
RELEVANCY OF DEATH PENALTY IN MODERN LEGAL SYSTEM OF INDIA

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ABSTRACT

This research work aims to examine the relevancy of the death penalty in the modern legal system of India in context of the today's global trend towards abolishing death penalty. With around 3/4th of the nations around the globe abolishing it, growth of rehabilitative, reformatory, feminist jurisprudence, it is the high time to analyse its relevance in contemporary Indian society.

The work takes cognizance of the law commission of India's 35th and 262nd report. Further, arguments for and against retaining the capital punishment are also evaluated along with landmark precedents of the Apex court which include discussion of the Rarest of rare doctrine evolved in *Bachan Singh v. State of Punjab* (1980 (2) SCC 684) which was further elaborated in *Machhi Singh v. State of Punjab* (1983 (3) SCC 470), upholding the constitutionality of death penalty in *Jagmohan Singh v. State of UP* (1973 AIR 947) and trucking down of Section 303 IPC in the case of *Mithu Singh v. State of Punjab* (

1983) 2 SCC 277) etc. Further it deals with statutory provisions regarding death penalty which include the offences for which death penalty is prescribed in the Indian Penal Code 1860, special reasons to be attributed for imposing death sentence under Section 354(3) CrPC. The work also aims to highlight the issues and challenges in imposing death sentence in India and its probable remedies which can help eliminate those issues so that any innocent is not subjected to wrong executions.

1. INTRODUCTION

The basic idea behind putting sanction in a Criminal Justice System is to protect the society by punishing the Offenders deterring and in turn regulating the conduct of the Citizens by fear of being punished. Crime being inevitable in any society, there is a need to prescribe punishments for law breakers. Capital Punishment or Death sentence can be referred as one of the most-gravest form of punishment that is administered for certain serious or heinous Offences. In this punishment ultimately the life of the convict is taken away. It is worth mentioning here that it should be distinguished from other life taking acts that are non-Judicial as death sentence is executed only by procedure established by law and only after granting opportunity of fair trial and following principle of natural Justice to the convict. The act of carrying out the Death Sentence or penalty is referred as 'Execution'.

The relevance of the topic lies in the fact that now a lot of debate is going on over 'Abolition v. Retention of Death Penalty' in India. This is due to the advancement of the human rights Jurisprudence and growth of ideas such as, hate the 'Crime and not the Criminal', an accused or convict is also a human being, a convict should also get a chance of reformation etc, what can also be referred as reformatory aspect of sentencing or punishment. International community is also advocating for abolition of Death Penalty for instance the United Nations considers Death penalty as violation of human rights and it focussed more on reformatory aspect of punishment rather than the Deterrent theory.

2.1. Death Penalty in the Historical Context-

In Historical Context Death Penalty was given in Greece under the Draco laws for Offences of Treason, murder, rape and Arson in around 7th Century. Romans and other major religion of the world have incorporated Death Penalty in one or the other forms though the Offences for which it was given differed across nations. Plato has the view that Death Penalty should only be given for those Offenders who cannot be reformed. Some reference can be found in the Bible, which was referred by Christians in the extract "Whosoever Sheddeth man's blood, by man shall his blood be shed". There were certain that does not included loss of life of man but for those Offences as well Death Penalty was given such as Adultery or Blasphemy. It is to be noted that one cannot say that Death Penalty was followed strictly and rigour sly in these regimes as there are evidences that show that the King or Emperor substituted or commuted death punishment with alternatives such as deportation, compensation etc. There was deviation in Islamic law that don not favour death penalty except for certain Offences and interestingly murder was

considered as a civil crime for which punishment was to be decided by the relatives of the victim. In England in around 17th and 18th century the law prescribed Capital punishment for various Offences but the same was not executed strictly for all Offences and the Offenders used to escape the same either by getting pardon or agreeing on alternative terms.

Scrutiny of death penalty from historical perspective reveals that the manner of execution was inhumane and these were done in form of public events in which large crowd used to gather and after execution the bodies were left for exhibition till it degraded. Traces of deterrent theory can be clearly witnessed from this type of exhibition. However in the same light, the argument is advocated that when such public hangings or executions were carried on in England for Offences such as theft, the criminals used to commit theft on the crowd gathered there, which reveals that such public executions had no deterrence on other Offenders. Later with the advancement of time in 1868 public executions were banned in England and in 1939 in the United States and since then the debate of abolition of death penalty has gained momentum with the recent trend of majority nations abolishing the death penalty and those who have retained it for certain category of Offences and very few are those who still continue for ordinary Offences as well.

2.2. DEATH PENALTY AND THEORIES OF PUNISHMENT

Tracing historically, one can witness the barbaric practise of retribution by individuals themselves, that was 'an eye for an eye, a tooth for a tooth'. There was no such thing as state but with the advancement of time there came the idea of 'Social Contract' as retribution because in prior setup the mightier dominated all others. In Social Contract the individuals surrendered all their rights and powers to one person[Mightier authority] and it was that authority who was endowed with the responsibility of protecting other citizens and also to provide Justice. From here the idea of 'retribution' shifted towards that of 'deterrence' which aimed to instil fear in the minds of potential Offenders and due to that fear, they shall be restricted from committing Offences. This notion has now in the modern Jurisprudence has shifted to the reformative aspect in the sanction or sentencing procedure. In Reformative theory the object is to reform, rehabilitate the Offenders and ultimately restore them again in the society so that they can contribute positively to the Society.

However, it can also be noted that Modern Indian Jurisprudence can also be referred as a blend of 'Reformative and Deterrent theories of punishment'. The scheme of punishment can be understood in the manner that for certain serious or heinous offences punishment is given with

the object of deterring the criminals while in other cases with a view to reform the Criminals following the ideology of hate the 'Crime and not the criminal'.

In the case of **Rajendra Pralhadrao Wasnik v. State of Maharashtra**¹, the Apex court concluded that "the probability that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered courts before awarding death sentences."

3.1. Death Penalty and Statutory Position in India-

In India, Indian Penal Code 1860 and Code of Criminal Procedure 1973 constitute the primary Substantive and Procedural Criminal statutes. In the former basically Death Penalty is prescribed as a punishment in the Offence of-

- i. Section 120B-Punishment for Criminal Conspiracy.
- ii. Section 121- Waging War, attempting to wage war, abetting to wage war against the Government of India.
- iii. Section 132- Abetting mutiny in the armed forces.
- iv. Section 194- Giving or Fabricating false evidence with intent to procure a Conviction of a Capital Offence.
- v. Section 302- Punishment for Murder.
- vi. Section 305- Abetting Suicide of a minor.
- vii. Section 364A- Kidnapping In the course of which the victim was held for ransom or other coercive purpose.
- viii. Section 376-A- Rape of a Woman causing his death or in Permanent Vegetative State.
- ix. Section 376AB- Punishment for rape on woman under 12 years of Age.
- x. Section 376DB- Punishment for Gang Rape on women under 12 years of Age.
- xi. Section 396- Dacoity with Murder.

In connection to what has been suggested by the Law Commission in 262nd report of 2015 that Death Penalty should only be retained for **terrorism related and Waging war against the state**. It is to be pointed out that as aforesaid 'Section 121' IPC deals with Waging war against the state and with regard to terrorism related offence Section 3[b] of the Explosive substances [Amendment] Act 2001 deals with 'use of any explosive of a special category which is likely to endanger the live of people or to cause serious damage to property'. Along with this

¹ [2019] 12 SCC 460.

Unlawful Activities [Prevention] Act 1967 is primary statute dealing with terrorism related Offences and activities. Section 16 of the same act provides for 'Punishment for terrorist Act' and it provides death penalty as well If a person commits any terrorist act and that act has caused the death of any person.

3.2. PROCEDURAL ASPECT

There are certain serious offences in which Death Penalty has been provided along with life imprisonment as one of the punishments but after, the 1973 CrPC the general rule is that life imprisonment should be given but in case in the opinion of the Judge DP should be given to the convict then as per **Section 354[3]**, the Judge has to give special reasons for giving Death sentence. **Section 366 and 368** CrPC shall also be mentioned here. **Section 366** provides for 'Sentence of death to be submitted by court of Session for confirmation to the High court', it is because the court of session cannot execute a death sentence without confirmation of the High court. **Section 368** deals with the 'Power of High Court to confirm sentence or annul Conviction'. It is to be done by the High court when a death sentence is submitted to it by the Court of Session under Section 366.

3.3. Doctrine of 'Rarest of Rare'-

The notion that has developed in the last 50 years relating to administration of death penalty is that it should only be used in only exceptional circumstances and for exhibiting the true picture. Judicial pronouncements of India should be traced since independence. The first landmark case, **Bachan Singh v. State of Punjab**², in which the Apex court gave the 'rarest of rare' doctrine which meant that Death penalty shall only be given in rarest of rare cases where in the opinion of the court any other remedy cannot substitute Death penalty and in no others. The court also noted points on Mitigating and Aggravating Circumstances. These circumstances are to be considered by the Judge before giving death penalty to the accused. There has been a recent development regarding the 'rarest of rare' doctrine in 2022 in which **Justice UU Lalit** has in a series of death sentence cases held that "complete assistance to the court in such matters would necessitate production not just the evidence in the case but also the latest state of the mental health of the prisoner". Hence, it can be now be states that the Apex court has made psychological evaluation of the condemned prisoner mandatory. This doctrine was employed in the case of **Machhi Singh and Ors. v. State of Punjab**³ where this doctrine further evolved

² AIR 1980 SC 898.

³ 1983 AIR 957.

and the Apex court provided for certain considerations that has to be viewed by any court while giving death sentence and these were, “motive of the crime, manner of its commission, anti-social or socially abhorrent nature of the crime, magnitude of the crime, and personality of the victim of the murder”.

Ram Naresh and Ors. V. State of Chhattisgarh is another case in which the Apex court bifurcated the ‘rarest of rare’ doctrine in ‘Aggravating Circumstances and Mitigating circumstance’. In the case of **Ashok Debbarma Alias Achak Debbarma v. State of Tripura**⁴, the Apex court introduced the concept of ‘residual doubt’ with regard to sentencing of death penalty. It shall act as a mitigating factor. It will apply to cases where the guilt is proved ‘beyond reasonable doubt’ but not has been established with ‘absolute certainty’. Keeping in view the irreversible nature of the death penalty this concept has been evolved by the court.

Two recent cases also dealt with these circumstances namely **Vinay Sharma v. Union of India**⁵ and **Shabnam v. Union of India**⁶. In the former case four accused of the Nirbhaya gang rape incident were sentenced to death in 2020 by considering the aggravating and mitigating circumstances of the case. The court considered the ‘inhuman and barbaric torture’ than was done on the victim that ultimately resulted in her death to be sufficient for giving death sentence.

In the latter case the accused axed 7 members of her family with her lover merely because the family members were not allowing her to marry his lover. The court considered the planning and brutally murdering of the family members as aggravating circumstance and gave death penalty to the accused.

4. DEATH PENALTY IN THE GLOBAL CONTEXT

The global trend regarding Death Penalty shows that nations are progressing towards abolition of Death Penalty. A total of 106 Countries have abolished death penalty in law, for all Offences whereas 142 Countries have abolished it in practise. Downfall in number of confirmed executions can be understood by the report⁷, which reveals number of Confirmed executions as 690 in 2018, 993 and 2017, 1032 in 2016 etc. In global context nations can be clubbed under four heads and these are-

⁴ [2014] 4 SCC 747.

⁵ W.P.[C]. No. 65 of 2020.

⁶ W.P.[C]. No. 88 of 2015.

⁷ Amnesty International report.

i. Countries that do not retain Death Penalty for any Offence-

Countries such as Albania, Argentina, Australia, Austria, Belgium, Bhutan, Canada, Germany, Greece, Italy, Mexico, Romania, Switzerland, Sweden, United Kingdom etc have abolished Death Penalty for all Offences.

ii. Countries that have not retained Death Penalty for Ordinary Offences-

Countries which have abolished Death Penalty for ordinary Offences include Brazil, Chile, Israel, Peru, Burkina Faso, El Salvador, Kazakhstan etc.

iii. Countries that have not executed anyone in last 10 years-

Countries which have not executed a single person in last 10 years include Algeria, Bahamas, Cuba, Malaysia, Maldives, South Korea, Zimbabwe, Sri Lanka, Tazikistan, Russia, Myanmar etc

iv. Countries that have retained Death Penalty for Ordinary Crimes as well-

Countries that have continued to apply Death Penalty for ordinary cases are Afghanistan, China, Egypt, Iraq, Japan, Jordan, Nigeria, North Korea, UAE, Thailand, South Arabia, Singapore etc.

5.1. DEATH PENALTY AND CONSTITUTIONAL PERSPECTIVE IN INDIA

On the point of Constitutionality of Death Penalty in India, firstly **Article 21** of the Constitution of India should be referred which provides that “No person shall be deprived of his life and personal liberty except according to procedure established by law”. The phrase ‘except according to procedure established by law’ provides the state the power or authority that it can take the life of an individual by way of death penalty but that only by following a due procedure and not in any arbitrary manner. Here all principles such as that of ‘natural justice’. ‘Just, fair and reasonable’, principle of uniformity and no discrimination should be followed in order the state wants to executed a person and in none other.

Jagmohan Singh v. State of Uttar Pradesh⁸, is a leading case in which the Apex court held that “death penalty is Constitutionally valid in India and it is not violative of Articles 14, 19 and 21”. In this case the contention was raised that death penalty is violative of Article 19 and 21 for there was no prescribed procedure. Addressing the same, the Apex court cleared that

⁸ AIR 1973 SC 947.

death penalty is given by the Judge as per the procedure established by law and it is decided only after considering the facts and nature of crime brought on record during the trial.

Subsequently in the case of **Deena v. Union of India**⁹ the Apex court was of the view that the method of execution in India by 'hanging by rope' do not amount to cruelty and hence it is not violative of Article 21 of the Constitution of India. The court was of the view that Section 354[5] CrPC which prescribes hanging as a mode of execution is 'Just, fair and reasonable' within meaning of Article 21 of Indian constitution.

Mithu v. State of Punjab¹⁰, is also an important judgement in which **Section 303** of the Indian Penal Code 1860 was struck down by the Apex court as violative of **Article 21** of the Indian Constitution. Section 303 was violative of the same as it did not provide for exercise of Judicial discretion by the judge as it provided death penalty as only punishment for Offence of 'murder by a life-convict'.

Despite all these Judgements observations Of V.R. Krishna Iyer, in the case of **Rajendra Prasad v. State of Uttar Pradesh**¹¹ shall be taken into consideration in which he pinioned that "The special reason must relate, not to the crime but to the criminal. The crime may be shocking and yet the criminal may not deserve the Death Penalty".

IN the recent case of **V. Channu Lal Verma v. State of Chhattisgarh**¹², it was pointed out in his dissent by Justice Kurian Joseph that "time had come to review the need for death penalty as a punishment". He said this in regard to the Law commissions 262nd report that stated that the Constitutional regulation laid down in the case of Bachan Singh has failed to prevent 'arbitrary and freakish imposition' of death penalty.

5.2. Delay in Execution

In India, since 2000 more than 2500 Death sentences have been given out of which since 2004 only 8 have been executed. There are 488 prisoners on death row as of 31 December 2021 which is the highest in the last 17 years, this number was 404 as of 31st December 2020. It shall also be pointed out that the 4 convicts of Nirbhaya Gang rape were executed in 2020 and prior to these executions the last execution was done of Yakub Memon in the year 2015. Referring the reasons of such delay, the primary reasons may be long time that is required for

⁹ 1983 AIR 1155.

¹⁰ AIR 1983 SC 473.

¹¹ 1979 SCC [3] 646.

¹² [2019] 12 SCC 438.

confirmation of the death sentence. In India the matters relating to death are generally tried by the court of session and if an accused is convicted by the sessions court, then the same is to confirmed by the High court under Section 368 CrPC. Further delay may also be attributed to the process of appeals and mercy that is applied for by the Convict. Delay in execution leads to mental agony and is traumatic to the convict and in the same context the Apex court in the case of **In Re-Inhuman conditions in 1382 Prisons**¹³, held that “the view expressed in Francis Coralie Mullin v. State [UT of Delhi]¹⁴ would be equally applicable to death row prisoners for meeting mental health professionals for a reasonable period of time with reasonable frequency so that their rights can be equally protected at all stages”.

In the case of **T.V. Vatheeshwaram v. State of Tamil Nadu**¹⁵, the Apex Court held that “delay in executing a death sentence is violation of Article 21 of the Constitution of India”.

In the case of **Sher Singh v. State of Punjab**¹⁶ the Apex court held that “death sentence is constitutionally valid and permissible within the constraints of the rule in Bachan Singh”.

5.3. Other Issues with Death Penalty in India-

Close scrutiny of the Apex court cases from 2000 to 2015 shows that in around 25 Percent cases death penalty has been wrongly pronounced. Wrong conviction in such cases resulted as a consequence of fabricated and false testimonies of witnesses. Further tracing of Death Penalty since independence shows that in most of the cases **poor, marginalised or have nots**, primarily have been on the receiving end. Obvious reasons for this may be our Judicial setup in which those having resources or able to engage skilled and experienced counsels are able to get away whereas those who cannot afford these facilities are convicted easily. Racial prejudice sometimes also comes in picture where the Judges tend to convict black accused in Capital cases and in disproportionate crime and numbers. There is ‘concept of free legal aid’ to be provided to the poor which can be seen as a positive step to ensure ‘fair trial and hearing’ under Section 304 CrPC which provides that ‘**Legal Aid to accused at state expense in certain cases**’, the phrase ‘certain cases’ refers to the situation when before the court of session any accused is not represented by a pleader and in the opinion of the court the court is satisfied that the accused does not possess enough means to engage a pleader and further ‘free legal aid is a fundamental right under Article 21 along with it being enumerated under Article 39-A as a

¹³ [2019] 2 SCC 435.

¹⁴ [1981] 1 SCC 608.

¹⁵ 1983 2 SCC 68.

¹⁶ 1983 AIR 465.

directive principle of state policy, of Indian Constitution. Legal services Authority Act 1987 has also been enacted in order to provide 'free legal aid' Legal Assistance available to prisoners sentenced to death is vital as to ensure that death Penalty is not administered in an arbitrary and discretionary manner but these provisions seem more of dead letter as they are inefficient. The condition and statues of providing free legal aid is completely unacceptable as the lawyers appointed by the state to defend the death sentence convicts often ask for money, do not effectively represent the case and in numerous instances they even do not meet the accused and their families which results in prejudicing the interest of the convict.

In the case of **Md. Manan @Abdul Mannan v. State of Bihar**¹⁷, the Apex court was of the view that "if a convict is imposes death sentence on the same day of conviction, then it shall not vitiate the sentence, provided that the convict is given a meaningful and effective hearing on the question of sentence under Section 235[2] CrPC". On the point of 'meaningful hearing' under 235[2] the Apex court in the case of **Accused X. v. State of Maharashtra**¹⁸, the court held that, "it is to be measured qualitatively and not quantitatively".

Principle of 'Uniformity' and 'Proportionality'

'**Principle of Uniformity**' with regard to administration of death Penalty refers that if death is to be retained and administered though for only serious Offences then it should be done so 'uniformly, rationally and fairly'. The Supreme court has again and again criticised death penalty for the reason that it is administered 'arbitrarily and disproportionately'. The Apex court while making reference to the 'rarest of rare' doctrine as laid down in the case of Bachan Singh case and the additional considerations laid down in the case of MacHhi Singh case, it expressed that the courts should uniformly administer the death penalty. The process of doing the same should be 'just, fair and reasonable'. Along with Principle of Uniformity, '**Principle of Proportionality**' should also be strictly followed. As per this principle a punishment should not be greatly disproportionate to the crime committed and this principle can be said to have its backing in **Article 14, 19 and 21** of the Constitution of India. In reference to disproportionality in death penalty, Justice P.N. Bhagwati has expressed his dissent in the case of **Bachan Singh v. State of Punjab**. In his view proportionality principle flows from Article 14, 19 and 21 and the courts have the power to restrict legislature from imposing disproportionate penalty but there is scarcity of proportionality precedents in India.

¹⁷ 2019 SCC ONLINE SC 737.

¹⁸ [2019] 7 SCC 1.

The case of **Vikram Singh v. State of Punjab**¹⁹ is a landmark one in which the ‘threshold for disproportionality’ was discussed and it was observed that the threshold is that “it must be so inhuman or brutal that it cannot be accepted by any standard of decency”.

5.4. MERCY

Clemency in Death Penalty is another issue as the accused is given multiple chances to avail clemency and it only makes the Judicial process more-lengthier. A convict can seek for mercy under **Article 72 or 161** of the Constitution of India to the President or the governor respectively. They can pardon or commute death sentence considering the merits of the case irrespective of the determination made by the Apex court. It is pertinent to mention the case of **Keher Singh and Anr. v. Union of India and Anr.**²⁰, in which the Apex court held that “the power of pardon is subject to Judicial review on limited grounds”. Subsequently on the point of increasing delay in deciding the mercy petitions of the accused the Apex court in the case of **Shatrughan Chauhan and anr. v. Union of India and Ors.**²¹ Was of the view that “undue, unreasonable and inordinate delay in deciding mercy petitions as a ground for commutation of death sentence”.

The case of **Yakub Abdul Razak Memon v. State of Maharashtra and Anr.** also involved certain aspects related to ‘mercy and following of due process’ because Memon was not given 14 days by the Apex court to challenge the refusal of his mercy petition. He was given death penalty for criminal conspiracy, terrorist activities in 1993 Mumbai serial blasts, murder and aiding and abetting terrorist acts. Further he was found guilty of possessing illegal arms and ammunitions.

5.5. Death Penalty STATISTICS

As per the **Death Penalty in India Annual statistics report 2021**, there was a 21 percent spike in courts handing down death sentences and **Project 39-A, National law University Delhi**, exhibits that the five states namely Uttar Pradesh, Maharashtra, West Bengal, Bihar and Madhya Pradesh top the table of highest death row populations. Further statistics show that there was increase cases of giving death sentence in 2021 which was 144 as compared to 2020 where these numbers were only 72.

6. DEATH PENALTY AND ABOLITIONIST V. RETAINIST DEBATE

¹⁹ [2015] 9 SCC 502.

²⁰ 1989 AIR 653.

²¹ W.P. [C]. No. 55 of 2013.

6.1. Arguments against abolition of Death Penalty-

i. Moral Grounds-

The first argument that is given against abolition of death penalty is that a person had by taking the life of another lost his own right to life and it is a just way of retributing the person taking life of another. It is considered as a sort of 'social revenge' and the state has the authority to execute the most identified awful crook.

On the same point critics argue that in the modern Jurisprudence there can be no space for retribution and "eye for an eye, a tooth for a tooth" will make the world blind and further in cases where Death Penalty is given for ordinary Offences the it is opposed on the ground that it is disproportionate to the harm caused to the victim. In ancient times Death Penalty found support in the religious texts and faiths but in modern context it fails to find support in religious texts and in last 75 odd years the new religious leaders irrespective of any religion have advocated for abolition of death penalty.

ii. Utilitarian

Those in favour of Death Penalty argue that it has a potential of crating deterrence in the potential Offenders particularly for those, for whom imprisonment may not be an effective deterrent. It is also argued that it ensures that individuals follow law and order in the society. Further it tends to stop the practise in which the Offender of particularly serious Offence walks off courageously and felling proud of his act committed.

iii. Practical Arguments

On the procedural part of Death Penalty, the supporters argue that Death Penalty can be administered in a manner that only those who really deserve Death Penalty be executed and all others who do not deserve it shall not be administered the same. The opponents argue that it is evident from the past experiences that there cannot be a way to screen out those who require Death Penalty and time and again it has been exhibited that carving or identifying any particular Offence requiring Death Penalty has resulted in arbitrary exercise of power and discretion.

Another argument in support of death penalty is that it tends to make the society safer as when offenders of brutal and heinous crimes are given life imprisonment and subsequently they are released on parole, these Offenders sometimes due to their instinct to take revenge or by virtue of their inherent psyche tend to commit Offences. Even if they do not commit such offences again the society has a fear of such Offenders. In addition to this another argument is made that

India being a poor country it is not feasible to detain all criminals and it is in the interest of the state to execute hardcore, repurative or habitual offenders which do not show a reformatory tendency a huge expense is required to maintain the inmates.

6.2. Arguments in favour of Abolition of DP-

Some of the key arguments in favour of abolition of DP are as follows-

i. Contrary to Human Rights-

Abolitionists argue that Death Penalty violates the 'Fundamental right to life' of the accused, guaranteed under **Article 21** of the Constitution of India as well as enumerated under various international conventions for instance, under **Article 3** of the Universal Declaration of Human Rights, **Article 6** of International Covenant on Civil and Political Rights etc. Further it is inhuman and degrading in character.

ii. Not a deterrent-

Other argument advocated against Death Penalty is, it is proven that Death Penalty does not act as a deterrent, ineffective in fighting against the crime and unable to make the society safer by deterring the potential offenders. For instance, as per the **National Crime Records Bureau's 2012 annual report**, 24923 rape cases were reported throughout nation, an average of 68 rape cases daily which has increased to 91 in 2018. While this indicates a better report rate, it also shows that new laws since 2013 have largely been ineffective in reducing the number of incidents. Researches have also shown that Violence in any form, even Death Penalty has resulted in more violence therefore DP cannot be an alternative to curb violence.

iii. Revenge rather than Justice-

There is difference between the basic ideas of revenge and justice. Revenge on one hand continues the never-ending cycle of violence, pain and sufferings whereas Justice aims to maintain peace and balance in the society. Death penalty in a way shakes the idea of justice itself proceeding towards the idea of retaliation. This exhibits a glimpse of the primitive society where the idea was "An eye for an eye, a tooth for a tooth", making the whole world blind one day.

v. Irreversible and does not sync with rehabilitation-

Another argument for abolishing Death Penalty is that it is irreversible. Judges are also human beings and they can also make mistakes leading to miscarriage of Justice and innocent persons

being executed. One of the key factors that in certain cases where the accused is unable to appoint quality, experienced and skilled lawyer his case is not represented properly making him prone to death sentence. In case it is later found that he has been wrongly convicted and executed then the court in no circumstance can reverse the execution. Similar is the case with rehabilitation. Death penalty may be seen as a denial to the capacity of reintegration. The basic purpose of reformation is to after rehabilitating the perpetrator of crime it should be restored back in the society so that he can contribute positively. The whole underpinning of reformation fails one a perpetrator is executed as the subject-matter of reformation and rehabilitation no more exists.

vi. Torture-

Death Penalty in itself cruel, degrading and inhuman due to the fact of improper detention conditions, psychological distress and methods of execution. By its inherent nature of execution and process of Death Penalty it constitutes torture because of minimal hope of surviving. Further the death row prisoners have to wait for decades under fear of death this in itself is cruel. Death row convicts being kept in Solitary confinement is also a troublesome concern as the Apex court has prohibited for the same, in practise they are kept in Solitary confinements which adds immensely to the mental agon and it adds more insult to the injury when the execution gets delayed indefinitely. It is also argued that irrespective of whatever the manner of execution it results in extreme suffering.

vii. Discriminatory-

Past incidents show that Death Penalty is not given uniformly. Those who are have nots face primarily two issues. First is lack of monetary resources for defending themselves by engaging quality counsels and second is lack of knowledge of legal system and its working, as a result of which they do not know how to approach the legal system, what is at stake etc.

viii. Tool of Political repression-

Sometimes Death Penalty is also used as a tool of Political repression and for exerting pressure on citizens. Though such instances within India have not popped up but in the global context and most of the non-democratic states use it as a tool. It is also used as a means of exerting pressure on other nations in case any citizen of that nation commits some serious Offence in one nation to force than nation to agree to own terms.

ix. Traumatic-

Trauma is an important con of giving Capital Punishments as it in turn creates new victims in addition to those created by the Offence itself. The core issue is that firstly Death Penalty fails to end the sufferings of the victim, in addition to this it extends the suffering to the accused and their families. The accused and its family have to strive hard in appeals for getting away with death sentence and once confirmed by the Apex court, try for seeking clemency. The mental trauma waiting for death in a long-delayed process such as India is unimaginable. Further those involved in execution also have to suffer from post-traumatic feeling of guilt of killing a man, no matter how justified it may be in eyes of law.

7. Death Penalty and Law Commission Reports in India-

There has been a drastic change in the Law commission report Of India worth reference to the retention of Death Penalty in India. For instance, in its **1967 review** the Law commission pointed that India cannot take the risk of experimenting the abolition of capital Punishment in Indi. However, in its **262nd report** of 2015, it has pointed that India should abolish death penalty except for the Offences of terrorism and waging war against the state and this retention has only been done in the interest of national security. For retaining Death Penalty for terrorism is the only viable punishment and under no circumstance a terrorist be exempted from Death Penalty due to the very fact that he has the potential to endanger the life of thousands of Individual so it is in the interest of the public to eliminate terrorists. In the case of **Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra**²², the accused was held guilty of 80 Offences such as murder, waging war against the state, possessing explosions etc. The court reiterated that death penalty should be given in rarest of rare cases and being on the statute book for certain offences that include ‘waging war’ and murder. The court subsequently upheld the conviction of the appellant stating that if there would a case in the minion attract death penalty, if not the case of the appellant. It is to be noted that Death Penalty to even terrorist should only be administered only after following due procedure and giving him proper representation so that no innocent is executed considering him to be terrorist. Law commission has concluded that at last it is on the legislature to decide whether to retain Death Penalty for Offences of terror as it involves in its ambit questions relating to national security which is of utmost importance and paramount consideration. If one goes by the

²² [2012] 9 SCC 1.

aforesaid mentioning then he may ponder that what could be the reason of such a drastic shift of the Law Commission.

8. CONCLUSION

Analysis of the aforesaid discussions reveals that with the growth of the modern Jurisprudence and the abolitionist trend of death penalty there is a need to move towards abolition of death penalty but keeping in mind the socio-economic conditions, crime graph, Criminal Justice system, physical geography of India there is a need to retain death penalty for certain Offences.

Concurring with the Law commission 262nd report it seems justified to retain death penalty for 'terrorism and waging war against India' offences but in addition to this keeping in context the recent history of Offence of rape for instance the incidents of Nirbhaya, Kathua, Hathras, Unnao, Hyderabad rape incidents, death penalty seems necessary for Offence of rapes as well.

In India the procedure of executing death sentence has its inherent loopholes for instance, long delayed trials, not complying with the 'Principle of uniformity, proportionality and natural Justice'. Often, we see that the accused belonging to poor or marginalised strata of the society are not represented properly in the Society and this leads to arbitrary and discriminatory administration of death sentence. Further after conviction too the convicts have to face hardship for seeking mercy and if the same is denied they have to be on death row for decades which is inhuman, torturous.

It is thus required in order to make death penalty effective for certain heinous and serious offences for which it is to be retained in India that the procedural loop holes are fixed as soon as possible and to expediate the Criminal Justice system so that a deterrence can be created in the mind of the potential Offenders that if they commit and death sentence Offence then their chances of being executed are high and it would result in making the society a safer one.