DEATH PENALTY IN INDIA: A COURT'S GAMBLE WITH LIFE

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Abstract

A central tenet of democracy is equality. Being the largest democracy in the world, every individual citizen of India is expected to be treated equally before the law. However, the country's judicial system has failed horribly in this regard. When it comes to the awarding of capital punishments, cases that have similar facts have been treated differently in Court to such an extent that the decisions taken seem almost random and arbitrary. Notwithstanding moral reasons for abolishing death penalty, as long as this form of punishment continues to exist in the State, it must be applied in a manner consistent with the fundamental rights prescribed by the Constitution of India. In the context of criminal law, this means that those who have committed similar crimes, must face punishments that are alike. Sadly, the country's system of capital jurisprudence reads as more of a lethal lottery than a well thought out and objective system of punishment. This paper begins with an introduction, followed by section two- where arguments for and against capital punishment are discussed. The third part of this paper tries to understand the existing framework for determining the rarest of rare doctrine in India. The fourth and final part of this paper tries to provide solutions and recommends further research in specific areas, in order to make the rarest of rare doctrine more objective.

Key words: Death penalty, rarest of rare doctrine, fundamental right to equality, life imprisonment.

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I. INTRODUCTION

The debate on death penalty is a timeless one. Capital punishment has both avid supporters as well as adversaries, who discuss and deliberate about the validity and the need for such a system of punishment in the modern era. While people are horrified by the fact that an innocent person could be hanged because of a judicial error, not many are shocked by the fact that two people who commit the same crime may be punished differently- one with death, and the other otherwise.

In the 21st century, capital punishment in India has been executed only in four instances. Out of these, the world's largest democracy has performed only one judicial execution[2]- the hanging of *Dhananjoy Chatterjee* (hereinafter Dhananjoy) in West Bengal on the 14th of August, 2004.[3] Coincidentally, Dhananjoy was the only one to be hanged for a crime not related to terrorism, as compared to the other three executions viz. Ajmal Kasab (in 2012), Afzal Guru (in 2013) and Yakub Memon (in 2015).

A report titled 'Death Sentences and Executions - 2015' by Amnesty International, concluded that India had awarded death sentences in at least 75 cases in the year of 2015.[4] Interestingly however, only one person was hanged in that very same year.

The reason for this large difference in statistics is twofold: The first is that the provisions for multiple appeals and mercy petitions given to an inmate on death row, effectively enables him to postpone his execution *ad infinitum*.

The second reason is a Supreme Court doctrine that requires judges to reserve capital sentences for only 'the rarest of rare cases' in which alternative sanctions are "unquestionably foreclosed".[5] Thus, when the defendants on death row appeal to the higher courts, their sentences are usually commuted, as the judges find in them a possibility of reform.

[2] This is as opposed to an extrajudicial execution, which is the killing of a person by governmental authorities without the sanction of any judicial proceeding or legal process.

[3] David Johnson, *India's Lethal Lottery*, ECON. POLITICAL WKLY., Jul. 24, 2010, at 19, 19. Retrieved from http://www.jstor.org/stable/20764331 (retrieved on: Oct 7, 2017, 22:53).

4 Amnesty International, *Death Sentences and Executions Report 2015*, 2016. Retrieved from https://www.amnesty.org/en/documents/act50/3487/2016/en/ (last visited on: Oct. 15, 2017). Here, it is to be noted that in India, even the sessions Court has the power to award death sentence, provided the award is approved by the High Court.

[5] Bachan Singh v. State of Punjab, AIR 1980 S.C. 898.

Thus, the actual number of people hanged is much lesser than the total number of death sentences awarded.

For quite some time now[6], the courts have grappled with the imposition of death penalty. Although the courts have been clear on the fact that capital punishment should be awarded only in the rarest of rare cases, it seems as if the exact guidelines regarding the R-R test[7] have not been clarified as of yet. As there exist no legislative guidelines defining the 'rarest of rare', the courts have had to rely upon precedents in order to determine the punishment of the defendant.

There have been several such verdicts, where the judges have tried to bring about clarity on the concept of an R-R test. As observed by Justice V.R. Krishna Iyer in the case of *Raghubir Singh v. State of Haryana*[8], a treacherous murderer deserves a sterner sentence, but ameliorative features have to be noticed. In the case of *Bachan Singh v. State of Punjab*[9], the Court emphasised on identifying aggravating and mitigating factors in order to decide whether death penalty should be awarded or not.

However, these judgements have been so varied in opinion and so vast in number, that it has turned the country's system of capital jurisprudence into a lethal lottery depending upon the opinion of the judges, dexterity of the lawyer and sometimes, even the opinion of the public.[10] The multiplicity of factors affecting the judgement, only seem to add chaos to the already flawed method of awarding death penalties.

This research paper aims at drawing analogies between cases that have different judgements but similar facts, and hopes to highlight the loopholes that are ever-present in the judicial system of India when it comes to the awarding of death penalty.

[6] Until 1973, courts were required to state reasons for *not* awarding a death sentence in a capital offence, thus making death sentence the 'rule' and life imprisonment the 'exception'. This was changed after the amendment of section 367(5) of the Code of Criminal Procedure wherein death penalty was made the exception.

[7] In the case of Gurvail Singh v. State of Punjab (2013 (10) SCALE 671), it is stated that the Court has to apply the Rarest of Rare Cases Test or the *R-R test*, which depends on the perception of the society and not the opinion of the judge alone.

[8] Raghubir Singh v. State of Haryana, (1986) 3 S.C.R. 802.

[9] Bachan Singh, *Supra* note 4.

[10] In the case of *Santosh Bariyar v. State of Maharashtra*, Sinha, J., admitted to undue influence of public opinion in awarding death penalty, with capital sentencing often becoming a media spectacle.

Further, it is to be noted, that nowhere in this paper does the researcher seek to justify or disprove every execution that has taken place until now. The problem of a mishandled punishment system is tackled as a whole, rather than focusing on individual fact situations.

II. CAPITAL PUNISHMENT: LOOKING AT BOTH SIDES OF THE COIN

Usually, an argument involving capital punishment would also involve a discussion as to whether life imprisonment is a viable alternative option for the same. However, there arises a problem. While the process of deciding capital punishment seems to be an arbitrary mechanism in India, the definition of life imprisonment itself seems vague and undecided. On many occasions, the Supreme Court has been petitioned to explain the meaning and the length of the term "imprisonment for life."

A constitutional bench of the Supreme Court, in *Gopal Vinayak Godse v. State of Maharashtra*[11] unequivocally declared that life imprisonment would mean 'imprisonment for the remainder of the convict's life'.[12] This view of the Court was reiterated in the case of *Shri Bhagwan v. State of Rajasthan.*[13]

However, in the recent judgment of *V. Sriharan alias Murugan & Ors. v. Union Of India,*[14] a constitutional bench of the Supreme Court allowed the Tamil Nadu State government to grant remission and to release certain life-term convicts who had been involved in the *Rajiv Gandhi Assassination Case*. This judgement also mentioned that- "the convict shall complete a fixed term such as 20 years, 25 years or like before being released,"[15] wherein the term 'or like' remains to be unclear.

On the other hand, cases such as *Inder Singh v. State (Delhi Admn.)*[16] and *Ashok Kumar v. State (Delhi Admn.)*[17], have interpreted words of the Indian Penal Code in order to conclude that "imprisonment for life" refers to rigorous imprisonment. When serving a rigorous punishment, the inmate is expected to do hard labour for the time of his stay in jail. In practicality however, several inmates serving a life term, are kept in solitary confinement and are not allowed to interact (or work) with the other inmates.

Such discrepancies ensure that even those who receive the sentence of life imprisonment remain unsure of what exactly that judgement entails. Although the researcher contests that life imprisonment must eventually replace the death sentence, owing to the discrepancies in

[11] Gopal Vinayak Godse v. State of Maharashtra, (1961) S.C. 600.
[12] B. M. GANDHI, INDIAN PENAL CODE 83 (K.A. Pandey ed., 4th ed. 2017).
[13] Shri Bhagwan v. State of Rajasthan, (2001) 6 S.C.C. 296.
[14] V. Sriharan @ Murugan & Ors. v. Union Of India, (2014) 4 S.C.C. 242.
[15] *Ibid.*
[16] Inder Singh v. State (Delhi Admn.), (1978) 4 S.C.C. 161.
[17] Ashok Kumar v. State (Delhi Admn.), (1980) 2 S.C.C. 282.

the manner in which such sentences of imprisonment are carried out today, such a replacement would be premature in status quo without further research on that area.

There are several arguments for and against capital punishment that seem to be falling into any of the following three categories:[18]

1. Assertions about the morality of death penalty and the appropriateness of retribution,

2. arguments about the utility of death penalty in terms of crime prevention: This paradigm looks at the *deterrence oriented theory of punishment* where it is contended that some potential criminals are prevented from actually committing the crime, after seeing someone who has committed a similar crime being punished with death penalty, or

3. contentions regarding reliability and fairness of the system of capital jurisprudence: This is based on the assumption that if perhaps, the small possibility of error in conviction was removed, more people would believe in the morality of the death penalty system and thereby, support it.

The researcher feels that discussing the third line of argument now would prove to be of no use as, at least in the near future, there seems to be no scope of a hundred-percent accurate conviction rate. Thus, this research paper does not cover that topic.

The first line of argument includes observations on the death penalty, made by philosophers, such as when A. Camus exclaimed:

"For there to be equivalency, the death penalty would have to punish a criminal who has warned his victim of the date at which he would inflict a horrible death on him and who, from that moment onward, had confined him at his mercy for months. Such a monster is not encountered in private life."[19]

With this argument, A. Camus essentially says that the *theory of retributory punishment*, which claims that the murderer must be punished with death in order to fulfil revenge of the victim's family, is faulty as there is no such murder in this world which is as horrific as the

[18] NINA RIVKIND & STEVEN SHATZ, CASES AND MATERIALS ON THE DEATH PENALTY 13-14 (3d ed. 2009).
[19] ALBERT CAMUS, REFLECTIONS ON THE GUILLOTINE IN RESISTANCE, REBELLION AND DEATH 199 (Alfred A. Knopf trans.) (1966).

planned murder of death penalty. This statement substantiates the reasons as to why death penalties based on retribution are intrinsically flawed.

The second line of argument is with reference to the deterrence oriented theory of punishment. In a broad sense, this theory of punishment is thought to be a function of severity and celerity.[20]

Severity, refers to the magnitude of the punishment. However, over the past two decades more and more scholars have realized that the deterrent effect of a punishment is not a consistent direct effect of its severity. After a while, increase in the severity of a punishment no longer adds to its deterrent benefits.[21] The researcher feels that the term 'magnitude' here, also applies to the number of times this severity is invoked. If the same level of fear is invoked, repeatedly and consistently, by punishing both ordinary crimes (such as murder) and extraordinary crimes (such as terrorism) with death penalty, the common man would become less fearful of this stimulus and this would not add to deterrence. Thus, the number of cases for which such death penalty is provided as a punishment must be increased.

Celerity refers to the period of time between commission of an offense and the administration of punishment. In theory, the faster a punishment is carried out, the greater its deterrent effect. The reason is that faster action reinforces the faith that the pubic holds in the system of punishment. In India, celerity seems to almost be a joke because, for all its power, the judiciary remains erratic, under-staffed and above all, slow. For example, in the previously mentioned case of *Dhananjoy Chatterjee v. State of West Bengal,*[22] the accused lived a bizarre life on the death row as his writ against the Governor was forgotten by the High Court which also forgot to vacate the stay which he had obtained in March 1994![23] A culmination of several such lapses on the Court's part resulted in Dhananjoy being behind bars for over fourteen years, before being hanged.[24]

[20] Michael L. Radelet & Marian J. Borg, *The Changing Nature of Death Penalty Debate,* ANNU. REV. SOCIOL., 2000, at 43, 44-45.
[21] *Ibid.*
[22] Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 S.C.C. 220.
[23] *Dead Wrong: Why was Dhananjoy Chatterjee Hanged?*, PEOPLE'S UNION FOR DEMOCRATIC RIGHTS (Sep., 2015).
[24] *Ibid.*

In comparison however, it took only four years to hang Ajmal Kasab[25], who was a convict in the Mumbai terrorist attacks. Similar are the time periods between convictions for other terrorist activities and those hanged for it in the 21st century. This shows that in the past, cases of terrorism have been prioritised and action regarding the same have been taken in a relatively faster manner. Thus, celerity would apply to such cases of terrorism.

[25] Meena Menon & Alok Deshpande, *Why Did it Take Four Years to Hang Him, Ask Survivors*, THE HINDU, (Nov. 22, 2012, 1:00 AM), http://www.thehindu.com/news/national/why-did-it-take-four-years-to-hang-him-ask-survivors/article4120519.ece

III. AN ANALYSIS OF THE RAREST OF RARE DOCTRINE

Although it is true that the courts have not yet come up with an infallible doctrine to determine exactly which acts of crime are deserving of death penalty, it is not for lack of trying. On several occasions, the courts have made efforts to correct and draw standards on the same.

In the case of *Ramnaresh and Ors. v. State of Chhattisgarh*[26] (hereinafter *Ramnaresh*), the Court gave a detailed list of thirteen aggravating, and seven mitigating circumstances that would help determine the chances of reformation in the criminal. The aggravating circumstances in general, relate to the nature of the crime, while the mitigating circumstances generally concern the convict's personality.[27] In this case, the Court was convinced that there was still a chance for reform amongst the criminals because of which they commuted their death sentence to a sentence of life imprisonment. Before we proceed to discuss the merits or otherwise of the above judgement, it will be necessary for us to state the case of the prosecution and the evidence on record.

This case involved a brutal gang rape which resulted in death due to strangulation. The rapists in question were the brother-in-law of the victim and three of his friends. In order to determine whether the accused must be awarded the sentence of death penalty or life imprisonment, the Court spoke of examining each case in the light of "enunciated principles". However, it is not clear as to what precisely these "principles" are, and when they are to be applied.[28]

Machhi Singh & Ors. v. State of Punjab[29] was another case where guidelines for awarding death penalty were sought to be clarified. In this case, an act of extraordinary violence was committed wherein Machhi Singh along with others, raided a number of homes, killing seventeen people in the animosity of a family feud.

While deciding on the death sentence, the Court put itself in the position of the "community", whose "collective conscience" was so shocked that it hoped for the holders of the judicial power to impose death penalty, irrespective of their personal opinion regarding the retention

[26] Ramnaresh and Ors. v. State of Chhattisgarh, (2012) S.C. 1357.
[27] Jagdish John Menezes, *Why the Question of Life or Death Remains the Most Difficult One*, JOURNAL OF INDIAN LAW AND SOCIETY, 2011, at 110, 116.
[28] *Ibid*., 120.
[29] Machhi Singh & Ors. v. State of Punjab, (1983) 3 S.C.C. 470.

of capital punishment. It provided five categories of murder, within which the 'rarest of rare' doctrine was to be practically applied. These include the manner of commission, the motive, the anti-social or abhorrent nature of the crime; the magnitude, and the personality of the victim.

An example of a case in which the 'personality of the victim' was considered and analysed would be the case of *Ramnaresh*, where the Court studied the facts of the case based on the five categories of murder mentioned in *Machhi Singh*. Since the victim was the mistress of the household and not the legitimate wife, the Court treated this as one of the mitigating factors that lead the Court away from awarding death penalty. Although the Court clarified this by stating that the brother-in-law would have been angry about the fact that she was a mistress and that this would have provided him incentive for the rape; the researcherchooses to disagree with this arbitrary reasoning by the Court. In the author's opinion, the personality of the victim should not matter in the award of a punishment to the rapist in question. As far as the Court is concerned, the only time they should look into the actions of the victim is when they determine whether the victim had given consent or not.

Another case where the character or the standing of the victim was unnecessarily considered, was the case of *Jagmohan Singh v. State of Uttar Pradesh,*[30] where the Court stated that- "where the victim is a person of high standing in the country, society is liable to be rocked to its very foundation. Prevalence of such crimes speaks, in the opinion of many, for the inevitability of death penalty not only by way of deterrence but as a token of emphatic disapproval by the society."

Although on the face of it, this judgement may seem correct to some, the researcher is forced to disagree with it, as the popularity or the standing of the person in no way increases or decreases the brutality of the murder that the individual has committed. A person who murders someone who is not of high standing in a society should not be punished differently from any other murderer simply on the basis of the difference in social standing of the victim. This would be opposed to the fundamental right of equality before the law, which every citizen is entitled to.

The guidelines given under both, *Ramnaresh* and *Machhi Singh*, are vague and indefinite. However, it is also prudent to note here that too much objectivity when it comes to the R-R

[30] Jagmohan Singh v. State of Uttar Pradesh, (1973) 2 S.C.R. 541.

test will have negative effects on future judgements, as the conditions in the society continue to change. The existent rules laid down by the Court, if limited in its scope, have a high possibility of becoming unnecessarily authoritative at a later period of time, thus restraining the Court in its judicial innovation.

On the other hand, if the Courts allow for modifications to the doctrines prescribed by them in the future, this would help in ensuring that the Courts remain contemporary in their judgements. The drawback of such a non-binding judgement however, is the fact that any Court can simply choose to not follow these guidelines provided.

This happened in the case of *Ravindra Trimback Chouthmal v. State of Maharashtra,*[31] which was a case of obvious dowry death. A woman was cut into nine pieces and disposed off, as she was unable to pay the amount of dowry that was demanded. It is also pertinent to note here that the woman in question was eight months pregnant. The husband, by killing off the woman had hoped to get more money in the way of remarriage thereafter.

The Court accepted that the "blood-boiling" act was committed to satisfy raw greed, but refused to consider it as a rarest of rare case since "dowry death has ceased to belong to that species of killing." After this judgement, the Court has drawn much flak for suggesting that the R-R test is not based on the brutality of the act, but on the number of times such a case has occurred in the past. Interestingly, dowry death is an explicit illustration[32] given in the case of *Machhi Singh*, but the Court completely overlooks it.[33]

In several cases, the Court is hesitant to award death penalty, due to the obvious disbelief that the Court seems to harbour against the punishment of death. The researcher feels that this is the wrong way to adjudge an act of crime, as the personal opinion of the judge regarding death penalty must not matter here. For as long as the Indian statutes hold death penalty as legal and necessary, the Court's only job is to see where death penalty must be given by following the R-R test. For example, in the case of *Rajendra Prasad v. State of Uttar Pradesh*[34], the majority judgement has opined that "one stroke of murder hardly qualifies for this drastic requirement (of death penalty), however gruesome the killing or pathetic the situation, unless the murderous appetite of the convict is so deadly that prison itself would be

[31] Ravindra Trimback Chouthmal v. State of Maharashtra, (1996) 4 S.C.C. 148.
[32] The Court, in its judgement of *Machhi Singh*, had elaborately elucidated when the community could expect death penalty to be the punishment prescribed by Court, along with illustrations.
[33] *Supra*, note 30 at 123.
[34] Rajendra Prasad v. State of Uttar Pradesh, (1979) 3 S.C.R 78.

gone if this man were now or later to be at large."[35] The accused in this case, were not awarded the death penalty.

Notwithstanding the obvious fact that several of the phrases above are especially vague and seem to be stated without any further explanation, these phrases are also severely hyperbolic. Due to lack of clarification, the researcher is forced to assume here, that the word 'gone' means that the prison will not be able to function anymore. The researcher finds it hard to believe that there exists such a man because of whose actions the prison, including the other inmates, the guards and the prison administration would be 'gone.' Thus, the researcher holds that this is too severe and too arbitrary to be the sole deciding factor in the awarding of capital punishment.

The researcher would like to conclude this chapter by comparing two cases which are very similar in the legal violations that occurred but different in their judgements, in order to prove that the subjective bias and opinion of individual judges play a large part in the confusion that surrounds the award of capital punishment.

The case of *Rabindra Kumar Pal alias Dara Singh v. Union,*[36] (hereinafter, *The Graham Staines case*) where life imprisonment was the punishment awarded, and the case of *Bhagwan Dass v. State (NCT) Of Delhi*[37] (hereon, *Bhagwan Dass*) where the outcome of the case was death penalty, are compared and analogised.

In the first case, a Christian missionary, Graham Staines, along with his two minor sons, was engaged in propagating the religion of Christianity in a remote village in interior Orissa when a mob of approximately 60-70 people burned the three victims alive while they were sleeping in a station wagon. The reasoning given for this was that this act was some form of revenge being taken in order to 'punish' these people for converting 'poor tribals' into Christianity.[38]

There was no evidence for proving that Staines or his minor sons were using coercive or fraudulent tactics to convert the tribal people into Christianity. Further, the right to propagate religion is a fundamental right provided by the Indian constitution. However, in a controversial statement, which was later expunged from the record, the Court cited the fact that the accused were "teach(ing) a lesson to Graham Staines about his religious activities,

[35] *Ibid.*
[36] Dara Singh v. Union, (2011) 1 SCALE 615.
[37] Bhagwan Dass vs State (NCT) Of Delhi, (2011) 5 SCALE 498.
[38] Abhinav Chandrachud, *Inconsistent Death Sentencing in India*, ECON. POLITICAL WKLY., 2011 at 20, 20.

namely, converting poor tribals to Christianity" as reasoning for refusing to apply the death penalty.[39]

The Court allowed for nearly twelve years to pass since the incident, before giving its final judgement. Nowhere was the nature of the victims- two helpless minors- considered here.

In the case of *Bhagwan Dass* which was adjudged in the same year, the defendant had strangulated his daughter with an electric wire, in anger of the fact that she had left her husband and had gone to live with another man. This was considered by the Court as a case of 'honour killing'. Expressing its intent to "stamp out" such "outrageous, uncivilised behaviour" the Court advocated the use of the death penalty in honour killing cases, holding that they fall within the category of the "rarest of rare" cases deserving of the death penalty.[40] The fundamental right to marital privacy is protected by the Court under the broad spectrum of Right to Life. Although overruled now, previous to this judgement- the case of *NAZ Foundation v. Government of NCT Delhi*[41] had recognised the privacy of both marriage and sexuality as a fundamental right. Thus, by killing his daughter on the basis of the actions she took regarding her marriage, Bhagwan Dass essentially violated a fundamental right which the State has the duty to protect.

Viewed through the prism of the *Machhi Singh* case guidelines, both these murders seem to be falling into the rarest of rare category. The intent to kill is obvious in both these actions and the act of both, an honour killing and the burning of infant children is 'socially abhorrent' in nature. Although the researcher has disagreed with the victim test, it is required to note here that both the victims are explicit illustrations in the *Machhi Singh* case- namely, an 'innocent child' and a 'helpless woman.' Not only this, but Dara Singh and others murdered three victims as compared to the singular victim of Bhagwan Dass.

Both these acts of murder have violated fundamental rights and have included a gruesome method of killing. Perceptibly, every murder involves a violation of the the fundamental right to live, but under the prescribed R-R test, not every murder deserves the death penalty.

From this, it appears as the though the Court is according less importance to the fundamental right to propagate religion, as compared to the other constitutional rights. This does not bode well with the values which the Court must stand for. Why does a man who killed his

[39] *Ibid.*
[40] *Ibid., 21.*
[41] NAZ Foundation v. Government of NCT Delhi, (2010) CriLJ 94.

daughter for marrying against his will deserve death, while the murderers of a six year old child, his brother and his father, deserve only life imprisonment?

This difference in judgements despite similarity in the laws violated, prove that subjectivity is prevalent when Court adjudicates a case on death row.

IV. CONCLUSION AND SUGGESTIONS

In its report published in August 2015, The Law Commission of India concluded that the "death penalty does not serve the penological goal of deterrence any more than life imprisonment." It further stated that because the community was so sure of the crime preventing capacity of death penalty, lesser focus was given to genuine issues in the criminal justice system of India, such as the inadequate crime investigation that takes place. The Commission also suggested that death penalty be retained for terrorism-related offences and waging war.[42]

Perhaps here, India can refer and adopt certain principles from the penal codes of nations such as Brazil[43], where death penalty has been abolished for ordinary crimes. This means that the laws of Brazil provide for death penalty only in exceptional crimes such as crimes under military law.

Keeping in mind the eventual phasing out of death penalty, the researcher feels that restricting capital punishment to such cases for the time being, would be the right direction to proceed in. While making terrorism the prime focus, the researcher claims that it is truly 'rarest of rare,' and therefore deserving of death penalty, because of the motive that terrorists have for killing. While the method of killing might be the same as any of the above mentioned cases, the fact that these people are willing to kill to secure a religious or political end, speaks volumes about their ability, or lack thereof, to reform in the future. This correlates with the principles laid down in the case of *Ramnaresh*.

Furthermore, the terrorists who are locked up in prison provide incentive for other terrorists to blackmail the nation into returning the prisoners. In ordinary cases of crime, while murderers are not willing to go to such extreme measures to set other murderers free from jail, it must be noted that non-state actors have been trained to be extremely loyal to each other and are thus willing to commit crimes to facilitate release of their fellows. This has happened already in India, when Mufti Mohammed Sayeed, the first Muslim Home Minister, was coerced into setting free terrorists in exchange for his daughter Rubaiyya Sayeed.[44] In

[42] Law Commission of India, Report No.262, *The Death Penalty*, para.7.2.4, page 217.
[43] *Supra*, note 3 at 66.
[44] Smita Gupta, *The Home Minister Whose Daughter was Kidnapped*, THE HINDU (Jan.8, 2016 00:12 IST), http://www.thehindu.com/news/national/The-Home-Minister-whose-daughter-was-kidnapped/article13986500.ece

order to prevent such repercussions in the future, where innocent civilians are also harmed, the researcher feels that death penalty is necessary in these situations.

The State also incurs huge overheads in keeping the terrorists alive, as there are needs for a high security prison, medical facilities, and deployment of additional security forces to guard such volatile prisoners.[45] In the case of Ajmal Kasab, the expenditures were so high that the cost of keeping him in prison exceeded the payments doled out to the martyrs of Mumbai terror attacks.[46] This begs the question of why the government is spending more on the upkeep of a terrorist than for those who have sacrificed their lives for the welfare of the nation.

The researcher claims that the R-R test that exists today is inherently flawed as it allows for great subjectivity and mistake in awarding death penalty. Thus, the basis on which death penalty is awarded must be changed from non-binding guidelines to quantifiable requirements that must be met to be deserving of death penalty. However, as pointed out earlier, this would make it difficult for the law to keep up with the changing times.

Thus, the researcher suggests that the deciding factor for awarding death penalty itself be changed, from trying to distinguish between types of ordinary crimes, to drawing a difference between activities related to terrorism for which death penalty must be awarded and ordinary crimes for which life punishment stands sufficient.

While this might be an easy statement to make in itself, the researcher also notes that extensive further study is needed before acting on the same. Not only is there a question of bringing about objectivity to the actual tenure of life imprisonment, but there are thousands of cases currently regarding the death row, for which every sentence must be commuted to life imprisonment. There also seems to be a pertinent requirement in India, for conducting further research in order to facilitate speedier trail before the Court. The delays in handing out sentences have been large and this had lead to mental distress and excessive penalty in several cases.

The researcher would like to end the paper with a positive note, by stating that the Indian judiciary has a great scope for improving its system of capital jurisprudence. Improving this

[45] *Supra* note 30, at 126.

[46] Prafulla Marpakwar, *Cost of keeping Kasab alive: Rs 45 cr & counting*, TIMES OF INDIA (Feb. 22, 2011) http://articles.timesofindia.indiatimes.com/2011-02-22/india/28624789_1_ajmal-amir-kasab-arthur-road-jail-special-cell.

system would not only help in preserving the rights of the accused, but it would help their families. The judicial system would face a lesser burden in determining those cases which are 'deserving' of death penalty and the resources once focused on capital punishment can now be channelled towards a better system of crime-prevention as a whole. Finally, the researcher believes that in this way, a perfect harmony can be struck between the morality of capital punishment and the need for a system of penalty to maintain the social equilibrium.

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