

## Introduction

**Death penalty or Capital Punishment** is a legal process or practice of executing people or someone as punishment for a specific crime after a proper & complete legal trial & whereby a person is put to death by the state as a punishment for a crime. The term 'capital punishment' is originated from the Latin word '*caput*', meaning 'head'. It initially referred to death by decapitation. Death penalty laws were first introduced in Eighteenth Century BC. in the Code of King Hammurabi of Babylon, and these laws of death penalty were codified for 25 different crimes. In those times death sentences were carried out by means of crucifixion, drowning, beating to death, burning alive and impalement. In the Tenth Century AD., hanging became the usual method of execution in Britain and it influenced America's use of the death penalty more than any other country. In England, during the 17<sup>th</sup> and 18<sup>th</sup> Century, people had a passion for watching public execution. During French Revolution, executions in Paris were witnessed by many including female Jacobins. In many countries there has been a demand for abolition of the death penalty and in some this demand has been accepted and death penalty has been abolished. In India, too there are many social workers including lawyers and judges who have voiced their demand. So far as constitutionality is concerned it has to be considered in the light of the provision of the Constitution of India. Method of execution are crucifixion, stoning, drowning, impaling, and beheading but in such present time execution is formed by lethal gas or injections, electrocution, hanging, or shooting. The Indian Penal Code recognizes capital punishment under eight sections (121, 132, 194, 302, 303, 305, 307, and 396) for different offences. Article 21 of the Indian Constitution provides that "no person shall be deprived of his life and personal liberty except according to the procedure established by law."

On the basis of this article, the constitutional validity of capital punishment has been accepted by our Supreme Court on several occasions, if the procedure adopted is "just, fair, and reasonable" and is not "fanciful, oppressive, or arbitrary". There was a proposal in mid 1999 from some sources that capital punishment should be awarded to rapists.

The number of persons admitted with death sentence in India was 843 (830 males and 13 females) in 1959 and 791 (785 males and 6 females) in 1960. However, the actual number of persons executed was 190 (188 males and 2 females) in 1959 and 210 (all males) in 1960. In 1982, 56.4 thousand persons were arrested for 23,339 murders (Crime in India, 1993).

Of these cases, trial was completed only in 14,000 (28%) cases, of which 6,335 (i.e., 45%) were convicted, 200 (i.e., 37%) were given death penalty but only 64 (i.e., 0.3%) were actually hanged.

In 1998, 81,093 persons were arrested (77,649 or 95.8% males and 3,444 or 4.2% females) for 38,653 murders (ibid., 1998: 271).

Of these, trial was completed in 63,974 cases (including pending cases), of which 20,396 were convicted and 134 were awarded capital punishment. But hardly 20 were hanged. Thus, in the last two-three decades, the number of persons actually executed has sharply come down.

In **Jagmohan Singh v. State of U.P**[2], the constitutional validity of capital punishment was challenged before the Apex Court. It was argued that the Right to Life was the basic Fundamental Right under Article 21 of the Constitution.

The Supreme Court rejected the contention and held that capital punishment could not be said to be violation of Article 21 of the Constitution. It is noteworthy that Justice Krishna Iyer in **Rajendra Prasad v. State of U.P**[3]. Justice Krishna Iyer has empathetically stressed that death penalty is violation of articles 14, 19 and 21.

The adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights in 1989 aimed at abolition of the death penalty and that it was a clear recognition by the international community of the need to eliminate the practice of capital punishment, totally and globally. India has ratified the United Nations International Covenant on Civil and Political Rights by which it has committed itself to a policy for the abolition of the death penalty. Thus, Death sentence has become an exception but not the rule. Hanging is the only methods used in India, other countries employ methods like lethal injection, gas chambers, beheading, shooting, and electrocution besides hanging. Under Indian law, death penalty can be imposed for murder, gang robbery with murder, abetting suicide of a child or insane person, waging war against the Government and abetting mutiny by a member of the armed forces

### **Arguments for death sentence:**

- Death sentence serves as deterrent for other criminals.
- A guilty must be punished proportionate to the severity of the crime
- Death sentence in India should be there in the statute books to contain terrorism.
- Death penalty provides a closure for the victims' families.

With the increasing significance of human rights , individual liberties and civil society, there has been an international trend towards abolition of death penalty. The Supreme Court has repeatedly held that the death penalty is not unconstitutional and does not violate Article 21 of the Constitution. The Apex Court, however, has made its intentions clear by refusing to define clearly as what constitutes the '*rarest of the rare cases*' and left it to the discretion of the judges hearing the case despite knowing that the same would lead to a differing set of results. Therefore,

it is vividly clear that the judges have been awarding death sentence according to their own scale of values, social philosophy and exercise of judicial discretion as per the facts of the case.<sup>1</sup>

## **Arguments in Favor of Abolition of Capital Punishment**

### **1) Capital Punishment is cruel, degrading and disproportionate**

Cesare Beccaria wrote that capital punishment is founded on vengeance and retribution, and not on reformation of the criminals and prevention of future crimes, which is the purpose of punishment, *i.e.*, the deterrence argument. There is considerable evidence to support this argument. Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, concluded that “it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment”.

### **2) Fallibility of Judgment in case of Capital Punishment**

The abolitionists are opposed to death penalty for reasons that utilitarian support and also for reasons of fallibility of judgment. A judgment being given by human beings based on evidence produced in courts, the possibility of human error cannot be ruled out and the irreversibility of death penalty makes it dangerous and opposed to the principles of proportionality. As human justice remains fallible, the risk of executing the innocent will never be eliminated. Justice P.N. Bhagwati in his dissent in *Bachan Singh's* case has made two astute observations. Firstly, that it is impossible to eliminate the chance of judicial error. Secondly, the death penalty strikes mostly against the poor and deprived sections of society.

### **3) Reformatory approach**

In *Narotam Singh v. State of Punjab*[4] the Supreme Court has taken the following view: “Reformatory approach to ‘punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to secure social justice.”

### **4) Moral Grounds**

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<sup>1</sup> 1.Should capital punishment be abolished? The Times of India, June 27, 2004.

2.(1973) 1 SCC 20: 1973 SCC (cri) 169

3. AIR 1979 SC 916

4.AIR 1978 SC 1542

By allowing death penalty morally nothing is achieved except more death, suffering and pain. Secondly, why should a person be allowed to die a quick, almost painless death if he murdered another person violently? Instead he must languish in prison up to his natural death. In fact, if the social values really mean that killing is wrong, then the society must abolish death penalty. Death penalty legitimizes an irreversible act of violence by the state.<sup>2</sup>

## **Arguments against Abolition of Capital Punishment**

### **1) Delay in executions is no ground for abolition**

A considerable time between imposition of the capital punishment and the actual execution is unavoidable, given the procedural safeguards required by the courts in such cases. This is in fact in favor of the convict. In *Sher Singh v. State of Punjab*[5], the Supreme Court refused to follow the rationale of *T.V. Vatheeswaran's* case[6] for commuting death penalty to a sentence of life imprisonment.

### **2) Chances of mistake by the Judiciary are not possible**

Firstly, the Apex Court has confined the imposition of capital punishment to the *rarest of rare cases*[7] so few people, after long careful proceedings, are awarded death penalty. Secondly, the processes of ascertaining guilt and awarding sentence are separated by distinct hearings[8] The sentence awarded by the Session Courts is subject to automatic confirmation by the High Court of the concerned state.

It must be borne in mind that, 95% cases go to the Apex Court[9]. Even thereafter, these cases are subject to an endless procession of clemency appeals, reprieves and pardons, etc. under Articles 72 and 161 of the Constitution of India. This eliminates even a single atom of judicial error, which might have remained after such a long purification process.

### **3) Arguments, based on the theories of Punishment Deterrence theory[10]**

If a convict is imprisoned for life, there is no deterrence for him to kill others since there is no harsher punishment than life-imprisonment, which already has been given to him. If one assumes that death penalty will not operate as deterrence on some criminals then no other lesser punishment can logically deter them too.<sup>3</sup>

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5. 1983 AIR 465 1983 SCR (2) 582

6. 1983 AIR 361 1983 SCR (2) 348

7. AIR 1980 SC 898; (1980) 2 SCC 684. & AIR 1983 SC 957; (1983) Cr LJ 1457.

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

9 Should Capital Punishment be Abolished? The Times of India, June 27, 2004

10 Praveen Kumar Jain, 'Should Capital Punishment be given Capital Punishment? – A Capital Question', I DLR (S) (2004).

## **INSTANCES OF INNOCENCE**

Last year, 14 eminent retired judges wrote to the President, pointing out that the Supreme Court had erroneously given the death penalty to 15 people since 1996, of whom two were hanged. The judges called this “the gravest known miscarriage of justice in the history of crime and punishment in independent India.”

Some argue that the death penalty is the only way to deter heinous crime, especially violence against women and children. But a comprehensive study done last year in the United States found that there is no credible evidence that the death penalty has any deterrent effect on crime. The “Innocence Project” in the United States [a national litigation and public policy organisation dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system] has found, on the other hand, several cases where innocent people were given the death sentence. One such case is that of Cameron Todd Willingham, who was executed in 2004 for the deaths of his three young daughters. In 2009, reinvestigation of the case raised serious doubts in the appreciation of forensic evidence in the case and the judge concluded that Willingham was wrongfully convicted. Another case is that of Carlos DeLuna who was executed in 1989 for the murder of a young woman some years before. In 2004, a study by Columbia Law School students brought to light the wrongful conviction of Carlos DeLuna, which turned out to be a case of mistaken identity of the actual perpetrator of the murder. Lawmakers in India find it convenient to hold up the death penalty as a symbol of their resolve to tackle crime, and choose to ignore more difficult but more effective solutions like social education and police or judicial reform. The certainty of punishment, not severity, is the real deterrent.

## **RAJIV GANDHI CASE**

The death penalty is little more than judicially sanctioned murder. Justice K.T. Thomas, who headed the three member bench in the Rajiv Gandhi assassination case, has said that executing Perarivalan, Murugan and Santhan, convicted and sentenced to death in the case, would amount to punishing them twice for the same offence, as they had already spent 22 years in jail, the equivalent of life imprisonment.

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In recent months, the Government of India has shown an alarming tendency to implement the death penalty. It is a fallacy to think that one killing can be avenged with another. For, capital punishment is merely revenge masquerading as justice. When the government is trying to create a just society where there is less violence and murder, it cannot be allowed to commit the same crime against its citizens in the name of justice.

### **Procedure When Death sentence is Imposed**

#### **Special Reasons**

The court has to record special reasons for imposing death sentence.

#### **Confirmation by High Court**

Court of session after passing a death sentence shall submit the proceedings to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court. The court passing the sentence shall then commit the convicted person to jail custody under a warrant.

#### **Enquiry and Additional Evidence**

The High Court while dealing with confirmation may order further inquiry be made into, or additional evidence taken upon, any point bearing upon, any point bearing upon the guilty or innocence of the convicted person.

#### **No order for confirmation**

No order for confirmation shall be made until the period allowed for preferring an appeal has expired, or if any appeal is presented within such period, until such appeal is disposed of.

In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall when such court consists of two or more judges, be made, passed and signed by at least two of them.

#### **Copy of Order Sent to Court of Session**

In cases submitted by the court of session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the court of session.

Where a person is sentenced to death and an appeal from its judgment lies the execution of the sentence will be postponed until the period allowed for preferring such appeal has expired, or if an appeal is preferred within that period, until such appeal is disposed of.

### **Postponement of Death Sentence on Pregnant Woman**

If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to imprisonment for life.

### **Mode Of Execution**

The issue regarding the constitutionality of hanging as a mode of execution came up before the Supreme Court in *Deena v. Union of India* (11), though the court asserted that it was a judicial function to probe into the reasonableness of a mode of punishment, it refused to hold the mode of hanging as being violative of Article 21 of the constitution.

This issue was once again raised in *ShashiNayar* (12) the court held that since the issue had already been considered in *Deena*, there was no good reason to take a different view.

Another issue which deserves attention is public hanging as a mode of execution. The issue of public hanging came to the Supreme Court through a writ petition *Attorney General v.*

*LachmaDevi*(13) in this petition the order of Rajasthan High Court regarding the execution of the petitioner by public hanging under the relevant rules of Jail manual. The S.C. held that public hanging even if permitted under the rules would violate Article 21 of the Constitution.

### **Legality of Death Sentence**

In the case of *Jagmohan V/s State of U.P.* (14) the question of constitutional validity of death punishment was challenged before the SC, it was argued that the right to live was basic to

freedom guaranteed under Article 19 of the constitution . The S.C. rejected the contention and<sup>4</sup> held that death sentence cannot be regarded as unreasonable per se or not in the public interest and hence could not be said to be violative of Article 19 of the constitution.

### **When can Death Sentence be granted**

As have been stated earlier, after CrPC., 1973, death sentence is the exception while life imprisonment is the rule. Therefore, by virtue of section 354(3) of CrPC., it can be said that death sentence be inflicted in special cases only. The apex court modified this terminology in Bachan Singh v. State of Punjab (15) and observed- " A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.."

### **Rarest of rare cases**

To decide whether a case falls under the category of rarest of rare case or not was completely left upon the court's discretion. However the apex court laid down a few principles which were to be kept in mind while deciding the question of sentence. One of the very important principles is regarding aggravating and mitigating circumstances. It has been the view of the court that while deciding the question of sentence, a balance sheet of aggravating and mitigating circumstances in that particular case has to be drawn. Full weightage should be given to the mitigating circumstances and even after that if the court feels that justice will not be done if any punishment less than the death sentence is awarded, then and then only death sentence should be imposed.

Again in Machhisingh vs. State of Punjab (16)the court laid down:- " In order to apply these guidelines inter alia the following questions maybe asked and answered: -

(a). Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

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<sup>4</sup>11.1993] 4 SCC 645

12 1992 SCC [CRI] 24

13 1989 SCC [CRI] 413

14 1973 SCC [CRI] 169

15 AIR 1980 SC 898

16 1983] 3 SCC 470

(b). Are there circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favor of the offenders?"

The SC has also discussed such aggravating and mitigating circumstances in various cases.

These circumstances include: -

#### Aggravating Circumstances

- # Murder committed in an extremely brutal , grotesque, diabolical , revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- # Murder- for a motive which evinces total depravity and meanness.
- # Murder of a Scheduled cast or Scheduled tribe- arousing social wrath ( npt for personal reasons).
- # Bride burning/ Dowry death.
- # Murderer in a dominating position , position of trust or in course of betrayal of the motherland.
- # Where it is enormous in proportion.
- # Victim- innocent child, helpless woman, old/infirm person, public figure generally loved and respected by the community.

#### Mitigating Circumstances

The court in its discretion, may take into consideration, the following circumstances as mitigating, on the basis of which the lesser punishment can be imposed:

1. That the offence was committed under the influence of extreme mental or emotional distribution;
2. If the accused is young or old, he shall not be sentenced to death;
3. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society;
4. The probability that the accused can be reformed and rehabilitated ;The state shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above;
5. That in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence;
6. That the accused acted under the duress of domination of another person;

7. That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

### **Conviction of a minor**

The ordinary sentencing applicable to adults will no longer be applicable in the case of juveniles. The Juvenile Justice Act defines the term juvenile as a boy who has not attained the age of 16 years, or a girl who has not attained the age of 18 years. As per sec. 22 of the said Act, no delinquent juvenile shall be sentenced to death ?.

### **Conviction Of A Pregnant woman**

Section-416 of CrPC. provides if a woman sentenced to death is found to be pregnant, the High court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to imprisonment for life.

### **Lesser Sentence To Co- Accused**

In cases where there are more than one accused, and murder has been committed by several persons, under section 34 of IPC, the act done by one will be considered to be acts done by all. So if a lesser sentence of life imprisonment is awarded to one accused, then the co-accused should also generally be given the same sentence, unless it can be established that the role of any one of them in the commission of the crime is more that of others.

### **Delay in execution of the death sentence**

Delay in execution of death sentence is a factor which may be taken into consideration for commuting the sentence of death to life imprisonment.

If upon taking an overall view of all the circumstances and taking in to account the answers to the question posed by way of the test of rarest of rare cases, the circumstances of the case are such that death penalty is warranted, the court would proceed to do so.

### **Judicial Discretion**

The ultimate discretion to decide whether death sentence is to be imposed or not , have been vested in the court. There is a debate going on about the extent of this judicial discretion.

A brief analysis of the cases decided by the SC. Regarding the question of death sentence over last 25 years, will reveal how differing/dithering the judgments have been.

In the case of Mohd.Chaman(17) , on the question of extent of judicial discretion, the court observed :-

" Such standardization is well nigh impossible . Firstly degree of culpability cannot be measured in any case. Secondly criminal cases cannot be categorized there being infinite , unpredictable and unforeseeable variations . Thirdly in such categorization, the sentencing procedure will cease to be judicial . And fourthly , such standardization or sentencing discretion is policy matter belonging to the legislature beyond the courts functions"

### **International Scenario**

As of June 2004, a total of 118 countries (including Canada, Mexico, Australia, Russia, South American nations and most European nations) have abolished the death penalty in law or practice. Of these, 80 countries and territories have abolished the death penalty for all crimes, fifteen countries have abolished the death penalty for all but exceptional crimes (such as wartime crimes) and 23 countries can be considered abolitionist in practice, i.e., they retain the death penalty in law but have not carried out any executions for the past ten years or more and are believed to have a policy or established practice of not carrying out executions.

## INDIAN PERSPECTIVE OF CAPITAL PUNISHMENT

In India, though the test of insanity in criminal law is based on the rigid principles of McNaughten's case<sup>[18]</sup>, death sentence is normally avoided in case of offenders not being legally insane, but mentally insane viz. psychosomatic disorders. Very often an argument is advanced by the abolitionists that many murders are committed in the heat or the moment. However, in such cases death penalty is not awarded. 'Grave and sudden, provocation and killing in the heat of passion are considered as culpable homicides as falling within the ambit of exception one or four of Section 300 of the Indian Penal Code and the maximum penalty for it is life imprisonment. Otherwise also, Courts have discretion not to give death sentence in a case of murder and give lesser sentences of life due to presence of some mitigating extenuating circumstances.

It may be pointed out in this connection that under Section 367(5) of the Criminal Procedure Code, as it stood before the 1955 amendment, the normal rule was to sentence the accused to death on a conviction for murder and to impose the lesser sentence of imprisonment for life to be recorded in writing. That provision was effected and today under the Criminal Procedure Code of 1973, the Court has to elaborate special reasons for awarding capital punishment.

The Major argument for abolition is that there is no evidence to support the deterrent theory of capital punishment. Statistics establish that the overwhelming majority of killers commit the offence in momentary aberration. Majority of them are perfectly ordinary people without criminal record. Most of the killings are for personal and emotional reasons like anger, jealousy and quarrels. Many of the killers feel terribly abashed after committing the act and few of them commit suicide later. It is vehemently argued that even in these extreme cases of professional criminals the cause of deterrence is served as much by long imprisonment, as by death sentence.

A large number of eminent psychiatrists from London institute of Psychiatry arrived at some important conclusions against capital punishment. They contend that prisons are already packed to the limit because of a mistaken approach to penology. Executions dehumanize the prisoner.

The condemned persons are also termed as victims and gain the support, more than the victims of crime.

The Law Commission of India emphasizes that the risk of abolition of capital punishment cannot be undertaken at this junction as under:

“The issue of abolition or retention has to be decided on a balancing of the various arguments for and against retention. No single argument for abolition or retention can decide the issue. In arriving at any conclusion on the subject, the need for protecting society in general and individual human being must be borne in mind. It is difficult to rule out the validity of or the strength behind many of the arguments for abolition. Nor does the Commission treat lightly the argument based on irrevocability of the sentence of death, the need for a modern approach, the severity of capital punishment and the strong feeling shown by certain sections in stressing deep questions of human values.”[19]

Indian criminologist started surveying the pros and cons by collection of preliminary data study about the socio-economic and psychic factors of criminals leading to commission of capital crimes. Buddha, Jesus and Gandhi considered capital punishment as killing by authority of law. “Karuna” should crop forth in the minds of judges. It is a harsh reality that capital sentence fall on the socially, mentally and economically backward people and on the brave and bold crusaders, reformists and revolutionaries. Justice Douglas observed that it is the poor, the powerless, and the pale that were executed.

V.R. Krishna Iyer, J. reiterated by categorically holding: “The future belongs to life, not to death. Even if a battle is lost, the war may still be won, but never surrender where man is on the cross. Where divinity is in jeopardy, values await crucifixion.” Again V.R. Krishna Iyer, J. in *Rajendra Prasad case*[20] adopted the meaning of penal statutes to changing social milieu[21]

“The Indian Penal Code fabricated in the imperial foundry well over a century ago has not received anything but cursory parliamentary attention in the light of the higher values of the National Charter which is a testament of social justice. Our Constitution respects the dignity and, therefore, the divinity of the individual and preservation of life, of everyone’s life. So the Court must permeate the Penal Code with exalted and expanded meaning to keep pace with

constitutional values and the increasing enlightenment of informed public opinion. A nineteenth century text, when applied to twentieth century conditions, cannot be construed by signals from <sup>5</sup>the grave. So, while courts cannot innovate beyond the law, the law cannot be viewed as cavemen's pieces. The penological winds of change, reflected in juristic debates, bills for abolition of death penalty in Parliament and the increasing use of clemency and commutation by the highest executive, must affect the living law of statutory application.

The position thus emerges proves that death sentence is not in conformity to the constitutional philosophy. The passage in *Bachan Singh case*[22] reads thus: (SCC p. 751, para 209)

“It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

The Indian Penal Code (Amendment) Bill, 1978 in clause 125 has proposed the idea of two degrees of murders, namely, the lower degree or the general murders for which the maximum punishment would be imprisonment for life and higher degree murders for which maximum punishment would be death penalty. Murders under the following situations would be considered as higher degree murders:

“(2) Whoever commits murder shall —

(a) If the murder has been committed after previous planning and involves extreme brutality; or

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<sup>5</sup> 17 *Mohammad Chamanvs State(NCT) of Delhi*  
1810 Cloth and Fin 200 (1843)  
1935th Report of Law Commission of India  
20*Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646  
21 SCC p. 674 & 668, paras 71 & 50  
22 *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

(b) If the murder involves exceptional depravity; or

(c) If the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed

(i) While such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of such murder he was such member or a public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973 or had rendered assistance to a Magistrate or police officer demanding his aid or requiring his assistance under Section 37 or Section 129 of the said Code; or

(e) If the murder has been committed by him, while undergoing sentence of imprisonment for life, and such sentence has become final.”

In India the deterrent line has been best advocated in the Thirty-fifth Report of the Law Commission which opined for the retention of death penalty mainly in view of its deterrent effect in these words:

“Experience of other countries could not be conclusive for India. Need for deterrent control provided by capital punishment is greater in various classes of society. There is greater danger in India of increase in violent crimes if capital punishment is abandoned, particularly in respect of professional criminals.”

## **CONCLUSION**

The capital punishment debate is not about what murderer’s deserve, but rather about how society should express and defend its fundamental values. The most fundamental argument for discontinuing the death penalty is that society can best express the seriousness of its commitment

to the sanctity of human life by abstaining from taking it, despite having justifiable cause. To respect human life precisely where its bearer has forfeited personal claim to that respect would be society's ultimate statement both of the sanctity of life and of kind of society it wants to be. Undeniably, the reciprocity of killing as punishment for murder in its own way takes life very seriously; but two side's effects undercut its impact. Achieved reciprocity implies a new equilibrium, a state of justice achieved or restored, but the taking of an innocent life cannot be compensated. Murders should never be allowed the comfort of illusion that they can pay for their crime.

The criminal-justice system is quite imperfect as a mechanism for determining guilt and innocence, "Law and order" advocates are more than ready to grant this generalization with respect to the all-too frequent case of guilty parties going free, but inevitably it happens occasionally in the opposite direction as well. The burden of proving guilt "beyond reasonable doubt" is far from absolute as a protection against the accidents for incriminating circumstance. It is sad enough when any conviction and imprisonment is belatedly recognized as mistaken, for society cannot ever redress the injustice of incarcerating an innocent person. Pain and humiliation cannot be reversed nor can the last years of freedom be restored. Both the arguments made by retentionists as well as abolitionists are empirically weak but emotionally strong. Only thing can be observed in present scenario that it should be awarded to rarest of the rare cases. Where the act is heinous and dreadful for the society to bear in such type of crimes the Criminal should be executed and sentenced with death penalty.

