

A CRITIQUE ON 262ND REPORT OF THE LAW COMMISSION OF INDIA

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Abstract

Law reform has been a continuing process in Indian history. Law Commissions were constituted from time to time by the government and recommended legislative reforms in order to clarify particular branches of law. The 35th Report of the Law Commission on Capital Punishment in 1967 recommended for retention of the capital punishment considering that time was not ripe to abolish the same. The constitutionality of death penalty has been challenged in various cases before the judiciary as well. The 262nd Report of the Law Commission of India on Death Penalty submitted recently in August 2015 has undoubtedly raised certain questions and compels to ponder over. The report has recommended that India need to move towards abolition of the death penalty but at the same time favoured its retention for offences related to terrorism and waging war. The article is an attempt to critically analyse the recommendations made by the Law Commission of India in its 262nd Report and endeavours to give certain suggestions for providing appropriate means of access to justice to the death convicts.

Introduction:

Law Reform has been a continuing process in Indian history. Law Commissions have been constituted by the government from time to time and are empowered to recommend legislative reforms in order to clarify particular branches of law where ever the government felt the necessity for it. The first Commission established in 1834 under the Charter Act of 1833 inter alia recommended codification of the Penal Code, the Criminal Procedure Code. The First Law Commission of Independent India was established in 1955. The three years term of the twentieth Law Commission constituted with effect from 1st September 2012 ended on 31st August 2015 with the submission of its 262nd Report on Death Penalty.¹

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¹ <http://lawcommissionofindia.nic.in/> accessed on 24-09-2015

The Commission comprised of the following members:

1. Justice A P Shah, Chairman
2. Justice S N Kapoor, Member
3. Justice Usha Mehra, Member [with effect from the forenoon of the 3rd April 2013] (Did not sign the Report)
4. Prof. (Dr) Mool Chand Sharma, Member

Recommendations of the Law Commission:

The Commission had given following recommendations² in its Report favouring abolition of death penalty:

1. Provisions for police reforms, witness protection scheme and victim compensation scheme should be taken up expeditiously by the government.
2. The march of our own jurisprudence - from removing the requirement of giving special reasons for imposing life imprisonment instead of death in 1955; to requiring special reasons for imposing the death penalty in 1973; to 1980 when the death penalty was restricted by the Supreme Court to *the rarest of rare cases* - shows the direction in which we have to head. Informed also by the expanded and deepened contents and horizons of the right to life and strengthened due process requirements in the interactions between the state and the individual, prevailing standards of constitutional morality and human dignity, the Commission feels that time has come for India to move towards abolition of the death penalty.
3. Although there is no valid penological justification for treating terrorism differently from other crimes, concern is often raised that abolition of death penalty for terrorism related offences and waging war, will affect national security. However, given the concerns raised by the law makers, the commission does not see any reason to wait any longer to take the first step towards abolition of the death penalty for all offences other than terrorism related offences.
4. Death penalty be abolished for all crimes other than terrorism related offences and waging war.
5. The Commission trusts that this Report will contribute to a more rational, principled and informed debate on the abolition of the death penalty for all crimes.
6. Further, the Commission sincerely hopes that the movement towards absolute abolition will be swift and irreversible.

5. Dr Sanjay Singh, Legislative Secretary (Ex-Officio Member) (Did not sign the Report)

6. P.K. Malhotra, Law Secretary (Ex-Officio Member) (Did not sign the Report)

7. Dr. G Narayana Raju, Member-Secretary

8. R Venkataramani, Member (Part-Time)

9. Dr. Gurjeet Singh (Part-Time) [with effect from the forenoon of the 31st May 2013]

10. Dr. Bijai Narain Mani (Part-Time) [with effect from the forenoon of the 24th May]

Justice (retd) Usha Mehra and both the ex-officio members - Law Secretary P K Malhotra and Legislative Secretary Sanjay Singh - gave their dissenting notes.

² <http://lawcommissionofindia.nic.in/> accessed on 27-09-2015

Previous Law Commission Reports:

The 35th Report of the Law Commission³ on Capital Punishment recommended that the death penalty be retained as India could not risk an experiment with abolition that would put the lives of citizens in danger. The 187th Report of the Law Commission on Mode of Execution of Death and Incidental Matters⁴ did not address the question of whether the death penalty was desirable. Instead, it restricted itself to three issues: (a) the method of execution of death sentence, (b) the process of eliminating differences in judicial opinions among judges of the apex court in passing sentence of death penalty, and (c) the need to provide a right of appeal to the accused to the Supreme Court in death sentence matters.⁵

Judicial Approach:

Presently, 140 countries have abolished the death penalty in law or in practice. India is one of the 59 countries that have retained the death penalty.⁶ In *Jagmohan Singh Vs State of UP*⁷ the petitioners argued that the death penalty violated Articles 14, 19 and 21 of the Constitution of India. It was argued that since the death sentence extinguishes, along with life, all the freedoms guaranteed under Article 19(1) (a) to (g), it was an unreasonable denial of these freedoms and not in the interests of the public. The Supreme Court found that the death penalty was a permissible punishment, and did not violate the Constitution. The court also commented on the wisdom of the introduction of the post-conviction hearing on sentence in the case of *Ediga Anamma Vs State of Andhra Pradesh*.⁸ *Rajendra Prasad Vs State of Uttar Pradesh*⁹ discussed what could be the special reasons in imposing the death sentence. The Court held, “special reasons necessary for imposing death penalty must relate, not to the crime as such but to the criminal.” In 1979, different Benches of the Supreme Court heard the cases of *Dalbir Singh Vs State of Punjab*¹⁰ and *Bachan Singh Vs State of Punjab*.¹¹ While *Dalbir Singh* relied on *Rajendra Prasad* to arrive at a decision, the Bench in *Bachan Singh* noted that the judgment in *Rajendra Prasad* was contrary to the decision in *Jagmohan*, and referred it to a Constitutional Bench. This culminated in the landmark decision of the

³ Submitted in 1967

⁴ Submitted in 2003

⁵ Law Commission of India, 187th Report, 2003, available at <http://lawcommissionofindia.nic.in/reports/187th%20report.pdf>

⁶ Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015

⁷ (1973) 1 SCC 20 and also referred to in the Commission's Report

⁸ (1974) 4 SCC 443

⁹ (1979) 3 SCC 646

¹⁰ (1979) 3 SCC 745

¹¹ (1980) 2 SCC 684

Constitution Bench in *Bachan Singh Vs State of Punjab*¹² in which the Court adopted the 'rarest of rare' guideline for the imposition of the death penalty, saying that reasons to impose or not impose the death penalty must include the circumstances of the crime and the criminal. In *Shashi Nayar Vs Union of India*¹³ the death sentence was once again challenged. The Court turned down the petition, citing the deteriorating law and order in the country, with the observation that the time was not right for reconsidering the law on the subject. In *Aloke Nath Dutta Vs State of West Bengal*,¹⁴ *Swamy Shraddhananda Vs State of Karnataka*,¹⁵ *Santosh Bariyar Vs State of Maharashtra*¹⁶ and *Farooq Abdul Gafur Vs State of Maharashtra*¹⁷ amongst other cases, it has been noticed that sentencing in capital cases has become arbitrary and that the sentencing law of *Bachan Singh* has been interpreted in varied ways by different Benches of the Court. In the case of *Mithu Vs State of Punjab*¹⁸ the Supreme Court struck down the mandatory sentence of death enacted in Section 303 of the IPC. *Machhi Singh Vs State of Punjab*¹⁹ listed out five categories of cases for which the death penalty was a suitable option; (a) Manner of Commission of Murder (b) Motive for Commission of murder, (c) Anti Social or Socially abhorrent nature of the crime (d) Magnitude of Crime (e) Personality of Victim of murder.

Apart from this, delay has been a matter of concern in the criminal justice system, with the adage 'justice delayed is justice denied' being attributed to the plight of both victims of crime as well as the accused. *Shatrughan Chauhan Vs Union of India*²⁰ also laid down guidelines for safeguarding the interest of the death row convicts which included reaffirming the unconstitutionality of solitary confinement prior to rejection of the mercy petition by the President, necessity of providing legal aid, and the need for a fourteen days period between the rejection of the mercy petition and execution. The Supreme Court also upheld the

¹² (1980) 2 SCC 684

¹³ (1992) 1 SCC 96

¹⁴ (2007) 12 SCC 230

¹⁵ (2008) 13 SCC 767

¹⁶ (2009) 6 SCC 498

¹⁷ (2010) 14 SCC 641

¹⁸ (1983) 2 SCC 277

¹⁹ (1983) 3 SCC 470

[All these case have been referred to in the Commission's Report as well]

²⁰ (2014) 3 SCC 1

constitutionality of Section 364A, IPC, which allows for the imposition of the death sentence in cases of kidnapping with ransom in the case of *Vikram Singh Vs Union of India*.²¹

Legislative intent:

There are approximately twenty two legislations in India in which death penalty has been recognised for various offences.²² Presently, The Anti-Hijacking (Amendment) Bill 2014 is pending in the Parliament which also prescribes death penalty.²³ The Criminal Law (Amendment) Act, 2013 expanded the scope of the death penalty by introducing several new provisions into the Indian Penal Code, including Section 376A, which allowed for the death penalty to be imposed in cases where rape led to the death of the victim, or left her in a persistent vegetative state. The retention of death penalty in these legislations and also the ones which are pending shows the legislative intent that time is not ripe for abolition of death penalty. A study conducted by Amnesty International while studying all death penalty cases from 1950-2006 in India has noted the lack of clarity and official information available on the numbers of people who have been executed in India, but suspected that the number of executions during this period probably ran into thousands of executions.²⁴ There has, however, been a reduction in the number of people being executed over time. Dhananjay Chatterjee was executed in 2004, after a period of about seven years since the last execution. The previous recorded execution had been in 1997.²⁵ After 2004, India had an unofficial moratorium in executions for eight years, until Ajmal Kasab was executed in November 2012. Two executions have happened since then with execution of Afzal Guru in February 2013 and Yakub Memon, in July 2015.

Critical Analysis of the Report:

1. The Commission recommends that provisions for police reforms, witness protection scheme and victim compensation scheme should be taken up expeditiously by the

²¹ *Vikram Singh @ Vicky and Another Vs Union of India & Others*, Criminal Appeal No. 824 of 2013, Supreme Court of India, decided on August 21, 2015

²² Such as IPC, The Air Force Act, 1950, The Defence of India Act, 1971, The Indo-Tibetan Border Police Force Act, 1992, The Assam Rifles Act, 2006, The Commission of Sati (Prevention) Act, 1987, The Narcotics Drugs and Psychotropic Substances Act, 1985, The Army Act, 1950, Navy Act 1957, The Border Security Force Act, 1968 etc.

²³ Anti-Hijacking Bill, 2014, accessed from Parliament of India available at <http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/anti%20hjk-E-%20int.pdf>

²⁴ Amnesty International, *Lethal Lottery: The Death Penalty in India*, ASA 20/07/2008, available at <https://www.amnesty.org/en/documents/ASA20/007/2008/en/>

²⁵ Amnesty International, *Lethal Lottery: The Death Penalty in India*, ASA 20/07/2008, available at <https://www.amnesty.org/en/documents/ASA20/007/2008/en/>

government.²⁶ This clearly implies an imbalance in the Criminal Justice System as far as rights of the accused and victims are concerned. If viewed from penological point it appears that for every life the alternative is compensation, despite the fact that no amount of compensation can bring back life. The very purpose of criminal justice system is first to protect the society by punishing the offender *in proportion to the gravity of the offence* so committed by him. Awarding death penalty does not imply an eye for an eye because had this been so the case, there would be no requirement for holding any trial or taking of evidences and proving the cases beyond reasonable doubt. The primary purpose of awarding death penalty is therefore neither retributive nor deterrence because any criminal justice system delves on the theory of *awarding punishment proportionate to the crime* for protecting the society and giving justice to the society by proportionately convicting the offender. If death has occurred then from the victim's point of view, justice remains incomplete if death sentence is not awarded as only death is a substitute for any murder. Irrespective of the compensation awarded, the desire for death of the accused by the victim's kin remains unfulfilled which may lead to self revenge as well. Abolition of death sentence may further enhance the desire of self revenge by the victim's kin as they will know that since death penalty shall not be awarded hence it would be a better option to kill the offender by themselves.

2. In its second recommendation the Commission observes that the 'march of our own jurisprudence – from removing the requirement of giving special reasons for imposing life imprisonment instead of death in 1955; to requiring special reasons for imposing the death penalty in 1973; to 1980 when the death penalty was restricted by the Supreme Court to *the rarest of rare cases* – shows the direction in which we have to head. The Commission feels that time has come for India to move towards abolition of the death penalty'.²⁷ If this recommendation is minutely observed then it can be inferred that the recommendation of the Commission is primarily based on its feelings and opinions which are not based on any concrete data available from India. Since the data which is mainly available from foreign countries, its applicability to Indian circumstances has not been shown or substantiated by the Commission in its Report.

²⁶ Para 7.2.1 of the 262nd Report of the Law Commission

²⁷ Para 7.2.2 of the 262nd Report of the Law Commission

Moreover, the data available in India is very less and uncertain.²⁸ It also implies that time had not been static and the need for imposing death penalty has been changing during the period from 1955 to till date, i.e. 2015(approximately sixty years). Still debating at this stage that whether death penalty should be retained or not gives the inference that we are not certain as to its abolition. In the absence of clear data, tomorrow we may feel that death penalty should not have been abolished. Had the time been ripe for its abolition there would be no need for debating it till date. For example on the basis of clear data available we could find that the girl child ratio was decreasing and therefore without any large scale debate, the sonography test was prohibited and conducting such test was made a penal offence. Similarly, when it comes to abolition of death penalty, a clear data could have served the purpose. The data is required as to the exact number of executions that have taken place in India since independence, the nature of the murders committed in those cases, the views of the kin/relatives of those victims who were murdered, the reasons for rejecting or allowing mercy petitions by the Presidents so far etc. The uncertainty may lead to contrary results in future if death penalty is abolished. Since the matter pertains to giving justice not only to the accused but also the hapless victim and his kin, abolition of death penalty cannot be recommended in the absence of clear data.

3. Although the Commission has recommended 'swift' abolition of death penalty except in terror-related cases, noting it does not serve the penological goal of deterrence any more than life imprisonment, at the same time the three members of the Commission chose not to sign the Report and gave their dissenting opinion²⁹. This implies that there is no full consensus in abolition of death penalty even amongst the members themselves. When there is no full consensus in the few members of the Commission, how can we expect that the people of India would agree to such abolition whole heartedly? Despite giving a detailed report, the Commission itself feels that this Report will contribute to a more rational, principled and informed *debate* on the

²⁸ A study conducted by Amnesty International while studying all death penalty cases from 1950-2006 in India has noted the lack of clarity and official information available on the numbers of people who have been executed in India, but suspected that the number of executions during this period probably ran into thousands of executions. Accessed from Amnesty International, *Lethal Lottery: The Death Penalty in India*, ASA 20/07/2008, available at <https://www.amnesty.org/en/documents/ASA20/007/2008/en/> on 28-09-2015

²⁹ Justice (retired) Usha Mehra and both the ex-officio members- Law Secretary P K Malhotra and Legislative Secretary, Sanjay Singh, gave their dissenting notes.

abolition of the death penalty for *all* crimes³⁰. This implies that even the Commission itself is not certain that whether death penalty should be abolished for terrorism related offences or not. On one side Commission recommends Death Sentence for terrorism related offences and waging war but at the same time expects a more ‘informed’ debate on the abolition of the same. This clearly gives the inference that the time has not come for the abolition of the death sentence as the Commission itself is not certain as to its complete abolition.

4. Nine years after a series of powerful explosions ripped through local trains in Mumbai, a special Maharashtra Control of Organised Crime Act court sentenced to death five convicts for planting bombs on July 11, 2006. The serial train blasts claimed the lives of 189 persons and injured over 800³¹. The news report clearly stated the reaction of the people as to the appropriateness of awarding death penalty. This implies that those who lose their kin in such incidents or those who are murdered, irrespective of the fact that whether it was a single murder case or death in terrorism attack, most of the times demand for conviction by way of capital punishment. Whether a person is killed in a terrorist attack or murdered individually, the pain is same and the penal consequence should not be different.
5. The Report, in effect, replaces “rarest of rare” with “terrorism” as the exception. So in creating an exception, the Law Commission of India has to argue why terrorism does not fall in any of the given reasons for abolition.³² For instance, they have to argue why so-called terrorists don’t fall under universal rights such as life, liberty and dignity (are they not humans?), or why ideological biases (for instance, invoking religious or identity politics in case of terrorism), will not interfere with the judicial system, or why deterrence would work for terrorists (contrary to all evidence) etc. But surprisingly, the Commission does not give a single such reason.³³ In effect, the justification for excluding ‘terrorism’ is that the “law-makers” intend so. There has been a perplexing shift in the *nature of the argument*.³⁴ Abolition of death penalty was grounded in a “constitutionalism” argument (fundamental rights, rule of law). But

³⁰ Para 7.2.5 of the 262nd Report of the Law Commission

³¹ <http://www.thehindu.com/todays-paper/five-awarded-death-for-711-train-attacks/article7708845.ece> accessed on 01-10-2015

³² <http://www.thehinducentre.com/the-arena/current-issues/article7636573.ece> accessed on 01-10-2015

³³ <http://www.thehinducentre.com/the-arena/current-issues/article7636573.ece> accessed on 01-10-2015

³⁴ <http://www.thehinducentre.com/the-arena/current-issues/article7636573.ece> accessed on 01-10-2015

in creating an exception, the Commission suddenly takes a “representative governance” argument- that citizens vote for their representatives, and it is ultimately they who have to decide. Constitutionalism is often in conflict with representative governance. In a representative government, ideally, the laws reflect the “unrestricted” will of the citizens, regardless of how it represents the ethos of the shared political life.³⁵ Constitutionalism, on the other hand, sets limits on the people’s will, on their determination of the laws of the state. For instance, Rule of Law requires that the representative government do not violate human rights of the people. So, representative governance is contradictory to constitutionalism. The Law Commission’s reasons for abolition of death penalty have predominantly been on grounds of ‘constitutionalism’ and ‘rule of law’.³⁶ But in creating an exception for ‘terrorism’, they conveniently shift gears to an argument of ‘representative governance’, a political claim. This is not to say that a constitutionalism argument is better than a political one, or vice versa, but the shift is arbitrary and on convenience.³⁷ Hence, death sentence should not be abolished in such circumstances of unclear stance.

6. According to former U.S. President George W. Bush “*the reason to support the death penalty is that it saves other people life*”.³⁸ The Report nowhere states or even gives a hint that abolition of death penalty will not lead to increase in murders or the crime graph will remain the same.
7. The question of a life sentence being for a person’s whole life was settled by the Supreme Court as long back as in 1961 in Gopal Godse’s³⁹ case. In that case, however, as well as under the new Criminal Procedure Code, 1973, the executive continued to have discretionary powers to alter sentences. The 1973 Code was amended to mean that life imprisonment would mean at least 14 years and a constitutional challenge to it was negated by the Supreme Court. The court upheld it, recognising it to be a check on executive excesses in sentencing, but did so with the

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

³⁹ Gopal Vinayak Godse Vs State of Maharashtra And others AIR 1961 SC 600

caveat that the powers of the Governors and President are unbridled by legislation or by judicial diktat, and enjoy constitutional sanctity. The courts have regarded this clemency power of these high constitutional authorities as being a “ray of hope” for the prisoner and have so far not blotted it out. However, the way in which the Supreme Court has been interpreting and applying sentences for serious offences seems to present a mind-boggling array of alternatives. They range from death sentence in the “rarest of rare” cases, life imprisonment for a person’s “whole life”, consecutive life sentences, and life sentences without being considered for remission or commutation for 20 to 30 years. What is perhaps most disconcerting is that there appears to be no coherence in judicial pronouncements while deciding which formulations are most apposite in a particular case. Disturbing questions also arise as to who these select prisoners are who are condemned to spend their whole life in prison. If the courts have been accused of arbitrariness in applying the standard of “rarest of rare” to select those who should be executed, is it not infinitely more difficult to pick those who should live but never be released from prison, come what may? Would then our system be determining if some prisoners face the prospect of spending the “rest of their natural life” based upon, as realist legal theorists say, “what the judge had for breakfast”? While it is naive to assume that underpaid and overworked staff in overcrowded prisons will be able to bring about holistic reformation in the vilest and most despicable of prisoners, this would be the profile of a few prisoners only. To assume this for all prisoners is to let the exception dictate the rule. Most prisoners who come out at the wrong end of the judicial system after going through the multi-tiered appeals process seem to be the poorest and most marginalised in society. Correctional institutions present them with avenues of “reforming”, by earning an honest wage in jail factories or getting an education, all of which were not available to them outside jail. However, if the court holds that for some life convicts there is no prospect of release, irrespective of any reformation they may have undergone; serious questions would be raised about our correctional institutions. The court would be pre-judging and completely ruling out the prospect of any reform on the date of the sentencing. It is worth pondering whether prisoners who are sent to

prison for their whole life, are incarcerated merely to compensate for the failure of the prison system to help prisoners meaningfully reintegrate into society⁴⁰.

In the wake of these circumstances, it is not feasible to accept the Law Commission's Report on death penalty.

Suggestions:

Since penalty of death is irrevocable, hence its application must be completely error free. Effective access to justice does not only refer to reductions in costs, access to lawyers and access to courts; but rather it is a broad term that refers more generally to the efficaciousness of a justice system in meeting the dispute resolution needs of its citizens from all the varied spheres of life. Death convicts are no exceptions. Instead of abolishing death penalty, law need to take suitable steps to ensure that death sentence should be awarded in an error free manner. Following suggestions may be helpful in giving access to justice to the murder convicts:

1. In case of death penalty a separate legislation is required or amendment in the existing law is required so as to incorporate a detailed procedure in awarding death sentence. This may mitigate the disparity in determining the case falling in the rarest of the rare categories or not. For example the time to decide the execution can be set, the time to file the mercy petitions, to decide review or revision or curative petitions can be fixed, etc.
2. The matters on death penalty should be decided by not less than thirteen judges. The 35th Law Commission had recommended that the matter should be heard by at least five judges bench. Since the matter involves the extinguishment of one's life, hence it must be heard by at least thirteen judges bench and the death penalty must be approved only if minimum eleven of the thirteen judges decide in favour of death penalty.
3. The case of persons awarded death penalty must be appealed against at the expenses of the State and heard by the highest court of appeal i.e. the Supreme Court, irrespective of the fact that whether the accused wants to appeal against conviction or not. Our criminal justice system is so tardy that sometimes the accused does not feel like moving the appellate court and accepts his fate to the gallows. Hence, irrespective

⁴⁰ <http://www.thehindu.com/opinion/op-ed/granted-life-but-never-free/article7703091.ece> accessed on 01-10-2015

of the choice of the convict, his case must be heard by the Supreme Court in all cases where death penalty has been awarded by the subordinate courts. This will certainly help the poor accused who does not have sufficient financial resources to approach the appellate court.

4. A worldwide consensus has now emerged that there is no evidence to suggest that the death penalty has a deterrent effect over and above its alternative- life imprisonment.⁴¹ Moreover, the available data is limited mainly to the foreign countries which have no or little value for India. This implies that if there is no data to establish that whether deterrent theory works or not death penalty should not be abolished in the absence of clear information. For example, in a study by Isaac Ehrlich published in 1975, Ehrlich found a unique deterrent effect of executions on murders.⁴² The study claimed that each execution saved up to eight innocent lives. The Supreme Court of India in Bachan Singh cited Ehrlich's research and gave it extensive value. However, many flaws were subsequently discovered in Ehrlich's methodology and assumptions. Besides, if deterrence has no effect then how it is going to help in the cases of terrorism? The Commission is applying two different logics in retaining and abolishing death penalty at the same time. For terrorism it says that death penalty is necessary for security of the nation but the same is not necessary for punishing the offenders of heinous offenders or recidivists. A view is taken by many that the death penalty is unlikely to deter terrorists, since many are on suicide missions since they are prepared to give up their life for their 'cause'. To counter the same, there are other reasons why the death penalty in fact might increase terrorist attacks. They not only get public attention, but often even gain the support of organisations and nations which oppose the death penalty.⁴³ The Commission has itself recognised that life imprisonment is an alternative to death penalty and if this is so the case then, why capital punishment has been suggested for terrorism related offences? It is true that it may not affect certain people's conscience but in larger public interest it needs to be maintained.

⁴¹ 262nd Report of the Law Commission Para 4.3.5

⁴² Isaac Ehrlich, The Deterrent Effect of Capital Punishment: A Question of Life and Death, 65 AM. ECON. REV. 397 (1975)

⁴³ Para 4.3.22 of the 262nd Report

5. In *Ashok Debbarama Vs State of Tripura*⁴⁴ the court held that “Arbitrariness, discrimination and inconsistency often loom large, when we analyze some of judicial pronouncements awarding sentence”. If this is so the case then there is a need to reform the evidence procuring system and not to change the effect of the same by changing the punishment itself. The majority of death row convicts in India are from economically vulnerable sections of society. Data presented by NLU Delhi’s Death Penalty Research Project shows that nearly 74% of convicts were economically vulnerable.⁴⁵ Sixteen of these persons were sentenced to death in the period between 2000 and 2013; which implies that the Supreme Court has admitted error in imposing the death penalty on 16 persons out of the total 69 who were given death penalty by the Court during this time period. This is an error rate of 23.2%. The Supreme Court therefore has acknowledged that in close to a quarter of the cases in which it has given the death penalty in the recent past, the death penalty was imposed erroneously. Reliance on the death penalty diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and rights of victims of crime. Instead of abolishing the death sentence, other weakness of the criminal justice system need to be looked upon and rectified.
6. Death row prisoners continue to face long delays in trials, appeals and thereafter in executive clemency. During this time, the prisoner on death row suffers from extreme agony, anxiety and debilitating fear arising out of an imminent yet uncertain execution. However if the same agony, anxiety and fear of the kin of the deceased is seen as to whether death penalty shall be awarded or not, it is found that the pain of the victim’s family is no less than that of the accused. Larger interest of the community lies in maintaining a balance between the rights of the accused and the victims’ and if this pendulum is not maintained, then there is strong possibility that time will come when victims would prefer self-revenge instead of reporting the same to the police as they will know that the offender cannot be awarded death penalty.

⁴⁴ (2014) 4 SCC 747

⁴⁵ Data presented by the Death Penalty Research Project at the National Consultation organized by the Law Commission on July 11, 2015 accessed from lawcommissionofindia.nic.in

7. Law Schools in collaboration with the Bar Council of India and States can, to a great extent play a pivotal role in further improvement b holding exclusive debates on improvement in the criminal justice system while awarding death penalty.

Conclusion:

The dissenting report so submitted need to be substantiated with concrete data and therefore it is not appropriate in the present set of circumstances to abolish death penalty. Capital punishment meted out to a criminal reflects the gravity of the crime. The death penalty should not be abolished because a balance between the rights of victims and accused is of utmost importance failing which the chances of crime commission are even more. The families of the victims can have a healing touch in most of the cases once the murder convict is put to death.
