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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

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## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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# **CAPITAL PUNISHMENT IN INDIA**

Authored By- Srikar Krishna B R

## **Keywords:-**

Punishment – Criminal Procedural Code – Human Rights – Deterrence – United Nations

## **Abstract:-**

*“Life is precious and death is irrevocable”.*

Capital punishment is the process of executing a person involved in criminal activities by the decree of a Court of Law. It is the highest degree of punishment that can be awarded. The method for the same used in India is by hanging by the neck. The death penalty is provided under Section 53 of the IPC, 1860 and the power to confirm the same is conferred upon the High Courts under Section 368 of the Code of Criminal Procedure. However, the principle of “Rarest of the Rare” is followed in India. Between 2002 – 2015, 4 criminals have been executed in India. This is because of the Judgement passed in Shatrughan Chauhan Vs. Union of India (2014) provides certain guidelines regarding the conversion of capital punishment into life imprisonment, which was implemented by the Supreme Court in the popular case of Rajiv Gandhi assassination. The other side to this coin is that many people feel this to be inhuman. Even among the legal fraternity, many criminologists demand the abolition of capital punishment. Studies reveal that the death row convicts suffer both physical and mental stress awaiting their execution. Many NGOs are fighting against this punishment and for the protection of human rights. Even after considering the application of the Rarest of the Rare, the idea of Capital Punishment itself is against the Constitutional provisions of Article 21. The main objective of any criminal punishment is the deterrence it brings about among the public. Unfortunately, statistical evidence does not show the working of the same which may be due to various mental, social reasons and also due to the time gap between the crime and the punishment. It is proven that the effectiveness of deterrence decreases with time. The UN is strictly against Capital punishment and considers it a violation of Human Rights. The UN relies upon the Reformatory theory instead of that of Deterrence. However,

India has not

completely banned Death Penalty, the number of executions in the last 20 years are drastically reduced.

## **Introduction:-**

The death penalty, additionally called capital punishment, execution of a wrongdoer condemned to death after conviction by a courtroom for a criminal offence. The death penalty ought to be recognized from extrajudicial executions completed without fair treatment of law. The term capital punishment is some of the time utilized conversely with the death penalty, however, the burden of the punishment isn't constantly trailed by execution (in any event, when it is maintained on offer), due to the chance of compensation to life imprisonment.<sup>1</sup>

## **Historical Background:-**

The death penalty is an old authorization. There is at any cost no country in the world where capital punishment has never existed. History of human civilization uncovers that during no time frame, the death penalty has been disposed of as a method of discipline<sup>2</sup>. The death penalty for homicide, treachery, illegal conflagration and assault was broadly utilized in ancient Greece under the laws of Draco (fl. seventh century BCE), however, Plato contended that it ought to be used distinctly for the worse off. However, the Romans likewise utilized it for a wide scope of offences, residents were excluded for a brief time frame during the republic. This observes support in the perception made by Sir Henry Maine who expressed that "The Roman Republic didn't nullify capital punishment however its non-use was fundamentally coordinated by the act of discipline or exile and the methodology of inquiries".<sup>3</sup>

Cautious investigation of the discussions in British India's Legislative Assembly uncovers that no issue was brought about the death penalty up in the Assembly until 1931, in British India's Legislative Assembly, issue of death penalty was not at all brought up.

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<sup>1</sup>CAPITAL PUNISHMENT IN INDIA, published by Lok Sabha SECRETARIAT, PARLIAMENT LIBRARY AND REFERENCE, RESEARCH, DOCUMENTATION AND INFORMATION SERVICE (LARRDIS)

<sup>2</sup>Capital Punishment by Dr. Subhash C. Gupta, 2000, p. 1

<sup>3</sup>Capital Punishment in India by Dr. Subhash C. Gupta, 2000, p. 1

## **Techniques for Execution in India: -**

At the time of independence, India held a few laws set up by the British government, which incorporated the Code of Criminal Procedure, 1898 ('Cr.P.C. 1898'), and the Indian Penal Code, 1860 ('IPC'). The IPC endorsed six punishments that could be forced under the law, among which death was also one. For offences where capital punishment was a choice, Section 367(5) of the CrPC, 1898 expected courts to record reasons where the court chose not to force a sentence of death, it was given that,

*If the accused is convicted of an offence punishable with death, and the court sentences him to any punishment other than death, the court shall in its judgment state the reason why the sentence of death was not passed.*

In 1955, the Parliament revoked Section 367(5), CrPC 1898, fundamentally modifying the situation of capital punishment. Capital punishment was as of now not the standard, and courts didn't require unique purposes behind why they were not overwhelming capital punishment in cases where it was an endorsed discipline.

Subsequently, due to the re-enactment of the CrPC in 1973, certain major changes were made to section 354(3) which stated that:

*When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence<sup>4</sup>.*

Now, there was a requirement for the judges to provide specific and precise reasons for the death sentence sanctioned by them.

## **Supreme Court On Validity Of Capital Punishment In India**

Article 21 of the Indian Constitution guarantees the Fundamental Right to life and freedom for all people. It adds that no individual will be denied of his life or individual freedom aside from per method set up by law. This has been lawfully interpreted to mean if there is a method, which is reasonable and legitimate, then, at that point, the state by outlining a law can deny an individual of

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<sup>4</sup> Code of Criminal Procedure, 1973

his life. The central government has reliably kept up by holding the capital punishment in the resolution books to go about as an obstruction, and for the individuals who are a danger to society, the Supreme Court also has maintained the protected legitimacy of capital discipline in "rarest of the rare" cases. In Jagmohan Singh versus State of Uttar Pradesh (1973), then, at that point, in Rajendra Prasad versus State of Uttar Pradesh (1979), lastly in Bachan Singh versus Province of Punjab (1980), the Supreme Court confirmed the sacred legitimacy of the death punishment. It said that if the death penalty is given in the law and the methodology is a reasonable, just and sensible one, capital punishment can be granted to a convict. This will, in any case, just be in the "rarest of the rare" cases, and the courts should deliver "extraordinary reasons" while sending an individual to the gallows<sup>5</sup>.

## **Evolution Of The Alternative Approaches For Death Penalty**

Considering the severity of the death punishment and the issues relating to human rights, the Supreme Court of India brought into light the idea of a life sentence, which determines a specific number of years of the sentence. This was formulated by a 3-judge bench in the case of **Swamy Shraddhanand** and the court set up certain guidelines and explained that the matter might be checked out from a different point of view. These cases have two sides. A sentence might be unreasonable and unduly cruel or it very well might be exceptionally excessively deficient. At the point when litigant results in these present circumstances Court conveying a capital punishment granted by the preliminary court and affirmed by the High Court, the Supreme Court might find, as in the current allure, that the case simply misses the mark concerning the rarest of the rare classification and may feel to some degree hesitant in underwriting capital punishment. And yet, having respect to the idea of the crime, the Court may firmly feel that a sentence of life detainment subject to reduction regularly works out to a term of 14 years would be terribly insufficient. What then, at that point, should the Court do is that in such case the Court's choice is restricted uniquely to two punishments, one a sentence of detainment, in every practical sense, of not over 14 years and the other passing, the Court might feel enticed and end up going on to support capital punishment. Such a course would without a doubt be shocking.

The most logical way of dealing with this issue would be to provide alternatives along with

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<sup>5</sup>Indian Express, New Delhi, dated 27.5.2015.

assuming authority of the actual courts according to their derived powers. One ex will be dealing with 14 years imprisonment and death. The court highlighted that the courts would take response to the extended choice essentially on the grounds that in certain facts of the case, the sentence of 14 years imprisonment would add up to no punishment by any means.

The case of **Swamy Shraddhanand** is a landmark case. In the cases of Haru Ghosh v. State of West Bengal, State of Uttar Pradesh v. Sanjay Kumar, Sebastian v. the State of Kerala, Gurvail Singh v. the State of Punjab and various others, keeping aside the death sentence, the Supreme Court has awarded the life sentence with a specific number of years.

## Clemency Powers

On the off chance that the Supreme Court turns down the allure against the death penalty, the person who is awarded a death sentence can present an appeal to the President of India and the Governor of the respective State. Under Articles 72 and 161 of the Constitution, the President and Governors, individually have the power "to concede pardons, respites, breaks or abatements of discipline or to suspend, transmit or drive the sentence of any individual indicted for any offense"<sup>6</sup>. Neither of these powers is sentimentally or emotional to the holders of the Office, yet are to be carried out (under Articles 74 and 163, separately) on the guidance and the cumulative decision of the Council of ministers.

Mercy powers, while exercisable for a wide scope of contemplations and on mutable events, additionally work as the last shield against the plausibility of legal mistake or unsuccessful process of equity. This projects a weighty obligation on those employing this power and requires full utilization of psyche, investigation of legal records, and wide going requests inarbitrating a mercy appeal, particularly one from a detainee under a judicially affirmed capital punishment who is on the edge of life and in line for the execution.

A document is known as the "Procedure Regarding Petitions for Mercy in Death Sentence Cases" has been drafted by The Ministry of Home Affairs, Government of India, to provide proper protocol and guidance to the Jail authorities as well as to the State Governments as to the proper

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<sup>6</sup>Indian Express, New Delhi, dated 27.5.2015

way of disposing of a mercy petition of the inmate who will be executed<sup>7</sup>. Annexure-III provided a detailed explanation of the petitions disposed of by the President in India.

## **Judicial Review Of Exercise Of Mercy Powers**

The following have been laid down by the Home Ministry as the essentials to be looked upon while dealing with such petitions.

- a) Personality of the accused (like age, sex or mental inadequacy) or conditions of the case (like incitement or comparable avocation);
- b) Cases in which the investigative Court communicated question regarding the unwavering quality of proof, in any case, has by and by settled on conviction;
- c) Cases where it is affirmed that new proof is possible fundamentally so as to see regardless of whether the new enquiry is legitimized;
- d) Where the High Court on request switched quittance or on an allure improved the sentence;
- e) Is there any distinction of assessment in the Bench of High Court Judges requiring reference to a bigger Bench;
- f) Consideration of proof in the obsession of liability in a posse murder case; g) major postponements in examination and preliminary and so on

Nonetheless, when the genuine exercise of the Ministry of Home Affairs (on whose proposals these petitions are chosen) is dissected, it is seen that on multiple occasions these rules havenot been followed. The Courts in various cases have analysed the petitions from an executive point of view and have taken decisions similar to what the decisions of the executive would be. Indeed, the Supreme Court as a feature of the cluster case Shatrughan Chauhan case heard 11 writ petitions testing the dismissal of the leniency appeal by the Executive<sup>8</sup>. Supreme Court, last year held that legal mercy could be allowed on the ground of exorbitant delay even after such an appeal is

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<sup>7</sup>Law Commission of India, Report No.262 on Death Penalty, August 2015, pp.176, 179

<sup>8</sup>Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.190-191 <sup>10</sup>Indian Express, New Delhi, dated 27.5.2015

dismissed.

## **Law Commission Of India's Report On Death Penalty:-**

The Law Commission of India in its 262nd Report (August 2015) suggested that capital punishment be abrogated for all wrongdoings other than psychological warfare related offences and pursuing war. Complete proposals of the Report are as per the following:

The Commission suggested that actions proposed that police changes, witness assurance plans and casualty pay plans ought to be taken up speedily by the public authority.

Although there is no substantial penological support for treating psychological warfare in an unexpected way from different violations, the concern is frequently raised that cancellation of capital punishment for psychological oppression related offences and taking up arms, will influence public safety. Notwithstanding, given the worries raised by the administrators, the Commission didn't perceive any motivation to stand by any more drawn out to venture out towards cancellation of capital punishment for all offences other than illegal intimidation related offences.

The Commission as needed is suggested that capital punishment be cancelled for all violations other than psychological oppression related offences and taking up arms. Further, the Commission genuinely trusts that the development towards outright nullification will be quick and irreversible<sup>9</sup>.

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<sup>9</sup>Law Commission of India, Report no.262 on Death Penalty, August 2015, pp.217-218

## Conclusion

India is a country where diversity is at its peak. Some people feel that if a person kills a person, then the appropriate punishment for the murderer is taking away his life. But, as human beings, we have evolved more than that in the past century and the aspect of human rights has come into play. We have understood the value of life and how the concept of an eye for an eye may not always be necessary, appropriate and/or moral. However, there is a difference of opinion between various kinds of people when it comes to the punishment of capital offenders and hence, the judiciary has taken a prominent role in deciding the same after considering all the aspects and after providing the accused all the chances to prove himself in front of various authorities to reduce his/her death sentence to life imprisonment.

Prior to giving a decision on whether or not capital punishment ought to be nullified, many things should be thought of. In spite of the fact that India has up to now, stood immovably behind holding the death penalty, the legal executive saves it for the shocking of wrongdoings and it happens on incredibly uncommon events. In the event that we consider, the quantity of individuals who were granted capital punishment and the number of individuals who were really executed, the numbers justify themselves. Somewhat recently, there have been just 3 executions, and all three were of fear monger cases. In *Bacchan Singh v. The territory of Punjab*, the Hon'ble Supreme Court made unmistakably capital punishment to be granted in the 'rarest of the rare' cases which shows the inborn expectation of the court to limit the act of granting the death penalty however much as could be expected. This judgment turned into a benchmark for every one of the courts in India on which they were to base their choices of giving death penalties in situations where the person who received the death sentence had submitted one or more capital offences i.e., killed another person.

Consequently, not exclusively do the courts practice their ability to grant the death penalty in very uncommon cases, yet in addition, a considerable lot of these death penalties are driven to lifetime detainment on grounds of wellbeing, pregnancy, family conditions, and so forth At whatever point any court grants a capital punishment, it makes reference to extraordinary explanations behind giving such discipline identifying with the uncommon conditions of the case. Is capital punishment substantial in this day and age? It is up to the Judiciary and legitimate specialists to choose.

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