PREFACE

CAPITAL PUNISHMENT AND ITS DELAYED EXECUTION: A CRITICAL STUDY is a very debatable topic. Capital punishment means a sentence of death. It is the severest i.e. an extreme point of sentence. The punishment is extreme as a result of it turnoff the existence of human life. The capital punishment is to be awarded just for very gruesome, horrifying, anti-social, grievous and disgusting crimes against humanity. Although the definition and extent of such crimes vary from country to country and time to time; there is in all probability no any country in the world where death penalty has never existed. It has been in observed from the past.

India stands dignified between the world trend to finish the penalty and those nations that continue to execute, like several of the decreasing range of countries that also apply the death penalty, over the last twenty years, India has reduced the number of executions carried out.

The Indian judiciary has dominated that the death penalty for murder must be restricted to the "rarest of rare" cases; however this instruction has been contradicted by the legislative assembly increasing the quantity of offences punishable by death. The death penalty is mandatory under two of the relevant laws, including for drug-related offences. There are grave concerns about arbitrariness and discrimination in the processes that lead to people being sentenced to death. Such factors would render India's use of the death penalty. Amnesty International is urging the Government of India to declare an immediate moratorium on executions with a view to abolishing the death penalty. As an emerging global and regional power and a party to the International Covenant on Civil and Political Rights and other international human rights treaties, India has an opportunity to exercise regional leadership and to strong signal of its determination to fully uphold human rights by abolishing the death penalty.

India retained the death penalty as one of the punishments in the Indian Penal Code, 1860 (IPC) after independence. Death penalty is also prescribed in
special or local laws for various offences. Presently, death penalty is provided under the IPC for various offences such as Section 121, Section 132, Section 194, Section 195A, Section 302, Section 305, Section 307(2), Section 364A, Section 396, Section 376E, and Section 376A.

The special or local laws which provide for death penalty are the Army Act, 1950; the Air Force Act, 1950; the Navy Act, 1950; the Indo Tibetan Border Police Act, 1992; the Assam Rifles Act, 2006; the Border Security Force Act, 1968; the Sashastra Seema Bal Act, 2007; the Defence and Internal Security Act, 1971; the Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985 as amended in 1988 the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Explosive Substances Act, 1908 as amended in 2001; the Unlawful Activities Prevention Act, 1967, as amended in 2004; the Maharashtra Control of Organised Crime Act, 1999; the Karnataka Control of Organised Crime Act, 2000; the Andhra Pradesh Control of Organised Crime Act, 2001; and the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. A number of local laws such as the Arunachal Pradesh Control of Organised Crime Act, 2002 providing death penalty have been repealed. Although various laws provides for the death penalty, it is mainly given under Section 302 IPC.

At present as many as 122 countries have retained the death penalty but they are continuously making renovations in the method of execution. Before awarding the death sentence the judge gives an opportunity to the condemned person to be heard on the point of sentence, satisfy the rule of natural justice and fair play. It seems that, whenever there is a crime there is ought to be a criminal. Undoubtedly, there are admirable principles which the Judges who have responsibility for passing sentence, should bear in mind while finalizing the sentence of the accused for criminal is tempted to commit the crime in a peculiar circumstance. The objectives of sentences and the range of sentences have widened over the years and this calls for properly previous observation of the
results of similar sentences imposed in similar circumstances in the past. The sentencing courts should, therefore, keep themselves abreast of the penological developments, especially when the choice is between 'death' or 'life imprisonment'.

There is long gap between the offence doing and the execution, leaving aside the lengthy trial process, what explains the unusually long gap between the Apex Court upholding a death sentence and the final execution of the penalty. The ineffectual legal system should be blamed, and then there are vested interests from the political sphere at play which essentially stall efforts to execute sentences. In a 1983 case, the Apex Court held that a delay of two years for execution was permissible, beyond which the sentence ought to be converted to life. Again, in a 1989 ruling, the Supreme Court, acknowledging the suffering endured in the long way for execution, said: when mercy petitions under Article 72 or 161 are received by the authorities concerned, it is expected that these petitions shall be disposed of expeditiously. Undue long delay in execution of the sentence of death will entitle the condemned person to approach this court under Article 32 (right to approach the Supreme Court) to look into this. To the lay citizen who wants some visible evidence of justice being done in case of a horrendous crime, the delays in executing a death sentence seems inexplicable. But legal experts say that it is not so easy to lay down iron clad rules to prevent them. “People who are administering criminal justice have to be balanced. In the conduct of such affairs, they cannot show vendetta”. The country is not abolishing capital punishment, and on top of that there is this delay in carrying out sentences. So, basically, they are doing nothing - neither is they creating a culture of compassion nor deterring anyone. Agrees Justice K. T. Thomas, who presided over the bench that handed the death penalty to the accused in the Rajiv Gandhi assassination: “The longer the wait for the execution of the death sentence, the greater should be the chance of commutation. One cannot put a person perpetually on tenterhooks. This should be ground enough to commute his sentence. In UK where life without parole
sentences are used "which means, a life sentence means a sentence for life - that is they won’t be allowed to come out of jail till they die. In most capital punishment cases, the Indian government’s attitude is actually similar, but they won’t make it official. This is abominable - if one is sentenced for a life in jail, one will at least know that he or she will be alive in jail. In some other countries where capital punishment is in force, the execution of the sentence usually takes much less time. For instance, Timothy McVeigh who was found guilty of the murder of 168 people in the 1995 bombing of a government building in Oklahoma City, USA, was sentenced to death in 1997 and executed in 2001. The delays in dispensing with a mercy petition just makes the agony worse, not to mention the fact that in the process, justice is also not seen to be done.

It is clear that argument for and against the retention of death penalty will come to the surface time and again. Like any other debatable matter some will support its retention whereas other will oppose it. Human Rights movement, to oppose it, has brought new ideas about dealing humanly with offenders. Gandhian reformative philosophy of "hate the crime but not the criminal" has also affected our penal philosophy. But the unassailable fact is that crime is increasing alarmingly, heinous crimes like brutal murder, rape and murder, rape of minor girls, bride burning, socio-economic offences especially law relating to spurious drugs, food adulteration, narcotic offences and corruption etc. have become a regular feature of our newspapers indicating that our society suffers from deep moral degeneration. Considering the present situation such as terrorists and disruptive activities, political or religious genocide, trade in human organs or white collar etc., it is expected that more legislations providing death penalty in future may come. In this context it can be safely opened that the claim to abolish death penalty is highly undesirable so far as security of our society and integrity of our nation is concerned. According to an eminent jurist Mr. Nariman, abolition of death penalty would be a dangerous experiment and we should continue to have this form of deterrent punishment till we
reach a "certain state of enlightenment" and also a need to proper implementation of law so that the cases disposed quickly and the problem of delay may be resolved.

What really is the need of the hour is establishment of a time frame within which the mercy petitions are to be disposed of. It definitely is inhuman to delay the death sentence, affecting the convicted and his family as well. But it should also be noted that the convicted was awarded a death sentence by law because of his clearly established inhuman actions. It is not only the convict's family that is distressed but also the families that were affected by the convict's actions, waiting if justice will be served and the guilty be punished. Merely stating delay in disposing the mercy petitions should not be reason enough to commute the death sentence. This delay could have been a result of complex procedures under the Constitution for processing the mercy petition or due to the presence of government's unseen hand to harness their political interests. Whatever be the reason, citing delay to be inhuman, for reducing the sentence is also nothing short of being inhuman to the families at a loss. Government should seriously consider in abolishing death penalty. If they take years to decide on the mercy petitions of the accused, this is merely a joke on the fundamental rights of the concerned persons. The government does not have the will to think about the problem. If a person is in jail for more than 20 years and his mercy petition is sent to the President for accepting or rejecting the petition. The government's answer is that there is no time limit. The inordinate delay on the part of authorities, would give a chance to other states, viz. Punjab for Bhullar, Kashmir to the terrorist who bombed Indian Parliament. Prolonged judicial process in inordinate delays in deciding mercy petitions is a real torture and grave injustice for the families of the victims. Till the time death penalty is there in our country, the judicial process should be swift.

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