



Death Penalty Execution: A Study.

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Abstract

India is a thriving nation, yet at the same time, crime is rapidly rising. Despite the fact that there are many regulations in place to prevent and deter crime, crime is still growing at a faster rate since the penalties are insufficient. To slow down the rate of wrongdoing, there should be discipline. The main purpose of a discipline is to punish the wrongdoer, to make sure they must suffer the consequences of their actions, and to discourage others from committing similar wrongdoings by instilling fear in them about the discipline that would follow. India has a variety of mandatory disciplines, with the death penalty being the most severe. It is also acknowledged as an acceptable kind of discipline, inevitably. This research article explains the history of the death penalty in India, including a brief account of the practice's origins in Indian records, efforts to abolish the death penalty, and the question of why it is still practised there. Regarding the Governor and President's access to the power of mercy. There are several hypotheses that have been supported by evidence in my research, including the one asking if even extremely uncommon cases will jeopardise Article 21 of the Indian Constitution. And how does the Indian public benefit from the death penalty? This essay attempts to outline the justifications for why the death penalty should be advocated and applied regularly to egregious offenders.

Keywords- *Death penalty, retain, abolish, rarest of rare.*

INTRODUCTION

India, a developed nation, is today mostly known for its rising crime rates and criminals. The capital punishment, commonly known as the death sentence, is the worst sanction offered to criminals for their crimes. It is a legal procedure whereby the state executes a criminal for their crime. Only severe and serious crimes like murder, rape, and offences against the state or country are subject to the death penalty; it is not applied to minor offences. Every punishment in every nation is based on the same principle, which states that each criminal must pay a price for their actions. Every penalty primarily targets two ideologies. The first is that someone who commits

an offence should pay a price for it, and the second is that criminals and other people should fear committing the same offence because of the penalty they receive. As a result, it deters others from doing similar crimes. The goal of capital punishment, like other punishments, is to deter future crime. For the egregious crimes against humanity, there is a death penalty. It varies from one nation to the next.

Even the United Nations (UN) has extensive discussions on the “Abolition of the Death Penalty” and saw it as a violation of human rights. The UN prioritises the Reformatory Theory of Punishment over the Deterrent Theory. J. V. R. Krishna Iyer stated in a case that the “particular reason must relate, not to the offence but to the offender.” Despite the horrible nature of the act, the perpetrator may not be deserving of the death penalty. The president and governor for the nation or state, respectively, each have the authority to grant clemency and commute a death sentence. Only when the court determines that the circumstances of the case warrant a death sentence rather than life in prison for the perpetrator.

Meaning of Punishment:

The word ‘punishment’ came from the word ‘punish, which means inflicting a penalty or sanction on a person as retribution for an offence, especially when there has been a transgression of law as laid down. Similarly, punishment, as defined in the dictionary, means to inflict a penalty as a retribution for an offence. In general terms a punishment is something that is inflicted on a person by means of pain, suffering or penalty, for causing any act which is in defiance of the law prevailing in the society. A punishment is provided by an authoritative body that has been vested with the power to inflict such punishment. Other than the prescribed body, no other body can inflict the punishment.

The word punishment is generally connected with crime as punishment is the result that the person gets for committing a crime. A punishment is provided not only for any act caused but also for an act, that was supposed to be done in accordance with law, was not done by a person. In other words, illegal commission and omission of an act leads to punishment. The sole purpose of punishment is to abstain the wrongdoer from committing or omitting any further illegal act and set an example for probable wrongdoers as to what shall be the result for causing menace.

Historical Background of Punishment:

The concept of punishment has been prevailing in the society since time immemorial. The concept of punishment is based on the principle of *Lex Talionis*, which means that the victim or any family member of the victim will always retaliate against the wrong done as a remedy, that is, the concept of ‘an eye for an eye’ comes into play in these circumstances. So in general before any advent of law or proper legal concept, the concept of punishment came into existence as it is something which is a general reaction of the human psychology. From ancient times, personal revenge was not only considered to be a right but also a duty. People of many different tribes and kin were obligated to avenge the harm caused to them or their family members.

From a mythological perspective also, the concept of punishment was prevalent as in ancient religious texts of different religions like Hinduism, Islam or Christianity, it was said that the God is the highest authoritative body

and the ultimate punishment a person can get is to be sent to hell by God, upon his or her death, to repent the wrong deeds that the person committed in their lifetime.

Origin of Punishment in India:

The Manusmriti written by the ancient Indian philosopher Manu was one of the first books of law that laid down the concept of criminal jurisprudence in India. It was a comprehensive code which provided ordinances related to law and order. An extract of the Manusmriti says, “*Punishment governs all mankind; punishment alone preserves them; punishment wakes while their guards are asleep; the wise considers punishment as the perfection of justice*”.

The Garuda Purana is considered to be a book containing a set of instructions given by Lord Vishnu in the fields of law, astronomy, medicine, grammar, etc. It also enunciated the concept of punishment according to the offences that were committed.

In the Dharmashastra, an ancient Indian legal literature, punishment is termed as ‘danda’. There are basically two concepts as propounded in the Dharmashastras, namely, danda and prayaschitya. Danda was synonymous to the concept of punishment while the concept of prayaschitya was that the wrongdoer himself acknowledges the sins he committed and wants to repent, for the wrongful acts he committed, by performing various acts according to the sins he committed.

Punishment in Ancient India:

In ancient India, the King was empowered, being the head of the authority, to punish the people for committing crimes. The King was bestowed with the responsibility and duty of maintaining law and order in the society. Manu said that the King was the protector of law and holder of punishment and the term used for that was Danda Chhatra Dhari.

There were different forms of punishments that prevailed in Ancient India. The punishments were cruel and barbaric in nature with the intention being to create deterrence and retribution. The punishments were classified as follows:

- **Capital Punishment** – This type of punishment is regarded to be one of the most violent forms of punishment to exist. Capital punishment in general terms mean death penalty. It is the killing of a person by an order of the authorized body in a legal manner. In ancient India the imposition of capital punishment was a common instance and it was used to given for even petty cases. There were different methods through which capital punishment was executed, some of them were **a) Stoning**, where the person that was sentenced with capital punishment, was to be pelted with stones till that person dies; **b) Pillory**, where a person’s hands and head are locked in an iron frame and is compelled to stand in public thereby restricting his movement and then the person would be whipped or stoned till death or sometime that offender was nailed to the wall; **c) Immurement**, where a person was constructed into

the wall, alive; **d) Execution by Elephant**, where the offender is left to be trampled under an Elephant's legs.

- **Corporal Punishment** – In this type of punishment, the offender is to be inflicted with severe physical pain. The main objective behind this form of punishment is to not only to punish the offender but also to create a fear in the minds of other probable offenders and deter them from committing a similar crime. There were various methods through which this punishment was executed like, **a) Flogging**, where a person was used to be beaten with sticks or whipped; **b) Mutilation**, where a severe damage was caused to a body part of a person like chopping off ones hands or cutting off ones tongues; **c) Branding**, where, with the help of a hot iron, the offender was branded on his forehead describing the offence he committed; **d) Pressured by iron rods**, where a person's body was pressured by two iron rods to cause inhumane pain; **e) Imprisonment**, where a person was imprisoned inside a cell but it was different from what it is today. In ancient times the hands and legs of the culprit were tied in shackles and then thrown in a deep dark small room or down a dry well.
- **Social Punishment** – In this form of punishment the offender was restricted from making any contact with the society. No person was allowed to contact with the offender also. This form of punishment aimed at inflicting psychological trauma. Some of the methods through which this punishment was executed were **a) Banishment**, where a person was sent off to a far place away from any kind of human contact; **b) Social boycott**, where the offender was restricted from participating in any activities or festivals that was to be celebrated in the area.
- **Financial Punishment** - Last but not the least, this punishment was executed by imposing some fine. It was the least severe form of punishment that was given.

Punishment in Modern India:

In modern India, the classification of crimes and their punishments has been classified in a more systematic manner. Ancient techniques of punishment has mostly been done with, especially the ones which were gruesome and barbaric in nature. The Indian Penal Code, 1860 is the country's main codified criminal law and it has mentioned some specific types of punishments that can be imposed according to the offence committed. Section 53 of the Indian Penal Code lays down the types of punishments that can be imposed, they are as follows:

- **Capital Punishment** – Capital punishment, as discussed earlier, is a punishment whereby the offender is sentenced to death. In modern times this is the most brutal form of punishment that is given to a criminal. The difference from the ancient times is that this punishment is given for very severe offences and the methods of executing this punishment have been restricted to few methods which are much less barbaric in nature. In India, hanging till death is the method to execute this punishment. It is one of the most controversial form of punishment which has divided jurists in two teams, one against it and one supporting it. Under Indian Penal Code, offences described under sections 121, 132, 194, 302, 303, 305, 307, 364A, 376A, 376E and 396 are punishable by death.

- **Life Imprisonment** – In this form of punishment, the offender is imprisoned for the rest of his life. There is a fixed term for life imprisonment but in case there is a fraction of terms, it should be 20 years vide section 57 of the Code whereas in some sections it has been clearly provided that the term should be for whole life only.
- **Imprisonment** – In this form of punishment the offender is imprisoned for a specific term and it has been classified in three heads which are, **a) Rigorous imprisonment**, where the offender has to do hard labour during the entire term of his imprisonment; **b) Simple imprisonment**, where the offender is simply confined to jail for the term that he has been sentenced to without the need of doing any hard labour; and **c) Solitary imprisonment**, where the offender is kept isolated from the other prisoners. Section 73 and 74 of the Code provides for solitary imprisonment.
- **Forfeiture of Property** – In this form of punishment, the property of the offender is forfeited or taken from him as a penalty. Sections 125, 126, 127 and 169 of the Code provide for the forfeiture of property as a punishment.
- **Fine** – In this form of punishment, the offender is charged with monetary liability which has to be given by the offender. The amount of fine is depended on the type of crime committed.

Theories of Punishment:

There are some theories on the basis of which different types of punishments are formed. There are mainly four such theories which are as follows:

- **Retributive Theory** – This theory means that the punishment that is to be given to the wrongdoer should act as vengeance. In simple words, the wrongdoer must suffer the same harm and consequences of it which he did to the victim. It is a public revenge rather than a private revenge.
- **Deterrent Theory** – The word deter means to prevent so this theory says to restrain or deter somebody from committing anything in particular. It leads to a preventive or restrictive form of punishment.
- **Preventive Theory** - The purpose of this theory is to prevent a crime from happening again in the society. The general form of punishment under this theory is to execute or confined or otherwise incapacitate the wrongdoer to prevent him from doing the crime he committed, again. The basic philosophy behind this theory is not to avenge the crime but to stop it altogether.
- **Reformative Theory** – This theory aims at reformation. The offender is believed to have become bad due to specific situation and is so helped to reform and become a good person once again. Through this theory, the offender is given one more chance at life by helping him improve.

Approach of Capital Punishment in Ancient Time:

In the judiciary, there has been debate over the death penalty or the death penalty, not just in India but in the majority of modern nations. The death sentence has always been utilised by the rulers of different kingdoms throughout the years in India to execute justice. The retributive theory of punishment—an eye for an eye, a hand for a hand, etc.—was utilised throughout the Mauryan Dynasty. The emperors of these dynasties also imposed a variety of death penalty-style punishments, such as cutting off one's head or dragging one's body behind a horse till one died.

However, from a global perspective, it was not until the 18th century that King Hammurabi of Babylon formalised the death penalty for the first time in the criminal laws. The Hammurabi Code specifies the death sentence for more than 25 crimes, including forgery and theft. The death sentence is also referred to in the Hittite Code from the 14th century B.C., though not extensively. Only the most heinous crimes carried the death penalty. The only punishment for all offences during the time of The Draconian Code of Athens, in the 7th century B.C., was death. As a result, harsh punishment is described as “draconian.”

The Doctrine Rarest of Rare

Following the publication of the landmark decision *Bacchan Singh V. State of Punjab* [(1980) 2 SCC 684], the principle of Rarest of Rare was introduced in the judiciary. In the precedent-setting decision of *Macchi Singh v. State of Punjab*, this notion gained additional clarity. The doctrine of Rarest of Rare does not have a specific legal definition, but it holds that the death penalty should only be meted out to the accused in extraordinary or rare circumstances where the safety of society is at risk due to the criminal's continued existence. This philosophy may only be used when the following characteristics of the crime are taken into consideration: the crime's size, its type and the criminal, its victim, the motive or reason for the crime, and the method used to commit it. Only if all of these criteria are met can the death penalty be imposed. There is no basis for the argument that this punishment is being used improperly.

Does the constitutional validity of Article 21 get violated by the Rarest of the rare case?

In *Jagmohan v. State of U.P AIR 1973 SC 947 Cr.LJ 3301973 SCC162*, A discussion on the SC's legality of the death penalty had taken place. It was claimed that the right to life, guaranteed by Article 21 of the Indian Constitution, had been infringed by the death penalty. In this instance, the court rejected all arguments and ruled that Article 21 wasn't violated by the death penalty. In this case, the SC upheld the validity of the death penalty and further promised that it would aid in preventing a resurgence of public wrongdoings.

In *Maneka Gandhi v. UOI AIR 1978 SC 597*, SC held that The application of the death penalty must be done in a fair and prudent manner. Each criminal would be entitled to procedural guarantees, and in doing so, they should be able to rely on Natural and Procedural Laws, which stipulate that:

- The accused would be given the opportunity to appeal;
- The death penalty is an unusual punishment that shall only be carried out in special instances.

The accused will have the right to an opportunity to be heard, the right to select an experienced legal representative, and the freedom to express themselves clearly while under preliminary supervision. The wrongdoer has the legal right to appeal for a pardon or reduction under Articles 72 and 161 of the Indian Constitution before the president and governor. The death penalty must be properly imposed by the HC. The death penalty shall only be carried out in exceptional cases. Individualization of sentence must be possible while taking into account specific circumstances.

In Deena v. UOI AIR 1983 SC 1155, The court closely monitored the inquiry into the execution of the death penalty, and it was established that hanging is not a particularly barbaric manner of execution and that, thus, Article 21 of the Indian Constitution is not disregarded.

In Triveni Bai v. State of Gujarat, the court ruled that the transgressor must be given a fair warning and that the death penalty must be postponed until the person is executed.

Therefore, we can conclude that the doctrine of the rarest of cases does not violate the constitutionality of Article 21 of the Indian Constitution.

LAWS AND PROVISIONS RELATING TO CAPITAL OFFENCES IN INDIA:

According to Article 21 of the Indian Constitution, no one may be deprived of their life unless the legal process is followed.

Article 120B of the Indian Penal Code imposes the death sentence on those who engage in criminal conspiracies, while Article 121 of the IPC imposes it on those who wage or attempt to wage war against the government.

According to Section 132 of the IPC, if an officer, soldier, sailor, or pilot in the army, navy, or air force of the Government of India aids in the commission of mutiny, so the mutiny is committed as a result of that complicity, they will be punished with death or life imprisonment, or imprisonment of both descriptions for a term that can be extended to ten years, as well as liable to fine.

According to Section 194 of the IPC, anyone who provides false evidence is punished with death or the alternative punishment for this mentioned since it leads to an innocent person being condemned and subsequently being executed.

Murderers are given the death penalty in accordance with Section 302 of the IPC.

According to Article 303 of the IPC, the death penalty will be applied to anyone who commits murder while serving a life sentence in prison.

According to Article 305 of the Indian Penal Code, if any individual under the age of 18, any person who is mad, furious, stupid, or in a state of

Those who commit suicide while intoxicated or aid in the commission of this suicide will be punished with the death penalty, life in prison, a maximum of ten years in jail, and a fine.

According to Section 364A of the IPC, anyone who kidnaps or kidnaps someone or keeps them in custody after such a kidnapping or abduction, threatens to harm or kill them, or by his conduct creates a reasonable fear that they will suffer harm or die, is guilty of abduction.

To engage in this behaviour with the intention of harming the government, a foreign state, an international organisation, or any other person, to refrain from acting, or to pay a ransom, is punishable by death or life in prison, as well as by a fine.

A 2013 addition to Section 376A of the IPC established the death sentence as an option if the victim had a harm during the rape that resulted in her passing away or placing her in a persistent vegetative state.

According to IPC Section 396, if one of five or more people who is engaging in dacoity also commits murder while engaging in dacoity, all of those people will be subject to the death penalty, a life sentence in prison, or a severe prison term of up to ten years, as well as being required to make restitution.

Case -law :

Ediga Annama vs State of Andhra Pradesh, Section 354 (3) of the 1973 amendment to the Code of Criminal Procedure was inserted in response to this case, which stated that in addition to considering the circumstances of the offence, the court should also consider the condition of the accused.

Rajendra Prasad vs State of UP, However, in this instance, the Supreme Court ruled that the Legislature, not the Court, should decide whether or not to keep the death penalty in place.

Mithu vs State of Punjab, In this instance, IPC section 303's mandatory death penalty was ruled illegal and removed.

Macchi Singh vs State of Punjab, The court enlarged on the theory of the rarest of the rare in this decision, setting down the criteria to be used in determining whether the case qualifies as one of the rarest of the rare or not.

Allauddin vs State of Bihar, In this case, the court declared that it should seek a lesser sentence if it was unable to provide a special justification for the death penalty.

Kehar Singh vs Union of India, The assassins of Indira Gandhi were given a death sentence in this case. This is among the rarest of rare cases because Kehar Singh, who was a conspirator but did not actually perform the crime, was included.

Deena vs Union of India, Section 354(5) of the IPC 1973 was challenged on the grounds that it violated article 21 of the Indian Constitution since it was barbaric, cruel, and degrading.

Attorney General of India vs Lachmi Devi, The court determined that public hangings to carry out death sentences are barbaric and in violation of article 21.

Triveniben vs State of Gujarat, AIR 1989 SC 142 The court ruled that a person who has been given a death sentence is also entitled to procedural fairness up until the moment of his or her passing.

Madhu Mehta vs Union of India, For roughly 8 to 9 years, the petitioner's mercy appeal remained pending before the president of India.

Doctrine of Rarest of The Rare Cases:

In India, the death sentence is enforceable by law and only applied in the most extreme circumstances. The word "rarest of the rare cases" is neither defined by law or by the Supreme Court, which is where the disagreement arises.

The first instance of the phrase "rarest of rare case" was in the Supreme Court's ruling in *Machhi Singh v. State of Punjab* in 1983. The expression "Rarest of the Rare instances" means that the court must consider the seriousness and character of the crime committed in order to determine the proper penalty. The death sentence or life in prison is listed as the punishment for the crime of murder in Section 302 of the IPC. It is illogical and against the public interest to believe that the death penalty may be used as a substitute for other forms of punishment for murder. The criminal justice system operates in accordance with the accused's order of conviction, and the imposition of a sentence or period of imprisonment is solely dependent upon that order. S. 302 of the IPC does not meet the requirements of A. 19(1) of the constitution.

In the *Machhi Singh* case, the court established some standards to be followed in order to identify the rarest of rare cases as well as some principles for evaluating the circumstances of a case where a crime falls under the category of "Rarest of rare cases formula."

In Sabiana v. State of Karnataka, For a crime, the accused has already been given life in prison. He later killed his wife and daughter while on parole. The Supreme Court sentenced him to death and ruled that those who are already serving life sentences for their crimes must also receive the death penalty.

However, the Supreme Court had in **Mithu v. State of Punjab** already struck down Section 303 of the IPC, which outlined the required death penalty for criminals serving life sentences. This viewpoint is supported by the argument that if the death penalty is required, hearing the offender's perspective on the punishment issue is pointless, and it is now just necessary to explain the circumstances leading to the death sentence.

The Indian Judiciary while concludes the judgement in *Bacchan Singh V. State of Punjab* altered their minds on the death sentence and now believe that it should only be used in the "rarest of rare cases" where there is no other option. The Supreme Court's strategy to lessen the use of the death penalty for offenders was applauded, but it appears that the legislation rejected this strategy by adding a number of offences to the penal code that carry the death penalty.

Test for "rarest of rare cases"

When determining whether to impose the death penalty on a convict under the doctrine of the "Rarest of the Rare" case, the general standard is whether the accused must receive the death penalty in order to preserve the peace and well-being of society, and whether failure to do so would result in no consequences under section 302 of the IPC.

To determine whether a particular case falls under the notion of “rarest of rare,” it is usually decided on the basis of the pre-planned, cruel, cold-blooded, and heinous nature of the crime, which leaves the victim without any opportunity of defence.

Arguments against and in favour of death penalty:

Arguments against death penalty:

1. Whether it is carried out by an individual criminal or by society as a whole, the death penalty or the death penalty is the outright denial of human rights.
2. Frequently, there are no appropriate standards established for determining who should be executed. In India, the death penalty must be applied in the rarest of circumstances, yet nowhere in the legislation is it specified what constitutes a “rarest of the rare.” Courts make these decisions in a fairly arbitrary manner.
3. Judgments from courts are not always trustworthy. The courts have the authority to impose the death punishment even on those who were first found not guilty.

Arguments in Favour Of Death Penalty:

1. The existence of the death penalty for crimes carrying the death penalty is necessary to maintain or balance the peace and order in society. Otherwise, no one would take it seriously and people would commit crimes without thinking about the repercussions. In the most populous nations, including China, India, the United States, and Pakistan, the death sentence is still in use. But in Europe, it is forbidden.
2. The SC determined that the death penalty is constitutionally valid.
3. It can be very expensive to provide a prisoner with facilities that are compliant with human rights for the entirety of his life, and the likelihood of his escape from the prison will rise.

ORIGIN OF CAPITAL PUNISHMENT WITH CONSTITUTIONAL PROVISION

legislation outlining its legitimacy. The validity of the death penalty has been contested on several India is one of the nations that has neither totally removed the death penalty provision nor passed occasions since the Indian Constitution was established through Supreme Court petitions.

The death penalty may be imposed on criminals for seven different offences. Among them include murder, homicide and dacoity, as well as helping a child, an insane person, or someone who is intoxicated commit suicide.

In the case of Jaggmohan Singh v. State of Uttar Pradesh, the death sentence was first challenged. In this case, it was argued that judges had the arbitrary authority to apply the death penalty under Articles 14, 91, and 21, that the death penalty violated all essential freedoms under Article 19, and that there was no fair sentencing process

for the death penalty. In this ruling, the Bench affirmed that the death sentence was indeed lawful and that it did not infringe any fundamental rights or freedoms.

The next development in capital punishment regulation came from *Maneka Gandhi vs Union of India*, which ensured two essential safeguards: first, that not all fundamental rights are distinct from one-another. Specifically, in order to be considered constitutional, a law needed to pass the test of Articles 14, 19, and 21 collectively.

This ruling also stated that any procedure developed in accordance with Article 21 had to be just, reasonable, and fair; it must not be arbitrary, harsh, or fantastical. This framework served as the foundation for the five judge Bench's consideration of the historic challenge to the death penalty brought forth in *Bachchan Singh v. State of Punjab* in 1980.

Regarding the death penalty in India, there have been a variety of differing viewpoints expressed. Some people are in favour of keeping the death sentence in place, while others are in favour of abolishing it.

OPINION ON CONSTITUTIONAL CAPITAL PUNISHMENT

Justice Krishna Iyer empathically emphasised in the case of *Rajendra Prasad v. State of U.P.* [6] that the death sentence is against articles 14, 19, and 21. She continued by saying that in order to inflict the death penalty, two conditions must be met;

- The special justification for doing so must be documented
- The death sentence must only be used in extreme situations.

Additionally, the Supreme Court established general guidelines for when the death penalty should be applied in the case of *Machhi Singh v. State of Punjab*. Speaking for the Court, Justice Thakkar stated that five categories of cases could be considered the rarest of the rare, deserving of the harshest punishment.

- The manner in which murder is committed. when the murder is carried out in the most heinous way possible in order to arouse strong and great outrage.
- when a murder is performed with a purpose that suggests animosity or depravity.
- When someone from a scheduled caste or a minority group is murdered, it might be claimed that the crime was either antisocial or of a socially repugnant nature.
- The extent of the offence must be taken into account. Several murders of family members or members of a certain caste or group, as an example.
- Last but not least, the character of the murder victim must be considered.

In *Deena v. Union of India*[7], the Court held that:

section 345(5) of the IPC, which prescribed hanging as mode of execution as fair, just and reasonable procedure adhering to the meaning of Article 21 of the Indian Constitution and hence, constitutional.

In Mithu v. State of Punjab:

Section 303 of the IPC was struck down as violative of Article 21 and 14 of the Constitution of India, as the offence under the section was punishable only with capital punishment and deprived the judiciary of its discretionary power and thus, results in an unfair and unjust procedure that costed a man his life.

Execution of Capital Punishment:**Methods of Execution Through Ages:**

In the past, different governments used a variety of methods to carry out the death penalty, and some of those methods are being used in some nations today. These techniques are –

1. **Crucifixion:** This is the practise of nailing someone to a wooden cross and leaving them there until they pass away. During those times in British Columbia, it was one of the common ways to carry out the death penalty. The identical method of crucifixion was used for Jesus Christ.
2. **Burning at the stake** – Heretics, witches, and suspicious women were the main targets of this method.
3. **The Wheel** – In this technique, a victim was fastened to the outside edge of the wheel and either rolled over a point or slid down a mountain until they were killed.
4. **Guillotine** – When Dr. Joseph Guillotine proposed that a device for beheading people be constructed, the guillotine quickly gained popularity as a means of execution in France during the French Revolution. The decapitation device was afterwards given his name. The equipment was first put to the test on sheep and calves before being used on people. The first guillotine execution finally occurred in the year 1792.
5. **Hanging and the Garotte** – The prisoner could be hanged by simply placing his neck in the loop at the end of a rope, which could result in a fractured neck and death.
6. **Headman's Axe:** During the 16th and 17th centuries, when decapitation was regarded as the most humane method of execution, it was very common in Germany and England.
7. **Firing Squad-** Typically, in this method, the prisoner is bound with hands to a chair or pole and given a blindfold. A group of executioners then uses a rifle to aim for the prisoner's heart.
8. **Gas Chamber:** The prisoner is confined in a space that is airtight. The executioner opens a valve to let fatal gas to flow into that compartment when instructed to do so. In a matter of seconds, the blood supply to the body is cut off, which causes unconsciousness. Death typically follows within six to fifteen minutes.
9. **Electrocution:** The prisoner is strapped into the electric chair, and the executioner shaves both his head and body to make it easier for the copper electrodes to stick to the prisoner's body.
10. **Lethal Injection** – A lethal dose of three different drugs is continuously injected into the prisoner's veins to cause lethal circulation. First, the prisoner is rendered unconscious by the injection of sodium thiopental. The

second drug, alcuronium bromide, is a muscle relaxant that halts the diaphragm and lungs from working. Finally, the heart's function is stopped by injecting the body with potassium chloride.

Methods Of Execution In India:-

In India, the two methods of carrying out the death penalty are hanging and firing. All capital punishment in India is administered by being hung by the neck till death. Nathuram Godse was the first person after independence.

To get a death penalty in India if found guilty of murdering Mahatma Gandhi. Later, the Indian Supreme Court (SC) made the suggestion in a case that India's capital sentence should only be used in the rarest of situations.

Methods of execution:

The act of carrying out a death sentence is known as an execution, although the sentence itself is referred to as one that should result in death. "Hanging by the neck till death" is the only legal method of execution in India. Execution by hanging is done by squeezing the neck or breaking it with a noose that is hanged. It was permitted under Roman law, Anglo-Saxon law, English law, German law, and other ancient modes of execution including the hanging. Up until the British government abolished the death penalty in that country in 1965, hanging was the most common and accepted method of execution.

The victim may be hanged from a gallows or crossbeam until he dies of asphyxiation in this traditional method of execution, or it may be that the condemned person stands on a trapdoor and when the trap is released, he falls several feet before being stopped by the rope tied around his neck, or a knot in the noose helps jerk back the victim's head sharply enough to break the neck. The majority of nations now use different means of execution instead than hanging, including lethal injection, fatal gas, electrocution, and firing squad. On occasion, the executioner may even get to pick the method of execution.

Additionally, nations like Afghanistan, Bangladesh, Barbados, Democratic Republic of the Congo, Egypt, Ghana, Iran, Japan, North Korea, Pakistan, Singapore, Sri Lanka, Sudan, Swaziland, United States of America, etc. also permit hanging as a method of execution.

While shoving people from an undetermined height is the method used for execution in Iran, electrocution and the gas chamber are also legal options in the United States. Sudan follows a system that mandates that retributive sentences be executed in the same way that the perpetrator caused the victim's death. Only in military courts in some nations is hanging used as a punishment. Twenty-eight nations permit the use of the firing squad as a method of execution, and twenty-two more do the same.

The Army Act, Navy Act, and Air Force Act in India are the only statutes that permit death by shooting instead of hanging as a method of punishment. For the offences listed in sections 34(a) through (o) of the Air Force Act, 1950, section 34 gives the court-martial the authority to sentence a person to death. The Court Martial has the ability to choose between a hanging death and a shooting death for this type of execution. The Air Force Act of 1950's elements are also included in The Army Act of 1950 and The Navy Act of 1957. The Act's Section 163 specifies the format of a death sentence as;

"When passing judgement on a death sentence, a court-martial may, in its discretion, order that the criminal be shot to death or hanged by the neck until he is dead."

Rishi Malhotra, an attorney, filed a writ petition in the case **Rishi Malhotra v. Union of India**. He objected to the way that death sentences are carried out in India, which is by hanging the prisoner by the neck until they pass away. In addition to being barbaric, inhumane, and cruel, it is also against resolutions adopted by the United Nations Economic & Social Council (ECOSOC), which categorically resolved by way of safeguard, that **"where the death penalty occurs, it should be carried out so as to inflict the least amount of suffering."** It specifies that the execution should be carried out as quickly and simply as possible, causing immediate unconsciousness that passes quickly into death.

Malhotra referenced Law Commission data from 1967 and 2003 that showed a rise in the number of nations that had either eliminated the death by hanging method or replaced it with others including lethal injection, lethal injection with a lethal weapon, and electrocution. Additionally, it cited the dissenting opinion of retired **Justice P.N. Bhagwati**, who noted that most industrialised and developing nations have switched from hanging to intravenous lethal injection or gunshot as a more compassionate way to carry out a death sentence with less agony and suffering. In light of this, the petitioner requested that the court strike down the pertinent criminal law provisions and deem them to be in violation of Article 21 of the Constitution.

Some important judgements are :

1. In **Deena v. Union of India**, the Supreme Court rendered a decision on the constitutionality of the death penalty's hanging execution as provided for in section 354(5) of the Criminal Procedure Code of 1973. The argument against it was that such an execution was barbaric and inhumane, and as a result, violated Art. 21. The court determined that hanging was an acceptable method of execution under section 354(5) of the I.P.C. and that it was therefore a fair, just, and reasonable procedure under Article 21.
2. **State of Maharashtra v. Santosh Kumar Bariyar**: This case might be seen as a first step in India's elimination of the death penalty. **Justices S.B. Sinha and Cyriac Joseph**, sitting as a bench, determined that prior decisions by the Court, which upheld 13 death sentences, were made per incuriam, or without knowledge of the rules established in Bachan Singh's case. Four people were charged in this case with kidnapping a victim, holding him hostage, killing him, and dismembering his body before disposing of it. The judges were confident that despite the murder's gruesome execution, the case's "mitigating factors" were enough to keep it out of the category of "rarest of rare" crimes.

The court discussed that ,¹¹². We are also aware that on December 18, 2007, the United Nations General Assembly issued Resolution 62/149 calling on nations that still practise the death penalty to enact a global moratorium on executions in an effort to outlaw it. The death penalty is still used in 59 countries, including India. A current and educated discussion and debate on the topic might be made possible by reliable research, perhaps conducted by the National Human Rights Commission or the Law Commission of India.

Drawbacks of Capital Punishment :

The death penalty has a number of drawbacks, which is why it has been abolished in more than 100 nations worldwide. South Africa, Gabon, Canada, and the United Kingdom are a few of the nations that have done away with the death penalty. The arguments against the death penalty are listed below.

- A. Killing is a sin. One of the worst crimes a person or group of people can commit is taking a life. As Christianity is the most widely practised religion in the world and is present in the majority of the countries where the death penalty has been abolished, let's explore the subject of killing from a Christian point of view. Anyone who has read the Bible is familiar with one of the Ten Commandments: "Thou shalt not kill." If you're a Christian and you follow the Bible, you can never advocate killing.
- B. The death sentence is a cruel and harsh punishment that is unfit for a civilised society. It is brutal to execute someone for a crime they did not commit, regardless of how serious it was. Consider how society would punish the offender by murdering him if he had committed a murder. What distinguishes the murderer from society?
- C. The majority of execution procedures are harsh and brutal because the perpetrator must endure significant agony before passing away. These inhumane techniques include stoning, hanging, and firing. Even contemporary execution techniques like the electric chair and fatal injection result in pain and have been criticised as being barbaric.
- D. When the death penalty is permitted, innocent people may wind up being executed. The stories of unfortunate people who wind up being put to death for crimes they didn't commit are the darkest aspect of the death penalty. Unfortunately for some of these innocent people, it takes a while for the truth to surface, and by the time the evidence proving their innocence does, they might have been put to death. This is why many opponents of the death sentence work tirelessly to end this kind of retribution. According to the Death Penalty Information Center, since 1973, at least 190 people who had been wrongfully convicted and given the death penalty in the United States have been exonerated. The centre also lists 20 people who were put to death despite having compelling evidence that they were innocent. According to The Innocence Project, after spending time on death row in the United States, DNA testing has exonerated 18 further individuals and confirmed their innocence.
- E. The fact that some crimes are done on impulse is another reason why the death penalty ought to be avoided. Let's consider the situation of someone who kills someone on the spur of the moment or while experiencing intense emotion and then immediately regrets doing so. Even though this individual killed and committed a crime, he or she needs to be punished severely. However, in some cases, it is unfair to condemn such a person to death for a deed that was not fully his intention. Unfortunately, whether a capital offence was committed voluntarily or not, it always justifies the death penalty in jurisdictions where it is legal.
- F. One of every person's basic and natural rights, the right to life, is violated by the death sentence. The fundamental right to life is guaranteed by the United Nations Declaration of Human Rights and the United States Declaration of Independence, among other documents. Who has the power to immediately take this crucial natural right?

- G. Even the death penalty's efficacy in deterring crime is debatable. Even in Singapore, it is challenging to demonstrate through data that the death penalty lowers crime. Even the claim that the death penalty promotes murder has been refuted. According to this argument, the death penalty makes a criminal more motivated to kill witnesses and law enforcement, discourages juries from convicting them, permits "cop suicide," and makes the state appear hypocritical for punishing actions that it itself engages in.
- H. There are some offences that should not result in death. When a person's penalty is not commensurate with the seriousness of their offence, justice has not been administered. In some nations, especially those that practise Islam, even non-violent offences can result in the death penalty. Abandoning one's faith is a felony that carries a death penalty in numerous Islamic nations around the world. A government that uses moral or religious sins as justification for capital punishment may be abusing its authority to execute political rivals.
- I. While incarcerated, some criminals come to terms with their horrible actions and make amends. Later on, they develop into excellent inmates who counsel others against leading a life of crime. They serve as an example to demonstrate to others that crime is not profitable. Unfortunately, the death sentence becomes it impossible for criminals like her to change and go on to lead productive lives.

CONCLUSION

“Life is valuable, and death is final.”

When the accused is given the death penalty, it is more than just a punishment; we are putting an end to or killing a person in the name of justice and the law. Killing someone is morally wrong and shows a lack of regard for human life. And refusing the death penalty does not imply that one is advocating for the offender. Democracies all over the world embrace reformative theories of punishment and oppose deterrent theories of punishment because when the death penalty is applied, it eliminates the potential for betterment that could have improved the life of an individual.

One should respect every single person because “even the most heinous criminal remains a human being possessed of basic human dignity.” According to the norms and laws we created, we have no right to select who gets to live and who gets to die.

It is true that a criminal must pay for the crimes he committed, but as a civilization, we must work to eradicate the offence rather than the offender. The primary distinction between humans and other animals is this. We have been given a priceless gift: “we are human,” and killing another person undermines the very notion of what it is to be a human.

Crimes are a part of the society and punishments goes hand in hand with crimes.. Punishments are an integral part of the society as it helps, in one way or the other, in maintaining harmony in the society. The concept of punishments has evolved over a long period of time and has reached the stage that it is today. Severe punishments are mostly doe with but still there are some countries, mainly the Arabian countries, where there

are still severe barbaric punishments are meted out. In Indian context, the types of punishments have evolved a lot and it has been classified in a very systematic manner vide the codified laws.

REFERENCES:

1. Ediga Annama vs State of Andhra Pradesh, AIR 1973 SC 774
2. Rajendra Prasad vs State of UP, 1979 AIR 916
3. Mithu vs State of Punjab, (1980)2 SCC 684
4. Macchi Singh vs State of Punjab, (1983)3 SCC 470
5. Allauddin vs State of Bihar, AIR 1989 SC 1456
6. Kehar Singh vs Union of India, AIR 1962 SC 955
7. Deena vs Union of India, (1983)4 SCC 645
8. Attorney General of India vs Lachmi Devi, AIR 1986 SC 467
9. Triveniben vs State of Gujarat, AIR 1989 SC 142
10. Madhu Mehta vs Union of India, (1989)4 SCC 62
11. www.newindialaw.blogspot.in
12. Capital Punishment in India by Dr. Subash C Gupta, 2000
13. Times of India, dated 27/03/2012.
14. IPC Chapter-XII Sec-302, 303
15. The constitution of India, part V, chapter I, article 72
16. Capital Punishment in India by Dr. Subash C Gupta, 2000
17. Law commission of India report 2015. Pg 45
18. Indian Express, New Delhi, dated 27/05/2015
19. Capital Punishment in India by Dr. Subash C Gupta, 2000
20. Law commission of India. Report no. 262 on Death Penalty 2015.