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# **LAW OF CRIMES**

## **“Capital Punishment Vis A Vis Right To Life”**

Authored by- Purna

### **Chapter 1: Introduction**

One of the most hotly disputed topics of our time is the individual right to life and its many implications in diverse political settings. This is a crucial subject today for a variety of reasons, including the widespread demand for abolition of capital punishment. The term "Capital Punishment" is one of the harshest types of punishment. This type of punishment that is most of the time meted out for the most egregious, terrible, and abhorrent crimes against mankind. Though the definition and scope of these types of crimes is different for different countries, states, and ages, but it always takes away the most basic right of life from people. The term "capital sentence" is commonly used in law, criminology, and penology to refer to a death sentence. There isn't a single country on the planet where the death penalty has never been used.

The history of human civilisation indicates that "capital punishment" has never been abolished as a form of punishment. There are two basic reasons for punishing wrongdoers: to deter others from doing wrong, and to deter others from doing wrong. The death sentence is based on the same logic as other forms of punishment. It is even more subject to discussion regarding its fairness, appropriateness, and effectiveness than other punishments due to its draconian and irreversible nature.

The morality of this punishment as well as its impact on criminal behaviour have long been a source of heated discussion. During the twentieth century, there was a campaign to abolish the death penalty, which resulted in several states joining the cause and abolishing the death sentence. The death penalty, on the other hand, is known to exist in India. Both proponents and opponents of capital punishment can make compelling and persuasive arguments. As a result, no one side has been able to deny the existence of the other. In this context, the world's countries can be classified into four categories.

According to the proponents of death sentence, the murderers cannot exercise their right to life or their right to life ceases to exist as they have destroyed the right of life of someone else. Moreover, they believe that capital punishment is a legal form of retribution that expresses and reinforces not just the anger of the victim's family, but also the moral resentment of all law-abiding citizens.

On the other hand, people advocating the abolition of death penalty argue that capital punishment violates the right to life of a person. They say that death penalty is not an appropriate response to the wrongful death of a person. The emotional need for vengeance is insufficient justification for instituting a capital punishment system, with all of its flaws and risks. Our laws and criminal justice system should lead us to higher values that reflect complete respect for all human life, including that of a murderer. They say that death sentence has not been shown to be a deterrent to future murderers.

### **Research Objective:**

The main objective of this research paper is to see that how the viewpoint of Indian government and judiciary towards capital punishment and right to life have changed over period of time. This research paper also aims to compare the attitude of various countries and various international organisations towards right to life and capital punishment.

### **Research Questions:**

How the attitude of judiciary and government has changed over time period?

What is the current attitude of various countries towards right to life and capital punishment?

### **Research Methodology**

Doctrinal methodology of research has been incorporated in this research paper in order to know about death penalty and right to life. This method enables the researcher to use the library and e-library for the conduction of research. The sources extracted for library can be divided into primary and secondary sources. Primary sources such as the constitution act, Criminal Procedural Code, IPC etc. are used and secondary sources such as books, research papers, articles, journals, editorials have been used in order to extract the information. This research paper has used analytical methodology of in order to analyzing the case laws related to know the capital punishment and right to life in India. Comparative research methodology

has been used for comparing the scenario of right to life and death penalty in different parts of world and in various international organizations.

## **Literature Review**

### **“The rhetoric and reality of capital punishment**

**By Prashant singh and Meghna Sharma”<sup>1</sup>**

The authors wrote this editorial for “The Hindu” when The Supreme Court dismissed the review petition by the culprits of Nirbhaya rape and murder case. In this editorial the authors have put forward arguments which criticises the reasoning and the logic which are used by the people who advocates of practice of capital punishment. The authors have tried to prove that the dismissal of the review petition by the judges was wrong and the fear of capital punishment will not contribute in deterrence of crimes such as rape. But the authors in this editorial has failed to provide the alternative of capital punishment.

### **“The right to life and the progressive abolition of the death penalty**

**Christof Heyns, Thomas Probert. , Tess Borden T”<sup>2</sup>**

The author examines the extent to which international human rights treaties, such as the “International Covenant on Civil and Political Rights (ICCPR)” of the United Nations (UN) and some regional human rights treaties, have compelled the progressive abolition of the death sentence. It then goes on to look at global patterns in terms of the death penalty's imposition, as well as some of the potential areas for advocacy or litigation in both retentionist and abolitionist governments, aiming at lowering and eventually abolishing the practise.

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<sup>1</sup> Prashant singh Meghna Sharma, *The rhetoric and reality of capital punishment* ,editorial, The Hindu, DECEMBER 19 ,2020 , [HTTPS://WWW.THEHINDU.COM/OPINION/OP-ED/THE-RHETORIC-AND-REALITY-OF-CAPITAL-PUNISHMENT/ARTICLE30341861.ECE](https://www.thehindu.com/opinion/op-ed/the-rhetoric-and-reality-of-capital-punishment/article30341861.ece)

<sup>2</sup> Heyns, C., Probert, T. and Borden, T, *The right to life and the progressive abolition of the death penalty. {P.117} ,2015F*

**“The right to life under international law****By B.G Ramcharan”<sup>3</sup>**

In this book the author has in depth analysed the right to life. He has analysed how various factors including capital punishment deprives people of their right to live. He has analysed the various implications of Article 6<sup>4</sup> and Article 2<sup>5</sup> of European convention on Human rights and how it affects right to life. The author along with this has also looked into the inter – relationship between right to life and other rights such as right to peace and right to development. The author in this book has not properly focused on that what should be the steps taken to eradicate the obstructions which comes in providing equal right to life to all.

**“Rights and Capital Punishment****By Thomas Hurka”<sup>6</sup>**

In this journal the author analyses the justifications given by the proponents of capital punishment. In this journal the author has deeply analysed the utilitarianism, consequentialist and retributive theories about capital punishment. The author in this journal has argued that rights theories use an alternative rationale for punishment, one that combines many of the appealing elements of the deterrent and retributive justifications while avoiding their disadvantages. The author then tries to prove that the rights-based explanation has more appealing moral implications for capital punishment than either deterrence or retribution.

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<sup>3</sup> Ramcharan, B.G., *The right to life. Netherlands International Law Review*, 30(3), pp.297-329, 1983

<sup>4</sup> *The European Convention on Human Rights* , Article 6 , 4 November 1950, [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf)

<sup>5</sup> *the European Convention on Human Rights, Article 2* , 4 November 1950, [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf)

<sup>6</sup> Hurka, T. , *Rights and Capital Punishment* , volume 21 , *CPhRev* , pp. 647 - 660 , December ( 1982).

**“Shutting Down the Death Factory: The Abolition of Capital Punishment in South Africa  
PETER by NORBERT BOUCKAERT”<sup>7</sup>**

In this journal the author takes about abolition of death penalty in South Africa. He talks about the historical background and the reasons such as violation of right to life which prompted the Supreme Court of South African to abolish death penalty in their county. The author then goes on comparing the South African stand of death penalty and right to life with that of India and America. The author in this journal has ignored talking about the views of various International organisations and other countries except America and India on Capital punishment and Right to life .

**“Abolishing the Death Penalty Worldwide: The Impact of a “New Dynamic”  
By Roger Hood and Carolyn Hoyle”<sup>8</sup>**

This author in this paper have talked about the scenario of death penalty in around the world , at the time when he wrote this paper . Along with Praising the increase no of countries which have abolished death penalty the author has also tries to shown that how the countries who have not those countries that which still uses death penalty as a form of punishment have come to accept a lot of the human rights arguments against it. But the author in this article has not talked about the countries which have neither abolished death penalty nor abstaining from performing things which deters the right to life of people.

## **Chapter 2 – Death Penalty In India**

In 1931 Babu Gaya Prasad Singh, an elected member from Bihar, attempted to introduce a bill in the Central Legislative Assembly to abolish the death penalty for transgressions under the Indian Penal Code. The motion for circulation was failed, and Bhagat Singh, Rajguru, and Sukhdev were hanged a few days later, on March 23, 1931. Later that year, at its session in Karachi, the Congress passed a resolution calling for the death penalty to be abolished. Then the Constituent Assembly debated a number of issues related to the death sentence from 1947 and 1949 but at last However, at last it was decided the that the question would be left on the

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*Peter Norbert Bouckaert, Shutting Down the Death Factory: The Abolition of Capital Punishment in South Africa, 32 Stan. J. INT'L L. 287 (1996).*

<sup>8</sup> “Hood Roger and Hoyle Carolyn, *Abolishing the Death Penalty Worldwide: The Impact of a “New Dynamic”*, *Crime and Justice*, Vol. 38, No. 1 ,The University of Chicago Press, pp. 1-63, (2009)” .

decision of Parliament. After that The Law Commission of India, chaired by Justice (retired) J L Kapur, supported the retention of capital punishment in its 35th Report on "Capital Punishment" in 1967. In 2003 the 187th law commission report recommended that beside hanging, lethal injection should also be used as a method of execution and at least 5 judges bench should hear the cases of capital punishment. Then law commission in its 262nd report said that capital punishment violates right to life and it should only be practiced in cases of terrorism. The difficulty in getting the exact number of inmates serving death sentences in India has been highlighted by Project 39A of the National Law University, Delhi, which releases death penalty reports. Since independence, India has executed roughly 755 people, according to Project 39A. According to the research, Uttar Pradesh had the largest number of executions, with 366. In addition, the state's Bareilly District Jail holds the distinction of having carried out 130 executions, the most of any jail in the country, with the most recent execution taking place on September 24, 1988. The Tihar Central Prisons in Delhi carried out 28 executions Till 31st December 2020, 404 people were on death row.

### **Judicial stand to capital punishment and right to life in India**

#### **"Jagmohan Singh vs The State Of U. P"<sup>9</sup>**

In this case, the validity of section 302<sup>10</sup> (under which a person who has committed the crime of murder can be punished with death) by the attorney for the appellant. He presented three arguments in order to invalidate section 302 of the IPC. In his 1st argument he said that with, execution violates all of the fundamental rights protected by Clauses (a) to (g) of Sub-clause (1) of Article 19<sup>11</sup>, and thus the law concerning capital punishment is irrational and not in the general public's interest. Second, the Judges' discretion to impose capital penalty is not based on any legislatively mandated norms or policies favouring capital punishment over life imprisonment.

Third, he argued that Article 14<sup>12</sup> of the Constitution prohibits judges from exercising unrestricted and unguided discretion in imposing Death penalty or life imprisonment. Finally, it was argued that the law's provisions do not provide for a trial of reasons and circumstances that are critical in deciding between the death penalty and life imprisonment. The right of life

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<sup>9</sup> Jagmohan Singh vs The State Of U. P, 1973 AIR 947

<sup>10</sup> The Indian Penal code, 1860, § 302

<sup>11</sup> "INDIA CONST. art 19, § 1, cl. (a), cl. (b)"

<sup>12</sup> "INDIA CONST. art 14, cl .1"

which is conferred by Article 21 (1)<sup>13</sup> of the Constitution was infringed.

After considering the arguments, a five-judge panel maintained constitutionality and validity of capital punishment, ruling that deprivation of life is constitutionally lawful and permissible punishment by the drawers of our constitution.

#### **“Rajendra Prashad v. State of Uttar Pradesh”<sup>14</sup>**

Rajendra Prasad was the appellant who was charged with murder charges of 2 people.

He was initially condemned to life in prison for First Murder, but was released on the eve of Gandhi Jayanti in 1972 after serving his term. But again in a flare-up of the long-running family rivalry, he brutally murdered a friend of the other family on October 25, 1972, just 23 days later.

The Allahabad court, after reviewing the circumstances, sentenced him to death, but the verdict was overturned in the Supreme Court on the grounds that the accused was not a threat to society and that the murder was committed solely to settle a personal family feud. In this case Justice Krishna Iyer said that capital punishment, according to, is a violation of article 14, article 19. He said that capital punishment also violates article 21 which confers right to life to the citizens of India.

In this case, it was also determined that when a person is sentenced to death, he loses his right to life, so jeopardising his fundamental right to life. He went on to say that two conditions must be met in order to impose Capital Punishment. At first the special basis on which capital punishment is being conferred in a case should be recorded. Second, the capital punishment should only be imposed in exceptional circumstances.

#### **“Bachchan Singh v. State of Punjab”<sup>15</sup>**

The court held that the rights which are guaranteed under article 19 (1) are not absolute rights. The Supreme Court has overturned its prior decision in Rajendra Prasad's case, ruling that the death penalty under section 302 of the Indian Penal Code does not violate article 21. The court did not abolish capital punishment completely however the judges said capital punishment should be imposed in a reasonable and not arbitrary manner. In this case the court laid down the principle of “rarest of the rare case”.

The judges said that “Judges should not be blood thirsty, the Court said in this case.

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<sup>13</sup>“ INDIA CONST. art 21, cl .1”

<sup>14</sup> Rajendra Prashad v state of Uttar Pradesh, MANU/SC/0212/1979

<sup>15</sup> Bachchan Singh v. state of Punjab, MANU/SC/0356/1982.

Resistance to taking a life through the instrumentality of laws is predicated on a genuine and persistent respect for the dignity of human life. That should only be done in the most exceptional of circumstances, when the alternative choice is unquestionably ruled out.”<sup>16</sup>

#### **“Machhi Singh And Others vs State of Punjab”<sup>16</sup>**

In this case, the notion of the "rarest of rare cases" was discussed and upon. It was a particularly heinous case. Machhi Singh, the primary culprit in the case, with eleven accomplices staged raids on a number of villages over the course of a single night, killing seventeen people, men, women, and children, for no reason other than they were linked to one Amar Singh and his sister Piyaro Bai. In this case the court determined that there are five types of cases which might be classified as the “rarest of rare cases”, and in which capital punishment can be awarded. When a murder is committed in an unusually violent manner in order to raise intense and extreme astonishment in the community. When a murder is committed for a move that demonstrates depravity and cruelty. The crime is of a social or socially reprehensible kind. The scale of the crime – heinous crimes of huge proportions and the last criteria to determine that weather a crime will be come under. “Rarest of the rare case” is the personality of the victim.

#### **“Denna v. Union of India”<sup>17</sup>**

It was a landmark decision by the Supreme Court on the validity of hanging a person to carry out the Death Penalty and if it was a violation of Article 21. The fundamental question was whether Section 354 (5) of the Criminal Procedure Code was constitutionally valid and whether it was in conflict with Article 21 of the Indian Constitution. The Supreme Court ruled that hanging by rope during the execution of the death penalty does not violate Article 21 of the Indian Constitution and that it is legal.

#### **“Sher Singh & Others vs The State of Punjab”<sup>18</sup>**

The Supreme Court ruled in this case that the death sentence is constitutionally lawful and permissible within the limits of the Bachan Singh rule. This must be recognised as the law of the land and it does not violate right to life under article 21.

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<sup>16</sup> Machhi Singh And Others vs State Of Punjab ,1983 AIR 957.

<sup>17</sup> Deena @ Deena Dayal Etc. Etc vs Union of India And Other, 1983 AIR 1155.

<sup>18</sup> Sher Singh & Others vs The State of Punjab, 1983 AIR 465.

**“Bhagwan Bux Singh And Anr. vs The State of Uttar Pradesh”<sup>19</sup>**

In this case also section 303 was held violative of right to life conferred under Article 21. And it said that all convictions which will come under section 303 will be dealt under section 302.

**“Maru Ram etc .etc vs Union of India”<sup>20</sup>**

In this case the court held that awarding a person with death sentence after a fair trial is not wrong if he / she deprived other from his / her right to life.

**“Mithu vs State of Punjab”<sup>21</sup>**

In the case of Mithu vs state of Punjab the court held that section 303 of IPC which says that “Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death” was held unconstitutional and violative of right of life and other right conferred under article 21 of the Indian constitution..

**“State of Rajasthan vs. Lachma Devi”<sup>22</sup>**

The Supreme Court declared in Attorney General of India vs. Lachma Devi, that public hanging, even if carried out according to the rules, would be barbaric, disgusting, and bring shame to any civilised society.

In this case the question of constitutional validity was raised once more, using almost the same arguments as in Jagmohan and Bachan Singh's earlier paper. Apart from invoking Art. 21 and claiming that the death penalty serves no social purpose, it was also contended that the Law

**“Smt. Shashi Nayar vs Union of India”<sup>23</sup>**

Commission's 35th Report, which the majority opinion referenced in support of the death penalty in Bachan Singh, should not be used to advise the court.

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<sup>19</sup> Bhagwan Bux Singh And Anr. vs The State of Uttar Pradesh, AIR 1978 SC 34.

<sup>20</sup> Maru Ram Etc. Etc vs Union Of India & Anr ,1980 AIR 2147.

<sup>21</sup> Mithu vs State of Punjab, AIR 1983 SC 473

<sup>22</sup> Lichhamadevi vs State of Rajasthan, AIR 1988 SC 1785

<sup>23</sup> Smt. Shashi Nayar vs Union of India And Ors 1992 AIR 395

**“State of Maharashtra vs Vinayak Shivaji Rao”<sup>24</sup>**

In this case the convicted was awarded with capital punishment for brutally killing house and in this case also the court said that capital punishment is not violative of right to life conferred under article 21.

**Chapter 3 -Capital Punishment In Various Part Of World**

Capital punishment has been either officially been abolished or it is not been used since decades in South American countries. Various reports published by international organization such as Amnesty international and UNITED NATIONS Human rights council and commission and etc has shown the trend in various countries towards abolition of death penalty.

Venezuela was the first country to permanently abolish the death penalty for all crimes in the world, doing so in 1863 under the administration of Juan Crisóstomo Falcón.

Brazil's last execution occurred in 1876, Colombia's in 1907, Puerto Rico's in 1927, and Chile's in 1985.

The capital punishment has completely been abolished in Mexico, Argentina, and Bolivia.

In United States of America, the capital punishment has been abolished in 23 states among 50 states of United States Canada officially abolished capital punishment in 1998. In 2005 death penalty was officially abolished in Mexico

23 countries among 54 countries of Africa have officially abolished death penalty. There is an increase in positive attitude of African countries towards abolition of capital punishment.

Sierra Leone a southwest African county abolished death penalty in July 2021. Malawi's Supreme Court of Appeal ruled in April 2021 that the capital punishment was unconstitutional and violates right to life. In May 2020, Chad abolished the death penalty for all crimes.

Among 48 countries in Asia 33 countries still retains death penalty in their country. At least 85%, and maybe as much as 95%, of the world's executions have taken place in Asia.

Excluding China Only four countries accounted for 86 percent of all reported executions took place in. Iran, Saudi Arabia, Iraq, and Egypt.

Except Tajikistan all countries of central Asian region including. Kyrgyz Republic, Turkmenistan, Uzbekistan and Kazakhstan has abolished death penalty.

Death penalty has been abolished in all European countries except Belarus.

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<sup>24</sup> State of Maharashtra vs Vinayak Shivaji Rao 1997, MANU/MH/0592/1998

Among 14 countries in Oceania, there are only 2 countries where death penalty is still practiced.

## **Chapter 4 – Stand Of International Organizations On**

### **Right To Life And Capital Punishment**

The death penalty is a breach of one of the most basic human rights, and it goes against one of the most basic principles of widely accepted human rights legislation. There is a rapid increase in the number of people and nations who are supporting the abolition of death penalty. The 1929 Geneva Convention was the first international pact to limit the death penalty, limiting it to prisoners of war captured during armed conflict.

In 1948 When the “Universal Declaration of Human Rights (UDHR)” was adopted there were only 10 countries where death penalty was abolished, But till 2019 the number of countries where death penalty has been increased to 106

On December 16, 1966, the “United Nations General Assembly” enacted the “International Covenant on Civil and Political Rights (ICCPR)”, was a multilateral instrumental which was signed by 173 countries. Along with various other Individuals civil and political rights, such as freedom of religion, freedom of assembly, electoral rights, and the right to due process and a fair trial, which was guaranteed by the treaty “the right to life” was one of the most important right. “The International Covenant on Civil and Political Rights (ICCPR)” encourages nations to abolish the death sentence, and the Committee which are advocating human rights has backed this up with these strong declarations. It does not abolishes capital punishment in its totality but puts a number of strong constraints on the application of the death penalty under Its Article 6<sup>25</sup>. Article 6 of the ICCPR has puts constrains such as “Right to a fair trial before the death penalty is imposed; Limitation of the death penalty to only the most serious crimes; Prohibition against imposing the death penalty when other ICCPR rights have been violated; Prohibition against retroactive imposition of the death penalty; Right to seek pardon or commutation of a death penalty sentence;”<sup>26</sup>

Most of the international organisations which are concerned with to human rights advocates the abolition of capital punishment The United Nations General Assembly has also passed

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<sup>25</sup> UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>

<sup>26</sup> 5<sup>th</sup> Human rights resolution , 18th June 2006,A/HRC/RES/5/1

resolutions opposing the death penalty. Commission on Human Rights and the Human Rights Committee of United Nation have advanced many resolutions in this direction, including the 1st resolution which was passed in 2007, which state that they are "convinced that the abolition of the death penalty is vital for the protection of this right [to life]." Since 2007, eight resolutions calling for an end to executions have been passed, with the cumulative number of votes in favour steadily increasing from 104 in 2007 to 123 in 2020. In 2020 38 countries voted against the abolition of death penalty and. 24 voted for abstinence of death penalty.

Progress toward the abolition of the death penalty is notably advanced throughout Europe. The death penalty is denounced by the "Council of Europe" and "the European Union", which see it as a kind of cruel and inhuman punishment and torture and violation of most basic right of life. Since 1998 Council of Europe have made abolishing of death penalty mandatory prerequisite for those counties who want to be its member.

According to the EU and the Council of Europe, death penalty is inhuman and cruel and that it has no part to play in the modernised legal systems and they strongly against the practise of capital punishment. They also believe that the practise of death penalty has to be eradicated in order "to contribute to the enhancement of human dignity and the progressive development of human rights"<sup>27</sup>. Complete eradication of capital punishment has become mandatory for membership if the Council of Europe.

In 2003 convention's "Protocol No.13", which abolishes the death penalty in all situations, went into effect was introduced by council of European. Except for Armenia, Azerbaijan, and Russia, all Council of Europe member nations have signed and ratified the convention. The protocol has been signed but not ratified by Armenia.

In 2019, Amnesty International observed 657 executions in 20 countries, which was 5% less than executions which took place in 2018. This was the lowest no of execution which took place in this decade by Amnesty International.

The debate on the abolition of capital punishment is no longer seen as merely a matter of state criminal justice policy and has obviously gone into the realm of human rights especially the

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<sup>27</sup> "Third World Congress Against the Death Penalty 5863/07 (Presse 4) (Paris, - 3 February 007), Available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/cfsp/960](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/cfsp/960) .; Supra Note 3 , 8".

right to live, The United Nations General Assembly, which represents all recognised states, has urged for the death penalty to be abolished, and human rights organisations agree that its application violates fundamental human rights norms.

## **Conclusion**

There has been an increase in the countries advocating the abolition of death penalty. The proponents of anti-capital punishment believe that killing a murderer is equivalent to killing an innocent person and violates the right to life. They also believe that keeping a murderer alive sanctifies the value of human life. On the other hand the proponents of capital punishment believes that keeping every murderer alive cheapens the human life as it deters murder and also threatens the right to life of other people, because society teaches that how bad an action is by punishments which metes out. After analyzing the ideas of both it can be said that both the ideologies are extreme because killing every criminal and killing no criminal is extreme. Because there is difference between the aim and the way in commission of a crime, committed by two people. There are few people whose mindset can never be reformed and preserving their right to life can threatens the right of life of other innocent people. It can be concluded that the principle of “the rarest of the rarest case” laid by the Indian Supreme Court draws a middle path between both the ideologies, but even convicts of heinous crimes should be given fair chance to prove their innocence and appeal for all remedies.

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