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Capital Punishment: An Analytical Appraisal

Kabita Chakraborty

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Abstract

Since long capital punishment is the most controversial issue all over the world. The main object of criminal laws of a country is primarily intended to reform the offenders rather than revenge. However, the state is also accountable for protecting the interests of the society at large and reaffirming the public's trust in the legal system, and the death penalty may be a tool for this purpose. Throughout the world two extreme approaches regarding the capital punishment have been advocated. One, is for retaining the death sentence for certain offences and other for abolition of it. In India, the death penalty is applied for two reasons, the first is that the wrongdoer must suffer for the actions done and the second is that by punishing the wrongdoers, it will deter future wrongdoing. Under this prevailing situation how far capital punishment will control the crime rate is really a debatable issue. Here the researcher overall review the present status of Capital punishment procedure.

Keywords : *capital punishment, retribution, reformation, controversial, abolition, death sentence.*

1. Introduction:

1.1 An Overview

The significance of a crime is largely determined by its course of action and its detrimental effect on society. The specific punishment for that crime is also affected by it. As the crime progresses, the risk of punishment increases and the offender has to pay for that. When the severity of the crime reaches its peak and thereby raises the question of the security of the society, the death penalty for that crime is given.

A crime is punish able with death penalty not only because it is deemed to be an act of pernicious character but also it transcends all forms of cruelty and is carried out by a very well-organized offender. In this case, the social reaction to that crime is also considered as a great factor.

In many cases the perpetrator is aware of the fatal consequences in response to his crime but deliberately commits the crime out of sheer stubbornness and desperation. In all these aggravated situations, the ruling authority has noother alternative but to proclaim strict verdict, the death penalty is given as a punishment on that rare circumstances.

1.2 Objectives

Through significant judicial statements, legislative actions, and shifts in public opinion, one may follow the capital penalty's jurisprudential development. The Judiciary has been instrumental in determining the legal environment governing the death penalty. The Court has articulated a range of principles and tests throughout the years since independence to govern the application and review of death sentences, demonstrating a changing and evolving comprehension of justice and human rights. The application of the death penalty in India has long been questioned from a legal, moral, and constitutional standpoint. Although it is constitutionally allowed in some situations, its use has sparked debate about whether it aligns with the Indian Constitution's tenets of justice, equity, and human rights. A complex interaction between constitutional requirements, judicial interpretations, societal norms, and international human rights standards is reflected in India's jurisprudential evolution of the death penalty.

Through tackling this research issue, the study aims to advance academic knowledge of the Legal and constitutional aspects of the death penalty in India, offering perspectives that can guide policy discussions, court rulings, and initiatives to uphold human rights and advance justice within the Indian legal system. Towards this end, followings are the research objectives of this study:

- Examine the constitutional framework and historical background of the death penalty in India.
- Examine the capital punishment's jurisprudential development using significant court rulings and legislative changes.
- Analyze the effects of the death penalty in the Indian judicial system on society, ethics, and human rights.
- Examine the efficacy and equity of the death penalty as a crime deterrent while taking comparative research and empirical data into account.
- Examine possible changes or alternatives to the death penalty within the Indian legal system, guided by the values of justice and human rights.

1.3 Capital punishment: Retributive approach

The death penalty is used in the broadest sense as a weapon of vengeance justice. This doctrine believes that there is moral legitimacy to take the life of a person who kills another individual. Aperson who has the brutality to kill can never be a part of a orderly society. Executing a murderer brings justice to the injured party and they get compensatory satisfaction. The cruelty of a murderer cannot be alleviated unless he is similarly tormented by death.

1.4 Capital punishment: Deterrent approach

Deterrence has been defined by Dr. Johnson as discouraging the offender by terror or naked fear from repeating his crime and at the same time preventing others from following his path. The mainpurpose of deterrent theory is to keep the offender away from criminal activities. The death penalty largely serves this objective. The imposition of any death penalty naturally instills fear in the minds of other offenders and prevents them from committing similar crimes. The purpose of the death penalty is not only to eradicate the ruthless criminal but also to set an example to the society that the consequences of any cruel and inhumane act are so horrible.[1]

2. Different modes of Capital punishment

In ancient period, the application procedure of capital punishment was extremely barbaric, and with the passage of time, scientific thinking has evolved which also brings the change in the mode of execution of this maximum punishment.

2.1 Primitive period

On that era no criminal was recognized as a human being in society and was regarded as the property of the authorities. In ancient times, any crime was punishable by death according to the will of the authorities and was carried out in a very cruel manner.

- **Beheading**

The practice of beheading as a means of execution was widespread in ancient times throughout the world. In the previous monarchical system the king used to order the death penalty in this manner, mainly as a punishment for any heinous crime.

- **Hanging**

In this method, the death penalty is carried out mainly by hanging the offenders through ropes. In the present era, this process is also used as a means of execution in countries like India.

- **Burning**

The practice of burning the perpetrator alive as punishment for his deeds has been seen in many cases of the old regime. In the Middle Ages it was common practice for women to be burned alive as a form of punishment for witchcraft.

- **Boiling in Oil**

The process of such execution is mainly mentioned in ancient scriptures. Boiling to death was a common mode of death penalty in many parts of Europe and Asia. Due to the lengthy process, death by boiling is an extremely painful method of execution.

❑ **Flaying alive**

It was a very brutal execution process in which the perpetrators had to die through extreme physical torture. In the process, the skin of the offender's body was removed and he was pushed to his death.

❑ **Throwing to wild beast**

The Latin term "Damnatio ad bestias" means "condemnation to be asts". It was a form of capital punishment prevails in Ancient Rome, where the offender was killed by wild animals, usually lions or other big cats. This form of execution was first introduced around the 2nd century BC, in Roman Republic.

❑ **Crucification**

Crucifixion is another way of the execution of capital punishment in this process offender was tied or nailed to a wooden cross or beam and left in the same position with starvation until eventual death has occurred from exhaustion and asphyxiation. This practice was very common as a form of death penalty in ancient Roman Emperor.

❑ **Crushing**

In this method the offender was executed by crushing him with a heavy object. This crushing was done mainly by applying force through iron or wooden planks.

❑ **Strangulation**

In this process the death penalty was carried out mainly through hanging. The practice of executing in this manner is still practiced in many Eastern countries

❑ **Torningapart**

In this cruel process, the body of the criminal was pulled out from both sides. This process was practiced in medieval Europe and Imperial China by using four horses. Sometimes camels was also engaged in that process in the Middle East.

❑ **Back-breaking**

It is an execution technique to prevent blood from leaking on to the ground. It was mostly used in Mongolian countries.

❑ **Falling**

In this method the death penalty was carried out by raising the offender to a certain height and then throwing him away.

❑ **Poisoning**

The practice of execution by direct application of poison to the food of the offender was common in

many lands in ancient times. Through drinking an infusion of hemlock was used as a method of execution in ancient Greece.

❑ **Burial alive**

It is a traditional method of executing death penalty. In this method the criminal was buried into the earth in living condition. Such punishments were given mainly for the crime of treason in the old monarchy.

2.2 Modern period

In present era, with the advent of modernity, the process of execution has become more innovative, and the use of various scientific methods is now practiced in different countries.

❑ **Shooting**

It is the second most prevalent method of death penalty after hanging, which is applied in various countries in different process

a. China, Belarus and Russia (before moratorium on death sentence)-By a single shot back of the head of the offender.
b. Thailand-by a single machine gun
c. Indonesia-by firing squad

- North Korea-various media sources claim that it is using overly potent weapons, including anti-aircraft guns.
- Lethal injection

  The procedure in volves injecting in to the body of the offender very subtly and professionally and killing him instantly without any suffering, this process was introduced in the United States in 1982, lethal injection has since been adopted by China, Taiwan, Thailand, Guatemala, and Vietnam.

❑ **Electrocution**

In the process, the culprit is exposed to a very powerful electrical current and he is electrocuted to death. This process of capital punishment was mainly practiced by the United States and Philippines. Now it is legally executed in Florida, South Carolina, Kentucky, Tennessee, Mississippi, and Oklahoma as a secondary method.

❑ **Gas inhalation**

In this method, the offender was tied to a chair and locked in a gas chamber filled with toxic cyanide gas, which would soon enter the body and kill him. It was firstly practiced in the United States and Lithuania. Now this process is legally proclaimed in California, Arizona, Wyoming, Oklahoma, and Missouri.

❑ **Stoning**

In the process, the offender is made to stand in a certain place and many people surround him and throw heavy stones at him until he is hit by the stone and dies. It is used as a form of capital punishment in Somalia, Afghanistan, tribal parts of Pakistan, Saudi Arabia, Iraq, Sudan, United Arab Emirates, Northern Nigeria, Mauritania, Qatar, Iran, Yemen and since 2014, in Brunei.[2]

3. Capital Punishment: Historical Overview

In ancient times, law enforcers thought that human life was the most sacred and precious thing, so the purpose of life was not only to protect his holiness but also to keep him safe from all sides. So those who can indulge themselves in the activities of taking away that precious life are above all kinds of arrogance. Murder has always been considered the worst crime in the world and the death penalty for that criminal has become a necessity for society. The prevailing thinking regarding the death penalty in different countries of the world are discussed below.

3.1 Roman and Greece: Approach towards Capital Punishment.

Ancient Roman society recognized the preventive quality of the death penalty. Under ancient Roman law, the offender was exposed to the public, and the death penalty created a ceremonial atmosphere. Because in that era it was thought that the welfare of the society was being established through the death penalty for the heinous criminal. The death of the hated person was done with considerable torture for example, a person who killed his father was tied up in a sewn bag with a live dog, cat or cobra and thrown into the river. The main purpose of such punishment was to cause the criminal to suffer a very painful death.

The use of the death penalty in the ancient Greek penal system is also seen in the case of various crimes. In that country, the death penalty for criminals was carried out through various forms of suffering. The main purpose of carrying out the death penalty in public was to control crime in the society and to set a social precedent.

3.2 English Approach towards Death Penalty

3.2.1 Ancient Period

England's Historic Crime and Punishment Policy show that the use of the death penalty was widespread in the middle Ages to control crime. Henry VIII, who ruled England for nearly 50 years, was famous for his brutality against criminals. In his day, it was customary to boil criminals alive and kill them. Such cruelty continued during the reign of his daughter, Queen Elizabeth, as his successor. This brutality towards criminals finally became extinct by the end of the eighteenth century and criminals

were relocated to the American colonies. Judging by the history of the death penalty in England, Doctor Fitzgerald found that the death penalty in England had declined rapidly over the last 200 years.

3.2.2 Nineteenth Century

In the first half of the nineteenth century, the use of the death penalty started to be widely criticized by the general public, and gradually it was used only for heinous crimes. Many of the criminals who were sentenced to death in those days would have been released from this extreme punishment if they had agreed to relocate to the American colonies. Lord Denning appearing before the royal Commission on capital punishment expressed the view that "Punishment is the way in which society expresses its denunciation for wrongdoing and in order to maintain respect for law It is essential that punishment inflicted for grave crime should adequately reflect the revolution felt by the great majority of the citizens. For them, it is a mistake to consider the object of punishment as being deterrent or reformative or preventive and nothing else. The truth is that some crimes are so outrageous that society insists on adequate punishment because wrong doer deserve it, irrespective of whether it is deterrent or not".

3.2.3 Twentieth Century

The death penalty, in addition to its cruelty, is quite harmful to human dignity. Some of the negative effects of the death penalty force the general public to look at it and various complications started to create surround the death penalty and as a result, the British Royal Commission was appointed in 1949, and according to this Commission, the death penalty was abolished from d England and Wales for five years at 1965 and finally in 1969 the death penalty was completely abolished from the province of England.

3.2.4 Present Status

The death penalty for murder was postponed in 1965 and eventually abolished in 1969 (1973 in Northern Ireland); the last hanging executions in the United Kingdom were in 1964. Even though it was never utilized, the death penalty was still a recognized punishment for several crimes, including treason, until it was outlawed entirely in 1998. William Joyce was the last person to be put to death for treason in 1946. The United Kingdom was bound by Protocol No. 13 to the European Convention on Human Rights in 2004; regardless of the UK's standing within the European Union, the convention forbids the reinstatement of the death penalty while the UK is a party.

On February 21, 1994, additional provisions to the Criminal Justice and Public Order Bill were introduced, sparking a parliamentary discussion on a subject that suggested the reinstatement of the death penalty. The first, which called for "the murder of a police officer engaged in the execution of

his job" to result in death, was defeated by a vote of 186 to 383. By a vote of 159 to 403, a new provision that would allow for a general reintroduction and provide the Court of Appeal the authority to substitute life in prison was rejected. The target of this would have been terrorists involved in the war in Northern Ireland. Conservative MP Philip Hollobone proposed a new bill introducing the death penalty in England and Wales in June 2013. The bill was withdrawn.

3.3 Sri Lankan View on Death Penalty

Sri Lanka's penal system abolished the death penalty altogether in 1995, but reintroduced it into the penal code as part of social security after the death of the Late Prime Minister, Mr. Bandaranaike.

3.4 Italian View on Death Penalty

Italian criminologists have expressed differing views on the merits of the death penalty. Lombro so has supported the application of capital punishment for those offenders who are habitual criminals and will never change their nature. According to him the death penalty would serve as a useful regulator for them. Beccaria on the other hand, was opposed to the use of the death penalty because he believed that it had an immoral effect on society because one's life was too precious and should not be executed.

3.5 French View on Death Penalty

Following extensive discussions and debates between French law enforcement and policy makers, the death penalty was abolished since it is generally accepted that the death penalty is not justified in light of the current trends in reformative penal policy.

3.6 American View on Death Penalty

According to various literature published in the United States, the death penalty is used with great caution in that country. This does not mean that the death penalty has been completely abolished in the United States. In many cases the maximum punishment is still considered appropriate in this country even though this punishment is applied for very rare situations. U.S. penal policy advocates support the practical use of the death penalty for two reasons: first, the death penalty can be used to control future murderers, and second, the person who kills has no right to his own life. According to the modern United States, the process of maximum punishment should be limited to homicide and rape, the most heinous national crime and there has been a change in the current thinking regarding the use of the death penalty, which gives more emphasis on the secret, painless and speedy execution, rather than the previous ruthless, painful and lengthy punishment process. Electrocutions, hanging, asphyxiation are currently used as the main means of execution in the United States, although several provinces under the United States have abolished death penalty.[3]

3.7 Indian View on Death Penalty

3.7.1 Ancient view

The death penalty was given considerable importance in the ancient history of crime in India and was used as punishment for various crimes. Various Indian epics, such as the Ramayana and the Mahabharata, mention various forms of the death penalty. It is very much relatable and significant that in the oldest epic, Bhagwat Gita, killing was occasionally justified as a virtue, and acting in a way against the general view of death penalty as asin or a sign of cowardice.

Dharma Shastra also contained a passage saying "killing of a murderer (Atatayinah) is one's duty, may the killer be a preceptor, child, old man or even a learned Brahmin" that means if a criminal is released without punishment, the crime will increase manifold. Manu, the great legislator, believed that strict attitude and intimidation were essential in governing the country. According to him, there is a great need to introduce the death penalty to prevent people from committing sins such as murder. If there had not been such a process of punishment, the whole country would have been in turmoil and the strongest community would have eliminated the weaker section of people. Under the medieval Mughal rule in India, the death penalty was used in its most ruthless manner. However, in the first half of British rule, especially in the nineteenth century, the barbaric mode of execution of capital punishment was abolished and in modern India, only the death penalty by hanging is legally recognized.

3.7.2 Modern view

In today's India, death penalty is used as a punishment for certain serious crimes with is specifically mentioned under Indian Penal Code

1. Waging where against the government
2. Abetment of mutiny
3. Giving or fabricating false evidence leading to procure one's conviction for capital offence.
4. Murder
5. Abetment of suicide by child or insane person
6. Attempt to murder by a life convict
7. Dacoity with Murder and Kidnapping for ransom

4. Capital Punishment: Judicial Activism in India

4.1 Capital punishment under Criminal law

Up to 1983, the death penalty was only prosecuted if a murder was committed by a person to whom a life sentence has already been served. The Indian Penal Code for other offences did not yet obligate the capital punishment and in its ruling on the writ petition filed by Mithu and others, the Supreme

Court of India on April 7, 1983, that the court could impose any other punishment on the offender. Section 303 of the IPC (Section 104 of BNS) was questioned for its constitutionality. Article 303 of the Indian Penal Code was said to have violated Articles 14 and 21 of the Constitution. The 5 judges constitutional bench led by Y.V. Chandrachud observes that section 303 of IPC (Section 104 of BNS) is unconstitutional and a death sentence cannot be imposed as a mandatory punishment even though the murder was committed by a lifer. Since then, all murder cases have been included in section 302 of the Indian Penal Code(Section 103 BNS), and the death penalty has been used as an alternative to life imprisonment. However, this maximum punishment is enforced only in rare of the rarest cases.

4.2 Conflict of views in Judiciary

Based on a major dispute about the necessity of the death sentence, members of the Indian Judiciary are firmly divided into two groups. Supporters of abolishing the death penalty contend that it violates human dignity and is a key component of retaliatory mentality, both of which are inappropriate under the current legal code. However, some who support the death sentence argued that it has a deterrent effect to heinous crimes like murder and has a social necessity. Our criminal law has occasionally carried out the capital punishment for offences like murder through specific amendments.

In the pre 1955 era, when a judge used a lesser punishment for a crime other than the death penalty, the judge had to record the reason for the punishment. Stated differently, it indicates that the judges discretion was subject to additional scrutiny. The imposition of this barrier on the judiciary was later found to be completely unjustifiable because, even if a judge makes the firm decision to impose life imprisonment rather than capital punishment, it will lose its impact if it is not properly assessed. In many cases its adverse effects are seen such as in **Queen v. Osram Sungra,** without providing a reason, the court granted life imprisonment rather than death sentences where the accused committed a cold-blodded murder with premeditated intent. Judges often disagree on whether death penalty or life imprisonment should be appropriate for any murder. It may be appears that one judge who considers the death penalty to be the appropriate punishment for a murder but the rest of the judges do not agree with it. On that reference it can be stated that in **Kunju Janardhanam v. State of Andhra Pradesh** while his innocent wife and two children were sleeping in the dead of night, the accused enamored with the charm of a village girl, brutally murdered them. Despite the girl's letters warning him not to ruin his happy family life by engaging in illicit intimacy, the accused chose to commit triple murder with extreme depravity. The death sentence was commuted to life imprisonment by 2:1 majority. Mr. Justice A.P. Sen noted that he disagreed with the majority in his dissenting opinion and observed, "The accused who acted as a monster, did not even spare his two innocent minor children in order to get rid of his wife and issues through her, if death sentence was not to be awarded in a case like this I do not see the type of offences which call for death sentence."

Rajendra Prasad's case, which was exclusively dealt by the Supreme Court of India, is particularly significant in assessing the effectiveness and usefulness of the death penalty.

In this case, it is seen that a convict sentenced to life imprisonment, who was very arrogant, was released from jail a few days ago on the occasion of Gandhi Jayanti, 1972. Shortly after his release from prison, the criminal suddenly attacked a man named Rambharosey and repeatedly tried to stab him. He somehow managed to free himself from the assailant, reached his house and locked the door, and the criminal rushed there any asked him to open the door. Meanwhile a man named Mansukh tried to stop the criminal there and at the end he died at the hands of that criminal. The Supreme Court, in a 2: 1 majority, through Mr. Justice V.R. Krishna Iyer had observed that it is the failure of the sentencing body that it has not been able to remove the criminal tendencies from the minds of the offenders and that is why this cruel death has taken place and in this case life imprisonment should be given instead of death penalty for the culprit. It was otherwise held by the Court "A second murder is not to be confounded with the persistent potential for murderous attack by the murder. This was not a menace to the social order but a specific family feud..... Here was not a youth of uncontrollable, violent propensities against the community but one whose paranoid pre-occupation with family quarrel goaded him to goat the rival.''

Justice A. P. Sen sharply reacted on this view of majority according to him In this case, the culprit can not get relief from the death penalty in any way, he mentioned that "the case of this accused is destructive of the theory of reformation. The "therapeutic touch" which is said the best of preventing repetition of the offence has been of no avail. Punishment must be designed so as to deter, as far as possible from commission of similar offences. It should also serve as a warning to other members of society. In both aspects, the experiment of reformation has miserably failed. I am quite sure that with the commutation of his death sentence, the accused will commit a few more murders and he would again become a menace to the society.''

Additionally it was held by the Ld. Judge "... The humanistic approach should not obscure our sense of realities. When a man commits a crime against society by committing a diabolical, cold blooded, pre-planned murder of one innocent person the brutality of which shocks the conscience of the court, he must face the consequences of his act. Such a person for fits his right to life."

There is a section relating death penalty in the Indian Criminal Procedure Code, Section 354 (3) (Section 393 BNSS) states that whenever a court sentences an offender to death, special reasons must be given for the sentencing and it must also be stated there why the sentence of life imprisonment is not applicable in that case.

5. Capital Punishment: Critical Evaluation

5.1 From International status

An international statistic compiled by the United Nations in 1962 shows that the suspension or abolition of the death penalty has no immediate effect on the rise of crime in society. Countries that have abolished the death penalty, such as Germany, the Netherlands, Denmark, and some Latin American states, have not been affected through this abolition. It is noteworthy that the abolition of the arbitrary use of the death penalty has resulted that the means of capital punishment is now limited to the execution of the murderer. In this reformative era, there is no use of the retributive doctrine like "tit for tat". Rather, the doctrine of reprisal spreads hatred and enmity among more people and does not prevent crime in any way. The retributive approach is outdated and does not properly accept modern criminal justice.

5.2 Ancient time

Beccaria were the first criminologist who had developed resistance against the capital punishment in 1764. He resolutely opposes this cruel and barbaric punishment process and emphasizes on their individual treatment. According to him, giving death as a punishment for crime carries the impression of cruelty and immorality of mankind. One of the reasons for the expulsion of the doctrine of vengeance is that to execute a person as a punishment means to actively kill him as well. It has also been observed in various cases that more than 80 per cent of the perpetrators involved in the murder have committed the murder under certain circumstances like provocation, jealousy, sexual impulsiveness, poverty or intoxication. Professor Scott has expressed skepticism about the effective execution of the death penalty because in many cases it has been seen that many innocent people have been subjected to such punishment as a result of wrongful trial. Because once the death sentence of an innocent person is carried out through wrong judgment, it is not possible to come to the right conclusion and restore his life. This is why in the case of such punishment, the offender is released under the plea of "benefit of doubt" if there is even the slightest suspicion of his guilt.

At no time in the history of human civilization has the death penalty been excluded, Different doctrines concerning the death penalty are prevalent among Indian penologist. Many of them have supported the use of the death penalty as a punishment, while others have called for the abolition of the death penalty for the sake of humanity. According to those who support the death penalty, this process of punishment will act as a crime controller and will force the people of the country to lead a lawful life. The supporters of capital punishment belief that in order to bring justice, the culprit must be sentenced to death. If the murderer is not sentenced to death, the person he killed will never be brought to justice. On the other hand, according to the opposition to the death penalty, the growing

number of murders in the society proves the uselessness of the death penalty. They also think that a hardened criminal commits killing with a very clever and cold-blooded manner, so that even if they are caught, they can easily escape from punishment. Reacting strongly to this doctrine, the Law Commission of India noted in its 35th report that "having regard to the conditions of India, to the variety of the social upbringing of its inhabitants, to the disparity of the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the Paramount need for maintaining law and order in the country at the present juncture India cannot reached the abolition of capital punishment. arguments which would be valid in respect of one area of the world may not hold good in respect of another area in this context similarly even if evolution in some parts of India may not make a material difference it may be fought with serious consequences in other parts on a consideration of all the issues in for the commission is of the opinion that capital punishment should be retained in the present state of the country."

From the above analysis it is clear that neither the use of the death penalty nor its abolition is entirely appropriate. The need or usefulness of this punishment depends on the nature of the crime and its circumstances.

6. Requirements for the death penalty: Review

- The death penalty is justified for those criminals who, naturally, carry out the killing with a very cold head and through a pre-planned manner.
- In agrarian countries like India, land disputes are often blamed for killings. In all these cases, the perpetrators are aware of their actions but commit such crimes out of sudden excitement. They can never be considered professional killers and in most cases the death penalty is not justified.
- Young people in particular are more likely to commit heinous crimes, such as murder, as a result of a social event or religious or political incitement. In all these cases the judge has to determine the appropriate punishment for the offender with the utmost care and analysis of the situation.
- Though the intensive studies carried out by Dr. Sethna within the criminal Sessions of Bombay High Court, it was concluded that, only 26.28 per cent out of the 507 murder cases were found to have been premeditated and in all other cases the cause of murder is the presence of instant arousal, emotion, uncontrollable anger, etc., so in these circumstances death penalty cannot use as a form of deterrence.
- The main purpose of imposing the death penalty on non-correctional offenders is to provide security to the society. In this case, it should be kept in mind that the use of this punishment is not only to intimidate the perpetrators but also to make the society aware of the horrors of murder.

From the above review it is understood that the classification of murder depends mainly on the social environment and the characteristics of the offender. Based on this principle, it can be said that habitual criminals or sex psychopath's offenders are considered as abnormal people who engage themselves into the heinous acts without considering the depth and negative impact of their crime. There is also another type of criminal who kills people and enjoys it without any specific reason.

They carry out one murder after another just for fun. And when they are questioned about it, they are quick to admit their guilt and say that they have the demonic pleasure of killing someone who has been tortured to death. Needless to say, no punishment other than the death penalty is appropriate in these cases.

6.1 Arguments "for" Death penalty

- The expulsion of the murderer by the death penalty is an appropriate retaliatory process and brings justice to society.
- Punishment should be based primarily on the severity of the crime and any heinous crime should be tried very strictly in order to deter it and to keep societal security.
- The capital punishment reveals the societal view towards these horrific crimes.
- A person who has taken the life of another has lost his right to his own life.
- The capital punishment should be viewed primarily as vengeful justice because it provides peace of mind to the victims and his family members.
- This is the most effective way to protect society from the hands of ruthless criminals and that is why the death penalty is legalized in the constitution.
- Many authorities believe that life imprisonment is more cruel than the death penalty.
- Economically speaking, the death penalty is far less costly than the life imprisonment for a criminal.
- The capital punishment protects prisons from overcrowding, and the expulsion of relatively dangerous offenders facilitates prison discipline.
- The capital punishment upholds the rule of law and prevents the victim's family from taking the law into their own hands.

6.2 Arguments "against" Death penalty

- The real meaning of the capital punishment is murder and all forms of murder are considered wrong, so the death penalty is wrong.
- The capital punishment is a process which is irreversible on evidence of irrationality and results in injustice to the person who was wrongly executed.
- The capital punishment is a ruthless revenge that pushes society towards a barbaric attitude.

- The capital punishment is an unreasonable and discriminatory process where the punishment is given for killing to many poor people who may not have a chance or ability to defend themselves properly.
- It is far more desirable to keep a man alive in the midst of all sieges than the capital punishment.
- The capital punishment violates human rights and specifically violates Articles 3 and 5 of the UN Declaration of Human Rights.
- A large number of murderers commit offence under immediate emotion and excitement and in that case the death penalty can in no way provide justice.
- The death penalty does not give the offender the opportunity to reform or rehabilitate in any form which is not acceptable under the current penal policy.[4]

7. Conclusion

According to modern doctrine, those who break the law need to be given appropriate punishment as a price for the crime. In developing countries like India, more importance is given to the application of penal section than to the analysis of the appropriateness of punishment. Weak punishment formulation and structural flaws in the nature of penal policies indirectly destroy the usefulness of the law. some laws relating to social policies like law relating to homosexuality and beef ban are gaining more popularity all over the country due to having over strict penalties even section 499 or 500 IPC Which is dealing with the criminal defamation are also added with this list. It was earlier considered as a civil wrong and therefore criminalize during the British period. The main flaw of the Indian legal system is that any judicial process here is time consuming. One of the downsides of the Indian legal system is that the policy of imposing punishment for relatively less important crimes is often not properly reviewed for serious and more destructive crimes. Although some activities are no longer included in the list of crimes, for an instance homosexuality is not a crime in present days.

Whenever punitive measures are taken to curb criminal activity, it is important to keep in mind that human nature is very complex and cannot be easily guessed. This is why not all people respond equally to the same situation. From this realization the idea of inventing different types of punishment policy for criminals came into application. The prison is not only considered a four-walled enclosure, but also a training center for those who break the law. More attention is being paid to the process of correcting criminals through proper training than just keeping them under the supervision of the authorities. It has been realized that security in society is possible only when the perpetrators will be corrected through separate treatment. Experience has shown that it is not enough to rehabilitate the offenders during his penalty period. It is also the duty of the authorities to ensure that after their release from prison they are able to lead a proper life.

The duty of a proper law-making policy is to correct and rehabilitate juvenile and first-time offenders and to adopt deterrent policy for habitual offenders. That is why the current penal policy places more emphasis on institutional infrastructure with reformative approach. Punishment should be made in such a way that instead of inflicting external pain on the perpetrators, the perpetrators should be made more aware of the moral values of the society and they should be established as a sophisticated member of the society.

Punishment policy should never be too harsh or too lenient. Punishment policy largely reflects society's attitudes toward crime, so the goal of enforcement depends largely on the social infrastructure and values prevalent there. In fact, the main demand of the present age is to improve the rehabilitation process and reduce the use of external punishment. Punishment procedures can never be created automatically. It develops mainly in the context of the socio-economic, political and cultural conditions of a particular society. They also have pre-dominance effects on emergence of crime. That is why alternative approaches are needed to control the criminal and his criminal tendencies so that new penal policy can be developed in the criminal justice process. Although in recent ages there has been a radical change in penal policy in many developing countries of the world, there is still a need for in-depth review in a number of areas related to crime and criminals.

One of the major tasks of modern penal policy is to scientifically classify criminals, to control the work of various criminal organizations and to improve their punishment system. The impact of criminology and the spread of related legislation is inextricably linked with punishment. Inhumane treatment with a criminal is not justified and fundamental human rights and dignity must always be respected. An appropriate criminal justice policy always places the utmost importance on the security of the society and builds resistance against the perpetrator and his criminal tendencies.

By emphasizing on the penal justice system The Supreme Court in **Ankush Maruti Shinde v. State of Maharashtra** case observed that "in perpetuating the sentencing system law should adopt the corrective machinery or the deterrence based on factual matrix. Imposing sentence without considering its effect on social order may be in reality a futile exercise.....it is, therefore, the duty of every Court to avoid proper sentence having regard to the nature of the offence and the manner in which it was perpetuated or committed."

According to some punishment theorists, the practical response to punishment for a crime depends largely on what the particular society or country is going through. For example, the death penalty, deportation, solitary confinement, etc., which are used arbitrarily in times of revolution or war, are not applied in same manner during the times of unity and peace.

In light of the increasing terrorism activities in India, it could be argued that the application of capital punishment for terrorists is an appropriate response, given that such instances are indeed rare and exceptional. And in the same vein, it is imperative to crack down on the growing corruption in various parts of India, especially in the Department of Politics and Corporations.

Based on the current criminal justice process, the chief justice of India, Justice P. Sathasivam, during the occasion of National Legal Service Day (6th November, 2013) expressed that "justice is still in a cynical phase for the common man, despite a force being made to make it accessible."

Endorsing his views Justice G.S. Singhvi regarding legal fraternity said that "it is time to ponder over whether in 65 years we have been able to achieve the goal to provide justice for people and whether we have created an atmosphere where everybody has equality of opportunity and status for people."

He further observed that "Justice was still an illusion for millions of people in the country and it is not accessible to a majority of the population."[4]

In 2020, capital punishment was last carried out in India when four convicts in the 2012 Delhi gang rape and murder case were hanged. The Supreme Court has stated that it should be used only in the rarest of rare cases. As of 2021, 56 countries retain capital punishment, while 111 have abolished it.

End notes:

1 Prof. N.V. Paranjape, *Criminology & Penology* 357 to 358 (Central Law Publications, Delhi, 18th edn., 2019)

2 List of methods of capital punishment, *available at*: https://en.m.wikipedia.org (Visited on 20 May, 2022)

3 Prof. N.V. Paranjape, *Criminology & Penology* 359 to 362 (Central Law Publications, Delhi, 18th edn., 2019)

4 Prof. N.V. Paranjape, *Criminology & Penology* 363 to 382 (Central Law Publications, Delhi, 18th edn., 2019)

5 Prof. N.V. Paranjape, *Criminology & Penology* 327 to 329 (Central Law Publications, Delhi, 18th edn., 2019)

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Bio Profile of the Author:

Professor, Faculty of Law, ICFAI University, Tripura

Email: kabita.legal@gmail.com