CHAPTER - V
5.1 INTRODUCTION

Certain primary public rights, when violated are called crimes. The violation of such rights gives rise to certain substitute public right in the form of punishment. The existence of punishment to the criminals is since old days. It appears that various provisions of punishment were made to prevent crimes in the society. The criminal law was also introduced and enforced at a later stage, to establish substantive norms of behavior, standard clearer specific and detailed than the norms and any other category of social control. The violation of such norms i.e. committing crime had always been viewed seriously by the society and the reaction to different stage of human civilization had been in existence in some of aggregative form. The attitude of society towards criminals reflects in the views of the famous criminologists.

For instance, Elmer Hurbert Johnson said that Criminals described or pictured as a hunted criminal or a brutal monster might be the scapegoat. Therefore, inflection of server punishment is justified. Another scholar 'Kant' said that. It would have destroyed the entire public better than that man should die. If legal justice perishes then it is no longer worthwhile for a to remain alive on the earth.

5.2 GLOBAL APPROACH WORLD WIDE

The use of the death penalty is worldwide. Since the Second World War, till the end of 2005 the number was 122 in 1977, 16 countries, were slaves. The punishment has four aspects as;

1) Cancellation of all crimes

2) Cancellation of all crimes, except in special circumstances

3) Used for at least 10 years, though, keeps
4) Retains the death penalty

Discussing it is the details, in 88 countries for all crimes except in special circumstances, 11 have abolished, and 30 other countries have used it for at least 10 years. A total of 68 countries retain it.

Age (Under 18), the youngest is used in the death penalty. People's Republic of China in 2004 performed in the 3400 execution, in the square where they were crushed under tanks.

There is increase of more than 90% of global execution. In China, some prisoners were sentenced to death by firing squad, in future all executions will be by lethal injection. There were 159 executions in Iran in 2004, and in the United States (in 2005), 60 were killed, 370 death sentences in Texas were still between 1976 and 2006. The states that allow the death penalty executions than any other American states, The Singapore percentage becomes higher in average, and the hangings of 70 in a population of about 4 millions.

In future number execution may grow in of capital punishment, however, because it is often marked by the population growth, which has restrained the rise in retentionist countries. In Japan, Korea, Taiwan, and America death penalty has only been fully developed in democratic countries, death penalty is a tool of political repression that often works on a grand scale and the death penalty is in the poor, undemocratic and authoritarian states. In 1980s, the democratization of Latin America, had a record of slave states. Soon neighbours in Central and Western Europe aspired to follow in Eastern Europe following the fall of communism.

The European country to Belarus. Belarus where the reason the European Council had backed away. In Asia, on the other hand, rapid industrialization, democratization and democratic and / or developed countries are increasing in favour of abolition.

In some countries, the death penalty repeats the exercise for long periods of time in suspended death sentence. In particular, the death penalty has been suspended in 1973 and then again in 1977,. Philippines in 1987, after the removal of the death penalty was
reintroduced in 1993, but back in India in 2006. The Capital penalty abolished is yet to be.

The S. C. in death penalty cases are "the rarest of the rare". It is used in Capital offenses, murder, gang robbery, complicity to commit suicide as a child or insane person, to wage war against the ruled in 1983. The Laws against people convicted of terrorist activities recently, the Karnataka State, India's Supreme Court Swami Sharaddananda V - a member of the armed forces, national, and complicity in the rebellion in recent years under the new anti-death penalty is imposed. Bachan Singh judgment is of the prescribed test case "the rarest of the rare" Machchi Singh holds that in the case of turquoise. After the verdict rarest of the rare attribute, but only measured in terms of the amount.

Between 1975 and 1991, there was of killing 40 people. On April 27, 1995 India hanged Auto Shankar Salem. That is only one execution since 1995, then the number of people sentenced to death but the civil rights of the People's Union for 1,422 executions from 1953 until 1963, were postponed 16 Indian states think of it. In the Indian report, the 1967 Law Commission's Link 34 information, quotes, and advises to the Independence of the death toll exceeds 4,300. About 29 mercy petitions are still 1992, when (14 deaths caused by the bombing) there were and death penalty and Rajiv Gandhi, the Khalistan Liberation Force terrorist Davinder Singh Bhullar three killed there are three outstanding individuals and 31 people injured and killed in the forest Brigand Veerappan's four associates cases - Simon, Gnanprakasham, Meesekar Madaiah and Bilvenderan, - in 1993 the murder of 21 policemen; Mangalore, killing four members of his family in 1994. At Amritsar in 1991, Praveen Kumar was sentenced to death for the murder of 17 people in a village, Gurdev Singh, Satnam Singh, paragraph Singh, Sarabjit Singh and others

There are also many lower courts that convicted the death penalty, India is likely to be commuted to life imprisonment, rather than to death penalty.

The judges in the lower courts use the death penalty that appears to be getting increasingly hesitant for them. For example, in several cases pending before the respective 2007 - etc. meditated cold-blooded murder, rape and murder of minors during the riot, terrorist bombings, received the death penalties. But activists, a reveal what causes the lack of sentencing guidelines' rarest of the rare’ though some less brutal
murders, possibly due to the lower court awarded death penalty defense lawyers are paid by the poor economic backwardness.

The death penalty is carried out by hanging. This time it was a challenge after 1983, the Supreme Court ruled that torture, barbarity, humiliation or degradation is not the hanging.

Mohammed Afzal (Afzal Guru) of the 2001 Indian Parliament attack was convicted and sentenced to death in connection with the plot. India's Supreme Court ruling that attack, the sentence was upheld by the "great conscience of society and laughed." Afzal on October 20, 2006 is scheduled to be executed on, but was not convicted. On May 6 26/11 terrorist attack carried out by the Mumbai special court hearing the case, Ajmal Amir Kasab, lone surviving terrorist has been sentenced to death. Kasab Judge ML Tahiliyani India imposed. Kasab the 52nd person on death row has killed the death penalty.


5.3 PUBLIC EXECUTION IN IRAN

Although the abolition of the slave states, and then bring it back in some countries, the debate in some cases, a knee-jerk reaction is revived by particularly brutal murders. Such as terrorist attacks, murders, serious, violent crimes, spikes, sparks,etc.

Gullup international survey in 2000 of a "worldwide support", Support Numbers break a resistance against. American, studies show that the longer a majority in favor of the death penalty. In July 2006, an ABC News survey of 2000 about half of the American and other election consistent with the death penalty in favor of the 65 per cent, found, however, of opinion without parole, the death penalty and life imprisonment to choose between listening to the public during the more divided show, May 2006 survey, the general death penalty often 60 percent believe it is not imposed enough or in the top 10
most used about six. Dealing with juvenile offenders in the death penalty. when I say they do not believe.

Found that a recent opinion poll on the website of Al Jazeera 39.3% vs. 52.7% and 8% undecided, being banned, and were banned in favor of the death penalty.

5.4 INTERNATIONAL ORGANIZATION

A number of regional conferences, think over the particular, the sixth protocol of the European Convention. However, the most serious crime of international agreements bans the death penalty. Other states canceled while legal under all circumstances to practice peace and during the death penalty, protocol number 13 has not been approved yet, in war or imminent threat at the time of execution, using the refrain from any international obligation. Turkey's treatment has its legal system reformed. The last execution in order to remove the death penalty was in Turkey in the context of changes in its law for the death penalty in August 2002 and May 2004, The law was repealed in 1984, Turkey banned the practice of capital punishment. As the result, in February 2006 Human Rights, the European Convention Protocol No.13 Postal approval, Europe's sixth protocol approved by the state used for a suspension on the center practice of the capital punishment -free continent (in all states but Russia, the European Council members, Belarus is the only exception, the European Human Rights agreement). Abolished it or lose their observer statue death penalty in practice, observer states, (ie, the United States and Japan), the European Council influenced these countries for the abolition of death penalty.

5.5 DEATH PENALTY (JUVENILE)

The young people in 1990 China, DR, is still officially in effect support from countries that have executed juvenile offenders, the young were convicted of their crimes, in many countries, as recorded 47 verified executions. 18 in China., Supreme Court of the Confederate statues. Oklahoma (1988), Thompson canceled the death penalty. IN 2005 SIMMONS 1642 In the beginning, British America / the young execution schedule US1642 / 1959] 2002, in the United Sates Supreme Court thought over the criminals mental retardation as in the case of persons of execution to be declared as unconstitutional.
The world prohibits the death penalty for juveniles and to all districts except USA and Somalia the contract is signed United Nations Conference on Child Rights. [Ehpen UNICEF, children's questions Rights Conference: "The child rights convention in the history of renowned contract approval. Somalia conference to continue the present fails, the United States to confirm its intention to identify but there is more to do so"] the capital punishment to the juvenile offenders Commission maintains that it has become customary international law.

In 1973 there was more common practice of young people (under the age of 18 when their crime figures) running, 17 juvenile offenders have been sentenced to death in 2000 for the execution of four individuals. Many of these young people were terrible.
5.6 THE CAPITAL PUNISHMENT IN SPECIFIC COUNTRIES

The use of the judicial system, Usually the perpetrator's punishment for racial abuse, corporal punishment, shunning, extradite and implementation is included in the compensation. However, in a small community, a crime is always in of passion. Crimes were rare. Moreover, a member of the majority community should not hesitate to inflict death upon them. For this reason, the execution was very rare almost an expulsion.

As the result, out of the attack on the community of users is considered minor crimes, including theft are punished severely. Methods vary from slavery beating executions. However, a formal apology, compensation or blood feuds and neighboring tribes or communities in response to crime is not always accepted.

Absence - arbitration between families or tribes fails or when a blood feud or revenge is not a jury system. The formula is used in state or religion, a mediation system. It may occur It's a crime, land disputes or a code of honor.

The referee made a religious context and the compensation system was included in peaceful solution. Compensation includes a replacement policy based on the debt exchange. Heuristic human blood, or an opportunity for the execution of a person who transfer for land or blood money or in case not to allow the animal blood. Aboriginal persons provided for the execution of the system, in terms of individuals, because it should be the original perpetrator of the crime. Viking things like blood feuds and meetings, organized.[F.N. Articles from the Connecticut cournat (December 1,1803)]. However it has also been blamed at present.

In some parts of the world, ancient republics, monarchies or tribal oligarchies emerged in the form of countries. These countries are often general, language, religion or united. As a result, royalty, nobility, various public and slavery emerged in the various classes. Accordingly, instead of tribal arbitration systems "tribes" than the other "classes" a unified system of justice was formalized in the relationship be as clean as water.

In the ancient history of India in the then constitution Manusmriti the punishment for the same crime differs from varnas castes such as if a Shudra is ordered to be killed a
Vaishya is enormously fined, a kshatriya has to surrender a piece of land but a Brahmin has only to perform purification there are strange types of punishments.

For example, an eccentric 621 BC, the first of its legal system Writing comes from ancient Greece: the death penalty crimes, were used widely. The law is a terrible word. Similarly, the death penalty, for 222 criminals for crimes such as stealing an animal or cutting of trees.

The Legal scholar of the 12th century AD. MOSES MAIMONIDES, says; "the good and the death of a single innocent than the man. Thousand guilty persons acquitted satisfactory wrote," He is a decrease of a slippery slope leading up specifically for anything less than the criminal offense of directing argued that the burden of proof, until his anxiety Law popular esteem appropriate to '. According to Judge Caprice "simply criminals, he looked for very ominous omission errors.

The basic idea is about the concept of nation-state citizenship. This is an appearance of justice is increasingly found in Europe, where it will related to the right to equality and universality,. Prevention of minor crimes such as theft death penalty becomes an increasingly unnecessary deterrent. Moreover, in districts juries tended to non-release, as in Britain, law enforcement officials were aware of it - the risk of violent criminals rather than a belief that can lead to death, the 20th century. There - was the mass acre of war between nations.

The execution was a big. Also, modern military organizations kill for of maintaining military discipline, and work execution. Leave, desertion, insubordination, looting the past, cowardice, absence, are punishable for death sentence. The gun came into general use for the first execution by firing squad as a method regularly. The States have a powerful tool of political repression, death penalty work. In response to such excessive punishment emphasis is on civil society organizations.

5.7 MOVEMENT "HUMANE" CAPITAL PUNISHMENT

In early New England, the public executions, Gospel message for politicians who asked the large crowd attending the event was a very solemn and sorrowful. Connecticut on December 1, 1803, says the record of a public execution. "In other countries the
opportunity to know him as a caring, so, in a very orderly and solemn manner, run through the entire display assembly as well as the size of the decent and solemn assembly, that can not be wont tell you the New England's collected.¹

The world's most trends long for low pain or 'humane' execution has to go. The coat of arms of the early 19th century Britain banned drawing and quartering France had developed the guillotine for this reason. This kind leads to suffocation and death, but it was subject to dislocate the neck "hanging" back and cut off the stem of long-distance. It introduced more humane alternative to the electric chair and German gas chamber, and it has been criticized as being too painful turn lethal injections, are back. However, although the latter rarely work, in some countries, hanging methods, beheading by sword are adopted.

Nitrogen asphyxiation for death penalty 2007 was not used in any country.

5.8 CAN CAPITAL PUNISHMENT EVER BE "HUMANE"?

There is a general belief that any type of execution is fast and free from pain among the types of execution there is always a question regarding modern civilized society. Is it proper to give the most dangerous criminal a complete painful death?. The problem is, should the physical suffering be included in the part of punishment. Any method used in punishment has a deterrent value when the death is caused slowly. The best method will be that of lethal injection which is the most human. However this process happens slowly at very slow when the intra virus injection are given. It first makes unconscious but requires heavily ten minutes for death in this type of punishment the prisoner is required to spend almost half and hours for the preparation death punishment. Only after ten seconds after the injection in vein he turns unconscious.

Very recently before a week, some reporters were beheaded and in reaction, the wounds were cut and salt was added and then trampled. It also happens in 2014.

Should quick death be the only good method. It has more technical problem that all other methods are good for ages between seventy to ninety years this method. The gas chamber happens to be very expensive and needs large problem of agony and the death is

¹ [ F.N. The execution of Caleb adams;2003]
very slow and cruel. Sometimes it might create problems for the staff present there at the time of punishment. Hanging is another instant punishment, the preparation of the prisoner for the punishment is also very simple. More than thousand of criminals had been hanged in the last two centuries but the modern society thinks about hanging as one of the cruelest types in the punishment in electrocution, the head shocked and cause physical pains the criminals preparation is very long.

1) The best method for the worst and the dangerous killer is slow death along with painful suffering

2) Death penalty should be abandoned and other types such as life imprisonment be adopted

3) It is proper to give death penalty for dangerous crimes such as rape of the minor coldblooded, killing total family members and murder after terrible torturing the principle of ‘the rarest of the rare’ cases.

5.9 ABOLITION IN DIFFERENT COUNTRIES

Death sentence summary 747, in England 759. in China, protest a public statement execution in 1395. Lollards twelve decisions included in the Italian's book set the tantukalultatu this book 1764. Issued, ("Crime and Punishment") Baccaria Dei Delitte della pene, Baccaria injustices, but also ineffective to the social benefit, not only to demonstrate the purpose of Torture and the death penalty. Cities around the world celebrate the day of the event even now it was commemorated on this day in 300 cities.

In the United States, Michigan State has never lifted a ban on the death penalty 160 years on March 1, 1847, was the first state to ban the death penalty,. Currently, the American sentenced to death penalty in 12 states.

In the year 1962 United Nations presented its report on capital punishment. The report provided the Council with a factual review of the various aspects of the question of capital punishment and requested the Secretary General to prepare such a review for submitting at its thirty fifth session in April 1963. According to the report there are two viewpoints which have argued for retention and abolition of death
penalty. The points put forward for death penalty is deterrent effect i.e. the protection of society from the risk of a second offence by a criminal who is not executed and who may subsequently be released or who may escape.

Similarly, it is argued the State has a right to protect itself. Many speak of the concept of self-defence and some even regard the death penalty as a necessity and the public authority as the representative in this regard of God on earth. A related argument which is often advanced is that based on the idea of atonement: the capital punishment for gravest of crimes. Some add that even if, from the philosophical point of view, the death penalty may be of doubtful legitimacy, it represents a political necessity for protection not merely of society but the social order itself. Similarly, it is contended that, since death penalty is the only means of eliminating the offender, altogether, this penalty is necessary. Further arguments offered are: Death sentence would cause reduction in the cost of prisoner.

This argument does not, however, question the basis of reformation. Another argument offered in favour is that death penalty has the maximum deterring effect among the various punishments; and lastly the death sentence in certain cases satisfies the urge for social justice.

5.10 GLOBAL TREND OF ABOLITION IN INDIA

The capital punishment is like other punishment. The world, and its continued presence in these countries and slave states in the retentionist creates political tensions between the governments. In the Second World War, many nations abolished the capital punishment. This article abolition is towards the global trend of the main components, 1950 and 2002, democracy, democratic, relatively slavery in the retentionist countries and peer group effects of the international political pressure on a scale cross-national research support, and it is a statement of political and argues that all of the abolition be raised for the opportunity. The Chief executive of the party is based-wing abolition is likely to be a discriminatory effect. If democracy is spreading throughout the world, abolition of slavery in countries around the world will and stand by their commitment to the removal of the press but it is a dream to think all countries to be democratic.
However India Stands a bit apart from the Global trend as Death penalty is permissible and constitutional in India. The Law Commission, 1971, in the 35th Lok Sabha in 1967 and the Government filed its report. The complete list of the principles of the Law Commission recommended against clemency, but gave examples of the situation it - would be appropriate for clemency petition, which - like the planned guilty of murder without a mental abnormality. Abolishing the death penalty in the 1983 Lok Sabha is specifically discussed. However with the background of heinous crime recorded in certain few cases in India may not comfort itself with abolition.

5.11 CURRENT INHUMAN CRIME INCIDENCES

In the case the Noida serial murder by Moninder Singh Pandher, and his servant, Surender Koli, it is difficult to adopt Abolition of Death Penalty.

Several serious terrorist attacks, serial blast like

- 29 September 2008 western India bombings series of blasts in Jaipur (Killed63).
- 13 September 2008 Delhi bombings.
- Mumbai serial train blasts in 2006 killed 200 human.

On 26 November 2008 the terrorist attacked south Mumbai which Including CST Taj Hotel, Oberaiand killed 173 people.²

On background of such inhuman crimes it is difficult to adopt abolition of death penalty in India. We have a single alive terrorist Kasab and popular fury and hatred against even having legal aid by a Court – that appointed has a defense lawyer. In such a case people may lose faith from system, if it shows amnesty toward such soulless criminals.

5.12 THE RETENTIONS MODE

The public opinion and legal procedure are in the opposite. It had happened once in post Bacchan Singh case. Death penalty for various offences is continued for example

² [F.N. E-news resources are used to collect the data]
the women groups demanded death penalty for the crime of rape. However the opinion of inquiry commission opposed it and gave the reason that death punishment may the criminal to kill the victim after rape. Such differences at times create confusions it had once happened in the famous Nanavati case where the judiciary blamed him though the jury had acquitted him. As the result the system of jury was altogether stopped. It is interesting to note that film, directors in their films some times used the terms such as ‘my lord’ and members of jury in their films It should be noted that the film world shows the courts the colleges the hospitals the blood donations though they are for from reality.

The TADA act had been interpreted in the S.C. in the case Kartar Singh (1994) 3 SCC 569 there were no doubt measures to reject death penalty Article 6 of the ICCPR has adopted it on 27th July 1982 in 1966 there was global convention regarding death penalty VIVA ICCPR It is about the human rights. The committee suggested the abolition of death penalty for a process in the enjoyment of the right to live. There were 64 states who were in favour of removal of death penalty.

Actually there are many diehard arguments regarding capital punishment. The main problem is concerning the person who is completely innocent but due to prejudiced witnesses and make - believe circumstances compel the judge to give capital punishment. The difficulty is if the innocent there is no provision of making him/her alive again similarly sometimes the criminals for the same reason created by the short coming and loopholes in law and order in police and judiciary the western countries do not care much for the innocent and try to punish an innocent with other guilty persons in India it is otherwise because the sympathetic view is taken that if a criminal is acquitted with many other innocents it is not wrong.

There is also an optional protocol for complete ban on death penalty except in times of war in fact genocide war crimes and inhuman attacks on persons (murder or rape) should be death with death penalty only. The civilization progresses on the one hand thinks of abolition in many decades but there is basic question has the world become really civilized. In spite of high education and economic stability it is to be noted unwillingly that savagery is still existing.

There is one additional problem of amnesty international problem because it thinks of human right neglecting the injustice on others regarding destruction of human rights
and honor by the criminals there were 500 punishments in 2006 outside China in Europe only Belarus continued the use in Africa there are only six countries. The U.S.A is the only state to oppose death penalty since 2003.

The problem is with middle Asia regarding death penalty in solving the basic reason is in the tendency, variety and religious prejudices human rights women rights, are away from the mob tendency as well as cultural and religious revenges. The Hindu, Muslims and Christian saying then against each other, the answer is a slapping words and one is ordered to leave India. There are other literary works such as. There are literary references to suggest the complexity in the society of Asia and the Middle East. There is no justification for the present the clashes in Iraq the sectarian war had exceeded the figure of 2000 in China.

5.13 MOVEMENT TO THE ABOLITION OF DEATH SENTENCE
Capital Punishment is one of the oldest forms of penal system. It had been in use in a form in ancient and medieval period. This punishment is awarded for most heinous, grievous and detestable crimes against human society. The capital punishment might have been sustainable in old days but nowadays the reformative aspect towards criminals is on the forefront. The very existence of this institution of the capital punishment is being questioned nowadays. It is considered that the capital punishment violates the humanitarian sentiments. As a result of the humanizing impact of the modern sociology and other science of human behavior several countries of the world have already abolished the capital punishment.

The abolition of death sentence movement was started in 17 century when Baccaria published. "The treaties of crime in 1764. He for the first time raised his authoritative and widely feared voice against capital punishment. He raised doubt about its legitimacy. He said that state has got no right to take one’s life as; he cannot delegate it to the state.
In 1767, Catherine II ordered the commission appointed by her to draft a new code to exclude death penalty. In 1786-87 respectively Leopard II of Juscony and Joseph II of Austria removed the death penalty from this corpus Juries criminal. By 1800 the movement of reform had spread over the world, In England Bentham and Baccaria condemned the capital punishment. They said that the quantum of punishment must not be more than what is necessary. Sir Robert Peel in England (1788-1800) established for the first time in modern policy a system which included the programme of Bentham, Romilly, Makemtosk and others. In 1822, the death penalty was removed in England in some 100 petty offences. In 1861, death penalty was solely stopped for murder, treason, and piracy. The Pennsylvania Legislature in 1886 reduced the capital punishment on principal at only for the offence of murder, treason, rape and arson.

At the beginning of 20th century Europe experienced a strong authorization current of thought which was due to German Nazism and Italian Fasism. The development of civilization and scientific research caused change in the trend of thinking of people. Abolition of death spread all over the world. Thus the capital punishment was abolished in Australia in 1950. Argentina in 1921, Belgium in 1863, Brazil in 1946, Denmark in 930, Finland in 1949, Greenland in 1954, Germany in 1949, Italy in 1944, Nepal 1931, Netherlands in 1881, Portugal in 1887, Rumania 1861, Sweden 1957, Switzerland 1937. Some countries out of these have, however, again resorted this punishment. In Russia it was abolished in 1918 and 1947 but restored in between this the period 1919 and 1950. In Ceylon it was suspended in the year 1956, but after the murder of Prime minister Sri. Bhandar Naikey, it was restored in 1959.

In 1948, there was a Universal declaration of human rights. In 1960 the British Government did unique experiment that the capital punishment will not be executed In India, the capital punishment has not been abolished, even now it is to be in ‘the rarest of the rare’ cases.

Should the death sentence be retained or stopped. The house rejected the bill. Again in the year 1962 it is in the Lok Sabha. The opinion of law commission was called for by the government on this point. The law commission therefore, in its 35th said that the risk could not be undertaken in the present state of the country. At this stage in India (i) Its population in a variety of social (ii) To the vastness of its area (iii) Devisers and its
people. The abolition of the death penalty in India can not take a risk in the current situation.

The arguments given in favour of abolition of capital punishment on the basis of ethics, morality and humanitarian grounds may be correct but practically it is very risky to abolish the provision of capital punishment. The abolition will not only create a serious problem for the Government and administration but encourage the rapid, increase of murder cases. The punishment of death is not awarded by the courts with vengeance. It is awarded only after strictly abiding the due process and principle of 'the rarest of the rare’ cases. The S. C. in India in so many cases awarded life imprisonment to the murderers instead of capital punishment. For instance, in the cases of Raghubir Sing versus State of Haryana and Idga Amamana vs. State of Andhra Pradesh,(F.N A.I.R. 1974 S.C.443) the life imprisonment was given by the S. C. and not the death penalty.

In the British Countries including England, Wales Crime statistic Report Indicates; (respectively 8%, 4%, 13% and 14%) over the previous year fell 22% to 24% risk of falling victim to crime. However England and Wales still maintain their place in the list of countries with the highest crime rate.

a) South Africa

South Africa, the 1996 Constitution of the Republic guarantees 111 Section 12 (1) (c) and it has the right to be a cruel punishment. The issue of section 277 (1) (a), the S. A. Cr. P. law, the murder of an effective penalty Makwanyane against the State Constitutional Court considered the death penalty only in 1977. The court it sentenced therefore as unconstitutional and a cruel and inhuman form of the death penalty. (F.N. The Death Penalty debate by Hon. Justice Anthony Bahati) However the number of homicides committed in South Africa is quite a high in comparison to those retaining the Death penalty.

b) Australia

Ronald Ryan was hanged in Victoria, in Australia in 1967. When the death penalty was used in the past, 114 at the end of the 20th century and were executed. The Western Australia abolished the capital punishment for all crime in the state, next year's
NSW treason, piracy and naval dockyard tivaippirku the death penalty as punishment for murder removed all the states in 1984.

Australian executions were carried out by hanging. Ryan executions between 1980 and occasionally death penalty in Victoria, South Australia, and Western Australia have passed on, but they were commuted to life imprisonment. Commonwealth of Australia and the leader of the death penalty do not apply to any offense, Tanzania Law Reform Commission the Commonwealth Death Penalty Abolition Act 1973, Section 4, "saying, provides the basis for the abolition of the Assembly," a person is not liable to punishment for any offense with death'.

Australia shows less homicide in comparison to other countries that have abolished the death penalty however Australia itself does not accept death penalty.

c) New Zealand

New Zealand in 1840, the British section turned out, and the first, including treason, the 1961 murder of cancellation, 1957 used were past 1842. work and abolished when the New Zealand First, a systematic appeared in the form if it has the effect that during 1989, 85 people were killed. New Zealand shows less homicide in comparison to other countries that have abolished the death penalty. However New Zealand itself does not accept death penalty.

d) China

In China the death penalty is for many crimes. People are executed in China each year more than any other country; The high number of executions - In 2007. Iran, at least 50 percent of the people executed the second than in the country. China that accepted for minor crimes are often considered the capital punishment" one country, two systems" policy, Hong Kong or Macau, had (under China) higher crime rate though it possesses death penalty in comparison to those countries.

e) Europe

The death penalty is abolished completely, almost in all European countries (50 out of 46) they considered the value of the ban on capital punishment and the abolition of
a position to be member of council. Russia, in effect, officially taking place in 1996 and follows the execution. Europe has higher rate of crime where death penalty is abolished in comparison to other countries that have retained it.

f) Singapore

There is death penalty in Singapore. The state 13.57 executions per one million people at the time of the United Nations estimated the death rate in the world between 1994 and 1999 - had the highest. The next highest was Turkmenistan with 12.43. Each execution is carried out on a Friday morning, hanging in Changi Prison.

It was a British colony and the United Kingdom. Singapore practical method used in the UK before hanging condemned individuals. Singapore in retention mode has really lesser crime rate in comparison to those countries that abolished capital punishment.

g) United States

Capital punishment in the United States is considered the only felony murder or aggravated murder, contract killing, and even more it is rarely in practice and is rarely used. Their districts begins in the colonies and territories. Methods of crimes are subject to the death penalty and a fine of law and its use is stopped, but others have been trying to expand its applicability, it varies from the ban. There are 37 of execution (in terms, because of the lethal injection cases) in 2008, which was the lowest number since 1994, but it increased in 2009.

However in U.S. Crime rate in regard of homicides is seen to be less in comparison in the others.

5.14 NO RELATION BETWEEN CRIME RATE AND DEATH PENALTY

The death rate of crime, and the death penalty are comparable. It clearly marks the death penalty for the crime that appears to have no effect on that. Murder in Michigan, Ohio and Illinois and Wisconsin fall with rate. The death penalty state, the average murder rate of 100 population is murder rate. Odd as the death penalty, and the low crime
rates, death of a people in 1972 was 200 and in 1997 it was 3,100. Crimes punishable by death penalty or a method to ensure weather.\(^3\)

### 5.15 RATE OF EXECUTION

In previous years, in 2008 they sentenced to death a large number of five countries as one of the five countries on all executions 93% of these districts offered in 2008, the abolition is a very big challenge. More than in other parts of the world, more people are killed in Asia in 2008. All of the execution of at least 1,838 (76%) were carried out in Asian countries. In 2008, a total of at least 1,838 executions carried out the following 11 countries are known:

Whereas China Sentenced 7003, Pakistan Sentenced and Bangladesh Sentenced 185, Afghanistan Sentenced 131, India has middle lower death sentence incidence i.e. 70 only. in 2008 out of which many execution are pending for many years in India.

It is discussed in the chapter about how the capital punishment is either preferable or is to be left for ever. There have been hundreds of decisions in various countries where the abolition of death punishment has no effect on the number of crimes various examples have been discussed but the cases in which the criminal is beyond any reformation then there is only the way to finish his or her life.

The type of capital punishment their drawbacks and benefits are the unanswerable problems, victimology revenge and other prejudiced views create an atmosphere of enmity rather than that of peace. How can the capital punishment be justified views create an atmosphere of enmity rather than that of peace.

How can the capital punishment be justified? The manners and methods in which the versatile aspects are discussed show if the slow torture is for longer period of suffering proper death painful, torture longer for period of suffering be proper for the criminal who had done the brutal act.

Can death penalty be substituted with life imprisonment? Once again there is problem of expenses on the criminal and it is taxing on the government the compensation

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\(^3\) (F.N. Criminal law and criminology An e-article edited by K.D.Gaur)
has also its own limitations because the rich can afford to pay and once again be ready for the next crime.

When all these plus and minus points are considered it is not possible to arrive at a certain decision regarding the abolition or retention of capital punishment the ‘tit for tat’ ‘the eye for eye’ will make all blind and revengeful. The progress of civilization will be once again questionable.

There is a lot of difference in the opinions of the judiciary all over the world. In addition the amnesty thinks only of the inhuman treatment to the criminal neglecting the victims life. For life is gods gift by saving one life again ending of other lives.

The subject of capital punishment is discussed in this chapter with addition of what is accepted and rejected in all countries of the world. Next the mental situation of the criminal and the way in which he should be dealt with are also discussed in detailed the effects of abolition as well as of retention are thought over with various examples and case. It is a sincere and honest effort to present the issue form all aspects related to capital punishment, it abolished or retained.

5.16 ACCORDING TO THE APEX COURT THE FOLLOWING CASES WOULD ATTRACT THE ‘THE RAREST OF THE RARE CASES’ RULE TO JUSTIFY IMPOSITION OF DEATH SENTENCE.

1. Killed in a very brutal grotesque, horrific, revolting or dastardly manner to ensure that the community's intense and extreme indignation raised;

2. Evinces total depravity and meanness yet determined a motive for murder;

3. When murder is that of a member of Scheduled Caste or minority community;

4. When murder is in enormous proportion i.e., several persons are murdered;

The Court ruled that penalty should be the only punishment to be awarded in the aforesaid cases.
In Satyendra case,[ F.N. A.I.R. 2004 SC 3508] the accused persons who were variously armed came in group by using cars and motor cycles and Intercepted a city bus knowing full well that deceased were traveling in it. They entered the bus from both doors without giving an opportunity to deceased person to escape, and killed them on the spot. Two deceased who tried to escape from the bus, were chased by the accused they were convicted under Section 149/302 (Unlawful assembly and murder) and sentenced to death by the trial Court which was affirmed by the High Court. In appeal, the Supreme Court held that sentencing the accused to death was not proper because various overt acts of individual accused persons were not established. Therefore, the death sentence was converted to imprisonment for life.

In the case of Jay Kumar case, the accused was a young man of 22 years of age who attempted to rape his sister – in – law brothers wife (Bhabhi) but having failed in his attempt, he murdered her and hanged her mutilated head on a tree. He also murdered the 8 year old Daughter of the deceased who was the sole witness to this incident. The Supreme Court rejected the appeal and upheld the death sentence on the ground that the double murder was committed in a brutal and gruesome manner and deserved no leniency in the award of sentence.

In the Supreme Court in Ram Deo Chauhan and another v. State of Assam,[ F.N. A.I.R. 2000 SC 2679] the caused death of four persons of a family in a very cruel, heinous and dastardly manner. His confessional statement showed that he committed these murders after previous planning which involved extreme brutality. Under the circumstances, the Court held that the plea that the accused was a young person at the time of occurrence can not be considered as mitigation circumstance and, therefore, death sentence imposed on the accused cannot be interfered with. The Court further observed ‘Tooth for a tooth’, and ‘death nail or the death of a nail’ rule "is not a civilized society really," but it's a man's a beast becomes and the community's threatening, he can be equally "true to himself as a permissible punishment," the death penalty has recognized constitutional law generated according to the procedure, without his life.

4 [ F.N. (1999) 5SCC1]
5 [ F.N. A.I.R. 2000 SC 2679]
In *Govindaswami v. State of Tamil Nadu,* the Supreme Court speaking through Mukerjee, J., observed that, “in case of murder committed in a gruesome, brutal, and calculated manner, Law and justice certainly stultify death sentence reduced. The commutation of such is the case of the death penalty with life imprisonment irregular passion, grace and false sympathy yielding are unregulated.”

In the case of Laxman Naik case it was conclusively proved on the basis of circumstantial evidence that the accused committed rape on his brother’s daughter aged 7 years in a lonely place in forest and thereafter murdered her. The evidence on record indicated how diabolically his plan to fabricate a cruel plan and carry it, and as a white, cold as a crime - are undoubtedly attracting the rare case of the rare category that falls on her rape and then a very young age a woman bloody and brutal murder, the death penalty, no life.

The Apex Court in this case held that injuries caused on the person of the murdered child and the blood soaked undergarments found near the body completed the chain of evidence as not to leave any doubt about the sexual assault followed by brutal, merciless, dastardly and monstrous murder which the appellant had committed. The Court, therefore, upheld the sentence of death passed on the accused (appellant) and the appeal was dismissed.

In a recent criminal appeal against the judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur on 11-2-1998 to the Supreme Court by both appellants and the respondents; the Apex Court was called upon to decide the propriety of alteration of conviction of 5 accused from Section 302 read with Sections 149, 148 and 341 of I.P.C. to Section 304-1 read with Section 149, 148 and 341 I.P.C. The accused were found guilty of committing murder by beating the deceased with lathis and axes on a trifle issue of damage of crop by goats entering into their fields. This had resulted into instantaneous death of the deceased. The High Court found no grievous injuries having been found on the body of the deceased, altered the conviction of the accused under Section 302 to one of 304 Part I, IPC and reduced, the sentence to the period undergone (i.e. six years) but enhanced the amount of fine from Rs. 2000/- to Rs. 10,000/- to be paid to the widow of the deceased as compensation. The Supreme Court emphasizing the

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6 [F.N. A.I.R. 1998 SC 1933]
7 [ F.N. A.I.R. 1995 SC 1387]
principle of proportion between crime and punishment held that “In many cases, the imposition of sentence without considering its effect on the social order and in fact may be a futile exercise”.

“The social impact of the crime, eg Moral turpitude or the social order and the public interest it big ‘impact on women involved any moral delinquency, guards, kidnapping, public money, treason and other offenses related to crimes against fraud, lost vision per se require exemplary treatment. Penalties for petty crimes or very sympathetic view merely on account of lapse of time in respect of any liberal approach taken and cared for by a long counter and threatening inbuilt be strengthened by string, as a result of the punishment for community layouts.”

Allowing the appeals partly, the Court held that and sentenced to six years imprisonment for the offense relatable general penalty clause should serve the ends of justice,. But it really is a case that falls under 304-II, IPC in this regard, although there is no appeal on behalf of the defendants. The enhanced fine must be paid within two months and default custodial sentence will be two years rigorous Imprisonment.

5.17 DELAY IN EXECUTION OF DEATH SENTENCE

A survey of available case laws on death sentence would reveal that the attention of the Supreme Court was focused on the question whether inordinate delay, in the execution of death penalty can be, considered to entitle the convict to claim commutation of the sentence to that of life imprisonment. In Triveniben v. State of Gujarat, the five Judges Bench of the Supreme Court overruled Vetheeswaran’s and Jawed Ahmeds to the extent they purported to lay down the two years delay rule, and held that no fixed period of delay could be held to make the sentence of death in executable. The Court, however, observed that it would consider such delay as an important ground for commutation of the sentence.

In Madhu Mehta v. Union of India the Supreme Court held that a delay of eight years in the disposal of mercy petition would be sufficient to justify commutation of death sentence to life imprisonment since right to speedy trial is implicated in article 21.

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8 [F.N. A.I.R. 1989 SC 1335]
of the constitution which operated through all the stages of sentencing mercy petition to
the president.

In State of UP v. Ramesh Prasad Misra,\(^{10}\) the Supreme Court reduced the death sentence of the accused to one of imprisonment for life in view of long lapse of time from
the date of commission of crime. The incident had occurred on the intervening night of
September 26/27, 1985 in Karwi town of Banda district of U.P. The accused was a
practicing advocate who had committed horrendous bed – room murder of his 28 years
old wife whom he had married only 5 months ago. He was found guilty of offence under
Sections 300 and 498-A (i.e., dowry death) and his plea of alibi was not established hence
he was convicted on the basis of circumstantial evidence and sentenced to death.

5.18 CONSTITUTIONAL VALIDITY OF DEATH PENALTY

S.367(5) of the Criminal Procedure Code, 1898, Before its amendment in 1955, a
court sentenced to death a punishment other than the death sentence given to the reasons
why the death penalty for a person convicted of a crime is required. But the destruction of
the Cr.PC amendment of this provision was removed or , 1860 (IPC) to life imprisonment
and the death penalty cases. In 1967, the Law Commission of India has conducted a
review of the death penalty, the government submitted its report on 35\(^{th}\) . The retention of
the death penalty was justified in its decision:

Diversity of its population and the paramount need, to the vastness of the area, the
education level of the country's moral and social upbringing of the diversity of its people
about various Indian conditions, to maintain law and order in the country in the current
situation, one can test the abolition of the death penalty in India.

Article 21 of Constitution Says no person shall be deprived unless by procedure
established by law- That utters Deprivation of life of any person is sanctioned validated
and approved by way legality.

Imposing the death penalty is always from the perspective of each of the countries,
including the Constitution, a matter that will be discussed further attention. It constant

\(^{10}\) [F.N. A.I.R. 1997 SC 2766]
debatable to eliminate certain of the applicant against the drugs and drug law, the death penalty is a political challenge.

Murder in violation of the Constitution is invalid art under 302 providing an alternative penalty, IPC challenge. 14 (2) 19 (3), and a series of events 21 Of political. The UP Jagmohan Singh V. State contended Art reference must be to check that the death penalty is constitutional. Right to Life in Art 14 and Art 19 of the Constitution except 21 is based on the enjoyment of these freedoms. 19 of the Constitution.

It was further said that the Criminal Procedure Code provisions in the detection process of the offender is guilty but sentence awarded under S. 302, wisdom is not computer controlled and to the judges awarded the decision, on practical views

Accordingly, the court held that S.302 I.P.C. Its value will not require testing eligibility of art. 19 The procedure prescribed in the Code of Criminal Procedure to capital punishment for murder can not be said to be unfair, and unreasonable. But Justice Bhagwati in his dissenting judgment that S. 302, IPC and S. 354 (3), Cr. P.C. violation of art. 14 and 21 are the regulations empower non-player on the field without reasonable and arbitrary. Thus, the death penalty should be applied in the rarest of the rare cases.

The Supreme Court in earlier case Bacchan Singh v. State Punjab judge sustained the constitutional validity of the application of the death penalty instead of life imprisonment, and it was more that it is not a violation of art. 14 and 21 of the Constitution. The chief Justice Chandrachud opinions of three judges of the Supreme Court in Sher Singh represents v State of Punjab [ F.N. A.I.R. 1983 SC 465: (1983) 2SCC 344] argue that capital punishment is constitutional and valid within the limits allowed by the rule of Bachan Singh. This has been accepted as the law of the land. Decision of this Court after full discussion should be accepted without reservation until morale aside.


11 [ F.N. A.I.R. 1973(1) SCC20]
It is in rare cases, the legislature in its wisdom, is considered necessary to apply harsh penalties to prevent the deaths of others and to protect society. The choice of remaining with the rider that the judge may punish utmost with always special reasons. The provision of art. 302, I.P.C. is consistent with the Constitution Provision Art. 21, which calls for individual liberty or life of an individual is not done except in accordance with procedures established by the law. Whether the death penalty in violation of Art. 14.19, and 21 Bachchan Singh case the Constitution. Supreme Court to review13 and the court answered in the negative dispute.

Faced with the statutory provision in cl. (3) of s. 354 of Cr. PC requires giving the specific reason for the imposition of the death penalty in accordance with art. Personal liberty except according to procedure established by law or the life of an individual should not be taking 21 of the Constitution is that the sermon, appeals death in extreme cases can not be countenanced and can not get the death penalty for a violation of Art. 21 of the Constitution. Section 302, IPC penalty chosen to show a higher level of concern and sensitiveness of the death penalty and life imprisonment, and the court on the court to choose between the heavy castings.

5.19 CONSTITUTIONALITY IN JAGMOHAN SINGH CASE.

The case also welcomes opportunity for representatives of the people, including the death penalty” The court did not support the argument that the death penalty is either unreasonable or not in the public interest. The abolitionists had also claimed that the unclear discretion in the law on capital sentencing brought about by the 1955 Amendment Cr.P.C. amounted to extreme discretion and made the punishment arbitrary and violative of Art. 14 Indian constitution as two people claim to be guilty of the same offence could suffer different fates, In its reply, the Supreme Court considered the 1953 report of the “United Kingdom Royal Commission on Capital Punishment” where it found it impossible to improve the situation in the UK by re-describing murder or by separating murder into degrees.

The Court noted that in India in fact, (he situation was already better than the output of the Royal Commission of United Kingdom and the public had accepted that

only the judges should decide on sentence. The Court also quoted from a listed text with respect to the aggravating and mitigating circumstances the judges could consider while sentencing an offender.

The Court thus concluded, “Laying down standards for a very wide discretion in the matter of fixing the degree of punishment that can not be invested in the judges of the criminal law as administered in India is very basic. As already pointed out, in the case of sentencing discretion, charge corrected by superior courts... Well-known principles of the exercise of judicial discretion, in the final analysis, the safest possible defense is offense.”

The Court also discharged the plea of discrimination, arguing that such a claim could not be made as the facts and circumstances in each case were themselves different and a judgment in one case could not be compared with another. The Court also summarily dismissed the argument that the lack of sentencing modus operandi in awarding death sentences fell foul of Article 21 of the Indian Constitution as the deprivation of the right to life and it was only possible as per the procedure established by law.

The Court noted that the accused was well aware of the possibility of the sentence during trial and also had an opportunity to address the Court as also examine himself as a witness and give evidence on material facts. In fact soon after this judgment, new Code of Cr. P.C., 1973, was introduced this was challenging to the constitutionality of the capital punishment. In Jagmohan Singh, the Supreme Court confirmed the death sentence and the well-known principles of the exercise of judicial discretion, even though accused insisted that the safest possible care, immediately following the verdict, a glance in the cases of reveals that of the political was with much depending on colleagues asana to bench her-own. Jagmohan Singh decision, the court did not discuss the issue of all the judgments of conviction, the Supreme Court delivered a variety of benches, where the other four capital cases, was presented on 3 October 1972. Although trial courts and the Supreme Court itself amendment to Cr.PC 1956, 'extenuating circumstances' or punishment continue to refer to the lack of them, Neti Sreeramulu Jagmohan Singh s judgment for the judgment of AP. State\textsuperscript{14}. Contended that the courts below had completely ignored the effect of the recent amendment of S.357, Cr.P.C.

\textsuperscript{14} [ F.N. (1974)3 SCC 314]
The Section 357, Cr. P.C. Says Order or judgment of a court conviction to a fine, which forms a part of the fine, the court, may be used in whole or any part of the fine is recovered (death including sentenced) when the sentences certain cases defined in Sub sections of act and the Present case they have proceeded as if there must be some mitigating circumstance in order to justify the imposition of a lesser penalty in case of conviction under sec. 302 I.P.C, i.e. Who is doing the killing and murder, "the death penalty, or [a life sentence] shall be liable to be punished and fined."

The learned additional Sessions Judge, when dealing with the question of sentence observed "There is absolutely no extenuating circumstances to justify the imposition of sentences" that were said. Ediga Anamma case\textsuperscript{15}, was founded guilty, punishing dilemma begins. The choice between the death penalty and term life was taken in a situation that is not entirely satisfactory. Modern Penology relating to crime and criminals alike when the correct material is selected, though in our system it is not providing procession comprehensive and adequate machinery for collection and presentation of personal data and the culprits are required within the ruling on the question. However, the Criminal Procedure Code 1973, coming into effect, Congress has wisely written into law later stage when the judge is responsible for sentencing. “Then listen to the offence of conviction to punishment according to law”\textsuperscript{16}

Section 235. Judgment of acquittal or conviction.

(1) After the arguments and law (if any) of the hearing, the judge shall give judgment in the case,

(2) If the defendant is found guilty, the Judge, unless required pursuant to the provisions of section 360 hear the accused on the issue, and then pass sentence on him according to law.

(3) If in any case under this Chapter in which a charge has been framed, the judge found that the defendant is not guilty, to record an order of acquittal.

\textsuperscript{15} (AIR 1974 SC 799 FN)
\textsuperscript{16} (S. 235 & S. 248 cr.p.c.1973)
(4) Where, in any case under this chapter, the judge found the defendant guilty, but was not carried out under the provisions of Article 325 or Article 360, in which, after a hearing on the issue of the defendant, punishing him according to law.

(5) When in a case of this Chapter, a previous conviction is calculated according to (7) of section 211 and subsection the defendant does not admit. It has been convicted of the alleged in the indictment, the judge may, after he sentenced defendant said, there is evidence of conviction allegedly as previously recorded a finding; Provided that no charges will be read by the 'judge nor the defendant be required to justify It would not be subject to the previous sentence by the prosecution or any evidence adduced by it, unless and until the defendant has been convicted under subsection (2)

A reduction is in the sentence on the basis of totality of circumstances rather than on the basis of one particular fact. In that instance, this included nearly one year and ten months on death row, the immature age of the appellant, provocation by the conduct of the deceased as also the fact that other accused that had caused greater wounds had only been sentenced to life by the lower courts.  

In Judgments of Raghubir Singh v. State of Haryana also received lesser sentence. It is arguable that had his case had been heard a few weeks previously, Without considering the light of Ediga Anamma v. State of Andhra Pradesh, he would have been sent to the gallows for the premeditated murder by poisoning he was found guilty of. It Seems different benches have different approaches.

Supreme Court In Suresh case (1981) 2 SCC 569, examined the trial court should have given the accused a hearing on sentencing even though it was not required to, as this would have furnished useful data on the question of sentence. The Court commuted the sentence on cumulative grounds as it is found that the accused was only 21 years old, there was no established motive (though robbery or sexual assault was claimed by the prosecution), that the accused did not even try to run away even though not injured and that though not insane, “he was somewhat unhinged” at the time of the offence. Lastly,

17 [F.N. A.I.R 1974 SC Page:1039]
the Supreme Court also considered the fact that the main witness for the prosecution was a child of five.

The Court concluded, “The extreme sentence cannot seek its main support from evidence of this kind which, even if true, is not safe enough to act upon for putting out a life.”\(^{18}\) In Srirangan v. State of Tamil Nadu\(^{19}\), a completely different face of the court was visible. Even though this was noted to be a “brutal triple murder,” with the new winds of penology blowing, observed the Court, “the catena of clement facts, personal, social and other, persuade us to hold that... the lesser penalty of life imprisonment will be more appropriate. There were hardly any facts stated in the judgment. Perhaps unsurprisingly this judgment was delivered by Justice Krishna Iyer who post Ediga Anamnia was carrying the abolitionist flag in the hallowed premises\(^{20}\) of the Supreme Court. His abolitionist agenda is no secret, in both Shiv Mohan Singh case and Joseph Peter case\(^{21}\), Justice Krishna Iyer attempted to reconcile his personal views on the subject with his professional duties as it a judge. In the former case, a special leave petition had previously been rejected as had a motion for rehearing of the petition. A first review petition was not admitted, a second modified review petition was dismissed and another application for resending the matter to the trial court was also dismissed.

This third review petition was surprisingly admitted, with the Bench stating, “we have desisted from a dramatic rejection of the petition outright, anxious to see if there be some tenable ground which reasonably warrants judicial interdicts to halt the hangman’s halter.” With little in the facts to support any change, the learned judge embarked on an assault on capital punishment, cleverly suggesting that these could be campaign points for abolitionists, commenting. “Moreover, the irreversible step (if extinguishing the offender’s life leaves society with NO opportunity to retrieve him if the conviction and punishment be found later on flaw some [sic] evidence or the sentence is discovered to be induced by some phony aggravation, except the poor consolation of posthumous rehabilitation as has been done in a few other countries for which there is no procedure in our system.” Even after considering all the factors, unable to find sufficient cause to reduce the sentence and weighed down by the large number of previous legal failures of

\(^{18}\) [F.N. 1981 vol.2scc 5693]  
\(^{19}\) (F.N. AIR 1978 SC 274)  
\(^{20}\) [F.N. (1981) 2 SCC 569]  
\(^{21}\) [F.N. (1977) 3 SCC 180]
the accused, the bench attempted to influence the President’s clemency decision stating, Similarly, in rarely reported refusal to admit the special leave petition itself in Joseph Peter v. State of Goa, Daman and Deli, a reluctant Justice Iyer, again unable to overrule the law resorted to suggesting a possible recourse to a clemency petition observing that “Presidential power is wider.” While none can grudge this brave and lonely battle being waged in the Supreme Court, it is obvious that all those whose appeals were heard by a Bench in which Justice Krishna Iyer featured were more likely to receive a sympathetic hearing and even perhaps a suggestion of presidential pardon, if not their sentence commuted. This merely reconfirms Professor Blackshejd’s previous observation that a key factor in determining a question of life or death was which judges heard the appeal.

Extinguishments of life through a judicial punishment for a standard and a practical means of criminal law can be brought along, slave of the first attack on the validity of such a law might not be. It was broken in favor of the death (1) (a), (g) all of the freedoms guaranteed under Article 19 accordingly contended that extinguishes It was unfair in the public interest. Secondly, award, two penalties, or discretion vested in judges based on any legal principle or standard or excessive sub-attracting group, set fire to its basic function legislature. Two people were sentenced to death, the other life are treated differently from the third to be convicted of murder, sentenced to unguided discretion of judges Article 14, it shall be a violation.

Judges for cruel and unusual punishment in violation of the death penalty have been banned for eight V. Burman. By decision of the American S. C. of Georgia refused to agree. Western experience planting doubts about the said court, the social conditions of the various and common sense, "he felt. Death penalty is unfair or public interest against did not come to court, the Law Commission's 35th report, and indeed from the support that attracted death removed tabled in Parliament in 1956 and 1962 bills rejected four times in a sentence between resolutions. excess of the negative argument, the court said: "the standard punishment for not laying down a very wide discretion in the matter of fixing the degree of the judges in criminal law as administered in India for investment is very basic. Will be corrected by the higher courts. "For practice, the court will address the issue of punishment can ever lead to additional resources and advice can hear the
accused's Law, according to the established procedures that allowed the Constitution to loss of life was imposed after a trial.

5.20 CONSTITUTIONALLY IN BACHCHAN SINGH

In the judgment of the constitutional validity of the death penalty three developments Jagmohan Singh v Punjab Bachchan. State sparked a new challenge. Crore. PCI The 1973 Act and Section 354 (3) the death penalty is punishment for a criminal conviction record judgment that would be required for special reasons. As far as the death penalty is the punishment for murder is the exception and not the rule.

Secondly, the decision in Maneka Gandhi v. Union of India Both procedural and substantive aspects of the penalty for each act to the police, are based on the interpretation of articles 21, 19 and 14 for a joint reading of the reasonableness of the last test, the Supreme Court was Rajendra Prasad V would be required. May be held to relate to no special reasons for imposing the death penalty state criminal offense may be held to relate to. The state and society, public order, security and public interests, unless of course that it must be given. Bachchan made by the Sarkaria and Kailash Singh, J.. bench in front of the Supreme Court during the trial, post-judgment Jagmohan Rajendra Prasad majority judgment observed that ran counter to the need to be reconsidered.

The third development agreement approval in India December 16, 1976 and came into force on was to accept that the ICCPR, India is committed to the abolition of the death penalty for progress in abolition.

Challenge the validity of the first limb, support. 302 IPC, it could be argued that the removal of Bachan Singh that:

a. The death penalty can not be imposed on the innocent, given the dubious legal processes;

b. The death sentence was confirmed that served no penological purpose. Its deterrence and there is no convincing evidence; And reform of the criminal

22 [F.N. A.I.R. 1978(2) SCR 621]
penalty is no longer an acceptable punishment was eventually convicted and rehabilitation was the primary purpose of punishment;

c. By what authority do the crime cruel, inhuman or degrading punishment.

It attempts to control not only the imposition of the death penalty in cases such as the four most judges of the death penalty in the case were negative to Bachchan Singh, political challenge, Jagmohan Rajendra Prasad has so far set aside the decision and made sure the state of public order and public threatened the interests of the security of community.

Court Cr.PC Section 354 (3) challenging the validity of the second jointly rejected it on the ground to allow the imposition of the death penalty in an arbitrary and whimsical manner. It explained that the requirement under section 235 (2) to investigate the persistence of the death penalty for the crime committed by the High Court under section 366 of the requirements that need to be coupled with (2) Cr.PC in the exercise of the judicial independence of errors that the High Court can be fixed by courts.

The courts exercise discretion, but do not want to put down the guiding standards or regulations, it generally constitute aggravating circumstances and Prevention accepted recommendations taxation friend.

The court noted the following aggravating factors may be suggested by the amicus curiae Court indicators and relevant contextual approach should be adopted, it is called euphemistically. It is, however, pointed out that this is not exhaustive and the Court of Justice in the matter of punishment that do not want to be seen as fettering of discretion.

There was a real shift in the attitude of the judiciary to punish the majority opinion views. It was the major stride in human rights jurisprudence and judicial influence that is reflected changing perceptions. Most said; "A real and abiding concern for the dignity of human life is a tool of law by relying on the resistance to taking a life. Note that when you want to save in the rarest of the rare cases".
In Machchi V. Singh State of Punjab23 The Court summarized the views emerging from Bachan Singh described the task of the sentencing judge. It said:

Charge -sheet a balance of aggravating and mitigating circumstances must be drawn and, in so doing, aggravating and mitigating circumstances before the option os exercised and has been struck between mitigating circumstances and a balance must be paid at the full weight.

The court explained that it has envisaged that the guidelines are applied. To ask questions to the sentencing court:

a. Renders a death penalty sentence to life imprisonment is sufficient to recall the crime, is there something unusual about?

b. Even then, according to the maximum weight is not an alternative to the death penalty, are there also guilty of the crime situation, speaking in favour of the mitigating circumstances?

Thus both Jagmohan Singh and Bachchan, subservient to the wisdom of the death penalty, the court nullified and shrank away the legislative shrank away. But the results were united. Singh explained the change by Machchi Bachchan Singh, was significant. It was a promise that the death penalty is the exception and not the rule. Shy yet craftily by the court credited the creation of the rarest of the rare trial, and sentencing reform it as a goal to help the rehabilitation of delinquent tax acknowledgment to the friend, the drafting of a crime. The imposition of the death penalty rate certainly would have been higher, but that kind of Bachchan Singh. In retrospect, Bachchan Singh's removal is not a small or insignificant achievement.

Bachan Singh constitutionally challenge the death penalty and do not exercise at a time and must be renewed at regular intervals showed that the removal. Perhaps taking a cue, the Indian challenge v. Sasi Nair. In the EU, albeit unsuccessfully, to date.24 The results of both the petitioner did not reflect the current reality on the ground that for Law

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23 [AIR ehpen (1983) 3SCC 470]
24 [FN Air (1983) 1 SCC 96]

However, the court was unmoved. "The country's law and order situation has improved since 1967 but has only worsened over the years has fallen fast today announced that the Justice Department looks". D. "Now, therefore, in the most inappropriate time to review the material law," it was determined that, it's probably a real link between rising crime following a review of the necessity of keeping the notion that the real obstacle to justify ex post, to assess the severity of punishment.

Cr.P.C. Amendments to the International Covenant on Civil and Political Rights, in 1976 platform, following the accession of India has been an exceptional sentence of death penalty support in the Assembly representing a renewed challenge political death sentence for murder has been set. It is based on the three key challenges raised by the removal of:

1) The irreversibility of the sentence and the execution of innocent persons.

2) Penological lack of purpose - deterrence and punishment is no longer an acceptable punishment in the end was the primary objective, proven - which cancellation penalty reform.

3) Execution by ail modes was a cruel, inhuman and degrading punishment.

By a majority of (4: 1),the Supreme Court Justice Bhagwati details written opinion(the death penalty, political stability and Bachan Singh v Two years later, Information Punjab (minority judgment) Jagmohan Singh V. Uttar Pradesh state, the the Supreme court in the case of the death penalty acted as a deterrent to a penological purpose served in the 35th report of the Law Commission published in 1967 and relied heavily on the argument. Crimes of stop the end of the access to the Court deficit which Ion are not proof was: "It's the reason, learning and light-exempt persons, rationally and deeply this issue disagree on the very fact that the impugned arrangement of the death

25 (FN AIR 1982 1325 SC State)
penalty, keeping the petitioner's argument for rejecting, among others, on the ground say that it is sufficient to completely "Reason and purpose to avoid the court to lift the death penalty, unjust, cruel he said that should be considered concluded or unusual punishment. irreversiblity and the dangers of innocence, the court convicted and sentenced to death have been executed, the lower the chances of an innocent person, it is almost nearly enough security, "noting that there were." The safety section 235 (2) Cr.PC before the introduction of mandatory sentencing hearing included Section 354 (3) Cr.PC in the 'special reasons' as to require the confirmation of the High Court along with mandatory sentence.

The court, however, legislative policy, observing that courts confine their consideration of Uttar Pradesh, Rajendra Prasad V. penalty. The state set out the 'special reasons', reading rejected "mainly" or simply attached to the particular circumstances of the crime, but considering the circumstances of the crime, the crime could not be taken to mean the features of the punishment he completely ignored.

The constitutional Bench rejected the argument that Section 354 (3) Cr.PC to allow the imposition of the death penalty in an arbitrary and whimsical manner, and it would be like arguing, rejected the idea of laying down standards or regulations "impossible benchmarking is well recently." The court instead of a job well done, said that the death penalty in this is important, as most controversial part of the legislature, "in all its complexity, broad implications and the various branches, even all the judges to properly choose the delegates own role does not accept, the court established unanimously acting parliament people. 'Contrary to the Supreme Court, such as the proposal to explain some of Amicus 'aggravating circumstances' and 'mitigating circumstances' referred to in determining the punishment of the indicators and it can be said it is in the appropriate circumstances.

5.21 "THE AGGRAVATING CIRCUMSTANCES - A COURT MAY HOWEVER, IN THE FOLLOWING CASES APPLY THE DEATH PENALTY IN THEIR DECISIONS-

(a) If the murder has been committed after previous planning and finds it involving extreme brutality; or
(b) If the murder involves has exceptional depravity; or

(c) Execution of any public employee union, or a member of any police force or any member of the armed forces and, if confirmed:

i) While such member or public servant was on duty; or

ii) None, or as the case may be, such member or public employee killed while on duty in the lawful exercise of such member or public employee effort by public employee, or as a result of such member or public officer is stopped; or

(d) Murder, criminal procedure, 1973, its duty under section 43 or section 37 regular exercise play or seek his help and his assistance required under section 129 before a magistrate or police officer provided assistance to a person.
5.22 MITIGATING CIRCUMSTANCES - IN THE EXERCISE OF ITS DISCRETION IN THE ABOVE CASES, THE COURT SHALL TAKE INTO ACCOUNT THE FOLLOWING CIRCUMSTANCES:

(1) Under the influence of extreme mental or emotional disturbance in that crime.

(2) Adult crime young or old, if guilty, is to be sentenced to death.

(3) The probability that the defendant did not commit criminal acts of violence continue to be a threat to society.

(4) The probability that the reform and rehabilitation of offenders. State crime by evidence to prove that the conditions are not completed 3 and 4.

(5) That in the facts and circumstances of the case the accused believed he was morally justified in committing the offense.

(6) That the accused acted under the duress or domination of another person.

(7) The level of crime that he was mentally impaired and his ability to appreciate the criminality of his conduct disorder showed that prevents the court thinks. "A real concern and dignity durable: the Supreme Court and mitigating circumstances, care, protection and humanitarian concerns and the court '. Judges Blood" should not be concluded, therefore, such a "liberal and broad interpretation" is to have clarified the human life of the law is a tool that a life relying on the opposition. Except in the rarest of the rare cases when the alternative is fore closure, without a doubt.
After a gap of over a decade (since Bachan Singh in 1980) the question of constitutionality of the death penalty received a hearing by a Constitutional Bench in Smt. Shashi Nayar v. Union of India and ors. The petition was filed by the wife of the accused as a last resort two days before the date of hanging, following dismissal of the Special Leave Petition and Review Petition by the Supreme Court and rejection of mercy petitions by the Governor and the President. In fact previous writs had been hidden but rejected by the High Court and the Supreme Court. However, since none of these judgments were reported there is little known about the merits of the case.

The Constitutional Bench did not go into the merits of the argument against constitutionality, as they noted that the same grounds had been dealt with in Bachan Singh and Deena v. State of U.P. and since they fully agreed with the position taken, it was not necessary to reiterate the same. The petitioner sought that the matter be heard by a larger bench than Bachan Singh, on the basis that decision was based largely on the Law Commission’s 35th Report which was now very old and in the absence of empirical. In this case too, it was largely the effort of voluntary groups led by the People’s Union for Civil Liberties Tamil Nadu, that ensured that relevant facts relating to the rehabilitation of the accused were made available to the executive during the campaign for the sentence to be commuted.

This sentence was also commuted by the executive. A study to show that the circumstances of 1965 were still relevant. The Supreme Court however found no merit in these claims, asserting: “The death penalty has a deterrent effect and it does serve a social purpose. The majority opinion in Bachan Singh’s case held that having regard to the social conditions in our country the stage was not ripe for taking a risk of abolishing it. No material has been placed before us to show that the view taken in Bachan Singh’s case requires reconsideration.” Further the Court also took judicial notice of the fact that the law and order situation in the country had not improved since 1977, and had deteriorated and was worsening. The Court therefore concluded that it was the most inopportune time to reconsider the constitutionality of the death penalty.

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26 [F.N. AIR 1992 SC 395]
27 [F.N. (1978) 3SCC 540]
The Constitutional manufacturers had acknowledged the death penalty as did apologize to the legislation as a permissible punishment and appeal. But none more important than the rules of the constitution, the implication is clear, except according to procedure established by law, according to the article 21 is to be deprived of his life. If the Constitution allowed for the loss of life in accordance with the Established Practice Law. In view of the symptoms of constitutional principles the death penalty is argues as it was seen as unfair or not in the public interest as it would be very difficult.

The issue of the death penalty is a long and difficult and controversial heated debate. It has evolved strong views in that state of affairs if the legislature decides to retain the death penalty for murder it will be difficult at this time in the absence of objective evidence regarding its unreasonableness to question the wisdom and priority of the legislature in retaining it.

The death sentence after trial in accordance with the procedure established by law is not unconstitutional under Article 21 to the constitution of India, Jag Mohan v. State of U.P. 28

Before addressing the arguments, it is useful to have a brief survey of the legislative history of the provisions of the criminal code that allows the imposition of the death penalty for certain crimes.

The question of constitutional validity of death sentence has been raised before the Supreme Court several times viz-a-viz article 14, 19 and 21. Article 19 deals with the several freedoms but not directly with the freedom to live. It was argued in Jug Mohan’s case that the right to live is basic to the enjoyment of all these freedoms and therefore, freedom to live could not be denied by a law unless it is reasonable and in public interest. The law commission in its 35th report has also favored retaining the death sentence in India and therefore, it is difficult to say that the capital sentence as such, is unreasonable or not in public interest. Adequate procedural safeguards have been provided to the accused under the Code of Criminal Procedure.

Further, the constitutional validity of awarding death is limited. In Cr. P. C. no procedure is laid down for the trial of the factors and the circumstances crucial for

28 [F.N. A.I.R. 1973 SC 947]
making the choice by the judges between awarding death or life. It is not unreasonable to leave discretion with the judges to sentence an accused convicted for murder either death or life. It is also not invalid under article 14 the judge balancing the number of aggravating and mitigating circumstances of the case and records his reasons in writing for awarding the sentence and their judicial discretion can be corrected by the superior court.

It was hit by the death penalty or life imprisonment imposed by the 14 judges of the Constitution, the uncontrolled, unguided discretion to fight crime is the fault of all the aggravating and mitigating circumstances after balancing. Them this is not to say that there will be no discrimination. The facts and circumstances of a case can hardly be the same as the other facts and circumstances and therefore Article 14 cannot be invoked in matter of judicial discretion.

The death sentence should be imposed only if otherwise public interest, social defense and public order would be smashed irritably. An accused of imposing the death penalty does not necessarily have to relate to "special reasons", but not the criminal. The criminal does not deserve to be sentenced to death for the crime shock. The extreme penalty can be invoked only in extreme situation.

The provision of death penalty as an alternative punishment of murder is also not violation of article 21. The founding fathers of this article are clearly in a fair procedure established by law in accordance with the fee and the right to personal freedom or deprive a person of his life, recognized the right of the state to bring out the implications. The procedure provided in CR.P.C. for imposing capital punishment for murder cannot be said to be unfair, unreasonable and unjust. The court, however emphasized the death penalty is an exception rather than the rule ought to be imposed only in the ‘gravest case of extreme culpability’, or in the ‘rarest of the rare cases’ when the alternative option is unquestionably foreclosed.

Further the Supreme Court has formulated broad guidelines for determining “rarest of the rare case” in which murderer should be awarded the penalty instead of life, the judges must ask themselves two question for deciding whether a murder falls in the category of ‘rarest of the rare’ cases.
1. Sentenced to life imprisonment and the death penalty are not enough to call it renders the crime, and whether there is something unusual about death sentence?

2. If the circumstances of the crime are such that there is no other alternative but to impose the death penalty, even after the age for the maximum weight to mitigating circumstances, which speaks in favor of the offender?

Article 21 is that no one shall be deprived of his life or personal liberty except according to procedure established by law.

If this item is expanded according to the interpretative principle indicated in the case of Maneka Gandhi case\textsuperscript{29} it will be read as follows:

Fee established by law for any person, except as reasonably practical, losing his life or personal liberty.

So it expanded there are clearly a founding father of the implications of the current law and established cost, reasonably practical under the personal freedom in life, of a person State recognized the right of the elevator 21 is for illustration purposes only read the constitution, and many other symptoms, especially the Constitution of the producers of the Seventh Schedule List III at the list of IPC first and second entries are fully aware of the existence of the death penalty for murder and other crimes show that the IPC and Cr.PC and enforced in the beginning. Section 72 (1) (c), especially in the suspension or punishment of any person convicted of a crime should be reduced by presidential powers and in all cases of the punishment is.

Similarly, under Article 161, the governor of a state is empowered to suspend, payment or work, among other things, the death sentence of any person convicted of capital murder or crime relevant to an issue that the former executive power expansion. Article 134 of, for a complaint to the Supreme Court to appeal a person sentenced to death by the Supreme Court, after reversing his acquittal by the trial court. According to Cr.PC, which has been used for over a hundred years, a death sentence must be carried out by hanging. In view of the above constitutional provisions any stretch of the imagination it can be said that the death penalty under Article 302, Penal Code, may be

\textsuperscript{29} [ F.N. Maneka Gandhi v. Union of India, A.I.R. 1978 SC 578]
discussed or done by hanging, forming an unreasonable punishment, or cruel or unusual because of the constitutional principles. One can not say that the coach of the Constitution is regarded as punishment for murder or mode to follow the traditional rules concerning penalties, defile the dignity of the person in the dream threshold preamble of the Constitution. Parity reasons, one can not say that the death penalty for murder violated the basic structure of the Constitution.

“Remember, death penalty is also murder”

The judiciary has more often than not, used section 354 (3) of the code of the criminal procedure to justify its stand either in support of or against the capital punishment. The abolitionists see this provision as a green signal for dilution of capital punishment while for the retentionist has special reasons contemplated by section.354(3) implicit suggest that the death sentence is legally and constitutionally permissible.

The pros and cons of ‘Life Or death’ sentence have been expensively dealt with by the supreme court of India in Rajendra Prasad versus state of U.P. Therefore it would be pertinent to state the fact of the case to analyze the entire issued in its proper perspective. The accused in the instant case was a desperate character who had undergone sentence of imprisonment for life and was released on Ganpati Festival day in 1972. The accused incidentally attacked one Ram Bharose and dealt several blows on vital parts of his body with knife. Ram Bharose fled from the clutches and ran into the house. The defendant chased him all the way to the bloody and knocked on the door asking him to open. Meanwhile, Mansukh; death came and tried to defend not attack the accused Ram Bharose. Thereupon accused stuck deceased Mansukh was done to death.

The Supreme Court by majority of 2:1 and speaking through J. Krishna Iyer, attributed failure of penal institutions to cure criminality within the criminal as the sole cause of this cruel murder and allowed Commutation of death sentence that of life imprisonment. The Court observed “This was not a menace to the social order but a specific family feud and whose paranoid pre-occupation with family quarrel.”

30 [F.N. A.I.R. 1979, SC 976]
Reacting sharply to the majority view J. A. P.Singh answered the experiment of reformation has miserably failed. If death is committed the accused will commit a few more murders and he would again become a menace to the society.”

In a way Rajendra Prasad’s case provided an appropriate opportunity for the Supreme Court to express its views on the need for dilution of death penalty in the context of Indian society.”

A year later the Supreme Court was once again called for to the controversy over choice between death penalty and imprisonment for life before larger bench of four judged overruling its earlier decision in Bachchan Singh V/s State of Punjab, the court by majority of 4:1 expressed view one element Furnishings well be configure as a replacement to Kill people ‘really is not logical and does not do range of Art.4, 19 and 21 of the Constitution INDIA solution. Of the observation, "well not have a death or configure any server cu be a subject penological purpose problem children, Journal complex and complex machines. Strong That was the view from my day model of equal defaults chắn comments left Slave mode, one part very large population of the person above all how gốm the world of social housing Students, law su, Phan and the administrative verification vien van Furnishings my strength required on the value and really finding electronic configuration of screen to protect.

The abolitionist contention that vengeance which is no longer an acceptable end of punishment it is contrary to the reformation of criminal and his rehabilitation, and finally that it is inhuman and degrading. The Supreme Court ruled that though life imprisonment is the rule, death sentence must retain as an exception and to be used sparingly.

In Machchi singh v. State of Punjab 1983, the accused killed two innocent and helpless women heinously and in barbaric manner. Their lordship of Supreme Court opined that the rarest of the rare case rule prescribed in Bachchan Singh’s case was clearly attracted in this case and sentence of death was justified.

In Kuljeet Sing’s alias Ranga v. Union of India 1981, the two accused Ranga. And Billa committed gruesome murder of two teenage children in professional manner. The

Supreme Court observed the murder was preplanned, cold-blooded and committed in most brutal manner and there were no extenuating circumstances warranting mitigating of sentence-

The Supreme Court in its decision in T.V. Vatfieeswami v. State of Tamilnadu 1983, once again ruled that prolonged delay in execution exceeding two years would be a sufficient ground to quash death sentence.

But soon after in Sher Singh v. State of Punjab 1983, the Supreme Court overruled its earlier decision, Chief Justice Y.V. Chandrachud observed, death penalty should only be imposed in rare and exceptional cases, but in death sentence held by Supreme Court should not be allowed to be defeated applying any rule of thumb, there is no hard and fast rule can be laid down as far as the question of delay was concerned. If a person were allowed to resort to frivolous proceedings in order to delay the execution of death sentence, the law laid down on death sentence would become an object of ridicule.

The Judicial trend in India reveals that it has always upheld the right of the state of ill a wrong doer. It may, however, not be denied that the judiciary has always weighted the contents of philosophy of life, as enshrined in our National Charter, heavily before punishing a wrong doer to death. As capital punishment extinguishes life, it is deprivation of life par excellence; and attempts have been made from time to time to attack the imposition of capital punishment on the anvil of Article 21. The judiciary has shown a gesture of liberalism in awarding death penalty in the right of spirit contained in Article 21 read with Articles 14 and 19. The doctrine of fair, just and reasonable procedure has been evolved by the apex Court for the deprivation of life and personal liberty. The Supreme Court has held that the procedure for the deprivation of life and personal liberty must be fair, just and reasonable and not fanciful, oppressive or arbitrary.

It may be said that the judiciary has shown its preference to life imprisonment rather than sentencing the criminal to death. The exception, however, is that the court has upheld the constitutionality of death sentence. The question of Constitutional impermissibility of death sentence, in the light of spirit contained in the provisions of Articles 16, 19 and 21 of the condition, was raised for the first time in Jag Mohan Singh V. state of U.P. The court was negative in the contenting and held that deprivation of life is constitutionally permissible provided it is done according to procedure established by
law. Soon after Jagmohan came the case of Ediga Anamma v. state of Andhra Pradesh\textsuperscript{32} in which justice Krishna Iyer passed a sentence of life imprisonment and commuted death sentence on the ground of delay of two years in execution. Further, apex courts showed its positive trend towards the philosophy of life and want a step forward stressing the viewpoint that humanistic imperatives of Indian Constitution need to be explored at the hands of law.

Justice Krishna Iyer delivering the majority judgment, which was concurred by Justice Desai, observed. It is fair to mention that the humanistic imperatives of the Indian Constitution... have hardly been explored by courts in this field of “Life or death” at the hands of law.

The Court held that death penalty can not be given unless it is shown that the appetite of the convict murderer is too chronic and deadly that ordered life of a locality or society or a prison itself will be no more if this man is now or later to be fixed in general. However, Sen. J. did not agree with the view point coined by the Court. He will delivering dissenting opinion, argued that it was not permissible for this court to hear an appeal, in particular the case when the sentence imposed capital to define ”special reasons” occurring in sub-section 354 of the Penal Code, so, by a process of judicial interpretation in terms of limiting the scope of the death penalty in a way that has virtually the effect of the abolition of the death penalty.

The court did not support the view point expounded in Rajendra Prasad’s case. It was held by the court that in Bachchan Singh v State of Punjab\textsuperscript{33} that death sentence was not violation of Article 21 of the Constitution. The court, however, relaxed its earlier trend and held in another case of Bachchan Singh that death sentence be imposed in the “rarest of rare cases”. The assassinations of Prime Minister Indira Gandhi and retired Chief of the Army Staff General Vaidya, murder so Sanjay and Gita Chopra are some of the cases in which death sentence was awarded on the touchstone of the “rarest of rare cases criterion.

\textsuperscript{32} [F.N. A.I.R. 1974 SC 799]
\textsuperscript{33} [F.N. A.I.R. 1983 SC 585]
Further, in Munaware Harun Shah v. State of Maharashtra\textsuperscript{34} the appellants committed as series of murders and the extreme penalty of death was upheld having regarded the magnitude, the gruesome nature of the offences and the manner of perpetrating them. It was also pointed out that may be shown leniency in the matter of sentence not only be out of place, but will certainly lead to and foster a feeling of private revenge among people leading to the destabilization of society.

Similarly, in Darshan Singh v. State of Punjab,\textsuperscript{35} the apex court upheld the death sentence because the attack was cruel in as much as the appellant had chopped of the neck of the deceased, have given repeated blows by ganders on the body of another deceased who was a young girl, indeed his own uncles daughter, which had been done to see that she did not escape. The brutality of the crime prevailed over the judges to approve the penalty of death. The constitutionality of death sentence was also challenged.

In Shashi Nayar v. Union of India\textsuperscript{36} Justice K. N. Singh speaking for the court relied on Bachan Singh and Jagmohan Singh was upholding the constitutionality of death sentence.

"The Bombay High Court acquitting the allegations criticized the sentence passed by the court while upholding the life sentence awarded to him. GT includes a judge to release as "disconcerting" bench Nanavati and Justice KT Thomas, reliable and formidable case scenario to create an entire chain and that the little girl Gangu was raped "irresistible conclusion unerringly" is no different from pointing delivered and charged with the murder of Suresh.

"Unfortunately, the High Court in criminal justice when he stepped to the side of all the circumstances of this case, such an atrocious crime, criminal culpability in an accident became successful., released "The first was accused of referring to the judgment when writing Mr Justice Thomas said, and then a lonely place the child was raped and killed, the Bench said:" we dealt, serious punishment for such a crime can be selected as the Court's view on contemporary needs:

\textsuperscript{34} [F.N. A.I.R. 1988 SC 747]
\textsuperscript{35} [F.N. A.I.R. 1992 SC 395]
\textsuperscript{36} [F.N. A.I.R. 1995 SC 1387]
"The court him once released, the High court observed that the accused were sentenced to life, but keep in mind that, in this case that the death penalty may be imposed in view of the constitutional bench in the most exceptional cases" is dangerous in the area of rare.

5.24 NITHARI MURDER CASE:

Investigation (CBI) court in a special CBI, seven-year-old Aarti murder Surender Koli the guilty, Artis body parts were a drain. She was found the last known Noida's Nithari village from the 19 women and children on a case busted before the Nithari killings affected nearly two months missing.

Nithari killings in the previous ruling, the special CBI court haltar Rampa Monintar Singh and Surinder Koli for their respective roles in the murder case were sentenced to death.

Just Halder: as in the case of murder, the CBI has given credence to a panther. While holding only Koli guilty of the first offence, on the basis of his cell phone records.

Aarti’s parents Durga and Neelam Prasad as Rampa’s father was alone with Goalie and then went out to buy candies, she herself said culprit. Aarti October 25, 2006, returned home from school that afternoon. The CBI's opinion was not challenged.

However, she came back. After a report about Aarti Noida. On Sector 20 police station on December 29, 2006 Aarti is taken down, the remains of missing Nithari. Both Panther and Goalie had done with the 19 bodies were found buried in the back of the house after murdering a young woman between 2005 and 2006 to eliminate the crime for children.

In 16 cases the hearing, the CBI chargesheet filed in 2007, handed over to CBI on January 11. A special CBI court, saying that he deserved a harsh punishment for his crimes, sensational Nithari rape and murder of nine-year-old girl killed in 2006 monintar businessman Surinder Singh Kohli the servant was sentenced to death.

37 [F.N. press trust of India : Nithari murder case may 04, 2010]
Justice AK Singh "rarest of the rare crime" and Rachna, he was given the death sentence for the murder of young children and women, killing 38-year-old Goalie in the third case of the CBI was given the death penalty. JP Sharma suggested:

“The judge awarded life imprisonment to Koli for kidnapping a fine of Rs. 1000 and sentenced to seven years in prison and a fine. Section of his belongings and DNA test report is based on the identity of his parents: Rachna murder and sentenced to death for committing rape under 302 IPC 1000," he said.

Judge Koli said "deserves more severe punishment but nothing more can be said than the death penalty awarded."  

5.25 TANDOOR MURDER CASE:

A Delhi court on July 2, 1995 on the capital of a restaurant Tandoor (oven), the body of his wife Naina Sahni, the former Youth Congress leader Sushil Sharma was guilty of killing and burning.

"Sharma was given the death penalty does not act as a mockery of justice in the case and shock the conscience of the society will be great is to be vile and cruel," the judges said.

It certainly justifies any punishment other than the death penalty in the "rarest of the rare cases" was a case falls in the category.

"There are opportunities for this kind of a person to reform itself, the judges observed in their 89 page order.

"All the facts and circumstances of this case and enthusiastic interest in our thinking, then we present a good case for awarding death penalty than the one that can not be determined in the eyes of," the judge added.

Sushil Sharma was awarded death sentence by Additional Sessions Judge G.P Thareja Nov 7, 2003, for murdering Naina Sahni, who claimed to be his wife, on July 2, 1995 and trying to dispose her body in a most horrendous manner.

38 [PRESS TRUST OF INDIA:DEATH FOR SURINDAR KOLI IN NITHARI CASE.SPPL.28, 2010]
The murder shocked the nation and was promptly dubbed by the media as the tandoor murder case. The prosecution had revealed in the trial court that after shooting Sahni dead, Sharma cut her body into pieces, stuffed them into a gunny bag and took it to an open air Bagiya Restaurant. Inside the erstwhile Ashok Yatri Niwas hotel on Jan path. He tried to dispose the body by burning in a tandoor with the help of his friend and restaurant manager Keshav Kumar, who too had been convicted for destroying the evidence and helping the accused.

Kumar was awarded seven years’ imprisonment and Rs 10,000 fine, but he was a free man the day he was awarded the sentence as he had already undergone eight years of jail term as an under-trial and his imprisonment tenure had to be adjusted against the sentence awarded to him. Sharma had challenged the trial court's order.

But rejecting his petition, the judges ruled, “Sharma Sahni, the brutal killing of his body will shock the conscience of the community at large and those who did not hesitate to say that this despicable act definitely shocked our judicial conscience.”

“Sharma and her husband, but he was sure that his wife was reluctant to declare openly living with whom she was enjoying her life, was an orphaned girl.

“He and his wife thought he was having an affair with some other strong people, when I thought that it would be able to avoid publicly declaring Sahni, he decided to finish her before she could tell the whole world of their relationship.

“It is also the epic may be he thought that was convicted of murder that appears all powerful, a situation none of these kind of like him as a person to help do not forget that a political party youth wing's leader already learned, from his family, no one even took him some protection even evidence during the trial during the investigation stage of his recovery or come forward,” the court said about his personality and nature of the guilty.

The judges also refused to buy the contention of Sharma’s counsel K.K. Sud As far as burning of the dead body in an oven that is the concern was only a step towards destruction of evidence of the crime.
While quoting a Supreme Court judgment, the judges said, “The convict did not even stop there but exhibited the criminality in the conduct by throwing the body in a burning oven, totally disregarding the respect for a human body Tamil Nadu bus burning:

In the notorious Joshi Abhyankar murder case\textsuperscript{39} the accused committed a series, of gruesome murders during January, 1976 and March, 1977. They were sentenced to death H.C.bombay on 6 April, 1979. The appellants thereupon filed special leave hovering over their minds for five years. Two of the petitioners, namely, Shanta Ram Jagtap and Munawar Shah pleaded that during this period, they had written a book entitled “Kalyan Marg” in Marathi and translated “Sukshm a. Vyayar”. Written in English by Dhirendra Bramhachari into Marathi. Dismissing the petitions the Supreme Court observed that the book writing and translation work of the petitioners believed that any specter of death penalty was hovering over their minds during the period they have been in jail. Therefore, any mercy Only in the case of wrongful conviction will not be displayed but will certainly lead to confusion among people in the community to foster and give rise to a feeling of private revenge.

The Supreme Court in Ranjit Singh v. Union Territory of Chandigarh\textsuperscript{40} was once again called upon to decide an appeal relating to the case, murder was committed by Appellant a life convict during parole. The accused was sentenced to death on conviction u/s 303, I.P.C. and the co-accused was awarded life imprisonment. Agreeing with the contention of deceased’s counsel the sentence of death to that of imprisonment for life as Section 303 I.P.C. had been declared unconstutional in Mithu case. Held that during parole appellant should have behaved like a law abiding citizen but instead he indulged into heinous crime of murder hence the case of “rarest of rare cases”.

Again, in Mahesh case\textsuperscript{41} the Supreme Court maintaining the sentence of death passed by the High Court observed “It would be To escape the extreme penalty of the law and allow the appellants to pay the penalty for reducing the powers of the judicial farce this country has to offer in the suspect icing system, the common man would lose faith in the courts.”

\textsuperscript{39} [F.N. A.I.R. 1987 SC.585]
\textsuperscript{40} [F.N. A.I.R. 1984 SC 45]
\textsuperscript{41} [F.N. A.I.R. 1987 SC 1346]
In the instant case father and son had axed a person and three members of his family and his neighbor who intervened merely because daughter of that person married a Harijan. The Supreme Court held that interference with the sentence was not called for because the act of appellants was extremely brutal, revolting and gruesome which shocks the judicial conscience. Therefore deterrent punishment was a social necessity in this case.

The Supreme Court in its decision in Asharfi Lal & Sons v. State of U.P.\textsuperscript{42} once again upheld the death sentence of the accused who committed reprehensible and gruesome murders of two innocent girls on 14\textsuperscript{th} August, 1984 to wreck their personal vengeance over the dispute.

Commenting on the desirability of death sentence the Court further observed: “It comes with the death penalty, especially in the absence of the Registrar in cases of extreme and brutal murders, a crime against society, in grave cases where the failure to impose a death sentence. 302, IPC, sentence that is appropriate, depending on the degree of punishment.”

In yet another case, Ravji\textsuperscript{43} the Supreme Court found no justification in commuting to life imprisonment. In this case, the accused had committed murder of four persons including his wife and three minor children and attempted to commit murder of two others. The act was committed in cool and calculated manner while victims were asleep. There was absence of provocation or any psychic disorder which could be attributed to these brutal and heinous murders.

5.26 RESEARCH METHODOLOGY

There are two types of methodologies,

1) Doctrinal / Non Empirical Legal Research.

2) Non Doctrinal / Empirical Legal Research.

\textsuperscript{42} [ F.N. A.I.R. 1987 SC 1721]
\textsuperscript{43} [ F.N. A.I.R. 1996 SC787]
The study undertaken is doctrinal research. The evolution and research are based on the roots of utility of capital punishment and its retention in Indian scenario. The researcher has endeavored to find out various incidents provision and cases wherein the background of retention lies.

The researcher has different points on capital punishment. Apprehensive arguments between the position of retentionist and the abolitionist are by and large analytical. Therefore all the data collection will have its base for research.

Hence, as for as collusion of different points on capital punishment is disturbed, it is more expressive.

This study and preservation of the capital punishment is just as possible to set right the problem. It seeks death penalty that encompasses international and national level.

Abolition of death penalty has received strong backing in international arena. However India is still retaining death penalty as a permissible and legal form of punishment the retention of death penalty.

The researcher has adopted the ‘doctrinal research’ method in this thesis on the grounds justified below;

Doctrinal research facilitates in coming on original research. It provides the language of Judges and other with the tools needed within a fixed time frame. It provides sound background for outstanding and it helps for the smooth functioning of the legal system of society. When question arises as to what course the law should follow the Doctrinal research may provide appropriate guidance and therefore the Doctrinal research is of informational value. There are certain concepts which can be improved only this Doctrinal research as it is more flexible in character and extends more workable more and important. It is also less expensive.

There are accepted truth and theories in all the fields of knowledge. The theories with differing levels of generality and degree of conformation existing at a given point of time are known to all. The intellectuals of the society are always inclined to probe the
facts of the empirical world and confirm the proved truth of his investigations by accepting or correcting the existing theories. Such probing is called research thus, research is a systematic attempt to press on information, various ‘truths’ or various ‘realities’.

Law may be termed as a behavioral science as it regulates human behavior. It is expressed in world, which is used in a particular context. Whatever be the source of law, it cannot provide remedy for all the situations and for all the time to come. Changes in society demand that law should move with the time if it has to remain alive and active and it can remain alive, active and useful, if it is aware of its lacunae and takes step to overcome it with the passage of time. But if there is a law for that area but due to one reason or the other, it does not work, its aim would be to suggest reform in the existing law so as to make it workable.

The legal research means to provide originality in law However, this should not be the end or the sole objective of legal research. When research is undertaken as a part of the process of law reform, it is undertaken for making suggestion for improvements in the law on I concrete and easily identifiable matters and the formulation of those proposals in precise terms. This is very significant and governing factor in the area of legal research.

Research is an inquiry for the verification of a fresh theory or for supplementing prevailing theories by new knowledge. Since every knowledge is the extension of an existing knowledge, no research can be said to be absolutely new. A researcher while undertaking a project for his work, processes much of information about it and while conducting research, he proceeds onward to acquire more information about it and formulate certain hypothesis on that basis. Thus it is a continuous process of acquiring knowledge through inquiry into existing laws.

A doctrinal research means a research that has been carried out on a legal proposition by way of analyzing the existing statutory provisions and cases by applying the reasoning power. Ordering and systemizing lawful propositions, study of legal institutions through lawful reasoning or rational deduction. Ascertaining a legal rule for the purpose of solving problems is one of the purposes of the traditional legal I research. This has been achieved by the original sources of law. The Acts of Parliament and the Acts passed by the legislature fall under this category legislation. The case laws decided
by the Supreme Court and High Courts, which are binding on lower courts, fall under the category of precedents. The doctrinal legal research attempts to verify the hypothesis by the first hand study of authoritative sources. A doctrinal researcher should know how to use a law library, for the major portion of this research methodology concerns with the identification of authoritative sources and uses the techniques to find them out.

**Doctrinal research looks at the following issues:**

1. The aim of preferred values;
2. The problems posed by the gap between the policy goal and the present state of achievement;
3. Availability of alternative choice for the implementation of goals;
4. The predictions and consequences that was made.

In a dynamic society, the laws on social welfare have placed great burden on courts of law. Generally, there will be gaps in statues and the courts have to evolve doctrinal principles, standards and norms. Further, there will be ambiguity in the statutory language.

**5.27 SOURCE OF DATA**

Therefore all the data collection will have its base from research papers, articles, books encyclopedias, e-sources some texts and national and international law journals. The analysis of which will eventually help in reaching the conclusions and suggestions on this study

**5.28 METHODS OF FOOT NOTING**

A standardized style of citation has been followed from beginning to end out.

**5.29 RESULT AND DISCUSSION**
In the present work, it is the sincere discussion about the capital punishment with the help of landmark judgment and recent Supreme Court or High Court cases as well as recent laws concerning it retention or abolished.

The abolitionists see this provisions a green signal for dilution of capital punishment while for the retentionist the special reasons contemplated by section 354 (3) implicitly suggest, that death Sentence is legally and constitutionally permissible.

In the case of Kunju Janardhanam v. State of Andhra Pradesh, the accused, infatuated by the charm of a village girl committed brutal murder of his innocent wife and his two minor sons while they were asleep in dead of night. The girl on her part had warned the accused though her letters not to destroy his happy family life by the illicit intimacy but the accused paid no heed and chose to commit triple murder with extreme depravity. Although the majority by 2:1 commuted death sentence to that of imprisonment for life Mr. Justice A.P. Sen. in his dissenting judgment disagreed with the majority and, observed:

“Also featuring a monster and I do not see the type of crimes should be given the death penalty if his wife and the issues with this model to a case of she’s has to young children to the innocent, a death sentence is not proper crime”.

In a way, Rajendra Prasad’s case provided an appropriate opportunity for the Supreme Court to express its view on need for dilution of death penalty in the context of Indian society citing extensively from Anglo American literature’ available on the subject and the relevant case law. Mr. Justice Krishna Iyer tried to derive at the point that special reasons referred to under Sec. 354 (3) of the Cr.P.C of must be liberally construed so as to limit; death penalty only to rare categories of cases such as white collar crime anti – social offences like hijacking or selling of spurious liquor, etc. and hardened murderers. Justice Krishna Iyer emphatically stated that by and large murders in India are not by a calculated professionally cold – blooded planning but something that happens at the spur of the moment due to sudden provocation passion in family feud or an altercation etc. motivates one to go to extreme and commit the crime and therefore, there are prospects for reformation of the offenders if they are not done away to death.

In Geneta Vijayavardhan Rao & another v. State of Andhra Pradesh, the two appellants were accused of setting up a super express bus on fire by sprinkling petrol with the motive of plundering the passengers. This resulted into roasting 23 passengers burn injuries. The defense plea was that the accused were young and their prime motive was not murder but plundering property and wealth was not considered sufficient enough to constitute mitigating. Circumstances warranting commutation of death sentence to that of imprisonment for life. The Apex Court ruled that considering the overall picture, Alive but the inhuman manner in which the Scheme of crime was plotted and executed.

In Manohar Lal alias Munna & another v. State of Delhi, the two accused (appellants) killed four sons in presence of the sole eye-witness; the mother by setting them ablaze the incident the accused were convicted, for offences under Sections 302 and 396 read. With Section 149 IPC. The Supreme Court held that the act of accused though gruesome, it was the assassination of Prime Minister Indira Gandhi which had blind folded the accused, it could be said that the act of the mob of which the appellants members were, sentencing accused to death would not be proper in the instant case and as such it is altered to that of imprisonment for life.

In case Kishori v. State of Delhi, consequent to the assassination of Mrs. Indira Gandhi many human were burnt alive or mercilessly killed, the charges against four accused persons, namely, Kishori (appellant), Rampal, Saroj and Shabnam were framed u/s 148, 183, 302 and 307 read with Section 147 of IPC having been Sentence to death the judgment of the High Court. During the hearing it was stated that Kishori was allegedly involved in several incident which gave rise to seven cases, four of which ended in his acquittal and in three cases, he was sentenced to death. The Supreme Court, observed that:

"The law is good for the death penalty in rare cases, rare imposed often criminal aggravating circumstances, if there is a vision that can express the court decided to remedy that mob action, as there is a particular person simply does not have the use of weapons of any pre-determined purpose, role, indicating that special circumstances exist the case, the individual is responsible for the decrease." 

45 [F.N. A.I.R. 2000 SC 420]
46 [F.N. A.I.R. 1996 SC 2791]
47 [F.N. A.I.R. 1999 SC 382]
In the instant case, all the witnesses a mob attack resulting in the death of three persons to talk to. The appellant claimed responsibility for the knife wounds, yet it was enough for themselves as a result of the injuries is not clear, although the death of the deceased persons. The appellant can not be said as a member of an organization or group in the gang indulging in acts must be the result.

In planned violent activities formed with any purpose or scheme which can be called as an organized activity. The Supreme Court, therefore, decided that on the totality of the circumstances, this is not a case which can be called “the rarest of the rare case” the appellant on charges framed against him, the sentence is, reduced from capital punishment to that of life imprisonment and with this modification, the appeal stands dismissed.

In Nirmal Singh case, the two accused Dharampal and Nirmal were convicted for murder of 5 persons there were witnesses and medical evidence too. Accused Dharampal was already convicted in a rape case on the testimony of close in laws of the deceased. He was sentenced to ten years imprisonment He had given a threat to deceased persons on, (the victim of rape case) whose deposition was responsible for Dharampal’s conviction. He had killed 5 persons with (Kulhari) axe which indicated his depraved mind. The Apex Court held that the brutal and merciless killing by the accused was certainly and desiring the sentence of death by hanging till death.

The Court, however, reduced the brother of Dharampal to life imprisonment holding that it stood totally on a different footing than that of Dharampal’s case. Dharampal was already punished for ten years in a rape case whereas Nirmal had no past criminal antecedents nor could he constitute a threat to the society. He had only assisted Dharampal in hitting the deceased after Dharampal’s blows inflicted by kulhari axe.

In Mohd. Chalnan v. State of Delhi, the accused had committed rape on a minor girl Ritu aged one and a half years when her parents and two sisters were away from home. As a result of this brutal and ghastly act the child suffered several injuries and died. Trial sections 302, 376, IPC and charged under, the Supreme Court in a very brutal murder, ghastly, horrible, while ensuring that it raises, that held these should be construed

48 [ F.N. A.I.R. 1999 SC 1221]
49 [ F.N. A.I.R. 2001(1) C.crlj.121(sc)]
as aggravating circumstances for imposition of death sentence. over his carnal desires. But taking guidelines laid down in Bachchan Singh case is one which deserves, humanist approach and therefore capital sentence imposed against appellant is commuted to imprisonment for life.

In the case of Amit alias Ammu case\(^50\) the accused aged 20 years (appellant) took deceased, a school girl of about 12 years of age to a secluded place and committed rape on her and strangulated her to death. He was sentenced to death by the Sessions Court in view of heinousness of the crime and also ordered fine or Rs.25, 000/- to be paid to the parents of the victim for mental torture; agony and the loss sustained of their only female child. The High Court confirmed the aforesaid sentences of ‘rarest of the rare case’. On appeal, the Supreme Court held that conviction of the appellant for the offence under Sections 302 and 376, I.P.C., considering that the appellant, the circumstances, of the case and cumulative facts, the Apex Court held that the case did not fall in the category of ‘rarest of rare’ case. The appeal was therefore allowed only to the extent of modification of sentence only.

In Dhananjoy Chatterjee case,\(^51\) the appellant was to committed murder and rape on school going 18 years old girl in retaliation for his transfer as a security guard to some other building complex, on the complaint by the deceased girl to her parents that the appellant was teasing and harassing her. His appeal having failed in the H. C. and the S. C. and the mercy appeal being rejected by the Governor of West Bengal and also the Hon’ble President of India, he was finally hanged till death on 14\(^{th}\) August 2004 in Alipore Jail of West Bengal in execution of his death sentence. The facts of the case were as follows:

The appellant was a security guard deputed to guard the building Anand Apartments. Deceased had made complaint about the teasing by the appellant to her mother previously also and her father requested to replace the appellant and accordingly he was transferred to Paras apartment. Anguished from this, the appellant entered the house in the absence of other members, committed rape and killed her. She was found dead on the floor with her skirt and blouse pulled up and her private parts and breast were visible with patches of blood near her head and floor. According to medical evidence,

\(^{50}\) [F.N. A.I.R. 2003 SC 131]

\(^{51}\) [F.N. Cr.Appeal no. 393-394 of 2004 decided on 26-03-2004]
hymen of the deceased showed fresh tear with fresh blood in the margins and blood stains on the vagina and matted public hair. The circumstantial evidence, the motive also gets importance of the law.

Thus, Hapless victim Hetal Parekh, from 5.30 am to 5.45 pm on March 5, 1990, was raped and murdered. In his flat number 3A, Anand Apartment on the third floor. Part of the challenge of the appellant and 380, IPC, even rape and murder and attempt to commit an offense under the said flat committing theft a wrist watch. Learned Additional Sessions Judge found him guilty and Section 302 IPC under a criminal who (i) convicted and sentenced to death (ii) Section 376 IPC under a crime and sentenced to life imprisonment and imposed, (iii) Section 380 IPC under the offense he has to undergo, five years rigorous imprisonment. Substantial penalty under sections 376 and 380 IPC, ordered to run at the same time, but in the case of the appellant under the section, the death penalty had no effect. High Court confirmed by the appellant executed 302 IPC. The appellant, and the High Court appeal against his conviction and sentence. Criminal appeals filed it after the appellant were dismissed by the High Court upheld the death sentence. Special leave was granted, the appellant, Dhananjoy Chatterjee alias Dhana, appeal.

There were no eye witnesses of the occurrence and the entire case rested on, circumstantial evidence A case based on circumstantial evidence, the existence of objective in significant. Although there is no necessarily intended to discredit the prosecution case, on the other concrete circumstances the case was developed, such as the complete chain of evidence about crime and the crime are inevitable conclusion to. In this case, the appellant registered ample evidence to show that the scope of the alleged offense and therefore the Court rightly found, if the accused guilty of aforesaid offences. Abscondence of the accused was sufficient to support the case against him. The Court, therefore, rejected the belated and vague plea of alibi which it considered to be only an afterthought and a plea in despair. The Court held that prosecution has successfully established Appellant was found guilty of her murder after the rape alone Hetal.

On the question of sentence, the trial court imposed the death penalty, the Supreme Court's imposition of capital offense under this section.302 of I.P.C. Hetal Parekh, killing five. Modi age 27 years, a married man, the appellant submitted and
awards were special reasons sentence him to death. It also Section 235 visually discernible legislative policy and (2) submitted to the Division. 354 (3) Cr.P.C. The court not impose the death penalty can choose serious. The dignity of human life and appealed to him, care of the community and give a chance to become a reformed member. The state to ensure the death penalty, it serves as a deterrent to such abject mind. According to the learned State counsel there were any mitigating circumstances; Rare case was undoubtedly. The Court observes as follows:

“We put the question in view of the penalty area, 354 (3) million from the patent has become a legislative policy which has given our anxious consideration. PCI Bachan Singh v Punjab we considered this courts monitoring. However, criminal punishment in the courts concern. "Today, there are disparities are agreed. Few criminals, many based on the equivalent offense are with very different sentences for receiving and a shockingly large number even system reliability weakens punishing the criminal and the final preparation of the justice that promotes when the most severe punishment is available of Course, that the community is satisfied with the justice that the guilty unpunished and the crime victim does not want to see what punishment to imposed. The penalty of material and no cut and dry formula do not lay down to do it. specific law in the absence of penalties, judges of various factors are needed to be considered all those factors need to into consideration of the situation of an overall vision after taking, even taking into account.

The courts of justice against the imposition of appropriate punishment for offenders in the community is to respond to the cry. For court; to Just keep a large amount of crime in the criminal rights..

Hon'ble Court, the protection of sacred duty sordid affair apartment rent population safety and welfare were to ensure the residence of one of a resident, the deceased should be subjected, to assure her of his complaint on the transfer retaliation lust and murder to see her, the offense is still deadly with the medical evidence. Offense not only inhuman and barbaric but it is absolutely ruthless cold-blooded crime of rape followed by murder and was an affront to human dignity in the community. In case there are any extenuating or mitigating circumstances. We are innocent of rape, having no

52 [F.N. A.I.R. 1980 SC 898]
stimulation, without a death, but a cold-blooded planned murder sentence determined in consideration of human life, the dignity of a real and abiding concern for the courts to keep in mind that they should recognize the defense with 18 years of insecure young woman is certainly the case with any other penalty which calls for at times the "rarest of rare" and u/s 302 of I.P.C. the death penalty on those who committed the crime under the IPC. Offenses under sections 376 and 380 IPC penalty imposed on those who run the courts in order to ensure, together with the related directions; In the event of the death of the appellant, the only academic interest will be used to support the conviction. If the appeal fails and is hereby dismissed.

Dhananjoy’s case is undoubtedly a trend setter in the history, of capital punishment in India and clearly indicates that the principle laid down in Bachan Singh’s case i.e. the rarest of the rare case is best suited to the socio milieu of the Indian society even in the present 21st century.

In Suraja Ram v. State of Rajasthan53 murdered brother’s wife and daughter. The Supreme Court upheld the sentence of death as the murders were committed in a cool and calculated manner and without any provocation. Therefore, it clearly fell in the category of the rarest of the rare cases.

The Supreme court in Krishnan v. State of Haryana54 declined to hold that the appellant’s case fell in the category of ‘rarest of the rare’ cases and therefore, commuted death sentence to one with life imprisonment. In this case, the accused was already serving a sentence of life imprisonment for a murder and he was found guilty of committing another murder of a person with whom he had a property dispute while he was released on parole. The Court ruled the sentence of death but that cannot be made the sole basis for award of death sentence as all other factors such as motive, manner and magnitude should also be taken into consideration.

In Raja Ram Yadav and other case55 the appellants (eight in number) were charged for committing premeditated murder of six persons in a cool and cruel manner u/ S 302, 436 read with Sections 148 and 120-B I PC The incident occurred when a group of

53 [F.N. A.I.R. 1997 SC 18]
54 [F.N. A.I.R. 1997 SC 2598]
55 [F.N. A.I.R. 1996 SC 1613]
persons committed mass massacre of 26 persons out of which 25 belonged to one community also from same family in the village Bhagora, Police Station Madanapur, Distt. Aurangabad. On the night of 30th May, 1987 The conviction was based on the testimony of solitary child witness who was five; years old son of one of the deceased. This deposition was held convincing and reliable, the death penalty was completely justified; but that the death penalty would not be serious award on the appellants, hence it would be proper to commute the death sentence the life imprisonment.

Again, in the case of ‘Ashok’ Kumar v. The State of Delhi Administration,56 the allegations against the accused were that he was having illicit relations with co-accused and killed her husband in a room of hotel by striking him with stone. The High Court enumerated as many as eleven circumstantial evidence against the appellant and spelt out the case to be ‘rarest of the rare’ one. The Supreme Court held the view that appellant was rightly convicted of the offence under Section 302 IPC as the chain of circumstances fully established the guilt of the accused. However, on the point of sentence, the Apex Court thought practical that the act of striking the dead with a handy stone and causing the death cannot be said to be so cruel, unusual or diabolic which would warrant death penalty.

In kanttiwari57 The accused took her to the nearby grocer’s shop, purchased a packet of biscuits and gave it to the victim. Therefore, he eloped with the victim, committed brutal rape on her and strangulated her to death. The trial court sentenced the accused to death under Sections 302/376 which was upheld by the High Court. On appeal, the Supreme Court held that the accused committing rape on an innocent seven years old girl who reposed trust and confidence in him because of their close family relationship indicates the depravity of the accused. The vulnerability of the victim, the enormity of crime and barbaric and gruesome murder committed by the accused brings the case in the category of ‘rarest of the rare’ case and execution of death sentence was the only proper punishment in the instant case so that others may also be deterred from indulging in such inhuman criminality. The appeal was, therefore, dismissed.

56 [F.N. A.I.R. 1996 SC 265]
57 [F.N.A.I.R.1996 SC 265]
In Mahindra Nath Das v. State of Assam\textsuperscript{58} The appellant (accused) was a young man, who killed the deceased and chopped off the hands and head of the dead body. Thereafter, he came to the police station along with the chopped hand and head of the deceased to make a confession of his offence. The Supreme Court considered this murder as the rarest of rare case and upheld the death sentence of the accused. The Court rejected the plea that the accused was a young man having liability of his three young unmarried sisters and age old parents who were solely dependent on him.

In the case of Prem Sagar case\textsuperscript{59} the accused were sentenced to life imprisonment for committing murder by intentionally causing death of the deceased in furtherance of common intention under Sections 302/34 IPC. In appeal against the sentence by the information, the Supreme Court held that undoubtedly, brutality is inbuilt in every murder but in the case of every murder death sentence is not imposed because life imprisonment is the rule and death sentence is the exception. The sentence of death is imposable in rarest of rare cases. The Court further noted that having taken into consideration the mitigating circumstances indicated by the High Court, there was no scope for interference and altering the sentence of life imprisonment to one of death sentence. The conviction of accused Dharambir was, therefore, affirmed The Court, however, ordered acquittal of the accused, Karambir because the prosecution did not link him with the occurrence and, therefore, his conviction was not justified.

The S. C. in Sushil Murmu case,\textsuperscript{60} reiterated the ‘the rarest of the rare case’ doctrine and held, In this case the appellant sacrificed a child of nine years before the deity kali by beheading him, for his own prosperity. The Supreme Court dismissed the appeal and laid down the test to determine as to what cases may be covered under the rarest of the rare type.

5.30 PEOPLE ON DEATH ROW IN INDIA

Mohammed Ajmal Amir Kasab, the terrorist attack 26/11, punishment and a special anti-terror court in Mumbai on Thursday ordered to be sent to the gallows, the sole surviving perpetrator of the more than 300 people to death in India.

\textsuperscript{58} [F.N. (1996) 5 SCR 102]
\textsuperscript{59} [F.N. A.I.R.2004 SC 21]
\textsuperscript{60} [F.N. A.I.R. 2004 SC 394]
Leading some to death:


- Khalistan Liberation Force terrorist ... Davinder Singh.Bhuttar, nine people were killed and 31 others convicted.

- In 1991 the assassination of former Prime Minister Rajiv Gandhi convicts Murugan, Santhan, Mighty the knowledge,

- On July 2, after the murder of his wife Naina Sahni Tandoor her body in a restaurant (clay oven), disposing, 1995, by former Youth Congress leader Sushil Sharma.

- Priyadarshini Mattoo rape and murder of a fellow in the College of Law in 1996 and his son, a former senior police officer Santosh Kumar Singh.

- Three AIADMK workers - Nedunchezian to (41), Muniappan (52), Ravindran (also known as alcohol, 44) - Three students of Tamil Nadu in 2000 and set fire to a bus, killing, in Dharmapuri town.


- Pawan Kumar Mittal, a petrol pump owner in Uttar Pradesh. Lakhimpur Kheri in the November 2005 murder of Indian Oil Corporation officer S.Manjunath.

- The assassination of the then Punjab Chief Minister Beant Singh in 1995, Babbar Khalsa terrorist, Jagtar Singh Hawara and Balwant Singh Rajoana

5.31 NO NARCO TEST WITHOUT CONSENT

Polygraph and brain mapping tests conducted any one drug, or one of his / her permission or a suspect to a crime, the Supreme Court of activists and lawyers praised the ruling, he said. Chief Justice K.G. A bench Balakrishnan and Justices RV Raveendran and
JM Panchal forcible administration of these tests for those facing criminal offenses "an unwarranted intrusion into personal liberty," he said.

"No individual in the context of investigating whether forcibly or otherwise criminal cases, the question of which techniques are subjected to. Individual freedom, so as to the bench.

"The results gathered from these techniques, such as trusting against self-incrimination" can not justify the dilution of constitutional rights ... Invocations of a compelling public interest 'fair trial right "comes into conflict." .

The Supreme Court 'godmother' Santokeben reserved judgment on a bench of petitions moved Jadeja, underworld don Arun Gawli and other challenging these tests. The court said; "These results are hardened criminals who have no respect for the benefit of the parties still argue about certain social values.

"It concerns our future generations constitutional case at hand did not stop, but in fact the whole population as well as our decision to extend the implication that must be borne in mind," -analysis Intravenous administration of the drug is a stimulant drugs as a suspect in the fact that drugs receive important information. Narco-analysis, polygraph and brain mapping tests are often used to assist in criminal investigations. All three are different from each other, but all are with the aim of collecting information.

Recently these experiments were done among the Indians in the 1993 Mumbai serial bomb blasts case accused, scam Abdul Karim Telgi in the printing and fake stamps and stamp papers circulating crime underworld don Abu Salem, and Sadhvi Pragya Singh Thakur, Nithari near New Delhi in children and women murders charged with the brutal murders of 2006 and September 2008, and domestic help Surinder Singh Kohli Monintar businessman linked to the Malegaon blast.

Mumbai-based senior lawyer Majid Memon described it as an important ruling. "No person is forced to be a witness against himself, and they have the right to shut up."

Attorney Rebecca M.John, Maoist ideologue advises Gandhi, said: "It will be a long time ago. Drug testing is constitutional. Supreme Court simply to ensures the rule of law.
While concluding the present chapter deals with as many as 40-50 typical cases as well as the opinions of nearly 25 learned judges over the dilemma between Death sentence and life imprisonment. The rarest of the rare type of cases were selected for study and history making decisions along with personal or Bench opinions are cited and humbly analysed.

The plight and predicament of Indian society as well as that of the judiciary also is honestly studied from various states of India covering a span of almost half century. The dichotomy between ‘life or death’ or death penalty and life imprisonment has been sincerely dealt with. The chapter includes the ‘rarest of the rare’ type of remarks of learned judges who use the discretion power in conviction but provide strong and special reasons that compel them to convict either capital punishment or life imprisonment.

There are some rare cases discussed here that raise the problem of parole and during that another murder similarly the political interference and the public opinion pressures at times compel judges in favour of the victims Indian judiciary has seen strange events such as manvat murder series or Noidas infanticide. The intention the manner the procedure, the trial and at lest the execution create challenging problems before the judiciary that has to see and think of justice for the victims on the one hand and the accused on the other last week, the decision regarding a southern Chief Minister has created a storm in society creating problems before law and order in the quarrel between the judiciary and the public opinion.

The chapter suggests the problems regarding the rarest of the rare category since Bacchan case and the explanations and explorations regarding. It has been the sincere motive of the present work to cast light upon the versatile aspect of judicial judgments and significant cases.