitution of India guarantees to every person a fundamental right to life subject to its deprivation by the procedure established by law, it has been argued by abolitionists that sentence of death in the present form violates the citizen's right to life. There are numerous legal luminaries who argue that the very fact that the death penalty is retained in Indian criminal statutes runs counter to one's right to life. Henceforth it is a very debatable issue as of now in India.

**ORIGIN AND EVOLUTION OF DEATH PENALTY:** The origin of death penalty lays back to 18<sup>th</sup> century to the code of King Hammurabi, Babylon, where the king codified the death penalty for 25 crimes. The death penalty is also considered as a part of 14<sup>th</sup> century B.C Hittite code, the B.C.'s Draconian Code of Athens in the 7<sup>th</sup> century, by which death was made the only punishment for all the crimes; and in the Fifth Century through the B.C.'s

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<sup>1</sup> The 35<sup>th</sup> law commission report 1967

Roman Law of the Twelve Tablets death sentences were directed to be carried out by such means as crucifixion, beating to death, burning alive and impalement etc.

In the Tenth Century A.D., hanging was considered the usual method of execution in Britain. In that century, King William the Conqueror would not allow anyone to be hanged or otherwise executed for any crime, except in times of war. However in the Sixteenth Century, under the kingship of Henry VIII, approximately 72,000 people are estimated to have been executed. Some common methods of execution as described in those times were boiling, burning at the stake, hanging, beheading, quartering etc. In India the concept of death penalty came into light in India through the case of *Jagmohan Singh vs. State of Uttar Pradesh*<sup>2</sup> In this case the appellant got convicted under Section 302,<sup>3</sup> Indian Penal Code 1860 and was sentenced to death. The apex court granted leave limited to the question of sentence. However, arguments were raised in regard to the constitutionality of the death penalty on the grounds that there was too wide discretion vested in the courts since no standards or guidelines were available there, and that it violated <sup>4</sup>Articles 14, <sup>5</sup>Article 19 and Article 21 of <sup>6</sup>the Constitution of India, 1950. The apex court held that the right to life is not a part of Article 19 and the death penalty could not be called unreasonable and opposed to public policy. The Court here also took notice of the 35th Report of the Law Commission of India which recommended retention of the capital punishment. It was held that the Article 14, of the Constitution of India, 1950 can hardly be invoked in matters of judicial discretion since the exercise of discretion in each case would be peculiar to its facts and circumstances. The discretion is given to courts to impose the death penalty after balancing the aggravating and mitigating circumstances and which cannot be called unguided. So this was the first Indian case which led to the embarkment of death penalty in India.

### **Effect and impact of death penalty on country's social economic strata**

The poor strata of people have higher chances to be penalized, There could be no greater indictment of the death penalty than the fact that in practice it is really a penalty for people from lower socio-economic groups. This turns it into a class-based form of discrimination in

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<sup>2</sup> *Jagmohan Singh vs. State of Uttar Pradesh* 1973(1)SC 20

<sup>3</sup> The Indian penal code 1860

<sup>4</sup> Article 14 of the Constitution of India 1950

<sup>5</sup> Article 19 of the constitution of India 1950

<sup>6</sup> Article 21 of the constitution of India 1950

the country. People living in poverty are disproportionately affected by the death penalty for many reasons such as being an easy target for the police, they cannot afford a lawyer, the free legal assistance they might receive is of low quality, procuring expert evidence is beyond their means, tracing witnesses is too costly, and access to appeals mostly depends on being able to afford extra counsel. Many cannot afford bail henceforth remain in custody before their trials, further hindering their efforts to prepare an effective defence. Meanwhile, migrants who find themselves caught up in the criminal justice system face multiple obstacles in effectively challenging charges made against them, including unfamiliarity with legal language and procedures, limited awareness of their rights, financial constraints, and the major lack of a supportive social network. They sometimes even face bias by judges, police officers and investigators, Which in higher probability can influence the verdict against them, and leave them at increased risk of receiving the death sentence. Women living in poverty are often at a severe disadvantage while facing the risk of a death sentence. In some States, women face the death penalty, including by stoning, not only in cases of murder, but also for alleged adultery, same sex-relationships and drug-related offences. women are prone to discrimination by intersecting factors, including their socio-economic status. This discrimination based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender violence, have an adverse impact on the ability of women to gain access to justice on an equal footing with men. Poverty continues to affect prisoners and their families – even after they reach death row. Living conditions are worsened by difficulties in accessing food, medical care and other services. Relatives who themselves live in poverty are unable to provide financial help. These inmates may even lack the resources to stay in touch with their families and friends while in prison. The same situation prevails for most the prisoners living in different parts of the country.

**Effect of Death Penalty given to terrorist:**

It is a majority's view that death penalty to the terrorists may not only be ineffective but can also be counterproductive. The terrorist when given the death penalty, are considered martyrs which influences many other misguided youngsters to sponsor and espouse a similar cause. Few religious fanatics also believe in reward after-life and boundless pleasures in heaven. Henceforth not awarding them the death penalty would lead depriving them of the anticipated rewards of the heaven. Also, imprisonment and incarceration of a terrorist can result in manifold of information relating to other terrorist organizations from them.

**Effects Of other Offences Punishable with Death penalty:** In its current form the death penalty fails to act as a deterrent. Hard core criminals never regret their acts whatever may be the punishment. Death is considered as a release, a freeing, not a punishment however Life is the punishment and the reward. The one who commits evil by evil design and action and is mentally conditioned to accept death or any other punishment henceforth no punishment is deterrent. Deterrence in such cases comes from failing the faulty indoctrination by knowledge infusion with the right doctrine and taking care of the prevailing mundane life.

**Legal and Constitutional aspects:**

In the present scenario as of now there are 22 legislations and acts which mentions death penalty in their penal clause. The Indian Penal Code 1860, is having 11 offences defined under various sections in which death penalty can be awarded. In total presently there are 61 offences for which death penalty can be awarded.

**Several legislations and act in which capital punishment are awarded**

*The Indian penal code, 1860- Section 120 B (1)*<sup>7</sup>

**BEING PARTY TO A CRIMINAL CONSPIRACY TO COMMIT AN OFFENCE**

Punishable With Death: Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

*The Indian penal code, 1860 Section 121*

**WAGING, OR ATTEMPTING TO WAGE WAR, OR ABETTING WAGING OF WAR, AGAINST THE GOVERNMENT OF INDIA:**

Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.

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<sup>7</sup> IPC section 120B(1)

**Indian penal code 1860 <sup>8</sup>,Section 132****ABETMENT OF MUTINY, IF MUTINY IS COMMITTED IN CONSEQUENCE THEREOF**

Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Beside these there are several other sections in the Indian penal code which advocates for death penalty as a punishment such as, <sup>9</sup>section 194, section 302, section 305 , section 307, section 376a, section 376e, section 376ab, section 376db etc.

*The explosive substance act , 1908*Section 3(b) - <sup>10</sup>Any person who unlawfully and maliciously causes by(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

**The Geneva Convention Act, 1960****Section 3:- PUNISHMENT OF GRAVE BREACHES OF CONVENTIONS.<sup>11</sup>**

If any person within or without India commits or attempts to commit, or abets or procures the commission by any other person of, grave breach of any of the Conventions he shall be punished -a. Where the offence involves the willful killing of a person protected by any of the Conventions, with death or with imprisonment for life b. In any other case, with imprisonment for a term which may extend to fourteen years. Sub- section (1) applies to persons regardless of their nationality or citizenship 3. For the purposes of this section -a. A grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention b. A grave

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<sup>8</sup> IPC section 132

<sup>9</sup> IPC section 194,302,304,307,376a,376e,376ab,376db

<sup>10</sup> The explosive substance act 1908

<sup>11</sup> The Geneva Convention act 1960

breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention c. A grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention d. A grave breach of the fourth Convention is a breach of that Convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention

Beside these acts there are several other acts which provides death penalty as a punishment for the offence done.

### **Law commission report on death penalty**

There have been several reports on the death penalty in India concluding on different varied facts. A few prominent reports have been discussed here:-

**(i) The 35th Report of Law Commission on Capital Punishment (1967):**<sup>12</sup> In its 35th Report on “Capital Punishment” in December 1962, which was presented in December 1967. The Commission undertook an extensive exercise to consider the issue of abolition of capital punishment from the statute books. Based on its analysis of the existing socio-economic, cultural structures (including education levels and crime rates) and the absence of any Indian empirical research to the contrary, it concluded that the death penalty should be retained.

**ii) The 187th Report on the Mode of Execution (2003):**<sup>13</sup> The Commission dealt with the issue of death penalty once more – in its 187th Report on the “Mode of Execution of Death Sentence and Incidental Matters” in 2003 .It only concentrate with a limited question on the modus operandi of execution and did not engage with the substantial question of the constitutionality and desirability of death penalty as a punishment.

**The Law commission 262<sup>nd</sup> report 2015 :-**<sup>14</sup> The Commission concluded after studying the issue extensively that the death penalty does not serve the penological goal of deterrence any more than life imprisonment. In fact it fails to achieve any constitutionally valid penological goals. The Law Commission also concluded that in focusing on death penalty as ultimate

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<sup>12</sup> The 35<sup>th</sup> law commission report 1967

<sup>13</sup> The 187<sup>th</sup> law commission report 2003

<sup>14</sup> The 262<sup>nd</sup> law commission report 2015

measure of justice to victims, the restorative and rehabilitative aspects of justice are lost sight of. It was also concluded that extremely uneven application of<sup>15</sup> *Bachan Singh* has given rise to a state of uncertainty in capital sentencing law which clearly falls foul of constitutional due process and equality principle. Therefore, the constitutional regulation of capital punishment attempted in *Bachan Singh* has failed to prevent death sentences from being arbitrary and freakishly imposed. And there exists no principled method to remove such arbitrariness from capital sentencing. The Commission recommended that it is essential that the State establish effective victim compensation schemes to rehabilitate victims of crime. At the same time, it is also essential that courts use the power granted to them under the Code of Criminal Procedure, 1973 to grant appropriate compensation to victims in suitable cases. The voices of victims and witnesses are often silenced by threats and other coercive techniques employed by powerful accused persons. Thus it is essential that a witness protection scheme is established also, the need for police reforms for better and more effective investigation and prosecution has also been universally felt for some time now and measures regarding the same need to be taken on a priority basis.

### **Change in statics:**

Changes in statistics: Nevertheless, education, general well-being, and social and economic conditions are vastly different today from those prevailing at the time of writing the 35th Report. For example, Per capita Net National Income at constant prices, based on the 2004-2005 series was Rs.1838.5 in 2011 - 2012, while it was Rs.191.9 in 1967-19686 Similarly, adult literacy was 24.02% in 19617 and 74.0% in 2018, and life expectancy (a product of nutrition, health care, etc.) was 47.1 years in 1965-1979 and 64.9 years in 2010 2015. The state of the country and its inhabitants has thus changed significantly. Further, the figures of homicide in India during the several years have not shown any marked decline. The rate of homicide per million of the population is considerably higher in India than in many of the countries where capital punishment has been abolished. Recent decline in the homicide rates: But contrary to it. Crime in India reports, published by the National Crime Records Bureau ('NCRB') under the aegis of the Ministry of Home Affairs, the homicide rate has been in continuous and uninterrupted declining . In 1992 it was 4.6 per lakh of population. As per the latest figures for 2013, the murder rate is 2.7 per lakh of population. After having fallen further from 2012, when it was 2.8.14 This reduction in the homicides rate has coincided with a

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<sup>15</sup> *Bacchan Singh vs. State of Punjab* 1980 ( SSC 684)



corresponding decline in the rate of executions, thus raising questions about whether the death penalty has any greater deterrent effect than life imprisonment. As on 31st December 2021, there were 488 prisoners on death row across India (a steep rise of nearly 21% from 2020), with Uttar Pradesh having the highest number at 86. This is the highest the death row population has been since 2004 as per the data from the Prison Statistics published by the National Crime Records Bureau.

**Constitutional due process standards :-** Post-1967, India has witnessed an expansion of the interpretation of Article 21 of the Constitution of India, reading into the right to dignity and substantive and due process. Most famously,<sup>16</sup> *Maneka Gandhi v Union of India*, held that the procedure prescribed by law has to be “fair, just and reasonable, not fanciful, oppressive or arbitrary.” Subsequently, in *Bachan Singh*, the Court observed that Section 354(3) of the CrPC, 1973, is part of the due process framework on the death penalty. The ‘rarest of rare’ standard has at its core the conception of the death penalty as a sentence that is unique in its absolute denunciation of life. As part of its concerns for human life and human dignity, and its recognition of the complete irrevocability of this punishment, the Court devised one of the most demanding and compelling standards in the law of crimes. The emergence of the ‘*rarest of rare*’ dictum when the “alternative option is unquestionably foreclosed” was very much the beginning of constitutional regulation of death penalty in India. In <sup>17</sup>*Shankar Kisanrao Khade v. State of Maharashtra* the apex court of India, while dealing with an appeal on the issue of death sentence, expressed its concern with the lack of a coherent and consistent purpose and basis for awarding death and granting clemency.

The Court specifically called for the intervention of the Law Commission of India on these two issues:-

Death penalty and its execution should not become a matter of uncertainty nor should converting a death sentence into imprisonment for life become a matter of chance.” “It does prima facie appear that two important organs of the State, that is, the judiciary and the executive are treating the life of convicts convicted of an offence punishable with death with different standards.” In another the court lamented on the lack of empirical research on this issue. However, it is important to consider the NCRB data on the number of death sentences awarded

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<sup>16</sup> *Maneka Gandhi v UOI* AIR 1978( SC 595)

<sup>17</sup> *Shankar Kisana rao Khade v. State of Maharashtra* AIR 2013

annually. On average, NCRB records that 129 persons are sentenced to death row every year, or roughly one person every third day. In another case, the Supreme Court, took note of these figures and stated that this number was “rather high” and appeared to suggest that the death penalty is being applied much more widely than was envisaged by Bachan Singh. In fact, as subsequent pages suggest, the Supreme Court itself has come to doubt the possibility of a principled and consistent implementation of the ‘rarest of rare’ doctrine.

### **Some recent political development:-**

Most recently, in August 2015, the Tripura Assembly voted in favour of a resolution seeking the abolition of the death penalty. Demands for the abolition of the death penalty have been made by the parties like CPI, [CPI (M)], [CPI (M-L)] VCK etc . A member of the CPI introduced a Private Member’s Bill asking the Government to declare a moratorium on death sentences pending the abolition of the death penalty. On August 2015, DMK Member of Parliament Kanimozhi introduced a private member’s bill in the Rajya Sabha seeking abolition of capital punishment.

These are some of the available data on political developments so far.

**Constitutional validity:-** In the case of <sup>18</sup>The Supreme Court held that the right to life was not a part of Article 19 and the death penalty could not be called unreasonable or opposed to public policy. The framers of the Constitution were aware of capital punishment as permissible under law which is evidenced by provisions like Article 72 (1) (c), Article 73 (3), Article 134 etc. The implication of these provisions is that the deprivation of life is constitutionally permissible if it is done according to the procedure established by law. The Court also took notice of the 35th Report of the Law Commission of India which recommended the retention of capital punishment. It was held that Article 14, Constitution of India, 1950 can hardly be invoked in matters of judicial discretion since the exercise of discretion in each case would be peculiar to its facts and circumstances. The discretion given to courts is to impose the death penalty after balancing the aggravating and mitigating circumstances and it cannot be called unguided. Further, the Code of Criminal Procedure, 1973, lays down detailed procedures as to when a death sentence can be imposed and the imposition of the death sentence, following the

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<sup>18</sup> Jagmohan Singh vs. state of Uttar Pradesh AIR 1970 (SCC 20)

procedure established by law, cannot be called unconstitutional.

Later in the case of *Rajendra Prasad vs. state of Uttar Pradesh* AIR 1979 SCC (646) <sup>19</sup>Supreme Court was dealing with the issue of sentencing discretion. It was stated that to hold that the discretion is ruled by well recognized principles alone is not sufficient. It must be further demarcated as to what these principles are so that the practice of the discretion does not militate against the mandate under Article 21, Constitution of India, 1950 of fair and nonarbitrary procedures. It was held that the special reasons for giving the death sentence cannot pertain only to the crime but must account for human rights and the fundamental freedoms given in the Constitution. The reasons must show why a life sentence would not suffice. Since taking life destroys the dignity of a person, the reasons must show why such a drastic step is justified; consequently, it can only be in exceptional circumstances that such a step must be taken. It was further held that the death sentence abrogates fundamental freedoms guaranteed under Article 19 of the Constitution of India, 1950 and therefore the exercise of the discretionary power to impose the death sentence must show that such a sentence is a reasonable restriction otherwise it would be violative of the Constitution. In a dissenting opinion, Justice Sen stated that it was constitutionally and legally impermissible for the Supreme Court while hearing an appeal on the question of sentence to restructure <sup>20</sup>Section 302 Indian Penal Code, 1860.

Now , in the landmark case of *Bachan Singh vs. State of Punjab*<sup>21</sup> The Constitution Bench affirmed the ruling in *Jagmohan Singh v. State of Uttar Pradesh* with some changes. It was observed that the scope and import of Articles 19 and 21 was expanded by the interpretation given to them in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248. India had also become a party to the International Covenant on Civil and Political Rights. The Court held that this fact had no impact on the constitutionality of death penalty as the Covenant did not outlaw death penalty. It was held that Article 19, Constitution of India, 1950 can be invoked only when one of the freedoms mentioned in it are infringed. Since the right to life is not a part of Article 19, it cannot be invoked to determine the constitutionality of Section 302, Indian Penal Code, 1860 which provides death penalty as an alternative punishment for murder. The death penalty cannot be called unconstitutional merely because it indirectly, incidentally or remotely affects the freedoms mentioned under Article 19, Constitution of India, 1950. The Court interpreted

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<sup>19</sup> *Rajendra Prasad vs. state of Uttar Pradesh* AIR 1979 SCC (646)

<sup>20</sup> Section 302 IPC

<sup>21</sup> *Bachan Singh vs. State of Punjab* 1980 SCC 684

Article 21, Constitution of India, 1950 as expanded in *Maneka Gandhi v. Union of India* to state that the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. The Court analysed Sections 235 and 354, Code of Criminal Procedure, 1973 and came to the conclusion that Section 302, Indian Penal Code, 1860 was not violative of Article 21, Constitution of India, 1950. In answering whether the death penalty serves any penological purpose, the Court held that it would not be right to decide the issue judicially since it was a highly contested debate with strong divergent views on both sides. The Court clarified *Jagmohan v. State of Uttar Pradesh* and held that the mandatory requirement of a pre-sentencing hearing introduced in the Code of Criminal Procedure, 1973 made it necessary not only to consider the circumstances of the crime but also that of the criminal. In a dissenting opinion, reported as *Bachan Singh v. State of Punjab* (1982) 3 SCC 24, Justice Bhagwati stated that the imposition of the death penalty as an alternative to life imprisonment under Section 302 Indian Penal Code, 1860 was unconstitutional as it conferred unfettered discretion on courts to choose between the death penalty and life imprisonment. In the case of *The Supreme Court* held that the mandate of<sup>22</sup> Articles 14 and 21, Constitution of India, 1950 is that every procedure established under law must be fair, just and non-arbitrary. There is no rationale for drawing a distinction between a person who commits murder and a person who commits murder while serving a life sentence so as to make the death sentence mandatory for the latter class. It would be a savage punishment to impose a mandatory death sentence on a category of persons on an assumption that life convicts are dangerous per se. A standardized mandatory sentence of death deprives courts of the exercise of its discretion and is, therefore, harsh, unjust and unfair. Section 303 Indian Penal Code, 1860 was struck down as being unconstitutional.

In the case of *Chhannulal Verma v. State of Chattisgarh*<sup>23</sup> Conviction of the appellant was confirmed and the sentence was commuted to life imprisonment taking into consideration the possibility of reform and rehabilitation of the appellant that was evidenced by his good conduct in prison. On the issue of the future of the death penalty in India, Justice Kurian Joseph, in his dissent noticed that various benches have over a period of time expressed concerns regarding the inconsistent application of the principles laid down in *Bachan Singh v. Union of India*. Having regard to the 262nd Report of the Law Commission of India which stated that the constitutional regulation of capital punishment attempted in *Bachan Singh* has failed to prevent

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<sup>22</sup> Article 21 of the Indian constitution 1950

<sup>23</sup> *Chhannulal Verma v. State of Chattisgarh* (2019) 12 SCC 438

death sentences from being “arbitrarily and freakishly imposed” and that capital punishment has failed to achieve any constitutionally valid penological goals, Justice Joseph stated that the time had come to review the need for the death penalty as a punishment. The majority opinion on this point stated that there was no need to re-examine the constitutionality of the death penalty in light of the decision in *Bachan Singh*. Most recently in the case of *Indian Harm Reduction Network v. Union of India*<sup>24</sup> The Bombay High Court noted that Section 376 E did not create a new punishment of imprisonment for life as the Supreme Court has held that life imprisonment means imprisonment for the whole of the remaining period of the convicted person's natural life. It held that the term imprisonment for life used in Section 418 Code of Criminal Procedure, 1973 is to be understood to mean imprisonment till the remainder of one's natural life and hence, there is a mechanism in place to execute such a sentence. It found that therefore there is no violation of Article 21, Constitution of India, 1950 as there is a procedure for implementation and execution of the sentence of imprisonment for life, which means till the remainder of one's life, under Section 376 E, Indian Penal Code, 1860. It was held that a life convict has a constitutional right to apply for remission under Articles 72 and 161, Constitution of India, 1950 but has no unfettered statutory right to claim remission. The Court finally held that the background in which 376 E, Indian Penal Code, 1860 was enacted shows the concern of the Parliament for the safety and security of women and children and as such, cannot be dubbed as being either arbitrary or outrageously disproportionate or violative of<sup>25</sup> Articles 14 and 21, Constitution of India, 1950

## Conclusion

In India Capital Punishment plays an important role in the rarest of rare cases. If we find out ratio of the capital punishment in India, very few cases in which this sentence is granted. There are so many cases in which the Supreme Court converted capital punishment into life imprisonment. These grounds may be as under

1. It constitutes a cruel, inhuman and degrading punishment;
2. It is irrevocable;

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<sup>24</sup> *Indian Harm Reduction Network v. Union of India* 2011 SCC ( Bom 715)

<sup>25</sup> Article 21 of the Indian Constitution 1950

3. It is capable of being inflicted on the innocent;
4. It does not act as a deterrent to crime;
5. It is a violation of the right to life provisions of the Universal Declaration of Human Rights and other international covenants. Turning to the international situation, we find that the UN General Assembly has taken the official position that it is desirable to abolish the death penalty in all countries, that it should not be introduced for crimes to which it does not already apply, that the crimes to which it applies should be progressively reduced and that it should be employed only for the gravest of crimes. But a large number of UN member states including India have not respected this decision.

Many loopholes exist in the structure of the death penalty. The outcome of the case is decided by the quality of the lawyer defending the accused. Many criminals cannot afford a competent lawyer, resulting in a greater chance of that particular person being issued the death penalty, as opposed to life in prison. A fine line separates these two charges, and a defendant who can afford a competent lawyer stands less of a chance of being assigned the death penalty than one who cannot.