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Law related to Capital Punishment in India: A Critical Evaluation

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ABSTRACT

Death penalty or Capital punishment is the harshest punishment in the Indian penal Code. No other punishment deters man so effectually from committing crimes as the punishment of death. The position of capital punishment did not change for more than 100 years. However, the trend in the direction of the abolition of capital punishment in many countries affected legislative as well as judicial thinking in India. The opinion of the Indian judiciary is that the death punishment is to be resorted to in the rarest of the rare cases. The current paper is an effort to analyze the reasonability as well as trends for abolition of death Punishment in India.

Keywords: *Death penalty, Capital punishment, Indian Penal Code, Constitution of India*

I. INTRODUCTION

"Capital Punishment is the way in which society expresses its denunciation of the wrongdoer. It is necessary to maintain respect for law. Some crimes are so outrageous that society insists on adequate punishment for the wrongdoer." - **Lord Denning**

Capital punishment or death penalty is the state-sanctioned homicide of a natural person as a punishment for a crime. The sentence ordering that someone is punished with the death penalty is called a death sentence, and the act of carrying out such a sentence is known as an execution. In India, the death penalty is given by the strategy of hanging. The other ways, through which death sentences executed at world scenarios, are stoning, sawing, blowing from a weapon, deadly infusion, electric shock, etc. 48 countries retain capital punishment, 108 countries have completely abolished it for all crimes and seven have abolished it for ordinary crimes. Although most nations have abolished capital punishment, over 60% of the world's population lives in countries where the death penalty is retained. Cesare Beccaria[2]'s treatise was the first detailed analysis of capital punishment to demand the abolition of the

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[2] On Crimes and Punishments (1764)

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death penalty. In England Jeremy Bentham (1748-1832), the founder of modern utilitarianism, called for the abolition of the death penalty[3].

II. DEATH PUNISHMENT IN INDIA

The subject of death sentence always has been a matter of controversy. While considering the Constitution as the supreme, the validity of death sentence v/s fundamental rights constantly came forward for the debates. However, the death sentences are rarely given in the Indian criminal courts. In the case of **Bachan Singh vs State Of Punjab[4]**, the Supreme Court held that capital punishment shall be given in the "rarest of the rare" case. However, what constitutes the "rarest of the rare cases" is not prescribed by the Supreme Court or by the legislature.

In the case of **Jagmohan Singh v. State of Uttar Pradesh[5]**, the SC ruled that the approach towards imposing capital punishment shall be balanced on mitigating and aggravating factors of the crime. However, in the case of Bachan Singh, for the first time, this approach was called into question due to the amendments in the Cr.P.C. As per the amendment in the Cr.P.C. in the offence of murder the offender shall be punished with the sentence of life imprisonment. After taking due consideration of the amendment, the Court stated that capital punishment shall be given in special cases only. However, in the case o**f Sangeet & Anr. v. State of Haryana[6]**, the court noted that the approach laid down in Bachan Singh's case is not fully adopted. The courts still give primacy to the crime and not to the circumstances of the criminal. The balance of the mitigating and aggravating factors have taken a bit of a back seat in ordering punishment.

The provisions under which the death penalty is given as punishment under IPC are as follows:

- Section 115– Abetment for an offence punishable with death or imprisonment for life (if offence not committed);
- Section 118– Concealing design to commit an offence punishable with death or imprisonment for life.

[3] Tony Draper: An introduction to Jermy Benthems theory of Punishment, Journal of Benthem Studies (2002), Volume 5, pp1-17
[4] AIR 1980 SC 898, 1980 CrLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145
[5]1973 AIR 947, 1973 SCR (2) 541
[6] (2013) 2 SCC 452

- Section 121– When armed rebellion (i.e. waging, abetting to waging of war or attempting to wage war) is made against the constitutionally and legally established government;
- Section 132– Uprising, supporting and encouraging the formation of the mutinous group of people in the nations armed forces;
- Section 194- With the intent to obtain a death sentence to an innocent by presenting concocted vexatious proof;
- Section 302– Causing murder of another;
- Section 305– Abetting suicide to an insane or minor person;
- Section 303– When a life convict person murders another person;
- Section 396– Causing dacoity with murder;
- Section 364A– Kidnapping;
- Section 376A (as per the Criminal Law Amendment Act, 2013)- Rape

Some other Acts under which the death penalty covered as punishment are:

1. Section 4, part II of the Prevention of Sati Act- Abetting or aiding an act of sati.
2. Section 31A of the Narcotic Drugs and Psychotropic Substances Act- Drug trafficking in cases of repeat offences.

The various states of India have jail manuals that provide a method for the execution of death sentences. In accordance with Section 354(5) of the Code of Criminal Procedure Act, 1950 hanging by neck till death is the mode of the execution. After the death sentence is awarded by the court, the accused have the right to appeal the order. After exhausting all remedies and confirmation of the order, the execution is made as per procedure under Section 354(5) of Cr.P.C. The process of execution is provided separately under the Air Force Act, 1950, the Army Act, 1950 and the Navy Act, 1957. However, the procedure under the above-mentioned defence acts is applicable to defence officers only. The Prison manual of different states of India gives detailed instructions about the execution particulars. Some are as follows:

1. The prisoner who is convicted for death sentence shall be given a proper diet, examined twice a day. The officers shall satisfy that the prisoner has no article by which he can attempt for suicide.
2. The description of the rope and testing of rope.

3. Regulation of the drop while executing the hanging.
4. Time of executions.

The law Commission of India in its 35th Report has given reasons for the view that capital punishment has a deterrent effect. Basically every human being dreads death. Death, as a penalty, stands on a totally different level from imprisonment for life or any other punishment. The difference is one of quality and not merely of degree.

Constitutional Validity of Death Penalty in India

Under Article 21 of the Constitution of India, the right to life and liberty is guaranteed, including the right to live with human dignity. There are certain exceptions that are recognized by the law wherein in the name of law and public order the state can restrict the rights. In **Maneka Gandhi v. Union of India**[7], the SC laid down the principle of **"due process"** through which a state can restrict the citizens from enjoying their rights. In the case of the death penalty the due process can be as follows:

- Death penalty to be given in 'rarest of the rare' cases;
- The accused shall be given the 'right to heard';
- As per Article 136, the death penalty shall be confirmed by the High Court;
- Under Section 379 of the Cr.P.C., the accused have the right to appeal in the Supreme Court;
- Under Section 433 and 434 Cr.P.C., the accused may pray for commutation, forgiveness, etc. of the sentence.

In various cases, the constitutional validity of the death penalty was challenged. In the case of **Jagmohan Singh v. State of U.P**[8], the argument was that the death penalty is in violation of Article 14 (Right to Equality), Article 19 (Right to Freedom) and "right to life" i.e. Article 21, which has been unanimously rejected by the five-judge bench of the Supreme Court. Further, it was contended that as per Cr.P.C. the procedure is confined to findings of guilt and not awarding death sentence. However, the Supreme Court held that the death sentence is a choice by the court made according to the procedure established by law and the choice between capital sentence or imprisonment of life is based on the circumstances, nature and facts of the case brought during the trial.

[7] (1973) 3 SCR 530
[8] Supra

In the case of **Rajendra Prasad v. State of U.P**[9], Justice Krishna Iyer had empathetically stressed that the death penalty is violative of articles 14, 19 and 21. With this the Justice Iyer said two conditions under which the death penalty can be given:

- While giving the death penalty the court shall record special reasons.
- Only in extraordinary cases the death penalty to be imposed.

However, in the case of **Bachan Singh vs. State of Punjab**[10], within one year the five-judge bench (4:1- Bhagwati J. dissenting) overruled the decision of Rajendra Prasad's case. The judgment expressed that the death penalty is not violative of Article 14,19 and 21 of the Constitution of India and pronounced that in the "rare of the rarest case" i.e. those cases in which the collective conscience of the community is so shocked that it will expect the judiciary to deliver the death penalty on the accused the death penalty can be ordered. Although, Justice Bhagwati in his dissenting judgment stated that the death penalty is not only being violative to Article 14 and 21 but also undesirable because of several other reasons.

Further, in the case of **Machhi Singh vs. State of Punjab**[11], the Supreme Court laid down the broad outlines of the circumstances under which the death sentence can be imposed. The court pointed out that under five categories of cases the extreme penalty can be given. Those points are as follows:

1. Manner of commission of murder;
2. Motive;
3. The magnitude of the crime;
4. Anti-social abhorrent nature of the crime;
5. The personality of the victim of murder.

Similarly, in the case of **Sher Singh v. State of Punjab**[12] and **Triveniben vs. State of Gujarat**[13], the Apex court asserted affirmatively that the death penalty does not invalidate the rights enriched under the Constitution of India.

In the case of **Mithu v. State of Punjab**[14], the Supreme Court held that the mandatory death penalty is invalid and unconstitutional in nature. However, no comments were made on the

[9] 1973 2 SCR 541
[10] Supra
[11] 1983 AIR 957, 1983 SCR (3) 413
[12] 1983 AIR 465, 1983 SCR(2) 582
[13] 1989 AIR 1335, 1989 SCR(1) 509

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consequent legislation for drug and criminal offences wherein the death penalty is considered mandatory. But at the same time, Indian courts actually applied the mandatory death penalty for these crimes.

However, recently in the case of **Channu Lal Verma v. State of Chattisgarh**[15], the question of the constitutional validity of the death penalty came to the three-judge bench. The Bench Constituted of Justice Kurian Joseph, Justice Deepak Gupta, and Justice Hemant Gupta. The bench upheld the decision of the Bachan Singh case. However, Justice Kurian Joseph had a different view, he said that "there is no substantial proof for the death penalty as a deterrent to crime".

The basic evolving parameters for the imposition of Death Sentence are:

1. The punishment shall not be so severe, so as to degrade the dignity of humans;
2. The state shall not arbitrarily inflict a severe punishment;
3. In a contemporary society such severe punishment shall not be unacceptable;
4. Such severe punishment must not be unnecessary.

However, there are other two questions which can be pondered by the Court while imposing the death penalty as punishment:

1. There is something uncommon in the crime which calls for the imposition of the death penalty and renders the sentence of imprisonment for life as inadequate.
2. Even after giving maximum weightage to the mitigating factors which are in favour of the offender there is no other alternative other than imposing the death sentence.

In the '41st report of Law Commission[16]', it recommended for the insertion of new provision which made a significant contribution in acknowledging the cardinal feature of procedural fairness and natural justice. Under the old code, there was no statutory opportunity given to the accused to explain the mitigating factor which is relevant to decide the nature of the punishment. However, after the recommendation of the Commission introduction of Section 235(2) and Section 248(2) of the Cr.P.C. was made. The new provisions provided an opportunity for the convict to place necessary information to the court to determine the mitigating factors and decide the case accordingly. Therefore, the choice of sentence shall be

[14] 1980 2 SCC 684
[15] 2018 SCC Online SC 2570
[16] Law Commission of India Report, Report No. 41, The Code of Criminal Procedure, 1898

made after following the procedure under section 235(2) duly followed by the court. In the cases of death sentence the importance of "right of hearing" has been overemphasized.

In 1976, in the case of **Santa Singh v. State of Punjab**[17], the Supreme Court explained the nature and scope of Section 235(2). The Bench remarked that "The provision is an acknowledgement of the fact that sentencing is an important stage in the criminal justice administration as the adjudication of guilt. And in no case, it should be consigned to a subsidiary position. It seeks to personalize the punishment so that the reformist component remains as much operative as the deterrent element. It is, for this reason, the facts of social and personal nature, maybe irrelevant for guilt determination, should be brought to the notice of the court at the time of actual determination of sentence".

Further, the court also opined about the meaning of the word 'hearing'. The hearing is not only limited to the oral submissions but it is wider than that. It gives both parties the right to put facts and materials which can be essential for the questions of sentencing. The Court stressed on the point that it is mandatory for the lower courts to comply with this provision. Not complying with Section 235(2) will not only be considered as mere irregularity, but that shall vitiate the sentence.

In the case of **Allauddin Mian v. State of Bihar**[18], Justice Ahmadi emphasized the purpose of Section 235(2):

1. It gives the accused an opportunity of being heard, which satisfies the rule of natural justice;
2. To determine the sentence of the award it assists the court.

In the case of **State of Tamil Nadu v Nalini**[19], the case was filed as an appeal against the judgment of the High Court of Tamil Nadu. This case is popularly known as Rajiv Gandhi's assassination case. The offenders were accused under Indian Evidence Act, 1872, Indian Wireless Telegraphy Act, 1933, The Foreigners Act, 1946, Passports Act, 1967, Arms Act, 1959, Explosive Substances Act, 1908, Indian Penal Code, 1908 (IPC), TADA Rules, The Terrorist And Disruptive Activities (Prevention) Act, 1987. In the case, there were 26 accused out of which four accused were punished death penalty by the Apex Court. The accused were from the LTTE (Liberation Tigers of Tamil Eelam) group and were seeking revenge for the Indian government's decision for sending army troops in Srilanka. However,

[17] 1976 AIR 2386, 1977 SCR (1) 229
[18] 1989 AIR 1456, 1989 SCR (2) 498
[19] Rajiv Gandhi Assasination Case, Retrieved from Indiankanoon.org

as per recent update Nalini Sriharan and Murghan have applied plea for mercy killing as there is no response to their mercy petition till date.

In **Jai Kumar v State of Madhya Pradesh case**[20], an appeal by the grant of special leave against the order of the Division bench of the High Court of Madhya Pradesh was made. In this case, the accused brutally murdered sister-in-law and 7-year-old niece. The Court considered the factual matrix of the case and observed that the act of murder was not done in the rage and the accused himself under Section 313 of the Cr.P.C admitted the murder. Thereby, the Supreme Court upheld the verdict of the Sessions Court and the High Court of Madhya Pradesh.

The case of **Suresh Chandra Bahri v State of Bihar**[21] was filed as an appeal from the High Court of Patna. The Sessions Court convicted the three appellants named Suresh Bahri, Gurbachan Singh and Raj Pal Sharma for the death penalty under Section 302 and Section 120 B of the IPC. The High Court of Patna dismissed the appeal affirming the sentence awarded by the trial court. In this case, the accused killed Urshia Bahri and her two children because of some dispute in the property. The Supreme Court confirmed the death penalty of Suresh Bahri, whereas the death penalty of the Gurbachan Singh and Raj Pal Sharma was commuted to a life sentence.

In the 21st century, the case of **Dhananjoy Chatterjee alias Dhana v State of West Bengal**[22] can be called as a historic case as the accused was the first person who was lawfully executed for a crime not related to terrorism. The accused was working as a watchman in the building of the deceased. He had raped and murdered an 18-year-old girl at her own home. The trial court ordered the death penalty under Section 302 of the IPC. The same has been confirmed by the High Court of West Bengal. While the appeal in the Supreme Court, the court held that case will be considered under "the rarest of the rare" case, thereby there will be no commutation of the punishment.

In the case of **Sushil Murmu v State of Jharkhand**[23], the accused was punished with the death penalty for the sacrifice before Goddess Kali of a 9-year-old child. The accused made the sacrifice for his own prosperity. The trial court held the accused liable under Section 302 and 201 of the IPC, 1860 and the Jharkhand High Court confirmed the death penalty. The Appeal was made to the Supreme Court, however, the Apex court upheld the order of the

[20] Judgement dated 11.05.1991 by Banerjee, J
[21] 1994 AIR 2420
[22] 1994 (1) ALT Cr 388
[23] Date of Judgement 12.12.2003

lower court and affirmed that this is an exemplary case which can be treated as the rarest of rare case, therefore there is no exception to be given to this case.

In the case of **Holiram Bardokti v State of Assam**[24], there were 17 accused. The appellant is one of the accused who has been awarded the death penalty under Section 302 read with Section 149 of the IPC by the Sessions Judge. The same has been confirmed by the High Court of Assam. The accused was being held for two murders i.e. of Narayan Bordoloi, Padam Bordoloi and Nayanmoni (6-year-old child). The Supreme Court observed that the appellant had no spark of kindness or compassion while burning the bodies and cutting the body into pieces, the whole accident shocked the collective conscience of the community. Therefore, the Apex Court upheld the order of the lower courts and observed that the court is not able to find any mitigating factors to refrain from the death penalty.

III. ABOLITION OF DEATH SENTENCE

Capital punishment is controversial in several countries and states, and positions can vary within a single political ideology or cultural region. In the European Union (EU), Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment. The Council of Europe, which has 47 member states, has sought to abolish the use of the death penalty by its members absolutely, through Protocol 13 of the European Convention on Human Rights. The United Nations General Assembly has adopted, throughout the years from 2007 to 2018, seven non-binding resolutions calling for a global moratorium on executions, with a view to eventual abolition.

Abolitionists believe capital punishment is the worst violation of human rights, because the right to life is the most important, and capital punishment violates it without necessity and inflicts to the condemned a psychological torture. Human rights activists oppose the death penalty, calling it cruel, inhuman and degrading punishment. Amnesty International considers it to be the ultimate irreversible denial of Human Rights. They argue that retribution is simply revenge and cannot be condoned. Others while accepting retribution as an element of criminal justice nonetheless argue that life without parole is a sufficient substitute. It is also argued that the punishing of a killing with another death is a relatively unique punishment for a violent act, because in general violent crimes are not punished by subjecting the perpetrator to a similar act.

Among countries around the world, all European (except Belarus) and many Oceanian states (including Australia and New Zealand) and Canada have abolished capital punishment. The

[24] Indiankanoon.org

EU and the Council of Europe both strictly require member states not to practise the death penalty. In Latin America, most states have completely abolished the use of capital punishment, while some countries such as Brazil and Guatemala allow it only in exceptional situations, such as treason committed during wartime.

In contrast, the rapid industrialization in Asia has seen an increase in the number of developed countries which are also retentionist. In these countries, the death penalty retains strong public support and the matter receives little attention from the government or the media. The United States (the federal government and 29 of the states) and some Caribbean countries have also retained capital punishment. In the United States, Michigan was the first state to ban the death penalty, on 18 May 1846. The death penalty was declared unconstitutional between 1972 and 1976 based on the **Furman v. Georgia case**[25], but the 1976 **Gregg v. Georgia case**[26] once again permitted the death penalty under certain circumstances. Further limitations were placed on the death penalty in **Atkins v. Virginia**[27] (2002) and **Roper v. Simmons**[28] (2005). In the United States, 21 states and the District of Columbia ban capital punishment. In Africa, less than half of countries retain it. South Africa abolished the death penalty in 1995.

In 1977, the United Nations General Assembly affirmed in a formal resolution that throughout the world, it is desirable to progressively restrict the number of offences for which the death penalty might be imposed, with a view to the desirability of abolishing this punishment.

The United Nations introduced a resolution during the General Assembly's 62nd sessions in 2007 calling for a universal ban. The approval of a draft resolution by the Assembly's third committee, which deals with human rights issues, voted 99 to 52, with 33 abstentions, in favour of the resolution on 15 November 2007 and was put to a vote in the Assembly on 18 December.

Again in 2008, a large majority of states from all regions adopted, on 20 November in the UN General Assembly (Third Committee), a second resolution calling for a moratorium on the use of the death penalty; 105 countries voted in favour of the draft resolution, 48 voted against and 31 abstained.

[25] 408 US 238 (1972)
[26] 428 US 153 (1975)
[27] 536 US 304 (2002)
[28] 543 US 551 (2005)

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A number of regional conventions prohibit the death penalty, most notably, the Sixth Protocol (abolition in time of peace) and the 13th Protocol (abolition in all circumstances) to the European Convention on Human Rights. The same is also stated under the Second Protocol in the American Convention on Human Rights, which, however, has not been ratified by all countries in the Americas, most notably Canada and the United States. Most relevant operative international treaties do not require its prohibition for cases of serious crime, most notably, the International Covenant on Civil and Political Rights.

Several international organizations have made the abolition of the death penalty (during the time of peace) a requirement of membership, most notably the EU and the Council of Europe. There are also other international abolitionist instruments, such as the Second Optional Protocol to the International Covenant on Civil and Political Rights, which has 81 parties and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Among non-governmental organizations (NGOs), Amnesty International and Human Rights Watch are noted for their opposition to capital punishment.

The recent trend in India is clearly towards the abolition of death sentence. In **Ediga Anamma v State of Andhra Pradesh[29],** the Supreme Court Observed, "while murder in its aggravated form in the extenuating factors connected with crime, criminal or legal process, still is condignly visited with death penalty, a compassionate alternative of life imprisonment in all other circumstances is gaining judicial ground.

In **Raghubir Singh V State of Haryana[30]**, although the Supreme Court accepted the contention that the murder was treacherous, death sentence was reduced to life imprisonment.

In **Rajendra Prasad V State of Uttar Pradesh[31],** the appellant was sentenced to life imprisonment in a previous case but released on Gandhi Jayanti day. He again committed murder and was sentenced to death by the Sessions Judge and his death sentence was confirmed by the High Court. However, the same was converted into life imprisonment by the Supreme Court.

In **Bachchan Singh v State of Rajasthan[32],** the Supreme Court held by majority that the Provision of death sentence as an alternative punishment for murder in Section 302 of the IPC is not unreasonable and is in the Public interest. However, the dissenting view of Justice Bhagwati was that instead of death sentence, the sentence of life imprisonment should be

[29] (1974) 4 SCC 443
[30] (1975) 3 SCC 37
[31] (1979) 3 SCC 646
[32] Supra

imposed. He pointed out that the international trend was towards the abolition of death penalty and a large number of countries has abolished death penalty de jure or de facto.

Justice Bhagwati also referred to the views of Jayprakash Narayan, Andrei Sakharov, Victor Hugo and Mahatma Gandhi in support of his contention. The view of Jayaprakash Narayan was that a humane treatment even of a murderer will enhance the dignity of man and make society more human. Sakharov regards death penalty as a savage and immoral institution which undermines the moral and legal foundation of society. Tolstoy, Victor Hugo and Mahatma Gandhi have expressed themselves against capital punishment.

Justice Bhagwati Observed, "Death Penalty is barbaric and inhuman in its effect, mental and physical upon the condemned man and is positively cruel. Its psychological effect on the prisoner in the death row is disastrous. Intense mental suffering is inevitably associated with confinement under sentence of death. Anticipation of approaching death can produce stark terror. There is also the excruciating mental anguish and several psychological strain which the condemned prisoner has to undergo on account of the long wait from the date when the sentence of death is initially passed by the session court until it is confirmed by the High Court and if appealed to the Supreme Court, then the appeal against death sentence is disposed by the Court."

He further observed, "Death penalty for the murder does not serve any legitimate social purpose, whether it is reformation, denunciation by the community or retribution and deterrence. The civilized goal of criminal justice is the reformation of the criminal and death penalty means abandonment of the goal for those who suffer it. Death penalty cannot serve the reformatory goal because it extinguishes life and puts an end to any possibility of reformation. It defeats the reformatory end of punishment."

In the case of **Om Prakash v State of Haryana**[33], the accused named Om Prakash was guilty of seven murders, thereby the Sessions court held him guilty under Section 302 of IPC, which was upheld by the High Court of Punjab and Haryana. There were two other accused but they were given life imprisonment and a fine of Rs.2000. During the appeal to the Apex Court, the court observed that mitigating factors of the case and considering other circumstances of the case, this cannot be counted under the rarest of rare cases. The court considering the background of the case found that the murder was acted due to constant harassment of the family members (deceased ones).

[33] Indiankanoon.org

Further, the court observed that this is not the case which was committed to fulfil the lust for women or wealth, neither it is for money, the act does not include any anti-social element like kidnapping or trafficking, the act does not include any dealing in dangerous drugs, nor any act committed for political or power ambitions. And further, the accused was working in BSF at the age of 23 with no criminal antecedents. Thereby, the Apex Court converted the death penalty to the sentence of imprisonment for life.

In the case of **Rajendra Rai v. State of Bihar**[34], the accused were held guilty of the murder of Krishnandan (deceased 1) and Sir Bahadur (the son of deceased 1), as the accused and deceased had a dispute over the land situated between their houses. The Trial court-ordered death penalty and the High Court confirmed the order. However, the Apex Court was of the view that the case cannot be regarded under the rarest of rare cases. Thereby the death penalty was reduced to life imprisonment.

In the case of **Kishori v State of Delhi**[35]**,** the accused was in relation to the mob attack which occurred against the Sikh community immediately after the assassination of Mrs. Indira Gandhi, the then Prime Minister which broke out in several places including Delhi. The appellant was held to be a part of the mob. The Sessions court was of the view that the accused deserves a death sentence, as he has been convicted for several murders and he killed innumerable Sikhs in a brutal manner. The High Court of Delhi confirmed the order. However, the Apex Court had a different opinion. The Court said that the acts conducted during the chain of events shall be considered as one. Further, the act of the accused was not a personal action, was just a part of the group activity which can not be called as a systematic or organized activity. Therefore, the Apex court felt that the act of the accused as a result of the temporary frenzy act, so the court reduced the death penalty to life imprisonment.

In the case of **State Of M.P Through C.B.I., Etc vs Paltan Mallah**[36], the deceased Shankar Guha Yogi, who was a popular and powerful trade union leader was killed. As he had been working for the welfare of the labour, the industrial unit at Bhillai and Durg wanted him to be out of their way. The deceased was the leader of the labourer organization named "CHATTISGARH MUKTI MORCHA" ('CMM'). The workers at Bhillai asked for help in the protest. To help those labourers SG Yogi shifted to Bhilla with his servant Bhahal Ram. There was a widespread movement, due to this, the leaders of the CMM were attacked by the industrialists. The deceased apprehended that there is a serious threat to his life. On the

[34] Indiankanoon.org
[35] Indiankanoon.org
[36] 2005 (3) SCC 169

midnight of 27.09.1991, Bahul Ram heard a noise from the neighbouring room where the deceased was sleeping. The servant found Niyogi lying on the bed in pain because of gunshot injuries. However, the accused Paltan Mallah and others were acquitted by the Sessions and High Court due to lack of evidence. However, the Supreme Court reviewed the matter and reversed the order of acquittal by the lower court. As there was a long lapse of time from the lower court's decision of acquittal to appeal, the court sentenced him to undergo imprisonment of life.

In the case of **Sambhal Singh v. State of UP**[37], wherein the four accused (Sambhal Singh, Jag Mohan Singh, Krishna Mohan Singh, and Hari Mohan Singh) murdered the three children of the Munshi Mall (deceased- the brother of the Sambhal Singh) because of a family land dispute. The Sessions court found them guilty and the High Court confirmed the sentence. However, the Apex Court observed that the age of the four accused was not considered by the lower court. Sambhal Singh was old and the other three were young, therefore, the court reduced the punishment of death penalty to life imprisonment.

In the case **Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka**[38], the accused was the second husband of the deceased Shakereh. The deceased came from a highly reputed and wealthy family. The accused murdered the deceased after a well-designed plan and executed it accordingly for attaining property which was on her name. The Session Court ordered the death penalty and the same was confirmed by the High Court of Karnataka. However, the Supreme Court converted the death penalty to life imprisonment. This is an important case from the point of view of sentencing and remitting the sentence. The Apex Court clearly differentiated the sentence of imprisonment for life from ordinary life imprisonment and held that the remission is not applicable to the cases where the imprisonment of life is given as a substitute to the death penalty; it means the accused will be in imprisonment till his last breath.

IV. CONCLUSION

It is frequently argued that capital punishment leads to miscarriage of justice through the wrongful execution of innocent persons. Many people have been proclaimed innocent victims of the death penalty. Improper procedure may also result in unfair executions. However, Supporters of the death penalty argued that death penalty is morally justified when

[37] 2004 CrLJ 1533
[38] (2013) 2 SCC 713

applied in murder especially with aggravating elements such as for murder of police officers, child murder and mass killing such as terrorism, massacre and genocide.

Opponents of the death penalty argue that this punishment is being used more often against perpetrators from racial and ethnic minorities and from lower socioeconomic backgrounds, than against those criminals who come from a privileged background; and that the background of the victim also influences the outcome. The position of capital punishment did not change for more than 100 years. However, the trend in the direction of the abolition of capital punishment in many countries affected legislative as well as judicial thinking in India.

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