



Death Penalty In India- Analysing Its Effects And Ethical Considerations In India

Author:-Anoushka Saha¹

¹Anoushka, Student, B.B.A LLB 3rd year, Christ (Deemed to be University), Lavasa Campus, Pune

Abstract

This paper is based on the historical context of death penalty along with highlighting upon the constituent assembly debates along with the opinions of the renowned proponents. This paper deals with legal provisions which consist of the death penalty especially in Bharatiya Nyaya Sanhita. This paper also navigates on the validity of death penalty along with highlighting upon the “rarest of rare doctrine” by also focusing on the landmark judgements which emphasise upon the doctrine also balancing it with Article 21 of the constitution of India. The researcher also navigates the international perspective of death penalty which includes the human rights perspectives on death penalty highlighting on the International conventions. This paper also navigates the perspective of different countries on the death penalty highlighting abolitionist and retentionist point of view with regard to death penalty where the abolitionist side emphasises more on right to life of the offender and states that capital punishment is inhumane whereas the retentionist side contends that death penalty serves as a deterrent. The researcher emphasises upon the attitudes and psychological impact of the individuals who are involved in the death penalty process along with navigating on the psychological impact of the victims' families. This paper further discusses other punishments which can be imposed apart from the death penalty. Further, the paper makes some suggestions on the reformative methods alternative to death penalty and its implementation in the legal system. Lastly this paper inclines more on retaining the practice of capital punishment and does not favour abolishing the same.

Key words: Death Penalty, Retention, Abolition, Capital Punishment

¹Anoushka, Student, B.B.A LLB 3rd year, Christ (Deemed to be University), Lavasa Campus, Pune

1.Introduction

“What we should look for are the answers to a number of different questions such as what justifies the general punishment of practice of punishment, to whom may punishment be applied, how severely may we punish”- HLA Hart ²

“If he has committed a murder, he must die.”- Immanuel Kant³

1.1 Meaning of Capital Punishment

It is to be noted that the word ‘Capital punishment’ refers for the most heinous form punishment⁴ and this kind of punishment is only awarded for the most grievous, heinous and execrable crimes which are against humanity. The exact definition of capital punishment varies from country to country as each country has different perspectives about capital punishment.

1.2 Evolution of Capital Punishment

It is important to note that every country has gone through stages where death penalty has been used to eliminate the offenders from society and there is no country in this world where death penalty did not ever exist⁵.

The historical background of capital punishment has been found in certain codes. During the 18th century Babylon and Hammurabi ended up codifying punishment with regard to the death penalty and included 25 types of crimes.⁶It is to be emphasised that the way death penalty used to be given brutally such as burning alive, drowning, beating the accused to death. It is important to note that Sir Henry Maine⁷ states that even though the Roman republic did not get rid of capital punishment, they hardly used it in practice as they punished the serious offences by exiling the offender or the legal questioning process was often used. So in simple words even though the death penalty did exist as an option it was avoided.

1.3 Evolution of Capital Punishment in India

Capital punishment has evolved in India over the years, it is important to note that death penalty has been apparent in the Hindu Philosophy since ancient times.⁸ During that time the crimes against people in the society was viewed as out of ordinary and at that period death penalty was considered to be a very frequent form of punishment. The crimes where death penalty was imposed upon were arson, treason and murder.

It is to be highlighted that the traces of capital punishment could be found in memoirs of prominent philosophers such as ‘Kautilya’ and ‘Kalidasa’ and the roots of capital punishment can also be seen in ‘Mahabharata’.

When the Mughal Empire came into existence, the emperor by his own self adjudicated upon the matters related to crime that used to take place keeping in mind the provisions of Islamic Law. Even in Islamic law the death penalty was only limited to the crimes such as theft, apostasy, murder and rebellion.

It is to be emphasised that Akbar allowed the governors in the provincial districts to give capital punishment without his approval.⁹

² Death Penalty (Capital Punishment), INTERNET ENCYCLOPAEDIA OF PHILOSOPHY, <https://iep.utm.edu/death-penalty-capital-punishment/> (last Visited Nov. 23, 2024)

³Ibid

⁴LOK SABHA SECRETARIAT, CAPITAL PUNISHMENT IN INDIA, REFERENCE NOTE NO. 27/RN/REF./OCTOBER/2015, at 1 (2015) available at <https://loksabha.nic.in>.

⁵Ibid

⁶Saiba Meher Rajpal, A Study on Execution of Death Penalty, 7 IJARIE 1 (2021)

⁷ Lok Sabha Secretariat, Parliament Library and Reference, Research, Documentation and Information Service (LARRDIS), Members’ Reference Service, Reference Note No. 27/RN/Ref./October/2015 (2015).

⁸ Chaitanya Shah, Capital Punishment in Indian Legal History, 6 INT’L J. LEGAL DEV & ALLIED ISSUES 4 (2020)

⁹Dr.Shaikh Musak Rajja, Justice and Punishment During Mughal Empire (Based on foreign Travelogues), 3 INT’L J. SCI & RES, 12 (2014) available at www.ijsr.net.

It is relevant to mention that the verse from the Quran (Sura II, verse 179) states that **“On wise person here is safety for your lives in death penalty. We hope you would never violate and would always abide by this law of tranquillity.”**¹⁰

Later when the British colonised India there were a lot of changes which were brought to the Justice system and along with the English common law's existence.¹¹ During the year 1860 Indian Penal code came into existence and was drafted by Thomas Macaulay. IPC was considered to be the foundation of the criminal justice system of India and it prescribed death penalty for various offences such as waging war against the state, murder and also included treason.

It shall be pointed out that during the colonial era capital punishment used to be frequently employed firstly, for suppressing opposition and secondly, making sure that there should be control over population.

Great number of freedom fighters such as Rajguru, Bhagat Singh, Sukhdev were executed by the British as they were involved in the Indian Independence movement and due to this it ended up triggering the public and it lead to an outcry and ended up reinforcing the link between death penalty and Political despotism.¹²

After India gained Independence in 1947 the criminal justice system also went under drastic changes¹³ and after the Constitution of India was drafted, the approach to the death penalty ended up becoming very limited to specific cases.

It is to be noted that even after India's Independence, the laws which were enacted during the British rule were still in existence and not removed. These were the IPC 1860 and CRPC

IPC consisted of six types of punishments which also included death penalty and the CRPC consisted of Section 367(5)¹⁴ which stated that if a crime which could have been punished by DP but the judge ended up choosing a different sentencing then he was obligated to explain why he did not give the death sentence but ended up choosing a different kind of sentencing.

It can be seen that this provision made the usage of death penalty the usual choice for serious crimes where it was actually allowed but during the year of 1955.

The Parliament of India removed that same requirement so that death penalty would not be a default option for serious crimes and the judges were no longer obligated to give justification as to why they didn't choose death penalty.¹⁵

That ended up making life imprisonment the standard punishment for serious crimes and death penalty limited to rarest of rare cases.

2. Research Methodology and Method

This paper falls under the nature of descriptive research and secondary sources such as journals, articles and research papers were used to find out about the historical evolution of death penalty till its psychological implications on the people who are involved in the process of the execution processes.

¹⁰Chaitanya Shah, Capital Punishment in Indian Legal History, 6 INT'L J. LEGAL DEV & ALLIED ISSUES 4 (2020)

¹¹History of Capital Punishment in India, LAW BHOOMI, <https://lawbhoomi.com/history-of-capital-punishment-in-india> (Last visited Nov. 23, 2024)

¹²Ibid.

¹³Death Penalty and Its Evolution in the Indian legal System, TSCLD, <https://www.tsclld.com/death-penalty-and-its-evolution-in-the-indian-legal-system>

¹⁴The Code of criminal Procedure, § 367(5)(1898)

¹⁵ Lok Sabha Secretariat, Parliament Library and Reference, Research, Documentation and Information Service (LARRDIS), Members' Reference Service, Reference Note No. 27/RN/Ref/October/2015 (2015).

3. Literature Review

To understand about the historical evolution of the death penalty the researcher extensively navigated through a paper called 'Death penalty in India: An Examination of Historical discourse' to find historical viewpoints and the emergence of capital punishment then and now.

The researcher also read through a paper called 'Capital Punishment in Indian Legal History' to understand that the traces of the death penalty could also be found in the Hindu Philosophy.

The researcher also wanted to understand the perspective of the different proponents with regard to death penalty and the ethical aspects of it the researcher examined constituent assembly debates through the 'Lok Sabha Secretariat, Parliament Library and Reference' where the researcher understood the huge debate which had taken place with regard to abolishing the death penalty during the years 1947-1949.

The researcher also analysed through various sources to find out the legal provisions which consist of punishment by death and also found out that certain new offences have been introduced in the BNS which consist of punishment by death.

The judicial precedents and the 'rarest of rare doctrine' was thoroughly analysed by the researcher and the researcher also found out that each case had its own perspective of the doctrine along with that the Supreme Court laid down various principles and guidelines when death penalty shall be imposed upon an offender and shall only be limited to the extreme cases.

Lastly, the researcher, to understand where other countries stand in relation to capital punishment along with the international human rights standards, understands it through various papers, articles and journals.

4. Constituent Assembly Debates with regard to Death Penalty

There have been constitutional assembly debates with regard to abolishing or retaining the death penalty especially there was a huge debate during the year 1947-1949.

In one of the constitutional assembly debates it was brought forward by Mr ZH Lari where he put forward an amendment with regard to the rescindment of death penalty according to him he contended that death penalty has been abolished in diverse countries and he proposed the incorporation of new Article 11-B where he put forward the abolition of capital punishment by also giving an exception to it that is sedition.¹⁶ Mr Lari also put on certain instances of thirty countries where the citizens were protected devoid of such punishment, he even put forward alternative methods for death penalty and emphasised upon the restorative methods which should be imposed.

Various persons who were involved in the debate had their own perspectives. These persons included Shri Amiyo Kumar Ghosh¹⁷, Shri K. Hanumanthaiya¹⁸ and even Dr. Br Ambedkar¹⁹ himself.

Shri Amiyo Kumar Ghosh stated his perspective on the amendment which was put forward by Mr Lari stating that Such provision if ever incorporated would unduly end up handicapping the state when it would have to deal with enormous threats and very serious crimes.²⁰ He also states that he accepts that there can be judicial mistakes that might end up leading to judicial murder that is kill innocent people but that does not mean that the provision for capital punishment should be abolished as at times the state ought to have the provision for capital punishment to inspect what might end up causing the society and the people serious harm. Lastly, even though he did not completely oppose the idea of abolishing the death penalty he stated that the constitution should not be amended for abolishing the death penalty rather the IPC could be amended to provide alternatives to death penalty so that there are no procedural difficulties while amending the constitution itself.

¹⁶Constituent Assembly Debate on Abolition of Death Penalty, BYJU'S <https://byju's.com/free-ias-prep/constituent-assembly-debate-on-abolition-of-death-penalty/> (Last Visited Nov. 23,2024)

¹⁷ He was an Indian politician and a member of constituent assembly of India from Bihar

¹⁸ He was the former Chief Minister of Karnataka

¹⁹ Former Minister of Law and Justice of India

²⁰ CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORT, VOL. VII, Nov. 4, 1948-Jan 8, 1949

According to Shri K. Hanumanthaiya capital punishment should not be nullified or abolished because according to him it maintains safety and security in the society and he also stated that if people end up committing heinous crimes which actually deserves death penalty but only minimum sentencing is given then the people once they are out of prison would become bolder and continue to engage in such activities.

He believed that capital punishment should be retained during the transition period of India along with emphasising that **“It would be very unwise from the point of view of the safety of the state and stability of society, to abolish capital sentence.”**²¹ Hence, the amendment was negated.

Currently the death penalty has not been abolished and has been limited to the rarest of rare cases.

5. Legal provisions which deal with Capital Punishment in India

The Indian Penal Code 1860 had several offenses which were punishable by death these included S.121, 132, 194, 195A, 302, 305, 307(2), 364A, 376A, 376E, 396 and are as follows:- Waging war, attempt, abet waging of war against the government of India, Abetment of Mutiny, Fabrication of false evidence with intent to procure conviction of capital offence, Murder, Abetment of suicide etc.²²

It is important to note that the ‘Bharatiya Nyaya Sanhita’ came into effect on 1st July, 2024 and IPC was repealed by it.

The offences which included death penalty in IPC remains the same in BNS and no change has been made rather four new offences have included the punishment by death and these consist of S.70(2), 101(2), 109, 111 which talks about gang rape of a woman who is under 18, murder by a mob, organised crime and offence of a terrorist act.²³

It is important to note that even after IPC was repealed and BNS came into effect, the offences which include punishment by death have also increased and that means that abolishing capital punishment completely will take a long time, maybe decades until it is completely abolished.

The other legal provisions which death with punishment by death are the Army Act, 1950, Air Force Act, 1950, Navy Act, 1956²⁴ in these acts it is clearly specified that death penalty shall be imposed upon them for certain offences some include mutiny, Desertion or aiding desertion etc.

The NDPS Act, 1988²⁵ mandates punishment by death which are related to narcotic and psychotropic substances. Especially when a person is **“engaging or financing or producing or manufacturing or selling narcotics or psychotropic substances”** U/S 31A of NDPS Act, 1988.²⁶

These are some of the legal provisions in India which consist of punishment by death.

²¹ Ibid

²²Capital offences in IPC, ADVOCATEKHOJ, <https://www.advocatekhaj.com/library/lawreports/deathpenalty/21.php> (last visited Nov. 23, 2024)

²³Review of death penalty punishments in bharatiya Nyaya Sanhita 2023, PUDR, <https://www.pudr.org/press-statements/review-death-penalty-punishments-in-bharitiya-nyaya-sanhita-2023>

²⁴ Vanjani, L.N. and Dubay, K.N., 2020. Execution of Death Penalty; a Mere Dream for the People of India. Supremo Amicus, 16, p.158

²⁵ Ibid

²⁶ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, INDIA CODE (1988)

6. Examination of Judicial Precedents in India

It is important to note that there have been various case laws which have laid the foundation of how capital punishment is imposed and when it must and should be inflicted upon the offenders.

These precedents help one understand that not only written legislations are enough for imposing death sentence but also the precedents make a huge impact on how and when capital punishment has to be imposed upon the wrongdoers.

It is Crucial to Highlight that before the Bacchan Singh case, in the case Jagmohan Singh vs State of UP²⁷ The validity and the constitutionality of the death penalty was upheld by the SC and the SC also stated that it not only deters but is also a rejection by society against the crime along with emphasising that death penalty shall not be eliminated as a whole.

6.1 Doctrine of 'Rarest of the Rare'

It is crucial to highlight that the doctrine of 'rarest of rare' was established in the case Bachan Singh vs State of Punjab.²⁸

During the year of 1980 the Supreme court pressed upon the 'rarest of rare' doctrine and from that particular period of time life imprisonment became the general norm and death penalty was to be awarded for the exceptional cases and to the most heinous crimes.

There were certain challenges which were addressed by the Supreme Court in the Bachan Singh case, firstly it was about the constitutionality of the death penalty U/S 302 of IPC²⁹, the Court sustained the validity of the death penalty emphasising that it satisfied the tests of reasonableness under Art. 19 and 21³⁰ of the Constitution of India and stated that the punishment of death penalty is justified. Secondly, the other issue which was addressed was with regard to the sentencing process U/S 354(3) of CRPC³¹ which gave the authority to the courts to either impose death penalty or life imprisonment and was considered violative to the constitution but the Supreme court clarified that it does not violate the constitution nor is arbitrary or "freakish" in nature.

The Supreme Court laid down certain principles in the Bachan Singh case such as death penalty shall be used as an exception but the standard punishment should be life imprisonment, the SC also emphasised that death penalty shall be given during the most extreme circumstances.

It is also to be Highlighted that the case Machhi Singh vs State of Punjab³² laid down certain criterias were laid down by the court to assess what could actually fall under the rarest of rare doctrine. The court specified the manner, motive of committing the murder and even the nature of the crime and the consequence it has to the society along with analysing the personality of the victim.

6.2 Other cases

In the case Mithu vs State of Punjab³³ S.303 of IPC was struck down by the SC and the court declared it as unconstitutional as that section talked about mandatory death penalty for life convicts who committed murder as the life convicts actually go through adverse situations which ends up making them more prone to vulnerability and imposing death sentence upon a life convict who committed murder would be arbitrary without considering facts and circumstances of the case.

²⁷ Jagmohan Singh v. State of UP AIR 1972

²⁸ Bachan Singh v. State of Punjab, AIR 1980.

²⁹ Indian Penal Code, § 302

³⁰ INDIA CONST. arts. 19, 21

³¹ Code of Criminal Procedure § 354(3),

³² Macchi Singh And Others v. State of Punjab AIR 1983

³³ Mithu v. State of Punjab AIR (1983)

In the case *Deena vs Union of India*³⁴ it was held that hanging does not directly or indirectly involved torture, abasement to the offender rather it is constitutional in nature.

It is to be worth mentioning that in the case *Shashi Nayar vs Union of India*³⁵ It was held that the method of hanging is not primitive or uncivil in nature and should not be replaced with a less painful method and the plea to reconsider the death penalty was dismissed.

In the case *Dhananjay Chatterjee vs State of WB*³⁶ The Supreme Court held that the punishment by death shall only be given after considering the factors such as the brutal nature of crime, the behaviour of the offender, the mental state the offender was in when he committed the crime and what impact does that have in the society.

In the case *Shankar Kisanrao Khade vs State of Maharashtra*³⁷ The Supreme Court highlighted the concern that there is no consistency between the courts and the government in relation to handling the death penalty cases. The court stated that the government does not clearly lay down the reasons as to why death penalty has to be commuted to life imprisonment along with recommending that the law commission of India should actually analyse whether death penalty serves as a deterrence or its only about punishment or does it exist to protect the society.

SC stated that **“Death penalty and its execution should not become a matter of uncertainty nor should converting a death sentence into imprisonment for life become a matter of chance”**³⁸

In the most recent case called *Mukesh and Anr vs State NCT of Delhi*³⁹ (also called the ‘Nirbhaya case’) the offenders were executed in the Tihar Jail and were given punishment by death which provided a sense of justice to the families of the victims and the people in the society.

7. International views on Death Penalty

“The international standard is clear: the death penalty must be restricted to the most serious crimes defined as crimes of extreme gravity involving intentional killing”⁴⁰

7.1 Human Rights perspectives on Death Penalty

It is important to note that according to the international standards imposing the death penalty goes against the basic human right that is the right to life.

Art. 6 of ICCPR⁴¹ in a crux talks about right to life by stating that everyone has the right to life and it has to be protected by law upon that nobody shall be deprived of life without any lawful reasons and also emphasises that the countries which still have death penalty can only impose it for the most serious and heinous crimes and highlights that death penalty can only be given after the proper procedure has been conducted and the court has taken all the factors before making the said decision. This Art. explicitly also states that punishment by death shall not be imposed upon the individuals who are under 18 years of age and women who are pregnant.

According to Art. 5 of UDHR⁴² “Everyone has a right not to be tortured or treated in a cruel, harsh, or degrading way” death penalty is contrary to this as it deprives the person of life.

³⁴ *Deena v. Union of India* AIR (1983)

³⁵ *Shashi Nayar v. Union of India* AIR (1991)

³⁶ *Dhananjay Chatterjee v. State of WB* AIR (1994)

³⁷ *Shankar Kisanrao Khade v. State of Maharashtra* AIR(2013)

³⁸ Ibid

³⁹ *Mukesh and Anr v. State NCT of Delhi* AIR(2017)

⁴⁰ UN Experts Call for Universal Abolition of Death Penalty, OHCHR, <https://www.ohchr.org/en/press-releases/2023/10/un-experts-call-universal-abolition-death-penalty> (Last visited Nov.23, 2024)

⁴¹ International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S.171

⁴² Universal Declaration of Human Rights art.5, G.A. Res. 217A

It is worth mentioning that the UNGA and other human rights org are against the death penalty and oppose the same and by time many countries have abolished the death penalty there are a total 139 countries which have abolished the death penalty.⁴³

Nevertheless, Human rights law does not absolutely outlaw the death penalty but sets certain guidelines that the death penalty shall only be reserved for grave offences, age and the circumstances of the offender must be considered, the style of execution shall inflict a very little pain and the offenders shall also have a right to appeal. The resolution 1984/50 of Economic and social council⁴⁴ approved certain safeguards for the ones who are actually facing death penalty and these included that firstly death penalty must be given only for the serious crimes, secondly death penalty shall only be given for the crimes where the law allowed punishment by death at the time the offence was committed, thirdly death penalty shall only be given when the evidence prove facts beyond reasonable doubt, there must be fair trial, no delay in execution and lastly, the offender shall have the right to appeal.

7.2 Perspectives of different countries with regard to Death Penalty

It is critical to point out that different countries have their own methods of dealing with the death penalty. Russia has ended up commuting death sentences to life imprisonment of the prisoners, Western Europe has removed the death penalty completely⁴⁵.

During the year 2023 the countries with the predominant number of executions included Iran, Somalia, China, Saudi Arabia and USA and most of the executions took place the most in the two countries Iran and Saudi Arabia.⁴⁶

7.2.1 Death Penalty in USA and its Analysis

Attention should be brought to the USA where thirty US states have upheld the validity of the death penalty. Even the federal laws highlight the application of the death penalty for the most heinous crimes such as drug trafficking, treason, espionage, murder.⁴⁷

There are legal concerns with regard to death penalty such as firstly the 8th Amendment of the US constitution which forbids “cruel and unusual” punishment, secondly the delays in the execution process can end up making the deterrent effect lose its value and lastly there it is found that the larger amount of blacks face death penalty due to discrimination.

7.2.2 Death Penalty in UK and its Analysis

It is important to note that the death penalty has been abolished in the UK. Even though the British actually applied capital punishment in India as a mode of deterrence but in the UK it has ended up abolishing capital punishment as a whole.

The last execution in UK was carried out during August 13, 1964⁴⁸ and two men were given punishment by death as they murdered a taxi driver while carrying out a robbery.

⁴³Background on the Death Penalty, HRE USA, <https://hreusa.org/hre-library/topics/death-penalty/background> (Last visited Nov.23,2024)

⁴⁴Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/safeguards-guaranteeing-protection-rights-those-facing-death> (last visited Nov. 23, 2024)

⁴⁵International Perspectives on the Death Penalty: A costly Isolation for the U.S, DEATH PENALTY INFORMATION CENTER, , <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/international-perspectives-on-the-death-penalty-a-costly-isolation-for-the-u-s> (last visited Nov. 23, 2024)

⁴⁶Death Penalty, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/what-we-do/death-penalty/> (last visited Nov. 23, 2024)

⁴⁷Marshan & Shubham Raj, Constitutionality of the Death Penalty and its Comparative Study, PIMPRI L. REV (2022).

⁴⁸Ibid

It is also important to highlight that the Abolition of death penalty Act⁴⁹ deferred death penalty for the period of five years but later it became permanent in 1969 and along with that the retention of death penalty was also removed.

7.3 Abolitionist perspective vs Retentionist perspective

One must observe that the abolitionist perspective argues against the death penalty stating that it is inhumane in nature, not effective as a deterrence and it is inconsistently applied. Whereas the retentionist perspective states that the death penalty serves as a tool for justice to the society and eliminates the dangerous offenders from the society.

7.3.1 Abolitionist perspective

Few believe that no matter how effective the justice system is, there might end up being several mistakes while executing the death penalty and can end up causing the wrongful execution of an innocent person and end up causing judicial murder⁵⁰. There are instances where the application of death penalty is arbitrary in nature that is the minorities often end up facing discrimination

Death penalty violates the human rights standards and against the right to life. Some believe that death penalty does not serve as a deterrence and does not improve the situation of the society

7.3.2 Retentionist perspective

Retentionist contend that if Death Penalty is replaced with life sentence then the offender who has committed the most heinous crime would still keep committing those types of crimes.⁵¹ Those offenders would have an opinion that they would only be facing life imprisonment and end up feeling that they won't have anything to lose.

Along with that the retentionist also highlights that capital punishment serves as a deterrent to the society and creates a fear in the mind of people to not commit heinous crimes and also ensures justice to the society as a whole when the criminal is eliminated from the society.

8. Psychological impact of the Ones involved in the process of Death Penalty

Prior to the year 2019 the 'jurisprudence' of death penalty remained ambiguous about how would the courts actually determine the question of mental illness which arises after being convicted. But later in the case *Accused X vs State of Maharashtra*⁵² The Apex court held that if the person who is going to be sentenced to death develops mental illness post conviction then the death sentence can be commuted to life imprisonment. The court emphasised that there must be a 'test of severity' that means that the mental illness must be severe in nature so that it becomes difficult for the offender to comprehend the nature of the punishment itself.

It is important to note that the persons who are involved in the process of death penalty also end up developing mental illness because of the delay in execution and even in the case *Sher Singh vs State of Punjab*⁵³ The Apex Court has not set a time limit for what actually classifies as 'undue delay.'

In the case *Shatrughan Chauhan vs Union of India*⁵⁴ It was held that punishment of death for the offenders who are suffering from mental illness such as schizophrenia is violative to right to life along with that the court emphasised that the persons who are suffering from mental illness should not be given the death penalty and

⁴⁹Ibid

⁵⁰Why the Death Penalty Should Be Abolished, INTERNATIONAL COMMISSION AGAINST THE DEATH PENALTY, <https://icomdp.org/why-the-death-penalty-should-be-abolished/> (last visited Nov. 23, 2024)

⁵¹One of the Oldest and Most Contentious Debates: The Death Penalty, 103 J. CRIM. L & CRIMINOLOGY available cholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5609&context=jclc (last visited Nov. 23, 2024)

⁵² *Accused X v. State of Maharashtra* AIR (2019)

⁵³ *Sher Singh v. State of Punjab* AIR (1983)

⁵⁴ *Shatrughan Chauhan & Anr vs Union of India* AIR (2014)

along with that the court highlighted that assessment of the ailment must be done by 'multidisciplinary team of qualified professionals.'

9. Alternatives to Death Penalty

It should be worth mentioning that the death penalty serves as a fundamental form of punishment for the heinous crimes regardless of the fact that it is essential to consider certain alternatives when the death penalty won't always be a feasible option.

Some of the alternatives are as follows:-

9.1 Life imprisonment

Even though life imprisonment is always the alternative for death penalty it is considered as the most effective form of alternative that means that the offender will be imprisoned till his natural life and it also called 'life without parole'

9.2 Fixed term of imprisonment

This kind of imprisonment is fixed for a certain period of time for example 10 years, 20 years- 40 years.

9.3 Restorative methods

The convict assumes responsibility and makes amends for the damages caused especially under controlled circumstances.

These alternatives ensure that there is more of a balanced view of justice and do not diminish the important aspect of the death penalty.

10. Conclusion and Suggestions

According to the researcher, the death penalty should not be abolished rather it shall be retained for the most extreme cases. The researcher feels that when the offender himself has no remorse while committing heinous crimes without even thinking about the life of the other person they should also face the same consequence of their actions.

From the above statement made by the researcher it can be concluded that the researcher supports the retributive theory of punishment. The researcher also highlights that regardless of death penalty being effective in nature there can still be alternatives to death penalty considering the mental health of the offenders that is if they don't even understand the nature of the crime they have committed while they had committed the offence.

It should also be noted that completely abolishing the death penalty won't be effective because then it will lose its deterrent effect it has on the offenders along with that if it is completely abolished bringing it back later again will be a very difficult task.

Hence the researcher emphasises that the death penalty shall not be abolished and be limited to the most extreme cases while also considering the alternatives for the ones who were not in their full mental capacity while committing the offence.