CHAPTER III
EVOLUTION OF CAPITAL PUNISHMENT IN ENGLAND, AMERICA AND INDIA

Capital Punishment was in existence in different countries for a variety of offences. A better understanding of the concept of Capital Punishment requires a brief enquiry into its origin, evolution and abolition in particular in England, America and India. In this chapter a modest attempt is made to trace out the historical background of the Capital Punishment in England, America and India. An attempt is also made to study the efforts in those countries to abolish Capital Punishment.

3.1. ORIGIN OF CAPITAL PUNISHMENT IN ENGLAND:

In England the origin of Capital Punishment can be traced to 450 years before Christ. In the beginning the culprits were drowned and later mutilation was practised. In the early period the methods of execution depended upon other factors like the gender, social status etc., of the criminal.¹

There was no unanimity among the rulers over the award of Capital Punishment. Canute who ascended the throne in 1016 did not favour Capital Punishment and in fact abolished the death penalty. Canute’s abolition of death penalty did not survive. His own son William Rufus was a passionate hunter, who hunted day and night. It was natural enough for him to order death for those who were caught hunting deer in the Royal forests.² Normans and Williams were also against Capital Punishment. During their tenure no criminal was hanged. But, they allowed other harsh punishments which in turn in some cases resulted in the death of the offender. However, conditions were changed during the regime of Henry I and II. Henry I prescribed death penalty for murder, treason,³ burglary, arson, robbery and theft. But, Henry II prescribed amputation of right hand and right foot for the offences of robbery, murder and false coining in the place of death penalty provided by Henry I. After Henry II Richard I who ascended the throne prescribed ‘hanging, drawing and quartering’ which was inhuman and barbarous.⁴

3.2. INTRODUCTION OF NECK-VERSE:

By the end of fifteenth century the position was changed with the establishment of eccelesiastical courts which started punishing the people spiritually. They could not inflict death penalty. So, any
clergyman charged with a crime which carried death or imprisonment made sure he claimed his privilege, which had been so extended as to include even doorkeepers and exorcists. Because priests were among the few literate people, the test of one's membership of holy order was to read the first verse of the fifty-first psalm. It became a simple matter for criminals to memorise the verse. The custom was to ask a convicted person if he had anything to say before sentence was passed and it was at this moment that he could put forward his plea of "benefit of the clergy". By repeating the Neck-Verse, as it became known, he obtained what amounted to reprieves.

Henry VII ordered that everyone convicted of a clergyable felony had to be branded on the thumb. This stopped persons claiming benefit on more than one occasion. After Henry VII, Henry VIII came to the throne. He was the first and only English King to permit Sunday executions and execution by boiling to death as a legal penalty. The whole Europe was at this time experiencing a movement towards severity and brutality of sentence. It was believed that hard and tough punishment was the natural answer - indeed God's answer to crime. Death of varying degrees of horror must be the deterrence of the serious offenders.

In 1512 murder in Church or on the highway was classified as non-clergyable. Suspects thus became liable to death penalty. A statute of 1532 set the tone for the remainder of the century stipulating that those committing petty treason, wilful murder, highway robbery or who stole from churches or other holy places or from dwelling houses where the owner or members of household were present, and who burned down houses or barns where grain was stored, were, with the exception of high ranking clergymen, to be denied benefit of clergy.

In 1553, Henry VIII had twenty Protestants burned because they would not acknowledge him as head of the Church. In 1536 he extended death penalty to various offences. Later Acts extended the death penalty to those holding diversity of opinion over religion (1540), those indulging in witchcraft or sorcery (1542), servants stealing or embezzling from their masters (1536), horse thieves (1546) and those committing buggery with mankind or animals (1532). In the short reign of Edward VI (1547-53), he repeated the laws permitting burning alive. Mary Tudor's reign (1553-58) was also too
short without any marked difference. Elizabeth I who ascended the throne on 17th November, 1558 was not noted for humanity. The result was more capital offences entered into the statute book, and a number of Henry VIII’s statutes which had been repealed were virtually re-enacted. Estimated annual executions numbered eight hundred at the beginning and increased steadily. Henry VIII did not distinguish clearly between political and religious offences and Elizabeth executed many Roman Catholics for religious offences which for legal purposes were classified as treason. Witches were burnt at stake, Bible being quoted as authority.¹⁰

3.3. T Y B U R N E X E C U T I O N S:

During the sixteenth century Tyburn in London became notorious place of execution. The site had been a traditional place for hanging since the twelfth century. The trees there were utilised for hanging purposes. In fact gallows became known as Tyburn tree. The first execution was that of Willima Fitzosbert in 1196, for leading a rebellion.

When Tyburn’s sad trade became too brisk, a beam was erected right across Edgware Road to permit multiple executions. Stands were built to accommodate the public who could witness events for small fees, the cost being increased according to the rank or social status of the victim. As hanging became the acceptable British method of execution, drowning became less common.

In 1603, James I came to the throne. He made witchcraft a capital crime. During his reign executions at Tyburn averaged about 140 a year. In this century gibbets were used to suspend the bodies of executed criminals in chains near the site of crime as a lesson to those who might copy their deeds. Occasionally living criminals were hung by chains and left to die; sympathetic passers-by would shoot them to put them out of their misery. It is doubtful whether gibbets deterred anyone.¹¹

In Charles I’s reign Tyburn executions dropped to 90 per year. He was followed to the throne by Charles II who took some interest in penal reforms. Transportation was introduced as a punishment. The last burning of a woman in Scotland was in 1708 and in 1710 the “Maiden”¹² was finally put into retirement. But, in England burning of witches continued for another eighty years.

By 1700 the death penalty was pronounced in England both for high and petty offences.¹³ This
trend continued and hangings crudely and publicly performed, were frequent - and from this period any statute would specifically state whether an offence was punished without the benefit of clergy. Five years later the system of requesting recital of the “Neck-verse” was abolished bringing to an end the farce of the benefit of clergy plea.

When Queen Anne died in 1714 there were thirty two capital offences in England. By the time George II came to the throne in 1743 this number increased to one hundred and sixty. Such was the incidence of hanging in London that it became known as the City of Gallows. In 1799 London averaged one execution every fortnight. By 1819 the number of capital offences on Britain’s statute books were two hundred and twenty embracing all manner of crimes and wrongs such as - damaging the waterloo bridge, impersonation of a prisoner, associating with gypsies for one month etc., Even children of seven years and eight years were also given death penalty for stealing spoons, colours, shoes etc.,

3.4. TOWARDS ABOLITION:

Protests against Capital Punishment can be traced to Saint Augustine or the writings of New Testament itself. Some would carry the beginning of the crusade against Capital Punishment to the literature of Old Testament. For the modern period the logical starting point is the year 1764, when Cesare Beccaria wrote his essay on “Crime and Punishments”. Beccaria maintained that since man was not his own creator he did not have the right to destroy human life either individually or collectively. He claimed that Capital Punishment was justified only in two instances: first, if an execution would prevent a revolution against a popularly established government; and secondly, if an execution was the only way to deter others from committing a crime.

The man who first brought the ideas of Beccaria and Bentham to the British political scene was Sir Samuel Romily. He entered political scene in 1806. In 1808 he succeeded in getting the death penalty repealed for the offence of picking pockets. Quakers supported Romily in his efforts to restrict the death penalty.

In 1812 Romily managed to set aside death penalty for vagrancy by a soldier or seaman. From 1810 until his death in 1818 Romily devoted his time in influencing the Parliament to pass three Bills
to repeal the death penalty for theft. In his twelve years tenure in Parliament, Romily succeeded in abrogating the death penalty in only three types of cases: picking pockets, stealing from cloth makers and vagrancy by soldiers and sailors.

Though he was far in advance of the general opinion of his day, he could not agree that the death penalty be abolished for all offences. Sir James Mackintosh, entered the Parliament in 1812, where he became one of Romily's most enthusiastic supporters in his attempts to reform the criminal law. In March 1819, his motion for a committee to study Capital Punishment was carried, resulting into the Select Committee of 1819.

With the insistence of the Committee and Mackintosh the three Bills proposed by Romily became law in 1820. In 1823, Mackintosh introduced nine resolutions to abolish death penalty for various offences. Sir Robert Peel, the then Home Secretary promised to look into the matter and between 1823-1827 he was able to pass eight Acts which moderated and consolidated the criminal law and which repealed more than 250 old statutes.

Although Peel favoured the removal of death penalty wherever practicable, he believed that Capital Punishment must be retained for all documents representing money. Though the penalty was in the statute book no more was it practised.

The movement towards abolition of Capital Punishment was further carried on by John Bright and William Ewart. They were successful in getting repealed death penalty for burglary in 1837 and were responsible for the appointment of five member Royal Commission in 1833 which presented its report in 1836.

In 1837, there were thirty seven Capital Offences on statute books. Lord John Russel sponsored a Bill for the removal of the death penalty for twenty one offences and restrict its use in the remaining sixteen offences, and he was successful.

William Ewart aided by John Bright, further led the movement for complete abolition. Debates in Parliament reached a peak and resulted in the appointment of another Royal Commission in 1864. At that time treason and murder were, in practice the only crimes punished by death in the United
Kingdom. The Commission favoured dividing murder into degrees. The Commission further suggested that the judges should have the power to record death sentence without pronouncing it, and suggested that an Act be passed directing that executions should be carried out within prison grounds. With the result in 1868 public executions became a thing of past. Except this, little progress was made during the remainder of the nineteenth century.

In the first and second decades of twentieth century, though two societies - Penal Reform League and Howard Association made some efforts nothing much was resulted. A small reform was achieved when the statutes in the criminal law relating to children were revised and consolidated by the Children’s Act, 1908, which prohibited Capital Punishment for any person under sixteen years of age.

In 1921, the amalgamation of the two societies resulted into a new body, known as the Howard League for Penal Reforms. It became a prime force in the abolition movement. The first attempt, in 1921, was an effort designed to prohibit passing the death sentence for persons under twenty one years of age or persons whom a jury had recommended to mercy. In 1922 Infanticide Act was passed. By the terms of the Act, woman charged with the death of her newly born child would be punished for the commission of manslaughter rather than with murder.

In 1925, a National Council for the Abolition of Death Penalty was founded, with Roy Clavery, as its first secretary. The subscribers of this new body were drawn from the entire nation and were of varied political, social, economic and religious backgrounds. This Council published newspaper accounts, magazine articles, radio broadcasts, books packed with statistics, novels, plays, pamphlets and leaflets advocating abolition of death penalty.

In October 1929, the first full-scale debate in the twentieth century on the abolition of the death penalty culminated in the appointment of a now famous Select Committee on Capital Punishment. This Select Committee, (1930) met thirty one times in all and interviewed a great many witnesses from Britain, Europe and even the United States. Special emphasis was placed on countries which had dispensed with the use of Capital Punishment. In those cases where appearances before the
Committee were impracticable, witnesses sent memoranda which the Committee either incorporated in the evidence or placed in the appendices. With the hearing of the last witness on July 30, 1939 the inquiry was completed, and the report consisted of 550 pages with an additional 100 pages in appendices. Ultimately, it recommended that in the then session of Parliament, a Bill abolishing Capital Punishment for an experimental period of five years should be passed.

Although, the Government did not allow a debate on the Report, the work of the Committee was not entirely lost. After a careful investigation, the Committee had condemned death penalty as unnecessary to the safety of the nation. The report now stood as a basic tenet in the crusade against Capital Punishment, and abolitionists turned their attention towards propaganda, which, they hoped would compel parliamentary action on the death penalty. But, unfortunately in 1931 the downfall of the government took place and the chances for action on the Select Committee Report became slim indeed.

After the war ended in 1945, The National Council for Abolition of the Death Penalty and the Howard League for Penal Reforms rendered their propagandistic efforts for the abolition of Capital Punishment. In the Parliament in 1947, Sydney Silverman criticised the Government for not including the abolition of Capital Punishment in the Criminal Justice Bill which was introduced in October, 1947.

The new clause inserted by the House of Commons providing for the suspension of Capital Punishment for an experimental period of five years was not considered. The Government proposed to maintain the death penalty for murders committed during: robbery, burglary, or house-breaking, wounding or inflicting grievous bodily harm by three or more persons acting in concert, crimes committed by means of explosives or other destructive substances, rape and indecent assaults on females and sodomy and indecent assaults on males.

Murders committed in the course of resisting or preventing arrest, or escaping from custody, or obstructing a policeman or any person assisting him were capital under the Government proposal. Murder of a prison officer by a prisoner was punishable by death, as was murder committed by the systematic administration of poison. A person ‘convicted of previous murder’ was also to be subjected
to the death penalty. In addition a murder must have been committed with “express malice”, which was defined as the “intent to kill or maim” if Capital Punishment is to be awarded.

Albeit the Home Secretary promised to consider practical means of limiting the scope of death penalty, the Criminal Justice Act did not provide for the abolition of Capital Punishment.

3.5. THE ROYAL COMMISSION, 1949:

In 1949 another Royal Commission was appointed to study the issue of Capital Punishment. In 1953 the Commission submitted its report. The following are the suggestions made by the Royal Commission:

1. Raising the age limit for imposing the death sentence from eighteen to twenty one.
2. Mercy killings are not to be removed from the category of murder.
3. Death penalty could not rationally be abolished for woman and retained for men.
4. M'c Naughten Rules dating from 1843, should be abrogated and that the jury should be left free “to determine whether at the time of the act, the accused was suffering from disease of the mind or mental deficiency to such a degree that he ought not to be held responsible."

The Commission refused to recommend that the judge be empowered to pronounce a lesser sentence upon a conviction of murder, but did not suggest that it might be possible for the jury to decide in each case if there were extenuating circumstances that would justify the substitution of life imprisonment.

The Committee concluded, "... the conclusion would seem to be inescapable that in this country a stage has been reached where little more can be done effectively to limit the liability to suffer the death penalty, and that the issue is now whether Capital Punishment should be retained or abolished.”

By this time there was some new propaganda published favouring abolition, but three murder cases probably did more than anything else to call the attention of the public to the problem of Capital Punishment.

In spite of public opinion and efforts of the abolitionists the Government refused either to abolish or to suspend the Capital Punishment on the ground of three reasons:

1. In the case of potential offenders, the Capital Punishment was a unique deterrent.
2. Serious difficulties might arise in view of the extraordinary long terms of detention that would be required in the absence of Capital Punishment.

3. Public opinion opposed abolition and it would be wrong to undertake it without public support. Consequently Sydney Silverman, who had emerged as the leader of the abolitionists in the House of Commons decided to introduce a Bill for the abolition of death penalty in 1955. It was supported in the House of Commons. The vote favouring the abolition was not victory solely for the Labour Party, as forty eight Government supporters had voted for ending the use of death penalty in Great Britain. But, in the House of Lords it was opposed. The commentary of “The New Statesman” and “Nation” in this regard was noteworthy: “The House of Lords may have delayed the abolition of hanging: but it has hastened its own abolition. From the hills and forests of darkest Britain they came: the halt, the lame, the deaf, the obscure, the senile and the forgotten - the heredity peers of England united in their determination to use their medieval powers to retain a medieval institution.”

3.6. THE HOMICIDE ACT, 1957:

The Homicide Bill was a compromising measure, it was hoped to draw support from both moderate abolitionists and moderate retentionists. This Bill was designed to resolve the problem in a manner acceptable to the majority of people in the country and in parliament itself and to maintain law and order by providing Capital Punishment for several categories of murder.

On March 21, 1957 the Bill became law. Thus Capital Punishment was retained for certain types of murder with in Great Britain. Although it would eliminate three - fourths of those formerly subject to execution still the death penalty exists in the statutes of Great Britain.

Under the new Law, by 1960 seventeen persons were executed. The rate of execution is therefore roughly four per annum, compared with an annual average of thirteen before the Act. Whether it is worthwhile continuing the law about Capital murder in order to hang an average four persons each year out of an average total of a hundred or more murderers is debatable.

3.7. THE MURDER (ABOLITION OF DEATH PENALTY) ACT, 1965:

Ultimately, the Murder (Abolition of Death Penalty) Act, 1965 abolished the death penalty for murder for a five year experimental period. A hundred years of relentless crusade against Capital
Punishment has been completed. Abolition of death penalty for murder in Great Britain was made permanent by resolutions of both Houses of Parliament on 18 December 1969. The death penalty is retained now only for high treason and for piracy with violence.

Since the death penalty was abolished for murder, motions to reintroduce it have been defeated in the House of Commons on a number of occasions. In the last decade, a vote on an amendment to the Criminal Justice Bill to reintroduce the death penalty for murder was held on June 1988 and it was defeated by 341 to 218.

An ardent abolitionist commenting on the abolition of death penalty observed, “What next? Well, it will still be necessary to expunge the death penalty completely from our laws, and that ought surely to be done without arguments, or fears, that treason and piracy will become rife, or that arsenals and dockyards will be burnt down.  

It is submitted that in Great Britain public opinion very much influenced the Legislature and the result is abolition of Capital Punishment. Bentham’s assertions that the Legislature should exercise its power in consonance with the public opinion had its sway in England. The Legislature should assess or gauge public opinion on matters of great public importance and it should accordingly act. Public opinion should be respected and be given effect.

3.8. CAPITAL PUNISHMENT IN AMERICA:

The American colonies had no uniform criminal law. The range of variation during the seventeenth and eighteenth centuries, so far as Capital Punishment is concerned, was considerable. It may be gauged from the differences in the Penal Codes of Massachusetts, Pennsylvania and North Carolina. The earliest recorded set of capital statutes on these shores are those of the Massachusetts Bay colony, dating from 1636. The early codification, titled “The Capital Lawes of New England”, lists in order the following crimes: idolatry, witchcraft, blasphemy, murder, assault in sudden anger, sodomy, buggery, adultery, rape, man-stealing, perjury in a capital trial, and rebellion (including attempts and conspiracies). Each of these crimes was accompanied in the statute with an Old Testament text as its authority. During one twelve-month period, there is a record that colonial Massachusetts
put to death twenty witches.

In later decades, this theocratic criminal code gave way in all but a few respects to purely secular needs. Before 1700, arson and treason as well as the third offence of theft of goods valued at over forty shillings, were made capital, despite the absence of any Biblical justification. Several Negro slaves were burnt at the stake in New Jersey as late as in 1785. The Common Wealth of Massachusetts recognised nine capital crimes and they bore only slight resemblance to the thirteen “Capital Lawes” of the Bay Colony viz., treason, piracy, murder, sodomy, buggery, rape, robbery, arson and burglary.

Far milder than the Massachusetts laws were those adopted in South Jersey and Pennsylvania by the original Quaker colonists. The Royal charter for South Jersey in 1646 did not prescribe the death penalty for any crime, and there was no execution in the colony until 1691. In Pennsylvania, William Penn’s Great Act of 1682 specifically confined the death penalty to the crimes of treason and murder. These ambitious efforts to reduce the number of capital crimes were defeated early in the eighteenth century when the colonies were required to adopt, at the direction of the Crown, a far harsher penal code. By the time of the war of Independence, many of the colonies had roughly comparable capital statutes. Murder, treason, piracy, arson, rape, robbery, burglary, sodomy, and, from time to time, counterfeiting, horse-theft, and slave rebellion - all were usually punishable by death. Benefit of clergy was never widely permitted, and hanging was the usual method of inflicting the death penalty.\footnote{[31]} Some states, however, preserved a severe code. As late as 1837, North Carolina required death for all the following crimes: murder, rape, arson, castration, burglary, highway robbery, stealing banknotes, slave-stealing, the crime against nature (buggery, sodomy and beastiality), duelling if death ensues, burning a public building, assault with intent to kill, breaking out of jail if under a capital indictment, concealing a slave with intent to free him, taking a free Negro out of the state with intent to sell him into slavery, the second offence of forgery, mayhem, inciting slaves to insurrection, or of circulating seditious literature among slaves: being accessory to murder, robbery, burglary, arson, or mayhem. Highway robbery and bigamy, both capital punishable, were also clergyable. This harsh code persisted so long in North Carolina partly because the state had no penitentiary and thus had no suitable alternative to the death penalty.
3.9. THE ABOLITION MOVE:

The last part of the eighteenth and early nineteenth centuries, however, saw a steady movement of thought and feeling towards humanitarianism over the Western world, of which America was naturally a part: but men like William Penn were embodiments of a social conscience, centuries ahead of its time.

Penn’s famous code adopted in 1682, retained Capital Punishment only for what is nowadays termed “first degree murder”. His criminal reform “Bill” was undoubtedly the most important single innovation in centuries for ameliorating the treatment of convicted criminals. But, after his death in 1718, the English Penal Code was reinstated in Pennsylvania. This not only restored religious offences, which Penn’s Code did not recognise, but imposed the death penalty for fourteen separate offences. Before Independence, in fact, the English colonies recognised anything from ten to eighteen capital offences: but after Independence, Pennsylvania again took the lead in reducing the number of capital crimes. The English Penal Code was overhauled and the death penalty for witchcraft was abolished in 1791: and, once more, Capital Punishment was abolished for all offences except the first degree murder in 1794.

After Penn, the noteworthy name in the criminal reforms was that of Dr. Benjamin Rush (1745-1813). In May 1787, he gave a lecture in Benjamin Franklin’s house in Philadelphia to a group of friends, recommending the construction of a House of Reform. After a year, he wrote an essay entitled “Inquiry into the Justice and Policy of Punishing Murder by Death.” He argued its impolicy and injustice. This essay, published a few years later, became the first of several memorable pamphlets originating in the country to urge the cause of abolition, and Dr. Rush is naturally credited with being the father of the movement to abolish Capital Punishment in the United States.

Like Romily of England, Rush also depended upon Cesare Beccaria’s “On Crimes and Punishment” for his arguments in favour of the abolition of Capital Punishment. The main points of Rush’s argument were simple enough: scriptural support for the death penalty was spurious: the threat of hanging does not deter but creates crime: when a government puts one of its citizens to death, it exceeds the powers entrusted to it. In the years immediately following the publication of Rush’s essay, several other
prominent citizens in Philadelphia, notably Franklin and the Attorney General, William Brandford, gave their support to reform of the capital laws. In 1794, they achieved the repeal of the death penalty for the crime of “first degree murder”.

These reforms in Pennsylvania have no immediate influence in other States... In the United States no major public figure emerged as leaders in this movement until several decades later. During the early decades of the nineteenth century, individual efforts were to advance the cause of abolition of Capital Punishment. Edward Livingston (1764-1886) who prepared a revolutionary penal code for Louisiana, insisted on total abolition. But, he did not live long enough to learn that during the next half-century, the leading piece of anti-Capital Punishment propaganda in the United States was a thirty-page excerpt from his modern Louisiana Code. Few voices rose in support of him. One New York Quaker hit on the worldly idea that the best “practical cure for murderous impulses” would be to impose an “enormous duty” on all kinds of strong liquor. A pacific clergyman, John Edward, wrote a tract entitled “Serious Thought on the Subjects of “Taking the Lives of Our Fellow Creatures” which enjoyed a wide circulation in New York.

Not until 1830 did the literary efforts of Rush and Livingston began to bear fruit. By that time, the Legislature in several States (notably Maine, Massachusetts, Ohio, New Jersey, New York and Pennsylvania) were besieged each year with petitions on behalf of abolition from their constituents. Special Legislative Committees were formed to receive these messages, hold hearings, and submit recommendations. Anti-gallows societies came into being in every State along the eastern seaboard.

The high water mark was reached in 1840s when Horace Greenley, the Editor and founder of the New York Tribune became one of the nation’s leading critics of the death penalty. Another notable figure in the area of abolition of Capital Punishment was Charles Spear, who was the author of Essays “On the Punishment of Death” in 1844. In 1845, he had founded a journal entitled “The Hangman” which afterwards became the “Prisoners’ Friend” and continued publication until 1859. About the same period the New York Society for the Abolition of Capital Punishment was sponsored by such prominent citizens as the Reverend William S. Baclch, John Quiney Adams, Williams H. Steward and
former United States Vice-President Richard M. Johnson of Kentucky and George M. Dallas of Pennsylvania.

In May 1845, a National Society was formed in Philadelphia, the headquaters of the Pennsylvania, for promoting the Abolition of Death Penalty and within a few years State societies existed in Tennessee, Ohio, Alabama, Louisiana, Indiana and Iowa. The conscience of mankind was so revolted by Capital Punishment that the death penalty could not be enforced in practice. One authority estimated that in the year of 1894, there were 9,800 known murders, but only 132 legal executions, plus 190 illegal ones. Thus, twenty nine out of thirty murderers got off without being punished.

In 1846, the Territory of Michigan voted to abolish hanging and to replace it with life imprisonment for all crimes save treason. This law took effect on March 1, 1847 and Michigan became the first English speaking jurisdiction, in the world to abolish death penalty for all practical purposes. In 1852, Rhode Island abolished the gallows for crimes, including treason. The next year Wisconsin did likewise. Maine abolished it in 1876, but reintroduced it in 1833 and abolished it again in 1887. Four other states prohibited it from 1907 to 1911, and seven more between 1913 and 1918, five of these restored it after an average period of about three years. South Dakota restored it in 1939. But, only one man was executed since then.

Between the peak of the Progressive Era no less than eight states - Kansas, Minnesota, Washington, Oregon, North and South Dakota, Tennessee and Arizona abolished the death penalty for murder and for most other crimes. However, by 1921, Tennessee, Arizona, Washington, Oregon and Missouri had reinstated it. Had it not been for persuasive voices of Clarence Darrow, the great “Attorney for the damned”, and for Lewis E. Dawes, the renowned warden of Sing Sing Prison, and organisation in 1927 of the American League to abolish Capital Punishment, the lawless era of the twenties might have seen the death penalty reintroduced in every State in the Union. By 1918 the death penalty was mandatory for capital crime in few states. By 1930 there remained only five states with a mandatory death law, and in 1951, Vermont and New York were the only States left with such a law. This practice has led to the enhancing the power of the jury or the court, or both, in deciding.
whether the convicted person should be executed or be given a lesser sentence than death. This is done partly by establishing a different degrees of homicide - a division unknown to England till 1957 - and partly making the death sentence permissive instead of mandatory.

3.10. THE PRESENT SITUATION IN AMERICA:

The death penalty is completely abolished in nine of the states and a life sentence is given instead. In twenty other states, the penalty is rarely used. To sum up this record in chronological order, Capital Punishment has so far been abolished in Michigan (1847), Rhode Island (1852), Wisconsin (1853), Maine (1887), Minnesota (1911), North Dakota (1915), Alaska and Hawai (1957) and Delaware (1958) though Rhode Island and North Dakota are not perfect examples, as they provide the death penalty for murder committed in prison, by a lifer. In the State of Washington, the jury may decide between death or life sentence and the jury may recommend alternative punishment. A death sentence may similarly be commuted to life imprisonment in virtually all States, and in some (such as Idaho, Illinois, Louisiana, New York, Oklahoma and Texas) at least it can be directly commuted to less than life sentence.

Alburt Camus, the Nobel Prize winner commenting on a film "I want to live" which surrounds the whole practice of passionless, deliberate killing as a punishment, performed in the name of State said: "Here is the reality of our times, and we have no right to be ignorant of it. The day will come when such documents will seem to us to refer to prehistoric times and we shall consider them as unbelievable that in early centuries witches were burnt or thieves had their right hands cut off. Such a period of true civilization is still in the future, in America and in France."

To conclude, "the history of Capital Punishment in America has passed through periods of unarticulated acceptance in the early centuries to a nearly total repudiation in the Furman case to a limited acceptance which is evidenced by the post Furman decision."

3.11. ORIGIN OF CAPITAL PUNISHMENT IN INDIA:

Capital Punishment has been prevalent in India from times immemorial. It is as old as the Hindu Society. There were references about the death penalty in our ancient scriptures and law books. Kane
points out “It will be seen from the early sutras like that of Gautama and from Manusmriti that the ancient criminal law in India was very severe and drastic. But from the times of Yajnavalkya, Narada and Brihaspati the rigour of punishment was lessened and softened.37

The fundamental basis of ‘Dandaniti’ was deterrence. The concept of reformation was not known to the smriti writers. One more salient feature of ancient Hindu law was that the punishment depended upon the caste of the offender as well as the victim. There was little uniformity between the various scriptures and sastras. The law depended upon the nature and whim of the King, if not in theory, at least in practice. Nevertheless, murder was considered to be the worst of all crimes and hence the punishment was also severe.38

Various forms of punishment were mainly traced from the Rig Veda and Atharv Veda.39 There is a mention in both Rig Veda and Atharva Veda about the death penalty by hanging,40 by shooting,41 by thunderbolt,42 by electrocution,43 or by combination of any of the three punishments out of the above.44

The infliction of penalties, including the penalty of death, is a process operating against certain classes in general: and even if a single individual is subjected to any penalty, including the penalty of death, it is because of that individual belonging to the enumerated class of the social degenerates. The hundred and fourth hymn of the seventh part of the Rig Veda and fourth hymn of Eighth part of Atharva Veda have been addressed in common to the deities Indra and Soma. Infliction of punishment on culprits appears to be the common jurisdiction of these two deities. The hymns 45 reflect the instrumentality of Indra in inflicting penalties in consultation with Soma, making thereby the infliction of punishment as a matter of common deliberation of the deities Indra and Soma, as if the two are respectively the executive and the judicial organs, acting in unison, in the cosmic government.46

Till the end of the Epic period killing was justified either in war or combat. The eighteen prominent epics, the puranas, are impregnated with the classical theme of the incarceration of godhead on the mission of killing non-Aryan sovereigns. All this depicts the cult of killing as a cultural crusade.47

Killing of a demon or evil spirit was supposed to be a very religious act performed with a view to propotiating the deities for safeguarding the welfare of the group. With that object in view, such
punishments were usually carried out in the public gatherings, since they had a religious outlook. Such a mode of Capital Punishment seemed to have been in vogue.\textsuperscript{48}

The administration of criminal justice as an integral part of the sovereign function of the State did not seem to have emerged in India till the smriti period. The credit goes first to smritis, mainly Manu and secondly to the Artha Sastra of Kautilya, who have eliminated the influx of metaphysical subtleties into the innate conditions of the society governed by positive law administered by the Royal Courts. The administration of criminal justice in accordance with the tenets of positive law deduced from the principles laid down in the smritis, very often alloyed with Royal edicts or ordinances, emerged in the smriti period and continued till the Moghal regime in India until it was replaced by codified penal law in the British regime.

The Manu Smriti has recongnised a juristic distinction between the sentence of death ‘de jure’ and ‘de facto’. It is stated that a death sentence passed on a Brahmin culprit is not to be executed ‘de facto’, but only ‘de jure’ by the tonsure of his head. The tonsure to such a Brahmin was as good as his death.\textsuperscript{49} The death sentence of a Brahmin culprit may be executed ‘de jure’ by his exile also.\textsuperscript{50}

The later smriti writers also concurred with the opinion of Manu. Kautilya’s Artha Sastra, Gautama’s Dharma Sutras and Yajnavalkya’s smriti prescribe that as a general rule a Brahmin offender was not to be sentenced to death or corporal punishment for any offence deserving a death sentence, but in such cases other punishments should be substituted.\textsuperscript{51}

Kautilya who exempted a Brahmin from death sentence, as a general rule prescribed certain extraordinary circumstances where death penalty can be given to a Brahmin also. A Brahmin who aims at the kingdom or who forces entrance into the king’s harem or who instigates alien enemies or tribes against the king or who instigages disaffection or rebellion in forts or in the country or in the army should be sentenced to death.\textsuperscript{52} Katyayana was against exempting Brahmins from death penalty and stated that even a Brahmin deserved to be killed if he be guilty of causing abortion, or if he be a thief of gold or if he kills a Brahmin woman with a sharp weapon or if he kills a chaste woman. Death Penalty on culprits belonging to a class other than that of the Brahmins has to be executed ‘de facto’ without any
Manu Smriti not only prescribed varied types of punishments depending upon the cast and social status of the offender and victim, but also prescribed various modes of carrying out the execution depending upon the offence committed. The thief of unclaimed property is liable to be crushed to death by an elephant. The punishment for institution of a malicious proceeding may range from fine, corporal pain and death, commensurate with the charge levelled against the accused. A sudra bringing false accusation of theft against a Brahmin is liable to be awarded death penalty.

The punishment on a thief of gold, silver or other metal of the weight of a hundred grams or valuable apparel of another might range from corporal pain, amputation, or death in accordance with the gravity of the offence and with due regard to time and place of offence and the class of offence to which the owner of such property would belong to. A person of noble birth, convicted of theft of gems or precious stones, or of kidnapping a woman, is liable to penalty of death. A culprit guilty of arson, of poisoning, of causing hurt on an unarmed victim, or robbery, and of stealing crops or women, even if he be a preceptor, an old man or child, is liable to be killed instantly. An adulteress proud of money or beauty, bringing indignity to her husband by lying with her paramour is liable to be bitten to death by dogs in a public place and the paramour is to be burnt to death by being placed on a red-hot iron cot.

3.12. OFFENCES AGAINST STATE:

After Manu, the total scenario was changed. Offences against God, morality and upper class people took a back seat, and offences against the State were considered to be the gravest. Kautilya's Artha Sastra reflects this change of attitude, which is still prevalent and embedded in all the penal laws of the world till date.

Kautilya considered offences against the State as gravest, and prescribed death penalty for such offences even on the least pretext. There are four broad classes of offences, traceable in Artha Sastra as would entail death penalty, namely, (a) spying against the State, (b) misappropriation from the State exchequer or from personal property of the king, or from the resources of the State, (c) conspiracy by officers of the State, including ministers, and (d) other heinous offences committed by citizens. Death
penalty for offences against security of State were awarded, not strictly as a mark of justice but rather as a measure of policy or expediency where no chances could be taken. A liberal view in these matters could jeopardise the security of the State.

The offence of breach of secrecy, which is, in otherwords, the same thing as spying against the State is punishable with death. The offence of embezzlement from the State treasury, if committed by the treasurer entails death penalty. The other offences which carried death penalty are misappropriation or conversion of the personal belongings of the sovereign and involvement of officers of State in the offence of disposing of any jewel extracted from mines or sandal wood forests.

Artha Sastra contained provisions for death penalty on officers of State, when suspected to be conspirators or otherwise guilty of breach of loyalty to the sovereign. Death to such suspects had to be brought about only by diplomatic manoeuvring and rather in a clandestine way. It also prescribed death penalty for clandestine deaths, which resemble our modern day fake encounters by police.

The thugs and cheats in places of pilgrimage would reap death penalty on their fourth offence. Persons guilty of rape, abduction or of keeping others in wrongful confinement, or those who cause grievous hurt to others by the offence of deprivation of members of the body, like nose or ear and those who kill the horses or elephants of the king or steal such chattels or chariots or those who have trespassed on places of public resort, would also meet death penalty. Causing the death of a virgin below the age of menstruation is offence entailing death penalty. Letting out a prisoner from the prison would entail penalty of confiscation of the property and death also. Assault on a woman by a prisoner and cohabitation committed by a sudra man with a Brahmin lady also carried the death penalty. Death caused in a scuffle called for death penalty with torture, but if death of the victim did not take place immediately and he died within seven days then the penalty would be death without torture.

The Artha Sastra prescribed death penalty for murder even if it occurred in a quarrel or duel. Hanging was the penalty for spreading false rumours, house-breaking and stealing the king's horses and elephants. For offences against the State, for murdering one's father and mother or committing serious arson Capital Punishment was given in varied forms, namely roasting alive, drowning, trampling by
elephants, devouring by dogs, cutting into pieces, impalement etc.,

For rape, threat to kill, abduction and wrongful confinement, death was given by crucifixion. The other offences which carried death penalty by crucifixion were tresspass on places of public resort, causing grievous hurt, stealing king’s chattels and chariots etc., For committing arson death penalty was executed by burning. The person guilty of damaging a bridge or obstruction of a water course would be drowned. Causing death by poison was also punished by drowning. Women were not exempted from death penalty. But, if a woman was found to be pregnant, her execution would be postponed till one month after her delivery. This provision was clearer than the provision of Criminal Procedeure Code. The woman guilty of killing her husband, or her offsprings, or committing arson, or causing the death of any person by poisoning would be crushed to death by cows.

It is notable that the Artha Sastra is not a penal code and naturally lacks a coherent schematisation of offences and their penalties of death mentioned therein are not to be taken as exhaustive but only illustrative. They are meant to set guidelines for the sovereign having most of the things to be determined by discretion of the sovereign: and the penalty of death attached to so many offences do not at all seem to be imperative.

In Buddhists texts also references to death penalty were found. Even a compassionate king like Emperor Ashoka postulated death penalty for a number of heinous crimes, though General Amnesty existed. Idu Batuta, in his writings painted the picture of India, as it was in the 14th century, pointed out that Capital Punishment was in vogue for the offences of moral turpitude. Even members of the Royal family were dealt with like ordinary men.

3.13. THE MUSLIM PERIOD:

Muslim period marks the beginning of a new era in the legal history of India. The social system of Muslims was based on their religion, Islam, which may be described as a reformist version of seventh century Arabian practice. Muslims after conquering India imposed their criminal law on Hindus, whom they conquered. Consequently, before the advent of the British, the Mohammedan Criminal Law was prevailing in India.
3.14. THE ORIGIN AND NATURE OF MOHAMMEDAN CRIMINAL LAW:

The primary basis of Mohammedan criminal law was believed to be of divine origin. But, the laws of Qoran were found inadequate to administer justice. When Qoran was found inadequate, so to fulfil the want of large and civilised community there was introduced the “Sunna” or rules of conduct deduced from the oral precepts, actions and decisions of the Prophet. These authentic traditions were taken to be the secon authority of Mohammedan law and were regarded as conclusive in cases which were not expressly provided by the Qoran. The third source of legal authority received by the “Sunnies” was the concurrence of the companions of Muhammed and failing this they took the aid of analogy as the fourth source. “Analogy” is a vast scattered mass of material codified after the death of the Prophet, according to the ideas and opinions of four great Muslim Jurists.76

The traditional Muslim Criminal Law broadly classified crimes under three heads: (i) Crimes against God, (ii) Crimes against sovereign and (iii) Crimes against private individuals.77 The first category includes such crimes as apostacy, drinking intoxicating liquors, adultery etc., The second category consists of crimes such as theft, highway robbery and robbery with murder and the like. The third category includes such offences as murder, maiming etc., i.e., offences against human body. Accordingly, the Muslim Criminal Law arranged punishments for various offences into four categories, namely Qisa retaliation, Diya or blood money, Hadd or fixed penalties and Tazir or discretionary punishments.78

Before proceeding into the details, it would be convenient to have a clear idea about the conception and classification of Homicide under Muslim Law. Homicide under Muslim Law was classified under the following heads:

1) Homicide in prosecution of war against hostile Muslims for the advancement of Islam. 2) Homicide in support of Mussalman community 3) Homicide of an apostate Muslim 4) Homicide of an insurgent against the rightful Imam 5) Homicide of a person who resists the established government openly 6) Homicide of a condemned criminal and 7) Homicide of a murderer by a person who was legally entitled to retaliate are lawful and justifiable.79

Leaving these instances, the Muhammedan Criminal Law recognised the general legality of putting another person to death, if necessary, for the prevention of evil, and safety of the community. Capital
Punishment could be imposed on persons who violently disturb the public peace, highway robbers, persons committing arson, persons who commit extortions under the pretext of collecting public taxes, false informers and generally on all habitual ill-doers who made practice of committing offences injurious to society. But, this infliction of death upon a criminal by a private individual was only justified if the criminal was in the act of committing the crime: after the completion of the offence, only a competent official was authorised to punish the offender.  

Besides these there were five kinds of homicides under Mohammedan Law.

1. Qatl-i-Amd: It literally means wilful homicide and implies intention to kill followed by a voluntary act. It entitles the aggrieved person to demand Qisa. The right of retaliation being considered as a private right, the possessors of the right were at liberty to remit their claim, and forgive the offender: or to compound, with the consent of the murderer for compensation.

2. Diya or Blood-money: Diya meant blood money. In cases of homicide Qisa could be exchanged for money. The murderer paid some money to the legal heir of the victim, so that the avenger would not retaliate. So, practically, the punishment of Diya was a corollary to the punishment of Qisa. The blood-money was fixed by law, for man it was 3333-5-4 Dinars and for causing the death of a woman it was half the amount. Curiously, there was no difference between the compensation for the death of a Muslim and a non-Muslim.

3. Hadd: In the case of Hadd, the law prescribed and fixed the penalties for certain offences. In otherwords it meant boundary or fixed limit of punishment with reference to the right of God or to Public Justice. In such offences the Judge was not free to use either Qisa or Diya or his discretion but he was required to pass a sentence according to the provisions of law.
Tazir: Tazir means discretionary punishment. Offences for which no punishment was prescribed were left to the discretion of the Judges to give any sort of punishment from imprisonment and banishment to public exposure. The circumstances of each case determined the Tazir. In these cases the king had the right called "Right of Siyasat" to punish the guilty in the interest of public justice.

Akbar's ideas of justice may be gathered from his instructions to the Governor of Gujarat that he should not take away life till after the most mature deliberations. In his times the death sentence was awarded but it was not accompanied with mutilation or other cruelty except in cases of grave sedition. This sentence was to be confirmed by the Emperor. The exemplary justice by the Moghul Emperor Jehangir in India who ruled from 1605 to 1627 was an illustration of the law of "life for life" as an institutional punishment in the 17th Century. The Emperor applied this principle in his own case, by offering himself to be killed in the hands of a lady who was bereaved of her husband by an arrow at the hands of empress Noorjehan. This incident is quoted with historical veracity.

A codified system of penal law never appeared even in Moghal period: and death penalty for heinous offences continued to be part of criminal justice, though history from times of Manu to the Moghal has failed to provide any known instance of regularly staged criminal trial. Aurangazeb the last of the five great Moghal rulers is known to have executed death penalty on Tej Bahadur Singh, the ninth preceptor of the Sikh religion. Two of he sons of tenth preceptor of the Sikh religion, namely Guru Gobind Singh, were put to death, by plastering them inside a wall, but all the three instances of death penalty were founded on religious and political motives and fail to provide any clue to any settled system of law and procedure providing for trial of offences calling for penalty of death. Otherwise, under the dictates of anger and passion Aurangazeb never issued orders of death.
3.15. BRITISH PERIOD:

Warren Hastings adopted the principle of non-interference with Mohammedan Penal Law as long as it would not affect the authority of the Government and the interests of the society. It soon appeared, however, that some of the provisions of the Mohammedan Penal Law were of such a nature that the East India Company could not allow their continuance on grounds of humanity and justice.87

Mohammedan Criminal Law prescribed death penalty and also other cruel punishments.” The Mohammedan Criminal Law was open to every kind of objection. It was occasionally cruel. It was frequently technical, and it often mitigated the extravagant harshness of its provisions by rules of evidence which practically excluded the possibility of carrying them into effect.”88 Nevertheless, in some respects, undoubtedly, the Mohammedan Law was superior to the English Criminal Law of that period which was still rude and crude, and far from perfect. English law would hang a man for stealing trivial things, but in Bengal a thief could never be capitally punished. In prescribing the severest punishment for crimes against person, it was far in advance of the English Criminal Law of the eighteenth century which punished offences against property with much greater severity.89

It is noteworthy to observe that Hastings who boasted that he intended to preserve the native law and commented upon Mohammedan Penal Law as barbarious and inhuman was the instrument behind the execution of Raja Nand Kumar, who was falsely implicated in a bribery charge for the sin of bringing corruption and bribery charges against Hastings. The English Act of forgery under which Nand Kumar was convicted had never been formally promulgated in Calcutta and the people could not be expected to know anything about it. The Hindu or the Muslim law never regarded forgery as a capital offence. To sentence an Indian to death under these circumstances by applying literally an obscure English law, was nothing short of miscarriage of justice.90

However, it is Cornwallis who brought substantial changes in the Criminal Law by making the following amendments:

(a) Intention of homicide was to be determined from general circumstances and proper evidence, and not from the nature of the instrument employed.

(b) The discretion left to the next of the kin of a murdered person to remit the penalty of death on

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The murderer was taken away, and the law was to take its course upon all persons convicted thereof without any reference to the will of the relatives of the deceased.91

The famous Cornwallis Code provided that in cases of murder the following circumstances were not to bar the trial or condemnation of the prisoner.

(i) refusal of the heir to prosecute,

(ii) non-appearance of the heir within a reasonable time and

(iii) legal incompetency, e.g., minority of the heir to prosecute.

In any of these circumstances, the case was to be conducted and sentence was to be passed on the supposition that the deceased had no heir or that the heir had been present at the trial and did prosecute.

In 1797 further changes were brought in the law of homicide. The law officers were directed to give their “fatwas” in all cases of wilful murder on the assumption that Qisa was claimed, even when it was not, and the sentence might extend up to death. In other kinds of homicide, if the Mohammedan Law prescribed the payment of the fine of blood, the judges were directed to commute the punishment to imprisonment which could extend to life imprisonment.

In 1799 the political awareness in Indians caused the making of another Regulation which was the first measure on the offence of treason and which penalised this offence. In the same year justifiable homicides under Mohammedan Law were also regarded as opposed to public justice, and all such cases were declared liable to Capital Punishment. The capital sentence was also prescribed in cases of homicide which were previously exempted from retaliation on some flimsy and superstitious grounds like the prisoner being one of the ancestors of the slain, or being the master of the slave if the deceased was a slave, or on the plea that the deceased desire to be put to death.92

The next reform came in 1802 when infanticide - the practice of destroying children by throwing them into water which was practised partly from economic reasons but also from a belief in its efficacy as a stimulant to the fertility of the mother - and which was not sanctioned by the Hindu Law, nor countenanced by the religious orders or by the people at large, nor was it at any time authorised by the Hindu or Mohammedan Governments of India - was declared to be wilful murder and on conviction to be liable to the punishment of death, and same punishment was to be inflicted on all the abettors and...
accomplices, notwithstanding any contrary fatwa of the law officers.

Regulation VI of 1832 marked the end of the Mohammedan Penal Law as a general system of law applicable to all persons in the country, excepting "British subjects". The period of horror of the Mutiny of 1857, being over Act XXVI of 1858 was enacted with a view to discouraging a recurrence. Under this Act, collecting men, arms, ammunition, or otherwise preparing to levy war against the State or instigating, or aiding in the commission of that offence was made liable to the punishment of death, or to the punishment of transportation of life, or of imprisonment with hard labour for a term not exceeding fourteen years.

Ultimately, the Indian Penal Code was passed in 1860. The provision regarding Capital Punishment under this code are discussed separately.

3.16. THE MOVE TO ABOLISH DEATH PENALTY IN INDIA:

After the Indian Penal Code came into force attempts were made both before and after independence for abolition of death penalty. In 1931 Gaya Prasad Singh introduced a Bill and a motion for its circulation was negatived after the reply by the then Prime Minister Sir James Crerar.

The mover in support of his motion, cited the examples of other countries which had abolished the death sentence, pointing out that the abrogation of death penalty had not landed human society into chaos, and argued that Capital Punishment had a demoralising effect on the human mind. The dangers of conviction of innocent persons and misery caused to the wife and children of the condemned man were also dealt upon.

The Home Minister, however, in his reply supported death penalty on the ground that in many countries death sentence had been restored after abolition: Secondly, he pointed out that in the abolition countries, the enactments abolishing death sentences were made after a very long period of experiment: Thirldly, he argued that in his experience as Home Minister and from the familiarity he had gained with homicides throughout the length and breadth of India, he could recite to the House "Crimes of so dreadful character that one is presented with the very pressing question whether in cases if that kind any punishment other than Capital punishment could on any theory of crime be regarded as the proper punishment." Fourthly he also stated that the Indian law was more elastic than English law, as
it empowered the Courts to pass an alternative sentence. In this connection, he stated "... it is my experience, both as an official in Local Government and as an official and a Member of the Government of India, that discretion is very frequently, and I think on the whole, very wisely and judiciously exercised."\footnote{95}

In Independent India in 1952 Sri A. Kazmi moved a Bill to amend Section 302 of Indian Penal Code in such a way to abolish death penalty. But, later the Bill was withdrawn without much discussion. Subsequently, Bills and resolutions were introduced in Parliament in 1956,\footnote{96} in 1958 \footnote{97} and in 1961.\footnote{98} for abolition of death penalty. All these attempts failed, but, provided a ground for discussion over death penalty. Sri Raghunath Singh's resolution for the abolition of Capital Punishment was discussed in the Lok Sabha, in 1962\footnote{99} and later it was withdrawn after discussion. However, a decision was taken to refer the matter to the Law Commission. The Government gave an assurance that a copy of the discussion that took place in the House would be forwarded to the Law Commission, which was seized of the question of examining the Code of Criminal Procedure and the Indian Penal Code, with a view to considering as to whether any changes are necessary therein.

Thereafter, in 1963, a question, was put in the Rajya Sabha on the subject \footnote{100} In the answers to the supplementaries on the question Government gave an assurance that a copy of the debates that had taken place in the Rajya Sabha in 1961 on the resolution of Smt. Savitri Devi Nigam would be forwarded to the Law Commission.\footnote{101} Government kept its promise by sending copies of Debates in the Lok Sabha as well as in Rajya Sabha to the Law Commission. As to the resolution of Sri Raghunadh Singh, Dr. L.M. Singhvi, had moved an amendment to the effect that the original resolution be substituted by one that the Government should take immediate steps to set up a commission consisting of eminent lawyers, judges and Members of the House of Parliament to consider the desirability of enacting legislation for the abolition of Capital Punishment in India. Sri H. C. Mathur moved amendment to the effect that the question regarding the abolition of Capital Punishment be referred to the Law Commission. Sri Bede also moved an amendment to the effect that a committee of eleven members consisting of legal experts and members of Parliament be appointed to investigate and report under what circumstances the Capital Punishment could be abolished.\footnote{102}
The Legislative move having, thus, ended with the resolution, of Sri Raghunath Singh, the matter was taken up during Gandhi Centenary year, when the Government decided to commute the death sentence of condemned prisoners into sentence of life imprisonment. In reply to a question raised, in the Rajya Sabha, on March 12, 1969 by Ganesh Lal Chaudhary, whether Government had ordered to commute the death sentence during the Gandhi Centenary year, the Home Minister, Y.B. Chavan, stated on floor of the House that in connection with the Gandhi Centenary year, it had been decided that in respect of death sentences awarded by Court, the President would exercise his prerogative of mercy in the case of all prisoners against whom the death sentence had been awarded on or before the 12th November, 1968, and commute the death sentence in each case to one of imprisonment for life.103

SUMMARY:

Capital Punishment existed in England since 450 B.C. In tenth century Britain mutilation also appeared on the scene. Canute’s rule was blessed with peace without any executions. But, Rufus reintroduced Capital Punishment. By the end of fifteenth century eccelesiastical courts stared punishing people spiritually. Every literate claimed the benefit of clergy. Inspite of this, the number of capital offences in England rose to 220 but in the course of time they were reduced to thirty two in all. The starting point for abolition of Capital Punishment in England was the year 1764, with Cesare Beccaria’s essay on Crimes and Punishment. With the efforts of Bentham and Romily the ideas of Beccaria seeped into the English thought. Mackintosh, Ewart and John Russel were instrumental for the abolition move.

Criminal Law was not uniform throughout America. Every Colony had its own law though the variation is slight. Though technically thirty-one crimes carry death penalty only seven crimes have actually been punished with death. Benjamin Rush, influenced by Beccaria’s essay started the movement towards the abolition of Capital Punishment. Livingston further carried the movement of abolition. Nine States in America abolished Capital Punishment completely. In other states it still exists.

In India, the Hindu Era and Moghal Regime saw Capital Punishment being imposed quite liberally. After the British stepped in the number of capital offences reduced substantially. In 1860, the Indian Penal Code was enacted. It prescribed death penalty only for eight categories of offences. Prior to
Independence and after Independence also several motions were moved in both the houses for the abolition of Capital Punishment. 35th Law Commission was appointed to study the matter in detail. Neither the Legislature nor the Law Commission felt that the time is ripe for the abolition.

**NOTES AND REFERENCES**

1. A free woman was cast from a cliff or drowned: a man slave was stoned to death by sixty or seventy other slaves: A female slave who committed theft was drowned.


2. Until quite recent times, the line between Church and State was a nebulous one. The attitude towards and the penalty for heresy (a religious offence) and treason (a political offense) were often, for all practical purposes indistinguishable.

3. The victim was drawn by horses to his place of execution. In early cases he was hauled on his bare back across cobbles, but this inflicted such serious or fatal injuries that a sledge was later introduced. He was hanged sometimes until he was dead or if he was unfortunate, until nearly dead. Finally, he was quartered i.e., he was disembowelled and his body cut into small pieces. This penalty should therefore read 'drawn, hanged and quartered'.

4. "Have mercy upon me. O God, according to thy loving kindness: According to the multitude of they tender mercies, blot out my transgression."


6. The offences are piracy, murder, rape, sacrilege, abduction, some burglaries and house breaking.

7. Supra note 2 at 67.

8. Ibid at 76.

9. Huge sharp blade suspended in a frame used for chopping the heads. The name might have come from celtic moddun, meaning a place where justice is administered.
13. They are treason, piracy, murder, arson, burglary, house-breaking, putting in fear, highway robbery, horse stealing, stealing from a person to the value of one shilling and all robberies.


16. One of Society of Friends.

17. They are shoplifting to the amount of five shillings or more, stealing forty shillings or more from dwelling houses and stealing from ships on navigable rivers to the amount of forty shillings. Though he was successful in House of Commons he was opposed in House of Lords.

18. Supra note 14 at 7.


20. Supra note 14 at 31.

21. A Select Committee differs from Royal Commission in that it consists entirely Members of Parliament appointed by the party whips. The number appointed by each party is in proportion to the strength of that group in the House of Commons.

22. He had represented the constituency of Nelson and Colne since 1935, but, he did not emerge as the leader of the crusade against Capital Punishment in Parliament until after the Second World War.


24. Ibid at 278, 280.


26. Supra note 14 at 120.

27. These were: First, murder in the course of furtherance of theft: Secondly, murder by shooting or causing explosion......: thirdly, murder in resisting arrest: fourthly, murder of a police officer: and fifthly, murder of a prison officer by a prisoner. In addition clause six retains death


31. Ibid at 29.

32. Ibid at 21.

33. Ibid at 31.


35. Ibid at 171.


41. Athrva Veda: 1/16/4.

42. Athrva Veda 1/7/7.

43. Rig Veda 7/104/20.

44. Rig Veda 10/87/11: Atharva Veda 8/3/11.

45. Rig Veda 7/104/19: Atharva Veda 8/4/19.


47. Ibid at 32.

48. Ibid at 34.

52. Ibid.
54. Ibid 8/34.
56. Ibid 8/323.
57. Manu Smriti: 8/371-372.
60. Ibid: 2/8/4-18.
63. Ibid: 4/11/12-16.
64. Ibid: 4/12/1-2.
69. Section 415 of Criminal Procedure Code is silent about the time of the pregnant woman's
execution. It simply says the execution shall be postponed.
II, Cols. 4345-4348, dated 24-8-1956: Ibid v. IX, Part II, Cols, 916-986, dated 23-11-
1956.
78. Rajya Sabha Debates: 25th August 1961, Cols. 1681-1784 and 8th September, 1961, Cols, 307-
365.

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101. Government kept its promise by sending copies of Debates in the Lok Sabha as well as in Rajya Sabha to the Law Commission.


103. Ibid.