# "IS CULPRIT SHOULD BE CRUCIFY?" ENLIGHTMENT BY JUSTICE PN BHAGWATI

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**ABSTRACT**

In India at the present scenario Capital Punishment is the most debatable topic among the notable jurists and eminent human right activist. For decades, often various judges of the Hon'ble Supreme Court have faced dilemma while sentencing death sentence to convicts of horrendous crimes as capital punishment is regarded to be unacceptable socially, morally and legally and non-humanitarian by the Indian Judiciary. Capital punishment has been challenged from time to time and the question to procedure established by the Indian Penal Law both substantive and procedural for imposition of capital punishment is not reasonable and fair is voiced by abolitionists on various grounds.

Punishments are based upon the identical proposition i.e. the individual is entitled to get penalty for his wrong doing. There are two main causes for inflicting the punishments. First is the reason that it is fair and just that the person who has done wrongful act should suffer for it: the other is the reason that inflicting punishments on wrong doers demoralize others from doing the same wrong acts. The capital punishment also based on the same hypothesis as other punishments.

The paper highlights the jurisdictional power of the court to award death sentence, and critical analysis of existing provisions regarding death sentence and aims to prescribe procedure for abolition or retention of capital punishment in India and it ends with a unambiguous suggestion that death sentence as an option for punishment should prevail as a method of punishment to the heinous criminals and there are no other less deterrent and rehabilitative methods available nowhere.

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On March 21, 2013, a bench comprising Justices P. Sathasivam and B.S. Chauhan disposed of the death sentence cases and the criminal appeals of the accused after one of the longest hearings which resulted in a massive judgment of 2,995 paragraphs and 1,004 pages of the Law Reports. The judgment not only examined the guilt of over 100 accused who were convicted, but also individually discussed the sentences. A Terrorist and Disruptive Activities (Prevention) Act (TADA) court had awarded the death sentence to 10 other persons but the Supreme Court confirmed the death sentence of Yakub alone; it was commuted to life imprisonment for the rest. On July 30, 2013, the same bench rejected the review petitions after denying oral hearings.

Later, the Supreme Court decided in Mohammed Arif's case ((2014) 9 SCC 737) that limited oral argument be permitted in review applications in death sentence cases. Consequently, on April 9, 2015, a Supreme Court bench comprising Justices Anil R. Dave, J. Chelameswar and Kurian Joseph heard oral arguments in a review petition filed by Yakub after going through the judgment under review as well as the judgment of the trial court. The review was dismissed.

A curative petition was then filed and on July 21, 2015, a Supreme Court bench comprising Chief Justice H.L. Dattu, and Justices T.S. Thakur and Anil R. Dave >rejected the petition, holding that there was no ground made out.

Another writ petition was filed by Yakub (Writ Petition, (Crl.) No.129 of 2015). There was a difference of opinion between two judges on the question of whether the curative petition had been decided in accordance with the law and as per the requirement of Supreme Court Rules. Following this, the Chief Justice of India immediately constituted a bench of Justices Dipak Misra, Prafulla C. Pant and Amitava Roy which dismissed the writ petition on July 29, 2015 and held that there was no flaw in the decision on the curative petition and that the issue of death warrant was in order. Another writ petition (W.P. (Crl.) No.135 of 2015) was filed and heard on the night of July 29/the morning of July 30, 2015 by the same bench, which dismissed it and observed that a further stay of the execution of the death warrant would be nothing but a travesty of justice.

Yakub's conviction and death sentence was examined by eight judges in the Supreme Court from time to time before his execution on the morning of July 30, 2015. Not only was due

process fully ensured but also undue lengthening of due process was accommodated by the highest court, by granting a midnight hearing. Justice according to the law has not only been done but was seen to be done. The criticism that, on merits, justice has not been done to Yakub Memon is absurd.

Every Indian should be proud of the manner in which this case has been dealt with by the judiciary.

Is the death penalty justified?

Under the Indian Penal Code (IPC), there are several offences which may attract a death penalty or life imprisonment. These include murder — Section 302; waging war (including attempt and abetment) — Section 121, and mutiny — Section 132. Under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) (now repealed but in force in 1993) and under the Prevention of Terrorism Act, 2002 (POTA) (now repealed), the death sentence could be awarded for terrorist acts.

Bomb explosions and the loss of lives as a result of terrorist attacks are completely different in nature, objective and motivation from a common murder. In this case, the objective is not to target someone in particular but to destabilise society and to encourage the disintegration of the sovereignty and security of a nation. Such terrorist attacks are often state-sponsored — and are an act of undeclared war.

For many years India has faced, and still faces, the most severe threats on account of terrorism. India was regarded as a "sponge" until the world took notice of the evolving nature and threat posed by terrorism after the terror attack on the World Trade Center on September 11, 2001.

Awarding someone the death penalty for acts of terrorism is qualitatively different from awarding someone the death penalty for having committed other crimes.

A criticism levelled by some against the death sentence having been awarded to Yakub reiterates the familiar argument that the death penalty as such should be abolished as it is a violation of human rights and is an inhuman and cruel form of punishment.

In the seminal case of Bachan Singh, the majority judgment upheld the constitutional validity of death penalty for murder under Section 302 of the IPC.

In his vigorous dissent, Justice P.N. Bhagwati, while declaring unconstitutional and void Section 302 (IPC) read with Section 354 (3) (Cr.P.C) as being violative of Articles 14 and 21, made the following observation: "I may make it clear that the question to which I am addressing myself is only in regard to the proportionality of death sentence to the offence of murder and nothing that I say here may be taken as an expression of opinion on the question whether a sentence of death can be said to be proportionate to the offence of treason or any other offence involving the security of the State" — ((1982) 3 SCC 24 at 76).

These words, from the strongest votary against the death penalty, are revealing. Justice Bhagwati clearly indicated that his observations do not apply to punishment of death in relation to terrorist acts or to treason — implicitly endorsing the death penalty for terrorist acts.

While abolition of the death penalty for crimes other than terrorist acts or treason may be justified, its retention in the case of punishment for having carried out terrorist acts or treason seems equally justifiable.

How effective? The death penalty may be well deserved and a judge has to make a decision according to the law. The power to commute the death sentence ought to be exercised by the Executive selectively.

After Yakub's execution in Nagpur, his body was flown to Mumbai the same day. Large crowds thronged his residence, the mosque at Mahim and at his burial at Marine Lines. There is increasing support for the view that the death penalty for terrorists may not only be ineffective but also be counterproductive. Why? Terrorists, when awarded the death penalty, become martyrs influencing many other misguided youngsters to espouse a similar cause. Many religious fanatics believe in reward in the "after life" and endless pleasures in heaven. Not awarding them the death penalty would mean depriving them of the "anticipated rewards in heaven". Again,

imprisonment and incarceration of a terrorist may result in yields — obtaining information relating to other terrorist organisations.

Here, it is worth citing Jessica E. Stern, an expert on counterterrorism and a lecturer at Harvard University, who also served on the National Security Council (1994-95) in the United States. In an article published in The New York Times on February 28, 2001, titled "Execute terrorists at our own risk", she had said this:

"As a nation, we have decided that terrorism that results in loss of life should face the possibility of the death penalty. But is this wise?

"…. One can argue about the effectiveness of the death penalty generally. But when it comes to terrorism, national security concerns should be paramount. The execution of terrorists, especially minor operatives, has effects that go beyond retribution or justice. The executions play right into the hands of our adversaries. We turn criminals into martyrs, invite retaliatory strikes and enhance the public relations and fund-raising strategies of our enemies…

"… For instance, the United Kingdom in 1973 debated whether to repeal the death penalty in Northern Ireland. By a margin of nearly three to one, the House of Commons decided that executing terrorists, whose goal is often to martyr themselves, only increased violence and put soldiers and police at greater risk. In a highly charged political situation, it was argued, the threat of death does not deter terrorism. On the contrary, executing terrorists, the House of Commons decided, has the opposite effect: It increases the incidence of terrorism."

Alan Dershowitz, the American lawyer and a life-long opponent of capital punishment, wrote in The Guardian on April 24, 2013 about the death penalty. In an article titled "Dzhokhar Tsarnaev should not face the death penalty, even for a capital crime", and which was about the surviving Boston marathon bomber, he wrote:

"…There is an argument, however, that could have an impact even on proponents of the death penalty.

"Seeking the death penalty against Tsarnaev, and imposing it if he were to be convicted, would turn him into a martyr. His face would appear on recruiting posters for suicide bombers.

The countdown toward his execution might well incite other acts of terrorism. Those seeking paradise through martyrdom would see him as a role model."

The question one needs to ponder over is whether the execution of a particular death sentence awarded to a terrorist would be counterproductive.

## II. HISTORY

During the rule of Mughal emperors, barbarous practices of pinning down a lawbreaker to death were used. It is attention-grabbing to note that during the rule of the Sikh Emperor Maharaja Ranjit Singh, he did not once hung anyone. The British, on the other hand, used death by hanging as the only legitimate approach of inflicting capital punishment. In the British period, death sentence was accomplished by hanging the lawbreaker by the neck till demise. The identical was replicated in the Indian Penal Code, 1860 (hereinafter referred to as the IPC) drafted by Lord Macaulay, which is still in legitimate force.

There have been failed attempts in sovereign India to obliterate death penalty. In 1956 a bill was presented in the Lok-Sabha to abolish the ongoing practice of capital punishment, which was rejected by the House. Efforts made in the Rajya-Sabha in 1958 and in 1962 also remained unsuccessful. Underneath the Chairmanship of Justice J.L. Kapur the Law Commission of India in its 35th Report of 1967 has sustained the persistent of death penalty for severe offences.

## III. DEATH PENALTY UNDER THE INDIAN PENAL CODE, 1860

The main substantive criminal code in India of the Indian Penal Code delivers for capital punishment and life imprisonment as substitute penalty under certain conditions.[3] There is not a

[3](a) Waging war against the Government of India, attempting or abetting thereof under Section 121.
(b) A betting mutiny by a member of the armed forces under Section 132.
(c) Fabricating false evidence leading to conviction of an innocent person and his execution under Section 194 (second para).
(d) Abetting suicide of a child, insane or intoxicated person under Section 305.
(e) Attempting murder by a person under sentence of imprisonment of life if hurt is caused under Section 307.
(f) Committing dacoity accompanied with murder under Section 396.
(g) Acts committed in furtherance of common intention under Section 34.
(h) Acts committed in furtherance of common object under Section 149.

single crime in the IPC which is punishable with compulsory death penalty as conviction. Section 303 of the IPC has been revoked[4]. In the above-mentioned classes of crimes, the capital punishment sets the superior limit of punishing methods. The legislative provisions do not deliver any guiding principle as to when the judges should inflict capital punishment in preference to life imprisonment, or award lesser sentence of life imprisonment. The judiciary is permitted to use its discretion and intellectual in the judgement process. It has to draw up a equilibrium of aggravating and mitigating conditions from the evidences of the case as set forward by the Apex Court in the case of *Machhi Singh* v. *State of Punjab*[5]. In addition to the IPC, other laws like the Narcotic Drugs and Psychotropic Substances Act, 1985, Explosive Substances Act, 1908, etc. too provide death sentence that can be awarded as the maximum penalty. The Air Force Act, 1957, Army Act, 1950 and the Navy Act, 1957 provide for obligation of the capital punishment.

## IV. EXECUTION OF DEATH PENALTY

In India, the manner of execution of death punishment is hanging. Section 354 (5) of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as the CrPC) provides that when any convict is condemned to death, the sentence intend to direct that he be hanged by the neck till he is departed. Hanging is still the most common technique of executing criminals. The matter concerning the constitutionality of the Section 354 (3) originally arose before the Supreme Court in *Deena* v. *Union of India*[6]. However the Court emphasized that it was a judicial function to investigate into the sensibleness of a mode of punishment, it declined to embrace the method of hanging as being violative of Article 21 of the Constitution. The matter of the mode of execution of the death sentence was once again raised up in *Shashi Nayar* v. *Union of India*[7]. It

(i) Abetment under Sections 109-115.
(j) Criminal Conspiracy under Section 120-B.
[4] As struck down in *Mithu* v. *State of Punjab*, AIR 1983 SC 473.
[5] (1983) Cr LJ 1457: AIR 1983 SC 957: (1983) 3 SCC 470.
[6] (1983) 4 SCC 645: 1983 SCC (Cri) 879; AIR 1983 SC 1155.
[7] (1992) 1 SCC 96: 1992 SCC (Cri) 24.

was succumbed that capital punishment being barbarous and non-humanitarian must be replaced by less agonizing method. The Court held that ever since the issue had previously been well thought-out in Deena (supra), there was no worthy cause to take an altered outlook.

The issue of carrying out death penalty by public hanging originated before the Supreme Court in *Attorney General of India* v. *Lachma Devi*[8] . It confronted the order of the Rajasthan High Court concerning the execution of the petitioner by public hanging at one of specified venues in Jaipur after spreading widespread publicity of the date, time and place of the execution. The Supreme Court held that public hanging, even if allowed under the procedures, would intrude upon Article 21 of the Constitution being "barbaric, dishonorable and bringing embarrassment on any civilized and cultured society."

As per Section 366 of the CrPC, after awarding death sentence to an individual, the Sessions Court has to provide before the entire case proceedings to the High Court for sanction. Such a sentence of death penalty cannot be accomplished up until confirmed by the High Court. Under Section 368 of the CrPC, the High Court may sanction the death sentence or permit any other sentence justified by law, or may rescind the conviction, and convict the accused of any crime of which the Court of Session might have sentenced him, order a fresh trial on the same or modified charge, or may well even acquit the individual. All this fluctuates from specific case to case and is fundamentally reliant on upon quantifiable facts and queries of law involved in the concerning case. Section 415 of the CrPC provides that when an individual is bestowed a death sentence by the High Court and subsequently he makes an appeal to the Supreme Court under Article 134 (a)/(b) of clause (1) of the Constitution, the High Court has to command the execution of the sentence to be postponed till the period permitted for preferring such an appeal has terminated, or, if an appeal is chosen within that period, until such appeal is disposed of. When the Sessions Court authorizes a capital punishment to a murderer, the criminal shall be committed to jail custody as provided under Section 366 (2) of the CrPC. Consequently, under Section 30 (2) of the Indian Prison Act, 1894 the secure authorities used to keep such prisoners in a prison cell acknowledged as the condemned cell. But more often than not, such captivity

[8] AIR 1986 SC 467.

actually meant solitary confinement in practice. In *Sunil Batra* v. *Delhi Administration*[9], the Apex Court held that a prisoner who is anticipating death sentence cannot be exposed to solitary confinement. The same opinion was further echoed by the Supreme Court in *Triveniben* v. *State of Gujarat*[10].

**Long delay in execution:** Extensive postponement in the execution of a capital punishment is adequate to solicit Article 21 and plea its replacement by the punishment of life-imprisonment. In *Rajendra Prasad* v. *State of U.P.*[11], Justice V.R. Krishna Iyer observed:

"This convict has had the hanging agony hanging over his head since 1973 with near solitary confinement to boot! He must, by now, be more a 'vegetable' than a person and hanging a 'vegetable' is not death penalty."

Thus, the death penalty was put aside on grounds of elongated delay in execution of the found guilty person. A substantial time between imposition of the capital punishment and the actual execution is inescapable, given the procedural safeguards required by the courts in such cases. In fact, it is in favour of the criminal. In *Sher Singh* v. *State of Punjab*[12], the Supreme Court rejected to follow the ratio of *T.V. Vatheeswaran* v. *State of Tamil Nadu*[13] case, and held that postponement in execution of death penalty surpassing two years by itself does not violate Article 21 of the Constitution to permit a person under sentence of death to a put a plea demanding withdraw of sentence and converting it into sentence of the life-imprisonment.

**Commuting of Sentence and Clemency Appeals:** Under Article 161 and 72 of the Constitution of India, the sentenced individual can appeal to the Governor of the State or the President of India for leniency. The Governor or the President must act not merely on their own decision but in accordance with the assistance and guidance of their Council of Ministers. The Supreme Court has witnessed that petitions filed under Articles 72 and 161 of the Constitution or under Sections 432 and 433 must be disposed off expeditiously[14].

[9] 1978 Cr LJ 1741, at p. 1754.
[10] 1990 Cr LJ 1810 at p. 1822.
[11] AIR 1979 SC 916.
[12] AIR 1983 SC 465.
[13] AIR 1983 SC 361 (2).
[14] *Sher Singh* v. *State of Punjab*, (1983) 2 SCC 344: 1983 SCC (Cri) 461, 474-475: 1983 Cr LJ 803.

**The Law Commission's View:** In its 35th Report on 'Capital Punishment' published in 1967, the Law Commission of India deliberated in paragraph 587 to 591, the query of proposing a reduced sentence for the crimes under Section 302 and 303 of the IPC. The 42nd Report of the Law Commission on the IPC published in 1971 underneath the Chairmanship of Mr. K.V.K. Sundaram, yet again deliberated the demand of amending Section 303. But then the Commission did not endorse any amendment since Section 303 was very seldom applied. It sensed that if there was an extraordinarily hard case, it could be easily dealt by the President or the Governor under the prerogative of clemency appeal. Lastly, it was only in the case of *Mithu* v. *State of Punjab*[15] that the constitutional validity of Section 303 of the IPC was confronted. In this case, a full Bench constituted of five Judges heard the petition alongside with six additional petitions of convicted prisoners and struck down Section 303 as being undemocratic, unconstitutional and violative of Articles 14 and 21 of the Constitution.

## V. CONSTITUTIONALITY OF DEATH PENALTY

In the case of *Jagmohan Singh* v. *State of U.P.*[16], the constitutional legitimacy of capital punishment was questioned before the Hon'ble Supreme Court. It was debated that under Article 21 of the Constitution 'Right to life' was the basic Fundamental Right.

The Supreme Court overruled the argument and embraced that capital punishment cannot be alleged to be violation of the Article 21 of the Constitution of India. It is worth mentioning that in the case of Rajendra *Prasad* v. *State of U.P.*[17] Justice Krishna Iyer ardently stressed that capital punishment is the violation of Articles 14, 19 and 21 of the Indian Constitution. Though, Justice Krishna Iyer noticed that wherever manslaughter is intentional and frightening and there are not any justifying circumstances, the criminal must be doomed to death as a degree of social security. As a consequence, the interpretations of the Apex Court in the case of *Bachan Singh*[18] were:

"for individuals find guilty of murder, life imprisonment is the rule and capital punishment an exception. A genuine and enduring apprehension for the dignity of human life

[15] 1983 Cr LJ 811: AIR 1983 SC 473.
[16] (1973) 1 SCC 20: 1973 SCC (Cri) 169.
[17] *Supra* N. 13.
[18] (1980) 2 SCC 684: 1980 SCC (Cri) 580: AIR 1980 SC 898.

suggests resistance to taking a life through laws instrumentality. That must not to be done except in the *rarest of rare cases.* When the alternate preference is unquestionably foreclosed."

The Apex Court lay emphasis upon Section 354 (3) of the CrPC saying that under it life imprisonment as sentence was the rule and capital punishment was an anomaly to be awarded in the *rarest of rare cases*. This was the first time that the Supreme Court invented the conception of *'rarest of rare cases'*. In *Machhi Singh*[19], the Supreme Court furtherly enlightened the phrase *'rarest of rare cases'* in the following words:

1. The maximum penalty of death need not be imposed except for in severest cases of horrendous culpability.

2. Before determining for the capital punishment, the circumstances of the criminal also need to be taken into contemplation along with the conditions of delinquency.

3. Life imprisonment is the rule and death sentence is an exception. In supplementary words, death penalty must be imposed only when imprisonment to life occurs to be totally insufficient penalty having regard to the applicable conditions of the crime and only if the possibility to execute sentence of imprisonment for life cannot be deliberately implemented having concern to the persona and conditions of the crime and all the appropriate conditions.

4. An equilibrium of provoking and vindicating conditions has to be drawn up and achieving so the vindicating conditions have to be bestowed full weightage and impartial sense of balance to be hit between the provoking and the vindicating conditions before the choice is implemented.

These procedures put down by the Supreme Court are to be obeyed by all the concerned courts having the required authority at the Sessions Court, High Court and at level of the Apex Court. Hitherto one further pointless effort was made in *Shashi Nayar* v. *Union of India*[20], to get death penalty as punishment stated unconstitutional. Besides summoning Article 21 of the Constitution and emphasizing that capital punishment did not help any social purpose, it was contended that the Law Commission's 35th Report of 1967, which the majority opinion cited

[19] *Supra* N. 7.
[20] *Supra* N. 9.

backing of the capital punishment in *Bachan Singh*[21] must not to remain to monitor the Court ever since lot of time has pass by since then. The Court overruled the urgings and held:

"Capital punishment has a deterrent effect and it does serve a social purpose….A judicial notification can be in use of the circumstance that the law and order circumstances in the nation has not only enhanced since 1967 but has worsened over the decades and is fast deteriorating today."

The court enlightened the theory of *'rarest of rare cases'* in *Mohammed Chaman* v. *State*[22]. The Court immediately abandoned the opinion of setting down standards and rules before an act of homicide takes place. The Court observed:

"…..Such standardization is well-nigh impossible. Firstly, the degree of criminality cannot be scaled separately in each case; Secondly, criminal cases cannot be classified, there being endless, random and unpredictable dissimilarities; thirdly, on such cataloguing, the punishing procedure will stop to be judicial, and fourthly, it is to be thought that such standardization or punishing option is a policy matter fitting to the legislature outside the court's functioning."

The Court also put down down definite guiding principle to determine the *rarest of rare cases*, and bestowing it the aspects that to be reckoned are, the method of commission of manslaughter; motive for commission of manslaughter; rebellious or socially repulsive nature of criminality; scale of criminality[23]; and behavior of the victim of manslaughter. Subsequently, the Apex Court has been following the codes laid down in the above two cases. Lately, on April 8, 2005, in *Holiram Bordoloi* v. *State of Assam*[24] a Division Bench of the Hon'ble Supreme Court terminated the appeal and endorsed the Assam High Court's judgement of capital punishment to the appellant. Hon'ble Justice K.G. Balakrishnan critically applied the above debated procedures on the specifics of the current case.

[21] *Supra* N. 20.
[22] (2000) 2 SCC 29: 2001 Cr LJ 725 (SC).
[23] In *Anshad* v. *State of Karnataka,* (1994) 4 SCC 381, Dr A.S. Anand, J. held that the number of persons murdered is a consideration but that is not the only consideration for imposing death penalty unless the case falls in the category of *'rarest of rare'* cases.
[24] (2005) 3 SCC 793.

## VI. ARGUMENTS FROM BOTH PERSPECTIVES: FOR AND AGAINST THE DEATH PENALTY

With the growing implication of human rights, personal rights and civilized society, there has been a worldwide drift in the direction of obliteration of capital punishment. The Apex Court has repetitively held that the capital punishment do not violate Article 21 of the Constitution and is not unconstitutional. The Hon'ble Supreme Court, though, has made its intents strong by declining to describe openly as what establishes the *'rarest of the rare cases'* and left it to the preference of the judges hearing the case notwithstanding knowing that the same would lead to a differing set of results. Therefore, it is vividly clear that the judges have been awarding death sentence according to their own scale of values, social philosophy and exercise of judicial discretion as per the facts of the cases. There are some very strong arguments for and against abolition of the death penalty in India and these are discussed as follows:

### A. Arguments in Favour of Abolition of Capital Punishment

#### i. Obscurity and absence of consistency in what institutes the *'rarest of the rare cases'*

One of the arguments is:[25]

"… however the court was surprised by the means of the crime and the fact that the security guard had raped and killed an 18 year old teenager girl, in the case of *Dhananjoy Chatterjee*. In *Soni Thomas's* case, the Apex Court upturned the capital punishment sentenced in the case an 11 year old girl who was raped and murdered by the co-paying guest, and in *Mohd Chaman's case*[26], the Court convicted the accused with life sentence for the murder and rape of a one and half year old girl. The murders were all correspondingly ruthless and scandalous and questionably satisfied the *'rarest of the rare'* conditions, but the court for reasons documented in the verdict did not consider fit to convict the murderer capital punishment. This change in the political and lawful understanding of the judges is most unambiguously seen in *Krishna Mochi's case*[27]. In this particular case, Justice M.B. Shah acquitted the suspect for inadequacy of evidence

[25] Sakharani, Monica and Adenwalla Maharukh, (2005): "Death Penalty: case for its Abolition", Economic and Political Weekly, Vol. XL No. 11. pp. 1023-1026.
[26] 2000 SOL Case No 705.
[27] 2002 Cr LJ 2645.

and the mainstream, but Justices B.N. Agarwal and Arijit Pasayat not only found the evidence adequate to give sentence however also sufficient to put the accused to sentence capital punishment.

Conferring to the judges, the crime by militants which has been labelled by them as "caste war between haves and have-nots" was one of life-threatening dissoluteness and relational to the criminality. In *Raja Ram Yadav* v. *State of Bihar*[28], the Apex Court gave verdict that in case of a dispute between Rajputs and Yadavs, the revengeful killings by Yadavs could not be held to be worthy of death penalty.

Likewise in *Ramji Rai* v. *State of Bihar* the Apex Court gave verdict that a case of triple murder by a crowd by cutting off the bodies of the victims was not the *rarest of rare case*s. In *Kishori* v. *State (NCT) of Delhi*[29], the Apex Court altered the death of the accused who had assassinated three members of a family in the course of the Sikh riots in Delhi."

The decisions do not deliver a hint as to what establishes the *'rarest of the rare cases'*. The hopelessness of putting down procedures could lead to an arbitrariness of the judgement and also amount to harsh and humiliating reprimand. The justification of proportionality of the crime and provoking conditions in exercise have no objectivity as one cannot realize that 'this' minus 'that' equals death.

**ii. Capital Punishment is cruel, degrading and disproportionate**

Cesare Beccaria wrote in 1764[30] that death penalty is originated on retaliation and vengeance, and not on restructuring of the offenders and deterrence of future criminalities, which is the tenacity of chastisement, *i.e*., the deterrence argument. There is substantial proof to back this argument. Scientific studies have constantly unsuccessful to discover conclusive proof that the death penalty discourages criminality more efficiently than other penalties. The current investigation of research findings on the relation amid the capital punishment and murder rates, led for the United Nations in 1988 and updated in 2002, concluded that "it is not judicious to accept the postulate that death penalty discourages manslaughter to a little bit greater degree than

[28] 1996(9) SCC 287.
[29] 1999 SOL Case No 760.
[30] Cesare Beccaria, *On Crimes and Punishment* (1764), Trans H. Paoluscci (1963), Indianapolis: Bobbs-Merrill.

does the intimidation and submission of the apparently smaller punishment of life imprisonment".[31] It also established that "The fact that the statistics... remain to point in the identical course is convincing proof that nations need not fear abrupt and grave variations in the curvature of crime if they lessen their belief upon the capital punishment".[32] Thu there is no proof to back that crime rates reduction with the annoyance of the capital punishment.

Current crime statistics from abolitionist nations fail to show that obliteration has destructive effects. In Canada, the homicide rate per 100,000 inhabitants fell from highest of 3.09 in 1975, the year before the obliteration of the capital punishment for manslaughter to 2.41 in 1980, and ever since then it has deteriorated additional. In 2002, 26 years after obliteration, the murder proportion was 1.85 per 100,000 population, 40 per cent lesser than in 1975.[33]

**iii. Fallibility of Judgment in case of Capital Punishment**

The abolitionists are opposed capital punishment for causes that practical support and also for whys and wherefores of imperfection of verdict. A verdict being given by human beings based on proof produced in courts, the option of human inaccuracy cannot be ruled out and the irreversibility of capital punishment makes it hazardous and contrasting to the ideologies of proportionality. As human justice rests fallible, the risk of executing the not guilty will not ever be rejected. Justice P.N. Bhagwati in his dissention in *Bachan Singh's*[34] case has made two judicious annotations. Firstly, that it is difficult to abolish the fortuitous of judicial mistake. Secondly, that the capital punishment raids mostly in contradiction of the poor and underprivileged segments of the civilization.

**iv. Prejudicial Dissemination of Retribution: Capital Punishment differentiates amongst the privileged and the underprivileged-**

Justice Bhagwati in *Bachan Singh's (supra)* case pointed out in his disagreement that capital punishment assaults mostly against the underprivileged and poor segments of society. Most of the condemned individuals are poor and uneducated, who do not have enough money to

[31] Roger Hood, *The Death Penalty: A worldwide Perspective,* Oxford University Press, Third Edition, 2002, p. 230.
[32] *Ibid.* p. 214.
[33] http://web.amnesty.org/pages/deathpenalty-facts-eng.
[34] *Supra* N. 20.

get a competent legal representative. The defence legal representative provided by the State are frequently inept or do not take solemn attention in the case. To quote Justice O. Chinnappa Reddy, know-how demonstrates that the burden of death penalty is upon the unconscious, the underprivileged and the poor[35]. Imbalanced dissemination of castigation is emphasized by getting into attention the illogical racial discrimination in the USA. It writes[36],

"… those who kill white folks are significantly more expected to be punished to death than those who murder blacks, irrespective of the race of the offender. However only 50 per cent of murderous victims are whites, figures demonstrate that 80 per cent of those executed in US since 1977 were executed for having murdered a white person.[37] This racial discrimination is further exposed by the statistics that out of the 749 persons who were executed in the US between 1977 and the end of December 2001, only 11 were white persons who I had killed black individuals.[38] Moreover, the capital punishment is hardly given when the homicide victim is black: a study showed in Texas in the 1980s detects that 13.2 per cent of black persons who killed whites were condemned to death whereas only 2.4 per cent of whites who had killed black persons were rendered capital punishment. These figures belie the hypothesis that the judiciary is directly above bias and public pressure." Gary Slapper[39] points out that more deaths have taken place owing to professional threats, owing to inattention of private companies than due to murder. Most of the earlier were predicted but abandoned. One could exemplify this argument, with the blatant case of cold-hearted inattention on part of the Union Carbide Management in Bhopal, which caused in the death of hundreds of innocent souls. Most of these deaths can be considered more calculated and cold-blooded than many 'murders', which are not even accused for. The description of crime as an individual crime where every individual is penalized for his wrong deed, needful the requisite *mens rea* lets most corporate crimes to go without punishment.

[35] "In *Bishnu Deo Shaw* v. *State of West Bengal,* AIR 1979 SC 964, O. Chinnappa Reddy, J. defined 'special reasons' as to those reasons which are special with reference to the offender, with reference to the constitutional and legislative directives and with reference to the times, that is, with reference to contemporary ideas in the fields of criminology and connected sciences, etc.

[36] Sakharani, Monica and Adenwalla Maharukh, (2005), *Op.cit.*

[37] Amnesty International: USA (1995). as quoted in Sakharani, Monica and Adenwalla Maharukh, (2005).

[38] NAACP Legal Defence and Educational Fund Inc. as quoted in Sakharani, Monica and Adenwalla Maharukh, (2005).

[39] *Gary Slapper*, "Corporate Manslaughter: An Examination of the Determinants of Prosecutorial Policy' (1993) 2 *Social and Legal Studies* 423 at 430. as quoted in Sakharani, Monica and Adenwalla Maharukh, (2005).

As Slapper puts it[40], "In orthodox morality, intention to do wrong is regarded with greater abhorrence than recklessness as to whether or not injury happens, but as Reiman (1979: 60) has contended, a contrary method can be just as persuasive: if a individual aims doing somebody injury there is no motive to accept that he or she poses a broader social risk or will patent a disapproval for the public at large, however if indifference or unruliness symbolizes the arrogance a person has in the direction of the magnitudes of his or her activities then he or she can be seen as having a somber contempt for humanity at large.

**v. Extensive deferment in execution**

It is an acknowledged point that court case in India is a very time consuming event. Widespread delay in the execution of a punishment of death does not assist any kind of determination and is satisfactory to raise Article 21 and claim its replacement by the sentence of life-imprisonment.[41]

**vi. Reformative attitude**

The Supreme Court has taken the following view in *Narotam Singh* v. *State of Punjab*[42]:

"Reformative method to 'punishment should be the object of criminal law, in mandate to endorse rehabilitation without upsetting community ethics and to secure social justice."

**vii. Ethical Grounds**

By permitting capital punishment ethically nothing is accomplished excluding more death, misery and agony. Secondly, why would a person be permitted to die a fast, almost effortless death if he killed another individual pugnaciously? As an alternative he must suffer in jail up to his natural demise. In fact, if the social ethics truly mean that assassination is erroneous, then the the social order must obliterate capital punishment. Capital punishment legitimizes an irretrievable act of vehemence by the state.

[40] *Ibid.*
[41] *Supra* N. 15.
[42] AIR 1978 SC 1542.

## VII. CONCLUSION

In the wake of above discussion and reasons actualities of current day realm following deductions can be drawn: The process of globalizations has made the world smaller and carried numerous glitches also. One of the severe intimidations ascending of late is the occurrence of worldwide terrorism. When terrorists groups strike at unrestricted will at blameless citizens and establishments of the social order then all urgings in favour of obliteration of capital punishment fails. These are epitomized by the December 2001 terrorist attack on the Indian Parliament, attack on Akshardham Temple, 9/11 attack on WTC in USA, train bombings at Madrid, bomb blasts in public transport in London, killing of an IIT professor emeritus in Bangalore, bomb blasts at holy places such as Varanasi temple, Mosque in Andhra Pradesh, Ajmer Sharif Dargah and at the Lord Hanuman Temple in Jaipur in May 2008. Ever since many of these attacks are made by suicide groups (*Fidayeen),* henceforth, if such offenders or their honchos are trapped, then death penalty is the only instrument to save the civil society from the crooked dogmas or immoral intentions of abhorrence mongers. Does any subject of human rights stand cogency for these extremist outfit runners. In the wake of modernization, globalization and improvement of extreme material values, there is a relative corrosion of moral weight of the community, family, religion, etc. on the individual.

This has led to a situation where severe penalties such as death penalties stand justified.

In a world with so much of acute disparity in terms of development between nations, no rhetoric can work or bring reformation but for severe punishments such as death penalty. For instance, there is stark contrast between the populations living in developed countries vis-à-vis populations in sub-Saharan countries, where obscurantism, superstitions, extreme communal hatred and prejudices operate due to illiteracy, poverty, deprivation and fundamentalism. How well severe penalties work in such societies is well evident from the extremely low crime rate in Islamic countries of the Middle East. Even within India, the kind of killings take place in the name of religion (Graham Staines Murder Case), superstition (lynching of so called 'witches' in rural Rajasthan and Haryana), caste killings in Bihar, female infanticide and dowry deaths, the abolition of death penalty will be against all social, legal, moral, national, civic and cultural interests.

On one hand, there is a demand for abolition of death penalty and on the other hand, there is an increased rhetoric for capital punishment for rape, heinous crimes against women, trade and trafficking of women and narcotics. Much of the arguments for provisions of death penalty have strong rationale on moral and social grounds. Therefore, keeping in mind the maxim *'Salus populi est suprema lex*63**'** a proper approach to issue perhaps will be, that death penalty must be retained for incorrigibles and hardened criminals but its use should be limited to the *'rarest of rare cases*'. The courts may make use of death penalty sparingly but its retention on the statute book seems necessary as a penological expediency. Therefore, it can be safely concluded that death penalty should not be subjected to untimely death penalty.