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Capital Punishments: Analysing the Need of it

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ABSTRACT

This paper aims to highlight for its readers the requisite for re-examining the need for retaining death penalty in statute book of India, on the grounds of it being against the basic tenets of human Rights. The procedure of deciding upon death penalty is arbitrary as it vests power with the judges to decide upon the death sentence as per their discretion without existing any proper guidelines for the judges limiting the exercise of their power given by the Rarest of the Rare Doctrine. This has been a point of concern in this Research Paper. This paper tries to possess to its reader that the imposition/non-imposition of capital punishment in India is largely dependent upon the bench or the judge who is deciding upon the matter, this hypothesis is backed by landmark judgments of the Supreme Court. It also talks about the Moral, Economic and Executive aspects of the capital punishment. On various junctures Deterrence has been used as a point of justification for retaining Capital Punishment, this paper will analyse whether it really acts as a deterrence or not. Finally, it will be concluding by providing some suggestions and highlighting the main areas of concern.

I. INTRODUCTION

In today's era, Capital punishment, legitimized by State is indeed a debatable issue, not just in India but, all over the world. On one hand, where 'killing' per se is illegal as life of a human being is considered as the most sacred thing and cannot be taken by another being, then, how on the other hand, 'killing by State' can be held legal. From human rights perspective, the line between two is extremely thin as in both the cases, the quintessential right of a person gets violated. However, if seen from a different perspective, being a welfare State, State owes a duty towards its citizens to protect them and to prevent infringement of their basic rights. So, if one's basic rights are infringed, then does the State have no right to retribute the wrong that has taken place toward its citizens? Well, there's a popular saying, "an eye for an eye makes the whole world blind"! So, here the question is 'killing by state' is legitimate and/or valid for the reason that it has been given by the prescribed law? Many a times, it's quite possible that guilty could be found innocent by court. But, sometimes, though

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very rarely only, even innocent might be found guilty. So, to what extent it could be correct to give capital punishments. This discussion is an open-ended and is to huge extent subjective. But, this does not mean that justice can be delayed to determine the validity of 'killing of state'. As we also know, "justice delayed is justice denied".

This paper seeks to analyse the arguments both in favour and against the death penalty from the political science, legal, international and economic point of view and conclude the reasonability of this punishment.

II. EVOLUTION OF DEATH PENALTY

The inception of Death Penalty can be traced back to Eighteenth Century B.C in the Code of King Hammurabi of Babylon, wherein death penalty was codified for 25 different crimes. Death penalty can also be outlined in the Draconian Code in Athens, which made death Penalty compulsory for all the types of crimes committed. The criminals were made to serve the punishment by such means as burning alive, drowning, beating to Death, impalement and burning alive. It was in the Tenth Century A.D., that hanging became the customary method of execution in Britain. In the subsequent Century under the reign of William the Conqueror it was not allowed to hang people except during wars. This trend didn't last for a long time as in the Sixteenth Century under the reign of Henry VIII, approximately 72,000 people were executed. Executions were usually made for crimes like marrying a Jew, Treason and not telling the truth. With the passage of time even in Britain started refraining from passing death sentence.²

DEATH PENALTY AGAINST HUMAN RIGHTS

On 21st November 2012 in a response to the outrageous act of terrorism Mohd. Ajmal Amir Kasab was executed. He was the sole surviving Gunman from the disturbing act of terror that took place in Mumbai, which took away the lives of 166 people during a 60-hour siege. The execution took place in Pune after the denial of his Mercy Petition by the then President Dr. Pranab Mukherjee. Although the suffering caused by Kasab can't be exonerated but capital punishment is also not the answer. In order to combat terrorism and violent crime it is very important that the culprits receive closure but the methods of ensuring crime have to be rooted in human rights and it must be ensured that such acts are not a mere act of violence and vengeance.

It has been a noted observation that generally there is a mass support for executions but after claiming a proper discussion if a life sentence is passed then the public support for executions

² Death Penalty Information Center, <https://deathpenaltyinfo.org/part-i-history-death-penalty>

and death penalty slowly starts fading away. Countries with no death penalty have lesser number of murders taking place in comparison the countries prescribing death penalty. There has been an increase in the worldwide acceptance of the notion that Death Penalty is inhuman, cruel and a very degrading punishment. It in its entirety is dangerous and endorses violence, with a failed attempt of delivering public safety or of deterring violent crimes. All the major cultures, religions and regions have now done away with death penalty. As per the statistics given by the United Nations, more than 150 countries no longer use it or have abolished it. India in general is considered as the benchmark and reference worldwide in terms of behavior and many other aspects but this aspect of Capital Punishment is seen against the notions of millions of people who think highly of the values and cultural values of the culture and tradition of the country.³

MORAL ASPECT

The death penalty is widely criticised primarily because of its inhumane nature and this can be shown and understood only by an apt description of the different execution methods.⁴

Hanging, the most widely used method, in around 60 countries, involves tying a noose around the prisoner's neck and opening a trap door through which the prisoner falls. The fall and the weight should cause a rapid fracture-dislocation of the neck but this rarely ever occurs and death could take as long as 45 minutes. If the drop is too long, the inmate could be decapitated and if the drop is too short, the inmate will be asphyxiated and in this case the face becomes engorged, the tongue protrudes, the eyes pop, the body defecates, and violent movements of the limbs occur.

Electrocution involves tying an electrode to the prisoner's leg and giving a jolt of 500-2000 volts for 30 seconds. The prisoner's hands often grip the chair. Violent movement of the limbs can result in dislocation or fractures. The prisoner's eyeballs sometimes pop out. The prisoner often defecates, urinates, and vomits blood and drool. The body turns bright red as its temperature rises. The prisoner's flesh swells and his skin stretches to the point of breaking. Steam or smoke rises and there is a smell of burning and sometimes the prisoner catches fire.

The gas chamber is a room with hydrogen cyanide gas inside which the prisoner is sealed. The prisoner does not lose consciousness immediately and instead experiences immense pain.

³ International Commission against the Death Penalty Opinion piece: India, By Federico Mayor, President of the International Commission against the Death Penalty, <http://www.icomdp.org/cms/wp-content/uploads/2013/02/ICDP-India-Open-Letter-07.12.2012.pdf>

⁴ Death Penalty Information Centre, *Description of Execution Methods*, <http://www.deathpenaltyinfo.org/descriptions-execution-methods>.

The skin turns purple and the victim begins to drool. Here too, his eyes pop.

Other than this, firing squad, stoning and beheading are also used as execution methods.

The lethal injection method, as the name suggests, is carried out by injecting a needle into the prisoner's vein, to which long tubes are connected, that carry the lethal dose. Death occurs due to anaesthetic overdose and respiratory and cardiac arrest. The problem arises because doctors are precluded from participating in executions and the process is left to the inexperience of technicians. The lack of medical participation can result in the needle being injected into the muscle or the needle becoming clogged which causes immense pain and due to the difficulty and cost involved in this process, this method is only used by six countries and most others seek cheaper, but more painful methods as those mentioned above. It is difficult to imagine how the employment of such harsh and monstrous methods of punishment could ever do any good to society.

III. CRIMINAL JUSTICE SYSTEM

Trials, prisons and sentences are all a part of a criminal justice system, that seeks to transform law-breakers into law-abiders in one of many ways, as propounded by the theories of punishment.⁵

The expiatory theory forgives the offender upon his realisation and repentance of his mistake. This theory can be criticised on the grounds that it allows for a breakdown of law and order in the society because crime goes unpunished and the victim gets no justice.

The death penalty would not stand the test of this theory because the fear of death would make any person repent their mistake in retrospect.

The reformatory theory seeks to take away an individual who has wronged the society and rehabilitate him by individual treatment so that he can be reintroduced into the society without posing a threat. The criminal justice system acts as a watchdog over the maintenance of harmony in the society.

The death penalty would not stand the test of this theory as it would leave no scope for reformation or future positive action.

The deterrent theory purports to discourage the commission of a crime. The punishment inflicted on the offender serves as a lesson for the offender himself as well as others to

⁵ Rachel Raj, *Theories of Punishment*, <http://lawnn.com/theories-punishment-kinds-punishment-criminal-law/>;
Shaswata Dutta, *Theories of Punishment - A Socio-Legal View*,
http://www.legalserviceindia.com/articles/pun_theo.htm.

abstain from committing that crime in the future, or fear facing the same consequences.

This theory can be criticised because of its ineffectiveness. Crimes can be of one of two kinds: crimes of passion and pre-meditated crimes. Crimes of passion are committed in the heat of the moment and do not involve any prior arrangement, therefore the severity of the punishment is not a consideration, for example killing someone as self defence doesn't involve thinking about the consequences of that action. Pre-meditated crimes involve plans and conspiracy, but there too the punishment is not a big consideration because the offenders plan and expect to get away with it and not be punished at all. Moreover, crimes are often committed due to some necessity and this consideration of necessity often outweighs the consideration of punishment, making deterrence a futile approach.

Therefore, the death penalty too would not be enough of a deterrent.

A retributive system is vengeful and seeks to take away an individual who wrongs the society, with a view to punish him, not as a means to rehabilitation but as an end in itself, to even the scales of justice. It adopts an eye for an eye approach.

The death penalty is thus sanctioned only under this theory, however this theory is the most criticised as a State exists to facilitate social harmony and to maintain peacefully, law and order in the society. The criminal justice should also share these aims and not focus solely on punishing the criminal while ignoring the effect on the rest of the society.

IV. ECONOMIC ASPECT

Although it shouldn't be, economic cost is often an argument for the imposition of death penalty. Lately however, it's a known statistic that death penalty costs the state more than a prisoner serving life imprisonment.

Figures differ from case to case and statistics can be modified and manipulated to suit the argument for either side. Therefore, we will be looking at this issue from a bird's eye view rather than going into specifics.

The costs incurred in the process of death penalty can be categorised into three types - legal, administrative and executive costs - and in all three categories the cost of death penalty exceeds the cost of keeping a convict imprisoned for life.⁶

Legal costs: Simply put, a trial with death penalty as the punishment costs more to the State than one with life imprisonment as the punishment due to the increased number of safeguards

⁶ Martin Kasten, *An Economic Analysis of the Death Penalty*, University Avenue Undergraduate Journal of economics 2019

put up to avoid abuse of this punishment, such as clemency and curative petitions, and the exhaustion of all of these remedies.

Administrative costs: Since life imprisonment isn't limited by a requirement of a minimum or a maximum sentence in most countries, and considering that prisoners on death row spend decades in prison before they are actually executed, the death penalty isn't any more economically viable than life imprisonment. As for the difference between the time spent on death row and the time spent in life imprisonment, death penalty is not given out to enough convicts to make a considerable difference, enough to justify this inhumane punishment.

Executive costs: These are costs exclusive to death penalty and therefore additional costs. It includes the cost of the executioner, the medical practitioner, the extra security and most importantly the cost of the method of execution, whether it is the lethal injection or hanging.

On an overall basis therefore, the death penalty costs, if not more than life imprisonment, then certainly just as much and definitely not significantly lesser.

V. EXECUTIVE ASPECT

Besides the theoretical issues with the death penalty, there are several problems with its execution as well, mainly in terms of incorrect sentences and biases. Let us take the examples of India and the USA one again.

In 2012, 14 retired judges wrote to the President that the Supreme Court of India had erroneously sentenced 15 people to death since 1996.⁷ That's 15 incorrect death sentences in 15 years. That's at least one person wrongly subjected to the death penalty each other. 11 years after Chatterjee was hanged, several investigative irregularities were found, which could have concluded that he was in fact innocent.

In the midst of the legal battle pertaining to the circumstances under which the death penalty should be awarded, Ravji Rao was hanged because the judge didn't follow the correct precedent and didn't apply the correct 'test' in determining whether he should receive this punishment.

Even after this 'test' was set down, in two cases pertaining to the rape and murder of a child, while one was given life imprisonment the other was sentenced to death.

Apart from this, there was Surja Ram, Mohan Chavan and several others, who were caught in the middle of this legal crossfire or investigative inefficiency or simply a judge's harsh conscience. Their lives were taken away by the State, in the name of justice.

⁷ Avijit Chatterjee, *You were wrong, My Lords*, The Telegraph, Aug. 2, 2015.

In a legal system which follows the convention of ‘guilty beyond reasonable doubt’ even for awarding simple punishments, the death penalty has been wrongly awarded several times. And this is bound to happen, because the nature of guilt in a judge’s mind is subjective and no man’s life can be valued objectively by applying any ‘test’, no matter how comprehensive. It’s not just wrong pronouncements but also premature or delayed pronouncements that violate the accused’s rights. Afzal Guru was hanged without informing his family,⁸ and Perarivalan, Murugan and Santhan were hanged after they had already spent 22 years in jail.⁹ Similarly, in the U.S., the disparity between white and black inmates on death row has been shocking, yet true. The U.S. has a 13.6% black population, but 42% of the inmates on death row are black. In 1999, one-third of the inmates that were executed were black.

VI. CONSTITUTIONALITY OF CAPITAL PUNISHMENT IN INDIA

The Indian Penal Code contains many provisions where a Court can award death penalty to a convict in case of life imprisonment. Mostly the provisions challenged by abolitionists are those where the provision provides for both life imprisonment and death penalty for an offence. This is challenged on the grounds that a convict who has done the same offence may be treated unequally by the court by giving different sentences which is violative of Article 14 of the Constitution. Some people also argue that it is also violative of Article 245 as it involves excessive and disproportionate delegation of legislative powers to the judiciary. The main contention is that the neither did the legislature provide any basis on which the court can differentiate between the two punishments nor did they lay down any principle through which the Court itself can make such classification. The question of punishment has been left open ended by the legislature.¹⁰

These arguments can be validated by doing a study of the cases of same offences. In some cases the courts have given death sentence to the convict while in other cases where the convict has done the same offence the court has imposed life imprisonment. It shows that there is arbitrariness in the matter of deciding whether the convict should be punished with life imprisonment or death sentence.¹¹

The receptionists argue that it is not feasible for the legislature to calculate and lay down the exact quantum of punishment for all cases for a particular offence. Indian Penal Code

⁸ Press Trust of India, *Afzal Guru’s hanging ‘wrong’: Tharoor*, The Indian Express, Feb. 9, 2015.

⁹ Kanimozhi, *Why the death penalty must end*, The Hindu, June 5, 2013.

¹⁰ K. Gaur, *International perspectives on death penalty* 39(01) JOURNAL OF CONSTITUTIONAL AND PARLIAMENTARY STUDY 183, 230 (2005).

¹¹ S. Ayyathurai, *Should death penalty go?* 106(04) CRIMINAL LAW JOURNAL 49, 50 (2000).

mentions about the maximum punishment for a particular offence and the courts are free to award any sentence within that maximum limit based on the circumstances in which the crime took place. The rationale behind this approach is very straight forward that the legislature cannot take into account all the facts and circumstances under which the crime has been committed. Therefore, it is imperative to give some amount of discretion to the court to decide the quantum of punishment to be awarded to various convicts.¹²

Moreover, the judges, by the nature of their profession, are expected to decide the cases objectively. Therefore, there shall not be any arbitrariness in awarding the sentences. Moreover, under Section 235(2) of Code of Criminal Procedure, the convict has the right to challenge his sentence in a separate hearing. This protects the convict from the arbitrariness of that may take place while deciding his sentence.¹³

Section 354(3) of Indian Penal Code also provides that the Court should mention special reasons while awarding the death sentence.¹⁴ Keeping into mind this provision, the judge would be more inclined to awarding life imprisonment as sentence and would avoid mentioning special reasons for death sentence unless they he finds that the nature of the crime is such that life imprisonment would not do justice to the victims and society.

Moreover, as the researcher pointed out in this research paper, the procedure for awarding death sentence has been made in such a way that it has to be confirmed by the superior authorities before being executed. For instance, the provision that a death sentence given by Sessions Court needs to be confirmed by the High Court and the right to automatic appeal in case the High Court overturns the acquittal by a Sessions Court and awards death penalty. It is presumed that a superior authority will not exercise its power arbitrarily and without taking into consideration other factors. The researcher believes that it would be fair to assume that at least the highest court of Justice would not allow death sentence unless there are special reasons to do the same.¹⁵

The abolitionists also argue that even though death sentence may be constitutionally valid but it is not fair or necessary to take someone's life just because he did a wrongful act while his mind was not in place. Receptionists reply to this by saying that it may not be desirable as a general rule but it is necessary in certain circumstances.

¹² M. Ketan, *The method of execution of the death penalty in India: Should it be reformed* 04 CRIMINAL LAW JOURNAL 97, 100 (2004).

¹³ Section 235(2), Code of Criminal Procedure, 1973.

¹⁴ Section 354(3), Code of Criminal Procedure, 1973.

¹⁵ R. Hood, *THE DEATH PENALTY: A WORLD WIDE PERSPECTIVE* 2000.

Doctrine of the Rarest of Rare¹⁶

If we were to find a proper definition of the Rarest of Rare we wouldn't have been able to find it because Doctrine of Rarest of Rare as such hasn't been defined anywhere, it is through the various interpretation of courts in various cases that some aspect can be attributed to this particular Doctrine. In a proper Criminal Trial, it is after considering the gravity and severity of the offence that a proper punishment is prescribed for an offender. It becomes very important for the court while discharging its duty to prescribe a proper punishment for the offender in the cases wherein the offence is not only against a particular individual but against the society at large. Therefore, while deciding upon the punishment in a particular weightage is attributed to "Atrocity and Brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should Respond to the society's cry for justice against the criminal".¹⁷

The Birth of the Rarest of Rare Doctrine

It was in the landmark judgment of Bachan Singh¹⁸ which lead to the inception of the Doctrine of Rarest of Rare while prescribing the punishment in cases related to Death Penalty. In this particular case by a majority of 4 is to 1, the constitutionality of the Death Penalty was upheld by the Supreme Court, but also imposed a subsequent rule that it has to be imposed only in the 'Rarest of the Rare' cases without actually defining or limiting the scope of the Rarest of Rare which they used in the judgment. The decision of the Hon'ble Supreme Court was based upon the 35TH Law Commission Report which had a whole discussion suggesting the courts to uphold the constitutionality of the death penalty and also rejecting the argument that death penalty was in outright violation of Basic tenets of Fundamental Rights.

After the landmark judgment came the Judgment of Mithu Singh v. State of Punjab¹⁹, wherein section 303 of the IPC which prescribed a mandatory death sentence for a person who commits murder while he is serving a sentence of life Imprisonment as unconstitutional. Holding it to be unconstitutional the court held that "It is difficult to hold that the prescription of the mandatory sentence of death answers the test of reasonableness. The circumstances that a person is undergoing a sentence of life imprisonment does not minimize the importance of mitigating factors which are relevant on the question of sentence which should be imposed

¹⁶ Rarest of Rare Doctrine, By- Soma Sarkar, Dated: November -22, 2018, <https://lawtimesjournal.in/rarest-of-rare-doctrine/>,

¹⁷ Ravji Alias Ram Chandra v/s State of Rajasthan, Criminal Appeal No. 1595 of 1995

¹⁸ AIR 1980 SC 898

¹⁹ 1983 SCR (2) 690

for the offence committed by him while he is under the sentence of life imprisonment.”²⁰

In the *Bachan Singh* various propositions emerged regarding Death Penalty which can be summarized as follows:

1. The Extreme Penalty of Death Penalty need not be inflicted except in gravest cases of extreme culpability.
2. Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’.
3. Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to imposed sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
4. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

In that very judgment of the Supreme Court various conditions were discussed wherein it was necessary to give death sentence which were held as if the murder took place in extremely brutal, diabolical manner so as to raise extreme indignation in the society, death penalty could be given. Also to some extent the motive in a crime wherein it was done for betrayal of motherland or with a motive of inheriting a property or a murder committed by a hired assassin.

According to court the five category which have to be considered while deciding upon the death penalty have to be:²¹

- a) Motive
- b) Manner of commission
- c) The extent of Crime
- d) Anti-social or repugnant nature of crime
- e) Personality of Crime

²⁰ *Machhi Singh v. State of Punjab*, AIR 1980 SC 898

²¹ *Machhi Singh v. State of Punjab*, AIR 1980 Cr.LJ 653 SC

Arbitrariness of the Rarest of Rare Doctrine

The rarest of the Rare Doctrine which was propounded in response of the rising demand of abolition of Death Penalty, this doctrine gave discretionary power to the judge to sentence for In the landmark judgment of *Aloke Nath Dutta & Ors vs State Of West Bengal*²² Justice Sinha recognised that different criteria have been used by different bench of the very same court while dealing with the same type of offence having a similar nature, this application in a distinctive manner in itself is arbitrary. Also, the court held that considering the situation that just because same type of punishment is prescribed, it can't be said that a proper uniform method can be developed for sentencing people for a death penalty.

In the *Swamy Shraddananda @ Murali Manohar Mishra vs. State of Karnataka*²³ the court held that “The inability of the Criminal Justice System to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results” and also Justice Aftab Alam held that the question of death Penalty is as such not relieved from the subjective element and the sentencing and confirmation of a death sentence or its commutation by this court depends a good deal on the personal belief of the judges who are constituting the bench during passing of such a sentence.

In another subsequent case *Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra*²⁴ the Supreme Court had a detailed discussion regarding how public opinion plays an important role while deciding upon a matter which might extract death sentence and also it highlighted how the danger of capital punishment is becoming a raising matter of concern in the eye of media. Also the court stated observed that as such there is no uniformity of precedents. While refusing death penalty or affirming death penalty the court in most of the cases hasn't relied upon a legal principle.

Justice Bhagwati that apart from the death penalty being against National and International norms also the practice of the death penalty has created a context of arbitrariness and also that it wasn't justified to provide powers to any set of judges as there doesn't exist any fool-proof system and manner of administering criminal justice systems. Also as per Justice Bhagwati when a “Judge is called to exercise his discretion as to whether the accused shall be killed or shall be permitted to live, his conclusion would depend to a large extent on his approach and attitude, his predilections and preconceptions, his value system and social philosophy and his

²² (2007) 12 SCC 230

²³ (2008) 13 SCC 767

²⁴ CRIMINAL APPEAL NO. 1478 OF 2005

response to the evolving norms of decency and newly developing concepts and ideas in penological jurisprudence. “²⁵

Justice Bhagwati held that no matter how careful the safeguards might be and whatever precautions may be taken, and the error that might occur in the judgment can't be rule out, as far as death penalty is considered to be constitutionally valid the court or the state may have the blood of an innocent man on its conscience.

VII. CONCLUSION

The death penalty exists because some crimes shock the conscience of the society and admittedly, deserve to be punished harshly. However, this harsh punishment cannot take away the offender's life itself. The criminal poses a threat to society, but he too is a part of that very society and should be reformed, not thrown out. Since executions have been the norm since time immemorial, countries are reluctant to take the big step of moving away from this norm and taking this big step requires political capital. Here's where the problem lies. In order to bring a legal change, there first has to be a social change. With the society still believing that taking away somebody's life is justified in some cases, abolishment of the death penalty doesn't seem viable in the near future. In order to bring this change, the society needs to be made aware of the nuances of criminology and penology. The common man measures every policy's worth in terms of its effect on him, and so he supports the death penalty because it makes him feel more secure. In order to change his mindset, he needs to be shown a bigger picture that is more important and is broader in its aspect, which comes through the study of the fields of criminology and penology.

Only 66% of the countries in the world have retained capital punishment, while the others have now abolished it, India is amongst those 66% countries. India retains this so that it can act as deterrence. Three major theories of punitive system are available which are retribution, rehabilitation and retribution. Death penalty ignores theories like rehabilitation and reformatory theory from the very beginning. It needs to change its stance from retributive model to reformatory-punitive system. The solution to this problem can be by apprehending the perpetrators and ensuring that no one escapes from the hands of law.²⁶

Retribution has a very important role to play while deciding upon the punishment, but what has to be insured that it is not reduced to vengeance. The basic notion of Eye to Eye, and tooth for tooth can't be used in our criminal justice system which is mediated by the

²⁵ Bachan Singh vs. State of Punjab AIR 1980 SC 898

²⁶ Asian Journal of Legal Studies , “DEATH PENALTY IN INDIA” by Dhananjay Kashyap at 89, β <https://asianjournaloflegalstudies.files.wordpress.com/2013/11/death-penalty-in-india.pdf>

constitution.²⁷

Further, the death row phenomenon is compounded by the degrading and oppressive effects of conditions of imprisonment imposed on the convict, including solitary confinement, and the prevailing harsh prison conditions. The death row phenomenon has become an unfortunate and distinctive feature of the death penalty apparatus in India. Further, infliction of additional, unwarranted and judicially unsanctioned suffering on death sentence prisoners, breaches the Article 21 barrier against degrading and excessive punishment.²⁸

²⁷ Report No. 262, at 213, Printed in 2015 by Law Commission Of India
<http://lawcommissionofindia.nic.in/reports/report262.pdf>

²⁸ Report No. 262, at 216, Printed in 2015 by Law Commission Of India
<http://lawcommissionofindia.nic.in/reports/report262.pdf>