CHAPTER - VI

SYSTEM OF PUNISHMENT UNDER THE INDIAN PENAL CODE AND THE NEED FOR REFORM

The penal law of India comprises the provisions of the General law and the provisions of the Special laws. The general law consists of the provisions of the Indian Penal Code, and the special laws consist of the provisions which deal with certain specific subjects relating to persons, places or things. These two segments together constitute the penal law of our country. In order, therefore, to know what reforms are needed in the provisions of these two segments of penal law it is necessary to conduct a study separately of the provisions of each of these two segments and note the factors which justify a change in the provisions.

In order therefore to conduct an exhaustive study of the System of Punishments in India and to note the factors which cause a reform of its provisions necessary a study is taken up first of the provisions of the penal code and note the factors in relation to its provisions which justify a change as necessary.

Reform of law is considered necessary when the court or an appropriate authority expresses the view that the provision of law do not meet the new situation or the provision is inadequate to deal effectively with the situation existing in society or a new situation has arisen for which there is no law already in place.

In certain cases the justifying factors may arise from the foreign elements. For example, the debates in the UN bodies on subjects like the human rights, the Environment or international peace may compel the states to think of reform the law.

This chapter has the object of studying such of the provisions of the general law, namely, the Indian Penal Code, 1860 with reference to the factors outlined above because of which it is necessary to consider the reform of law necessary.

Before taking up the study of any particular provision of law which is hit by such situations the researcher would like to spell out the modes of punishment in the general law of crimes in respect of which controversies have arisen calling for a change in the law.

I. Punishments under the penal code:
Section 53 of the Indian Penal Code enumerates the different punishments which the courts may award to a person convicted for a crime:

(i) Death penalty
(ii) Imprisonment for life;
(iii) Imprisonment which is of either description: rigorous or simple;
(iv) Forfeiture of Property;
(v) Fine.

In respect of each of the above punishments the courts are supposed to follow the procedure prescribed by the relevant provisions of the substantive and the adjective laws. The interpretation of the courts in refusing to inflict the relevant punishment and the opinion expressed by any agency at the international level justify a change in the system of punishments.

THE CAPITAL PUNISHMENT WORLD SCENARIO

The history of capital punishment is as old as the judicial history of the world. Let’s have an overview of the capital punishment and its type in the international scenario from the ancient to modern times. Here are some of the forms of capital punishment.

a] Stoning :-

It was very common in ancient and medieval times. It was used to cause death in countries like Arabia and Iran. The person was half buried in the ground. The viewers used to throw stones at him/her until death occurred.
b) **Sawing:**

Capital punishment by sawing was prevalent in Rome and Morocco. The criminal was cut with the use of a saw.
c] Crushing :-

This is an ancient form of execution. It was used in India, Indonesia, Burma etc. The criminal were crushed with the use of elephants.
d]  Blowing from a gun :-

In Great Britain the criminals having engaged in the crimes like sedition were executed by blowing from a gun.
e] Capital punishment by hanging :-

This is the most common form of execution found in modern world. In India the hardened criminals inflicted with capital punishment are hanged as per the order of the court in certain jails.
### f) Capital punishment by other forms :-

A part from the above mentioned forms execution, the capital punishment can also be inflicted by other forms. Most of them are now not used in the modern world. They include dismemberment, slow slicing, decapitation, and also putting a number of persons in a poisonous gas chamber.

### II. CAPITAL PUNISHMENT UNDER THE PROVISIONS OF THE INDIAN PENAL CODE

Capital Punishment is the highest punishment provided in the Indian law.
Vide sections of Indian penal code this most severe punishment may be awarded for the following offences:-

1. **Attempt to topple the constitutionally and legally established government by armed rebellion**

   The penal code dealing with the above offence provides for the punishment of death. It says, those who attempt to topple the legally established government by using arms and ammunition or abets such activity shall get death in punishment or shall get incarceration for life and also will be awarded monetary fine.

2. **Supporting uprising, encouraging mutinous people including armed forces.**

   The penal code dealing with this offence provides that those who encourage uprising and instigate mutinous elements in the nation’s military including army navy and air force, if armed rebellion be found committed in consequence of that abetment, be punished with hanging till death or with incarceration for life or with three years in jail plus monetary fine.

1. **Presenting concocted vexatious proof with wicked object of falsely obtaining death sentence to an innocent.**

   Section 194 of the penal code dealing with this offence provides that those who concoct by perjury wrong proof with object of mischievously causing an innocent person to be charged such offences that the innocent will get death penalty such persons doing perjury will get ten years hard labour in jail or life in jail plus monetary fine. If the innocent person or persons are executed on the basis of false proof given by someone then that person or those persons shall be liable for capital punishment. Section 194 has been drafted in order to discourage people from telling falsehood to court in spite of knowing that due to such falsehood some innocent person is likely to be put to death. There must be fear in the minds of witnesses that they cannot speak anything false under oath.

   The practical experience is that government officers in order to save politicians of ruling parties give false evidence in court and also get away with it.

**Murder:**
The penal code provides the punishment for murder; it says, that those who cause murder of another shall be awarded death or incarceration for life and also monetary fine.

5. **Abetment of suicide or a minor or an insane person:**

The penal code dealing with this offence provides that if any encourages or creates circumstances that another embraces death by an act of suicide then such person who encourages and creates circumstances forcing some one to embrace death by suicide, shall be punished with death and incarceration in jail for ten years and also monetary fine.

6. **Punishment for murder of another person by a life convict**

Section 303 of the penal code dealing with the offence of murder by life convict, provides:

Those who are themselves are convicts under life imprisonment if they commit murder of someone then such convicts shall get only death and nothing less than death.

7. **Dacoity with murder:**

Indian penal code provides punishment of death for murdering the victim or victims while committing armed dacoity.

The section describes that if one of five dacoits or more of five dacoits of the gang of five or more kill one or more resisting persons while looting them then every one of the gang of dacoits shall be punished with death or life imprisonment or incarceration in jail with hard labour for a term up to ten years and a monetary fine additionally.

**CAPITAL PUNISHMENT IN INDIA:**

In addition, there are some other categories of cases of constructive liability to death penalty:
1. Where an act which constitutes an offence punishable with death is done by several persons in furtherance of common intention of all, each of such person is to be sentenced to death. (Sec. 34 IPC)
2. If five or more persons conjointly commit dacoity and any one of them commits murder in so committing the dacoity every one of those persons is punishable with death (Sec. 396 IPC).
3. In certain circumstances, abetment of offences punishable with death, is also punishable with death (Sec. 109 to 119 IPC).

In addition to the above, the Armed forces laws also have a provision for the sentence of capital punishment for certain offences under those laws after trial by a court-martial.

In case of above noted provisions of the I.P.C., tow options are available to the courts. Either to sentence the accused to death or to impose on him sentence of imprisonment for life.

However, there is one section in the I.P.C. (Sec. 303. I.P.C.) where the capital punishment is mandatory.

Constitutional validity of Capital Punishment

In Jagmohan Singh vs. Sate of U.P. it was argued that death penalty for murder was constitutionally invalid, as it violates, among other things fundamental rights guaranteed to the citizens of India. It was further contended that death penalty was volatile of the constitution right of


Equality guaranteed under article 14, as in two similar cases one may get death penalty and the other life imprisonment. Mr. R.K. Garg, Counsel for the appellant contended in this respect that the dissertation given to the judges to impose capital punishment or imprisonment for life is uncontrolled and unguided. The supreme court held that it does not find any merit in this contention. If the law has given to the judge a wide discretion in the matter of sentence to be exercised by him after balancing all the aggravating and mitigating circumstances, since facts and circumstances of one case can hardly be the same as the fact and circumstances of another. It has been pointed out by this court in Budhan Chowdhury vs. The state of Bihar that article 14 can hardly be invoked in matter of judicial discretion.

The American experience is also not different. The discretion given to the Jury by law in capital sentences was challenged before the supreme court of America in Mcgautha vs. California whether in the absence of any standards for deciding when the accused should be sentenced to death or to life imprisonment; the provision of law which gives the discretion to the jury was constitutional. The majority of the judges held that the infinite meaningless boiler patented or a statement of obvious that no jury would need... Some of the circumstances of aggravation and mitigation were mentioned in the Appendix to the code. But it was pointed out that the Draftsmen of the code did not restrict themselves to the items referred to in the Appendix but expressly stated
that besides the above circumstances the court was bound to take into consideration any other facts the court deems relevant. This only meant that any exhaustive enumeration of aggravating or mitigating circumstances is impossible. Finally the majority observed at page 726: “In light of account, knowledge, and the present limits of human information we find it quite unfeasible to declare that commit to the untrammelled carefulness of the jury the authority to articulate life or fatality in funds cases is unpleasant to everything in the constitution.

In India, the supreme court observed, this difficult responsibility is cast open magistrates and for additional than a century the judiciary are delivery out this task under the Indian penal code. The hopelessness of laying down principles is at the very core of the criminal law as administer in India, which invest the judges with a very wide discretion in the substance of falsification the degree of penalty. That discretion is liable to be correct by higher courts. Laying legal code would not serve up the reason. The work out of legal judgment on well accepted ethics is, in the last scrutiny, the safest achievable safeguard for the charge.

on the other hand, the supreme court in EdighAnamma vs. State of A.P. has known some channel lines to the courts to effect their legal judgment although decide connecting life detention and demise sentence as follows:

We think the penal bearing in this jurisprudential expedition points to life jail usually, as against decapitate, gas cavity, electric lead, firing force or humans cord. “Thou shall not kill” is a slow directive in

4. See Supra Note I.

law as in existence, address to citizens as well as to state, in end of war as in.

Let us develop the encouraging indication against death punishment under the Indian law at present. Where the killer is too young or too old, the mercy of penal justice helps him, where the illegal suffer form socio-economic, extrasensory or penal compulsion insufficient to attract a legal exemption or to demote the crime into a smaller one, legal commutation is probable. Other universal societal pressure, warrant legal notice, with an mitigating impact may in particular cases, provoke the smaller punishment. unexpected kind in the legal process such as the death verdict have hung over the head of the culprit agonizingly long, may presude the court to be empathetic. similarly if others concerned in the offence and similarly positioned have secret the advantage of life incarceration or if the wrongdoing is only productive being under section 302 read with S. 149, or again the accuse has acted rapidly under another’s commencement without premeditation, conceivably the court may kindly opt for life custody, even like where a just reason or real doubt of
wifely infidelity pressed the criminal into the cause or real doubt of wifely unfaithfulness pushed the illegal into the offence. On the other hand the arms used and the approach of their use, the dreadful kind of the crime and unfortunate, helpless State of the casualty and the like, strengthen the spirit of the law for a sterner judgment. We cannot perceptibly feed into a administrator PC all such situations since they are astrological imponderables in an deficient and surging civilization. A legal strategy on life or death cannot be left for adhoc mood or person predilection and so we have required to objectify to the extent likely abandoning retributive, callousness, amend the prevention creed and compliant the tendency alongside the tremendous and irreversible punishment of put out living.

The submission of Mr.Garg was further based on the provisions of article 19 of the constitution. The arguments advanced by Mr.Garg against death penalty per se were practically similar to those which were addressed death penalty per se were practically similar to those which were addressed to the supreme court of America in the case of Furman v. State of Georgia (Nos. 69-5003, 69-5030 and 69-5031 decided on June 29, 1972) and obtained the assent of two judges. Mr. Justice Brennan and Mr. Justice Marshall. In that case the judge were invite to reject funds chastisement on the earth that it dishonoured the Eighth adjustment which forbade cruel and unusual punishment, Bremann, J. accepted the authority of the confront in these words :

“If a penalty is strangely severe, if readily available is a physically influential probability that it is inflict arbitrarily, if it is considerably rejected by existing injustice and if close by is no motive to believe that it serve any legal principle more efficiently than some less severs penalty, then the due infliction of that penalty violate the order of the section that the condition may not cause ruthless and uncivilised punishment upon those convict of crimes.”

1. Controversy about the abolition of Death penalty

I. Historical Background to Movement for The abolition of Death penalty

(i) Movement at the national level :

The history of the movement for the abolition of Death penalty is discernible from the events of human history in which protection was sought to be given to the life of persons considering life to be a matter of right having considerable dignity. Such a right found its place first in the national laws such as the English Magna Carta, the French constitution and the American constitution. The Magna Carta of 1215 had provided that: “No freeman shall be taken or imprisoned, or be diseased of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law
of the land. The same principle found expression in 1791 in the US constitution which had provided that: ‘No person shall be. Deprived of life without due process of law.’ The French declaration of the freedoms of citizens 1798 provided that ‘the law should impose only such penalties as are absolutely and evidently necessary’. Related to the rule against unjust deprivation of life is the prohibition against awarding of capital punishment, i.e., the sentence of death, the practices of using inhuman treatments. As human rights can only attach to living human beings, the international instruments, on the analogy of national laws, have considered the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. These instruments have laid down the rule against unjust or unfair deprivation of human life and with equal emphasis laid down the rule against death penalty.

(ii) Movement at the international level:

The roots of the rule with regard to abolition of capital punishment at the international level therefore are the legal instruments on the right to life which have been adopted under the aegis of the united nations organization. The movement for international action against Death penalty dates back to 1948 when the UN general assembly adopted a declaration called the universal declaration of human rights, 1948 which was followed by a number of instruments on the subject of human rights and which dealt with the rights of the persons to protect the life and liberty of the individuals.

The universal declaration of human rights, 1948

The first international instrument to talk about human rights is the universal declaration of human rights, 1948. They are not privileges that may be granted by the governments for good behaviour and they may not be withdrawn for bad behaviour. In this declaration the right to life is proclaimed as a human right and the deprivation thereof by any unjust law or unjust action is also prohibited. The universal declaration recognizes each person’s right to life and categorically states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The international declaration of human right becomes necessary for the physical integrity of the human beings. The same principle was given a more precise formulation in the subsequent instruments, namely, the international covenant on civil and political rights, and the international covenant on economic, social and cultural, rights, 1966, a brief reference to which may be given as follows:
The international covenant on civil and political rights, 1966 was adopted at the same time as the international covenant on economic, social and cultural rights. It entered into force on 23rd March 1976. Article 6 dealing with the right to life says

“1. According to ICCPR article 1 every human being has the inherent right to life. This right of an individual needs to be protected by the law of such country where the person is born and resides. No one shall be arbitrarily deprived of his life.

1. The second article of the covenant urges the world community by treaty that countries should not inflict the capital punishment in exceptional circumstance.

2. When deprivation of life on a mass scale constitutes the crime of genocide, amounting to elimination of a single tribe or race no derogation can be allowed under any pretext of revolt, war or emergency. It is understood that nothing in this article shall authorize any state Party to the present covenant to derogate in any way from any obligation assumed under the provisions of the Convention to stop genocide and to punish those who are responsible for genocide.

4. Genocide the international covenant on Economic Social and cultural rights, 1966 also recognize that it is the right of the prisoner to seek pardon or commutation or remission of the sentence.

Concession of amnesty, pardon or commutation of a sentence The enforcement of a death sentence is stayed when amnesty, pardon or commutation has been requested until a ruling is made on the application; the commutation or pardon of the penalty imposed on a traitor leaves in place the accessory penalty of dismissal from the military, and the traitor may at no time rejoin the armed forces; stay of execution may also be ordered by the Commander-in-Chief of the armed forces (the President of the Republic).

The Second optional protocol to the international covenant on civil and political aiming at the abolition of death penalty was adopted by the general assembly of the united nations on 15th December, 1989. India is not a party to this etiquette.

All countries which are sovereign have their own laws and own schemes of punishment approved by legislative bodies. There cannot be international laws to be followed by member nations relating to internal security law and order and crime prevention. united nations financial
and Social Council in 1984, stated: "Death penalty may only be approved out pursuant to a final conclusion rendered by a capable court subsequent legal development which gives all probable safeguard to make sure a reasonable trial, at least equivalent to those controlled in article 14 of the international convention on civil and opinionated rights, together with the right of anybody supposed of or emotional with a crime for which resources sentence may be compulsory to enough legal support at all stages of the measures."

Yet some more instruments of much significance with regard to matters of death penalty are the following:

article 8 of which states that a prisoner must be given a right to seek pardon or commutation or remission. The treaty also says that the state shall not show any discrimination while granting pardon or remission or commutation between their Nationals and foreign Nationals.

International Obligation on the part of states to be transparent in matters of awarding capital punishment; In 1998 the UN commission on human rights called upon all states that retained the death penalty, "to make available to the public information with regard to the imposition of the death penalty". A similar resolution was also passed in 2003. The UN Economic and Social Council (ECOSOC) too, in 1989, urged upon member states to be transparent in the matter of letting world know how many convicts were given death penalty and how many were actually executed. It is therefore obligatory for member states to publish, categories of offences for which the death penalty is authorized, and actual figure of convicts executed.

Movement at the Regional level

The trend set by the united nations was followed by the Regional organizations through their instruments, the important among them were the following:-

The American declaration of the rights and duties of Man, 1948, adopted the following provision:

“Every human being has the right to life....”

This declaration was followed by a Convention, which provided as follows:-

“4 (1) each and every individual has the right to dignity and respect as human being. Everyone’s life and dignity has to be protected legally. Except by due process of law nobody’s life can be taken or dignity tarnished.
(1) In those nations where capital punishment has not been abolished in those nations death can be given sparingly only in cases of cruelest murders committed with barbaric insensitiveness.

(2) In nations which already abolished death sentence in those nations death sentence shall not be reintroduced.

(3) No nation shall keep on its statute book death sentence for political offences.

(5) No nation shall execute minors below eighteen years and old people above seventy years of age. In case of those who were minors at the time committing offence shall not be punished with death if becoming major during trial. Pregnant women shall be saved from gallows

All persons who have received capital sentence must have right to mercy and they can file mercy petition for reduction in the sentence. So long as the mercy petition is kept pending and so long as it remains under consideration death of such petitioner shall be kept in abeyance.

The next instrument at the regional level is the Convention adopted by the Council of Europe for the protection of human rights and Fundamental Freedoms, 1950, which stated as follows:

“2(1) law shall protect life of everyone. life of nobody can be taken except by a lawful conviction and award of death by a competent court.

(2) No enforcement officer shall use force greater than that required to keep someone under control so as to cause injury leading to death of a person. In order to effect a lawful arrest or to prevent the escape of a person lawfully detained bare minimum force must be used.

The African Charter on human and People’s rights, 1981 provided as follows:-

human being have inherent dignity. All human beings have right to life and right to be treated in a dignified manner. Respect as human being and protection as human being are the twin rights which every person on the earth possess and these twin rights must be protected in all nations.
The human rights organizations like the Amnesty international, the human rights Watch etc. are the organizations which espouse the cause of abolishing the Death penalty.

II. The Movement for Moratorium on Death penalty

While the above description of movements was with regard to the instruments adopted by the united nations up to the end of 1990's, The steps taken from then on showed a new strategy to secure the abolition of death penalty and this was through the strategy of asking the nations to put a Moratorium on the execution of Death penalty. The following are details about the concept of Moratorium on Death penalty.

An organization was founded in Rome in 1993 to oppose capital punishment and torturous treatment in police custody generally given by police to elicit and obtain crime related information. Torture is also used as a weapon by police to obtain admission based upon which a confession report is generally prepared.

This movement reached culmination and made it known throughout the world since some countries in Europe and latin America proposing to general assembly of united nations that a moratorium be put on capital punishment until the issue is resolved by consensus among nations. There has been a lobby of reformists doing very hard work to get capital punishment abolished or at least put a moratorium on death of convicts for some years. The abolitionists have been partly successful. Some countries like India and United states did not agree to abolish death sentence since these countries think that abolition of death will take away the lid of deterrence and there will be a spate of murders to avenge murders, there will be political murders and there will be rape related and robbery related murders.

The terrorists and insurgents will also become more daredevil and their activities will be increased. India told united nations categorically though her representative that Indian supreme court has already devised a doctrine called rarest of the rare murder in 1980. Now in India death is awarded but in rarest of the rare murders and attacks involving utmost cruelty.

The abridged text of the general assembly resolution bringing moratorium on death sentence,

The united nations convention on human rights in 2005 demanded from all member nations the approval to bring a moratorium on executions of convicts who have been condemned
to death by courts and their mercy petitions rejected. oicyts death wmebr nations universal declaration of human rights, the I.C.C.P.R. and the convention on the rights of the child.

In fact though there is pressure from the abolitionists lobby to abolish capital punishment throughout the world, it would not accomplish its goal since there are 49 member countries of united nations which are either directly operating Sharia law or inclined to koranic laws in matters of murders rapes and balsphmies. These nations strictly implement death sentences. The pressure of any lobby won’t work on Islamic nations. Besides Islamic nations there are other nations in which heterogeneous races and cultures have been flourishing for centuries. In these nations deterrence is the only penological theory that works in these countries. The reformist law is utopian. Riformist judicial policy and criminal justice policy is not practical. In practice all courts while awarding punishments in their judgments clearly write that they ar punishing and that leniency will not be shown. In country like India where there are large number of cases of bride burning, honor killing and rape related murders, it is futile to think of any reformation and correction in the behaviour of murderers. The rarest of the rare doctrine devised by suprem court of India has been a wisest thing. India is maintaining a modern outlook as well as India is hard on those who do murders with well chalked out plan by conspiring with many stakeholders.

The argument forwarded by the reformist lobby is that by executing a convict condemned to death the community is undermining human dignity. This argument is a hollow argument. The murderers undermine human dignity first. They are blinded by lust, by greed, by revenge and by false honour. When murderers do not show signs of culture, feelings of kindness and become insensitive while killing women, old people, children why should Italy of Chile get so emotional about barbaric criminals on death row. There are land grabbing gangs, drug selling gangs, human trafficking gangs, fanatic paranoid freaks and myriad mentally sick degraded human beings who would turn this world in to a hell if death penalty is abolished.

The rhetoric of human dignity and culture is condemned by Islamic states. According to Islamic states the retribution is the only theory od penology which is valid logical and approved by the almighty God. Islamic states vociferously bounce back “No arguments against the will of God “ Islamic countries don’t fear or feel bad if they are assailed as brabric nations.

Chile is in forefront in calling for abolition of death penalty from the podium of united nations and till the is target is achieved Chile is asking nations to bring moratorium on executions death sentences. The recent history of Chile which is one of the insurgency ridden countries situated in Latin America. Is chile doing the job of abolishing death sentence to divert attention of its own countrymen? There is ample scope to say yes it is a fact. Chile is facing an insurgency movement called MIR.
This organization is Marxist organization. All other nations in Latin America have some kind of outfit within their own territories. In 2008 Chile was the main force behind abolitionists.

Chile and Italy are forcing nations through their lobby in united nations to abolish death penalty. The moral force behind this movement is too week since the criminal gangs and mafias working in almost all fields of crime from drugs and narcotics to illegal arms sale to insurgents in various countries to trafficking in women and girls in flesh trade internationally from Ukraine to Thailand and from Philipines to Arab Emirtaes. and illegal bonded worker supplied throughout the world. Wherefrom Taleban and Laskar e-Tayyaba are getting sophisticated weapons? Wherefrom truck bombers, suicide bombers get their kits? These are supplied by gangs which are ruthless and commit murders of slave workers and policemen every hour spread across several continents. It is an intrigue why these two nations Italy and Chile are demanding abolition of capital punishment.

Why Chile and Italy are shutting eyes on international gangs and their terrible operations is a mystery yet another mystery is why these nations are using platform of united nations which is itself becoming a week international body unable to function effectively. The countries like Syria and Egypt were torn by civil war and millions of children and women died and became homeless. united nations saw to it as a bystander just helplessly. When million deaths of children amend women could not be avoided and damage could not be stopped, then why the small issues like death sentences are blown out of proportion is simply not comprehensible to any political analyst or any sociologist.

The absurdity of abolitionist lobby has been exposed and there is no need to further the counter argument. The main theme of the present research is reformation in punishments. If the abolition of capital punishment is tested on the touch stone of penology then abolitionists fail miserably. The incapacitation theory of penology says that the criminal has to be incapacitated to commit more crimes or repeat the same crime. In the medieval age the kings used to cut the limbs of the criminal and incapacitate him of doing any harm to others. This was too barbaric. In modern times we put these criminals in to prisons and thereby incapacitate them to move about freely and commit crimes. In incapacitating by incarceration is a costly affair. It costs the tax payer to shut the criminal in a lodge, guard him 24x7 and feed him, clothe him as per international prison commission’s norms. Adam Smith had said in his famous speech in British parliament at the end of 19th century that capital punishment is far superior to life imprisonment. Instead of imprisoning and giving pain to the convict on everyday basis the state must finish the pain in just a few minutes by executing the convict and simultaneously save the taxpayer from immense expenditure of maintaining the convict in prison for 10-20 years.
Another forceful argument is put forth by the abolitionist lobby before the United Nations is that if an innocent is executed can we bring him back to life? The loss would be permanent and miscarriage of justice would be irreversible.

The counter argument for the above argument is that in Ajmal Kasab’s case one hour long video tape shot by new agencies was available to the court. Kasab was clearly seen holding AK47 assault rifle and shooting indiscriminately. In spite of such indelible proof the court procedure took several years to hang him just because Kasab was given full opportunity to defend himself. Even the country of his origin Pakistan disowned him saying that he is not our citizen. Then government of Maharashtra gave him the legal aid to defend himself. There can be no miscarriage in such cases. The argument of miscarriage of justice by chance is not tenable.

Another argument put forth by the abolitionists is that human rights law has been continuously being refined and has been asking us to abolish death. The counter argument of the receptionist lobby of those nations which wish to retain death sentence is their repertoire is that human rights claimants must themselves be the people who respect human rights. If criminals who violate human rights every now and then by assaulting people brutally killing them mercilessly cutting throats of children for ransom; if such criminals ask for human right umbrella then the logic and reason ends there.

Yet another arguments pushed ahead is that number of offences for which death penalty has been assigned as punishment must be reduced. This demand too is absurd. Take the case of acid attack on a beautiful career oriented girl disfiguring her for life. It is her virtual death. A girl without a face is a living corpse. Even the most respected Verma committee did not give death to acid attacker. In acid attack the death is the only deterrent. The counter argument from the retentions lobby is that the list of offences punishable by death must be enhanced instead of going in the direction of reduction of such offences. There are nine offences in Indian penal code which proclaim death sentence and three more anti terror laws are there which proclaim death for conviction under them. If as a nation the polity is to survive then leniency in treason, waging war, terrorism, insurgency must be punished with harshness.

If India is to wither as a nation and drift somewhere between freedom and subjugation then such thoughts as giving leniency to criminals will proliferate. Even corruption should be a crime that should attract death punishment. India is one of the most corrupt countries in the world only a few ranks away from fully corrupt. If INR 10 thousand crores, INR twenty thousand crores such huge scams are happening and going unpunished then India will not remain a strong nation. Death penalty should be attached to corruption beyond certain amount.
Death sentence has been there on statute books for two thousand years. The only redemption about death sentence can be in the style of giving death and not commuting death sentence. The humane method of finishing life of the criminal must be adopted as suggested by Dr Justice V.S.Malimath committee. The method is giving lethal injection to the convict in a laboratory and bringing his end peacefully instead of adopting a barbaric method of hanging by neck till death.

ICCPR 1966 and UDHR are the conventions which are most ineffective in the sense that they have no monitoring system and no offices connected to social workers in remote places where maximum violations of treaties occur on every day basis. The voice of people is being stopped by gagging them in matters of expression of opinion. The social workers are often thrown in to police lock ups on the grounds of their connection with left wing extremists to transnational terrorists. Police can prove and disproves any thing with the help of tutored stock witnesses and creating fake evidences. Instead of abolishing death penalty the ICCPR and UDHR offices must concentrate on violation of human rights of the innocents and not of criminals convicted by courts after several chances of defending and several forums of appeal provided by the judicial system.

Wage theft is one such issue. Millions of people in India are given wages less than minimum wage. Thus duping the working class of lacks of cores of rupees. Another area of great human rights violation is that prohibitory orders issued throughout the year gagging the entire population of 600 districts in India of the liberty granted by article 19 of the constitution of India. People cannot raise voice against the government due to suppression of right under article 19. Protest and demonstration has become a crime in this country punishable by imprisonment. There many things which UDHR can do on priority basis leaving aside the absurd job of abolishing death sentence of those who have been murdering people any where mercilessly without regard to the age and gender of victims. It was a shame on legal profession when Collin Gonsalves filed an emergency petition in supreme court to save the watchman from noose who had killed a fourteen year school girl by banging her head on the wall after he raped her. In latest case of killing of another girl by watchman sajjad in wadala Mumbai has been published by a TV channel. The abolitionists and their supporters are having kind of paranoia. The researcher herself discussed with women about giving amnesty to criminals who rape and kill women to destroy evidence when Nirbhaya case was much in debate. The women were shocked the moment they heard the proposal.

All the rapists in Shakti mill compound rape of a photo journalist in Mumbai. Recently the verdict has come and the sessions court gave death to all. It is interesting to watch how the case meanders in high court and supreme court.
Abolitionists have been blinded by their love for convict criminals. They must have watched on television how the college and university students collected in huge mobs at Jantar Mantar in Delhi carried candles in their hands wept for Nirbhaya and demanded death for rapists whether the raped girl was killed or abandoned. If such is the sentiment of thousands of women in the capital region Delhi, what must be the feeling in entire nation about the Nirbhaya episode. The level of anger was such that each and every woman wanted death for the gang members who raped the girl. Now the name has been published. Her name was Jyoti Singh. A galantry prize has been instituted by a multinational company in her name.

Public opinion and punishment

The public opinion and public outcry are both important to the government in deciding the legal and judicial policy. If the government had shown the oppressive policy against the students and shown less care to their sentiments then government would lose popularity and must be out of power in the next poll. We have seen how the National capital region Delhi people rejected the ruling party twice. Firstly in Assembly elections and then parliamentary election. Public opinion is the factor that must go a long way in deciding whether capital punishment should be retained or abolished.

In Islamic countries the people want Islamic laws being tied with a religion that wants the government run on religious lines. Once the Islamic laws and Islamic socio-political policies have been accepted then Sharia law is the law that will take over the procedural aspect and penological aspect. Retribution on equal pain level and quantum of loss is the penal policy in Sharia law. The abolitionists are frustrated by Sharia law countries as these countries are in no way going to abolish death sentence. The tragedy is there is death for women even for less serious crime of adultery. (Zina) The ambit of interpretation is such that misdemeanour can easily be turned into felony. Summary case can easily become indictable case non cognizable can take the form of cognizable..

Ajmal Kasab, the only surviving terrorist of 26/11 attack on Mumbai, was hanged on 21 November 2012. Afzal Guru terrorist from Kashmir who was involved in armed attack of December 2001 on India’s parliament was hanged on 9th February 2013.

There were 12 mercy petitions under consideration under article 72 of the constitution of India before the President of India Pranab Mukherjee after Ajmal Kasb’s mercy petition was rejected.
Most death sentences given in India are based on circumstantial evidence alone. When murders take place in darkness and at lonely places the eye witnesses do not exist. Sanjay Chopra and Geetha Chopra, Children of Naval commander were given lift in the car by Criminals Ranga and Billa. They took the car to lonely end of Buddha Jayanti Park in New Delhi and waited till midnight. They raped the minor girl Geetha and then killed both the captive children. In this case the possibility of existence of eye witness ia totally ruled out. The trial judge very intelligently sewed pieces of circumstantial evidence to make a clear cut indictment and gave hanging to both the criminals.

In the absence of forensic facilities, the testimony of witnesses is crucial, but in India tutored witnesses are easily available for cash. For this reason there have not been much death sentences given by courts, even in broad day light murders committed on busy roads of the towns. There have been large number of acquittals in the gruesome murders cases.

Ever since India became independent there has been a controversy with regard to the abolition of capital punishment. The agencies which call for the abolition of death penalty are from the United Nations. The human rights Group assert the view that the capital punishment is unreasonable, inhuman and degrading; hence it should be abolished. Within the country there are two views one pleading for its abolition and the other pleading for its retention in the statute book.

The government view on the subject is that it upholds the rule of law including the protection of human rights and fundamental freedoms but is not in a position to abolish the death penalty in view of the national constraints. In and outside the country the view expressed by the representatives of the government is that the death penalty has been retained in the country’s laws to serve the purposes of criminal and penal codes, and as a deterrent to criminals that threatened civilians and state security.

The answer of the government agencies to this problem is capital punishment had been meted out only in cases where human life had been taken, and where the security of the state was at risk. In any case, there was always resort to the supreme court. The death penalty had not been carried out in recent year just on the judgment and order of a trial court; there is a long drawn procedure furnishing necessary safeguards to the convict and only after the matter has been considered at all levels a decision is taken to execute a person.

Apart from the judicial safeguards there is also the rule of Executive looking into the matter by way of appeal or a petition for mercy when the President looks into the matter and then a decision is taken whether to execute a person or not.
1. The controversy about treating Homosexuality as an offence

This is a controversy which is because of certain developments at the national and international levels. The developments at the level of the outside world were because of the concept of Gay Marriage and Gay rights which in certain countries had received recognition and which had become somewhat popular in India too. The supreme court judgment against the trend raised a serious controversy about homosexuality. The view of the supreme court was based on the letter of the law, as found in Section 377 of the Indian Penal Code which considered any kind of relationship outside the wedlock as illegal, more so in the case of persons belonging to the same sex. The facts of the case and the nature of the controversy that erupted in the country may be outlined as follows:-

In a jolt to lesbian, gay, bisexual and transgender, the Supreme Court Wednesday held that consensual sex between adults of the same sexual grouping is an wrongdoing. Location sideways the Delhi highcourt verdict of 2009, the apex court bench of Justice G.S. Singhvi and Justice S.J. Mukhopadhayay said that there was no legitimate room for change in Section 377 of the Indian penal code. Section 377 of IPC holds that sexual association alongside the order of the natural history is an wrongdoing. The Delhi highcourt by its, now set aside, decision had decriminalised the sexual association flanked by adults of the similar sexual category under segment 377.

restore back Section 377 beneath the decree book, the court referring to the Attorney all-purpose said that rule could, if it so desired, amend the law. The apex court judgment upholding Section 377 came 21 months after it had retained its decision in March 2012.

2. human rights law applicable to the System of Prosecution

A number of provisions of the international human rights law are relevant to the organization and functioning of the institution of Prosecution which is related to the general law of criminal procedure. To name a few, the following provisions of the universal declaration of human rights, 1948 are the first few provisions relevant to the prosecuting agencies in the system of Criminal Justice:-

article 2: "all persons are having entitlement to all the rights and liberties described in universal declaration, without discrimination of any sort just as birth genetic stock, complexion of the skin, gender, dialect, faith, , national or social origin wealth etc..
article 3: Each citizen and resident has the right to live, enjoy freedom and protection physical existence.

article 4: no person must be compelled to live in subjugation or servitude. Buying and selling of human beings will be an offence.

All citizens and residents are equal before law and have entitlement without any differentiation and equally protected by law.

article 8: Each and every person shall have the right to justice by the competent court for acts of violation of fundamental rights guaranteed to him by the constitution.

article 11: No person shall be indicted of any crime in respect of committing any act or omitting any act which was not a crime. At the time of committing it.

In India the following Provisions of Part III of the constitution dealing with Fundamental rights of the individuals correspond to the Provisions of the human rights law mentioned above.

article 14: The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

article 15: The state shall not discriminate against any person on the bases of faith, genetic origin gender, place of birth.

article 20: (1) persons shall not be indicted of any crime except for violation of law that exists at the time of happening of crime, nor be given a punishment greater than that which might have been existed at the time of the happening of the that crime.

(2) No person accused of any offence shall be compelled to be a witness against himself.

article 21: No person's life can be taken or personal liberty snatched except according to procedure established by law.

Apart from the above Provisions which are a limitation on the authority of the Prosecuting Agencies there are also certain prescriptions which the international organizations have laid down with regard to the System of conducting the work of Prosecution. The United Nations has formulated a model code. The term 'law enforcement officers' includes the Prosecution agencies. The following Provisions of the code of Conduct formulated by the United Nations are relevant to
the powers and functions of the Public Prosecutors. They have to keep these principles; in mind while performing their duties:

"article 1: Police officers shall always do their duty cast upon them by law, by prosecuting all persons alike without discrimination for breach of law showing integrity and responsibility of high order demanded by their profession.

article 2: while performing duty, a police officer shall respect and protect human dignity of others and maintain and uphold the human rights of persons they deal with.

article 3: Police officials must not use greater force than required for controlling people they are supposed to control.

article 7: The Police Officials shall not indulge in any act of bribery They must oppose corruption at all levels.

article 8: Police officials shall always respect and obey rules and the code They must prevent violation of law to the best of their capability.

Police officials who have reason to believe that a crime has taken place or is about to take place must report the matter to the offers to whom they are subordinate where imperative to do so.