1.1 Conceptual Analysis

Death was one of the earliest methods of establishing one’s dominance and deterring one’s enemies. It was by instilling the fear of death that man kept his possessions and prevented others from taking control over them. Hence, the struggle for existence was invariably centred on the question of death. Before the centrality of the state was established, and human life began to be organised around it, leadership and respect in human societies were conferred upon whoever was able to instil fear and terror in the hearts and minds of his adversaries and subordinates.

References to capital punishment in ancient India are found in the world most ancient texts including Sanskrit, Buddhist and late Pali texts. It has been mentioned that King rules the world and he can censure, impose fine and even execute those who transgress his commands.

According to Manu, the great Hindu Legal thinker, danda alone protects people and the wise declare danda to be just and lawful. Giving a reason for the validity of danda, Manu explains that if ruler fails to punish wicked, the strong people will perish the weaker ones. So when danda destroys the sinners, the common people are not disturbed. However, such danda must be applied with great care. Manu, therefore, laid emphasis upon the king’s obligation to detect culprits and punish them including the death penalty. Kautilya emphasized that the punishment must be just and when it is so it does not destroy righteousness. According to him, punishment is the universal means to ensure public security.

China was one of the earliest civilisations to have had capital punishment in its law-books, which was in the form of beheading. The first record of a death sentence being executed is found in ancient Egypt. Almost fifteen hundred years before the birth of Christ a criminal was punished to death, in a method as per his wish, for the crime of having practised magic.

In Jewish law, we find the mention of several forms of capital punishments. Stoning to death was the most central among them, beheading- which was given to conquered adversaries, crucifixion which was derived from Roman Law and burning

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3 Id at 117-18.
4 Ibid.
5 Id at 2.
alive. Other prominent forms of capital punishment included throwing the criminal from a rock, starvation and pouring of molten lead.

The following sections of this chapter will provide a historical analysis of capital punishment from the ancient times, through the middle ages to the modern period. These sections apart from discussing the methods of capital punishment will also delineate the changes in administering capital punishment and how these changes reflect the juridical structures and the political systems and beliefs of those respective periods.

1.2 History of Capital Punishment Laws

In modern world, capital punishment means the execution of a condemned person by the concerned state’s authority for the crimes punishable with death under the law known as capital crimes. The word “capital” is derived from the Latin word capitalis which literally means “concerning the head”, consequently, capital punishment figuratively means to lose one’s head. Capital punishment is different from murder (though life is taken away in both) as murder is “to kill (a human being) unlawfully and with premeditated malice.” On the other hand, in capital punishment the element of unlawfulness and malice is absent (though many countries execute people in a wrongful and out of political motives) which makes it different from murder. Capital punishment remained in existence in almost every nation and society, so long as the historical records are concerned. It is an established phenomenon that crime and punishment (which includes mode of punishment also) co-relate to the culture and form of civilization from which they emerge. It is true that it is difficult to precisely ascertain the existence of capital punishment in pre historic era but it is seems very likely that capital punishment existed in some form or another throughout the history of human being and it is as old as human society itself. It has been used as a method of punishment to ensure justice on the principle of lex talionis: “an eye for an eye, a life for a life” since the earliest societies. Capital punishment remained a mode of punishment for various forms of crimes which include murder, rape, adultery, treason, espionage, spreading anarchy in a land, etc. Among these crimes murder usually warrants this ultimate form of punishment.

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6 Ibid.
1.2.1 Early Death Penalty Laws

The first ever written code which prescribed death penalty in the history was the **Code of Hammurabi** written on stone tablets around 1760 B.C. The sixth Babylonian King, Hammurabi, enacted the code. The code consists of 282 laws with scaled punishments depending on the social status of the wrongdoer. The Code of Hammurabi prescribed capital punishment for twenty-five different crimes, interestingly, murder was not one of them. The prime concern of the Hammurabi code seems to prescribe a proper measure of compensation for injuries committed against slaves, domestic slaves and property. Furthermore, capital punishment was prescribed to serve as a backup punishment for thieves without the ability to pay restitution and fines. In the recorded history of mankind, the first ever sentence of capital punishment was awarded in sixteenth-century BC in Egypt. The criminal was from the noble class and accused of practising magic. As a punishment, he was asked to take his own life.

Similarly, other ancient societies in due course developed their own set of written laws that incorporated the capital punishment, for example, the Hittite Code of fourteenth century BC, or the Roman law of the Twelve Tables in the fifth century B.C. or, then again, more importantly the Code of Athens of seventh century B.C. Among these codes, all the more vitally, was the Draconian Code of Athens which prescribed capital punishment for every crime committed by any transgressor. Draco was an Athenian legislator in Ancient Greece. He substituted the ubiquitous system of oral law and blood feud by a written code to be applied only through a court although Plato contended that it should be used only for the incorrigible offenders. The word draconian comes from Draco's laws. On the other hand, the Roman Law of Twelve Tables which goes back to 450 BC included capital punishment for the wide range of offences which were applied differently upon people belonging to a noble class, freemen and slaves. Capital punishment was prescribed for crimes, for

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8 The Code of Hammurabi is a legal document from ancient Babylonia (now the modern-day Iraq), which contains the first known death penalty laws. Under the code, written in the 1700s B.C., twenty-five crimes were punishable by death. These crimes included adultery, helping slaves escape. Murder was not one of the twenty-five crimes, available at: https://deathpenalty.procon.org/sourcefiles/Hammurabi.pdf (visited on 1st Nov, 2017).


11 Supra note 1 at 1-3.

instance, the publication of libels and insulting songs, the cutting or grazing of crops planted by a farmer, the burning [of] a house or a stack of corn near a house, cheating by a patron of his client, perjury, making disturbances at night in the city, wilful murder of a freeman or a parent, or theft by a slave.\textsuperscript{13}

During Vedic Period in ancient India (1500 BC to 600 BC) the system of punishing wrongdoers witnessed a gradual development. The doctrine of the divine affinity of King seems to have originated in this period. The ruler’s authority was not unlimited and it was subject to his obligation towards people. The coercive authority of the king, also known as \textit{danda}, received recognition as the basis of \textit{Dharma} i.e. justice.\textsuperscript{14} In the period of Pre-Maurya (600 BC to 325 BC) the King’s obligation to protect his subjects was further developed and a King who failed to punish guilty or who punished an innocent had to undergo fasting.\textsuperscript{15} Rulers of Maurya dynasty developed the law of treason and capital punishment was prescribed for various treason acts.\textsuperscript{16}

It seems that in the 4\textsuperscript{th} century BC, the death penalty was in force during Buddhist rule in ancient India and it was awarded for the criminal acts accompanied with cruelty.\textsuperscript{17} Despite the fact that Buddhist rulers prominently adopted the practice of non-violence (Ahimsa), King Ashoka reportedly did not abolish death punishment totally. References to death punishment can be found in the edicts of Ashoka.

According to Vincent Smith\textsuperscript{18}, even the most pious Jain and Buddhist rulers did not hesitate to inflict death penalty upon their subjects and King Ashoka himself sanctioned capital punishment throughout his reign. Vincent observes that Ashoka, however, in order to satisfy his humanitarian feelings, gave three days grace period to those condemned with capital punishment to prepare for death.

The abovementioned three days grace period for culprits condemned with death is evident from Ashoka’s Pillar Edict IV, which has been translated by different authorities in due course of time. As per a recent study of the Edict\textsuperscript{19}, the respite of

\begin{thebibliography}{9}
\bibitem{13} Supra note 1.
\bibitem{14} Supra note 2 at 24.
\bibitem{15} Id. at 51.
\bibitem{16} Id. at 167.
\bibitem{17} B.R. Ramchandra Dikshit, \textit{Mauryan Polity} 167-68 (Madras University Historical Studies, India, 1953).
\bibitem{18} Vincent Smith, \textit{Early History of India} 185 (Atlantic Publishers & Dist, New Delhi, 4\textsuperscript{th} edn., 1999).
\bibitem{19} Romila Thapar, \textit{Asoka and the decline of Mauryas} 176-77 (Oxford University Press, USA, 1961).
\end{thebibliography}
three days given by King Ashoka was to secure the greater welfare of his subjects. This grace, in certain cases, may afford the opportunity to prove the innocence of culprit or may secure his repentance. The study further highlights an interesting point that despite the fact Ashoka was a firm believer of Buddhism, he did not abolish the death penalty. The reason behind not abolishment of the death penalty by Ashoka was, doubtlessly, the fact that he considered death penalty essential for the maintenance of law and order. Ashoka, despite having personal convictions towards Ahimsa, was of the view that justice must be founded on the recognition of pleasurable rewards or painful punishments. Besides, Kautilya also advocated capital punishment but only in specific cases. Also, King Harsha awarded death penalty for slaying any living creature.²⁰

Recorded facts of capital punishment during Maratha rule in India can easily be found. James Grant Duff in his work, ‘History of the Mahrattas’²¹ observes that Sursoobedars had the authority to inflict capital punishment for big crimes. But the Mamlitdars in such cases had to require the authority of Peishwa. Also, the big Jagherdars, within their respective jurisdiction, were empowered to punish capitally. The state prisoners were put to death by administering poison or by deleterious food such as a mixture of flour and salt in equal quantity. To execute criminals, their confession was generally regarded as necessary but there were no prescribed rules for trial and torturing accused in order to extort confession was a common practice. One noteworthy fact of this period was that the Brahmins were exempt from capital punishment and women were rarely awarded death penalty.

In reference to the legality of capital punishment during Maratha period, an important incident may be cited when the celebrated Chief Justice of Poona named Ram Sastri refused to serve under Peshwa Ragunathrao. Peshwa was privy to murder of his own nephew and he reportedly asked the Chief Justice what was the punishment for his actions? Ram Sastri not only declared that death penalty was the only punishment for the act but also refused to serve under Ragunathrao.²²

According to a prominent work contributed to the administration of justice in Maratha period, no harsh punishment was awarded to culprits without seeking approval from Peshwa. The work further highlights that the gangs involved in murder,

housebreaking and highway robbery were punished capitally and their bodies hung up on the sides of roads.²³

The famous Chinese traveller FaHsien, reportedly, did not witness any death sentence in India during the period 399-400 AD and what he found was the imposition of fines and mutilation in the crime of treason.²⁴ In spite of this, it is well established that at various periods in ancient Indian history, the death sentence has been a recognized mode of punishment.

In ancient Indian texts, the death penalty is usually referred to as Pramapana, which may be either pure or of mixed variety. In pure form, the capital punishment is not associated with other punishments. Whereas, in mixed form, the death penalty may be combined with mutilation or some other sort of punishment. The pure form of Pramapana may be further divided into Avictram (ordinary) and Vicitram (extraordinary). In Avictram Prapana, ordinary weapons like sword, etc are used to execute culprits while in the latter case, the execution is done employing awe-inspiring methods.

Execution of capital punishment was often cruel in nature including crucifixion, drowning to death, burying alive and battering to death. Submerging the culprit in water in a sack containing dog, rooster, viper and an ape was the usual practice among Romans for awarding punishment to parricides (the person who murdered one's parent).²⁵

The most infamous death execution in BC was of great Greek philosopher Socrates around 399 BC when he was forced to drink the poison for corrupting the minds of the youth of Athens and impiety.

The death penalty has received the sanction of most of the world’s major religions at some point in time. In Jews law, capital punishment is prescribed by the Torah was also known as Pentateuch for homicide, kidnapping, blasphemy, magic, violation of Sabbath and several sexual offences.²⁶ Jews used different methods to capitally punish the offenders which included beheading, hanging, stoning to death,

²³Ibid.
throwing down from a rock, putting under saw and crucifixion. The crucifixion of Jesus Christ by Romans at around 29 AD has been the most shameful execution of history. However, the crucifixion and other cruel modes of capital punishment were abolished in Roman Empire by Emperor Constantine some three hundred years later. The Code of Theodosius (438 AD), which was the compilation of Roman laws, prescribed capital punishment for more than 80 offences.\textsuperscript{27}

In ancient India, according to earliest Smiritis\textsuperscript{28}, the Capital Punishment in Pre-Maurya period was awarded to those who inflicted bodily harm to seven constituents of the State or who committed forgery of royal edicts, etc. As per the text of Manusmriti, the death sentence was given for theft exceeding 10 kumbhas. The death penalty was also awarded for the crime of rape of the woman of higher caste by a man of lower caste.\textsuperscript{29} Manu also prescribed mutilation of an offending limb of the accused.\textsuperscript{30} But one thing is noteworthy that Brahmins were not subject to capital punishment.\textsuperscript{31}

As per the observation made by Jolly\textsuperscript{32} regarding capital punishment in ancient India, it was stated that in all cases of serious theft crimes, the guilty is sentenced to death by impaling, hanging or drowning. Even the hands of guilty are hacked off or other tortures are inflicted often to aggravate the punishment for such crimes. The same punishment is awarded for committing burglary, the frequently repeated crime of picking pocket, robbery and stealing certain animals, grains and precious metals. Also, forgery of royal grants or even private documents attracted capital punishment. Reportedly, King ordered a dishonest goldsmith to be put to death who was involved in fraudulent weighing and measurement practices. Interestingly, as regards punishment, there was no difference between theft and robbery. Moreover, rendering assistance or taking part in such crimes or even abetting such crimes was considered as equally criminal act.

After the advent of Islamic law as expressed in Quran around 632 A.D. prescribes Capital Punishment for certain heinous offences also. The Qur'an evidently illustrates the possibility of capital punishment in chapter 5 verse 32 for two group of

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\item[28] \textit{Supra} Note 2 at 50.
\item[29] Manusmiriti 8, Verse 366.
\item[30] Manusmiriti 8, Verse 125.
\item[31] Manusmiriti 8, Verse 379 and 380.
\end{itemize}
\end{small}
crimes namely **Intentional Murder** and **Fasadfil-ardh** (spreading mischief in the land). “.....If anyone kills a person - **unless it is for murder or for spreading mischief in the land** - it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people” ³³. The aforesaid directive, therefore, makes it clear that a human life can only be taken in two cases viz. Intentional killing of a human being and in cases of rebellion against the collective system by damaging the life, wealth or honour of others. This latter act is referred above as “spreading mischief in the land”. The killings which do not fall under these two categories are not justified. Islamic law clearly says that such unjustified killing is a crime not only against the family of the victim but also against the Almighty as well as the society and the government. It is notable here that in the recorded history of mankind probably it was Islam which had made first attempt to reform the law relating to capital punishment. Islam has limited the application of death penalty only for the two group of offences namely intentional murder and Fasadfil Ardh (spreading mischief in the land). However, it was generally believed that first reform of capital punishment happened from 1776-1800 A.D. when great thinkers and writers of America and Europe have called for the restricted application of death penalty for the heinous offences like murder and treason only which is not totally correct to say.

**1.2.2 During Medieval Period**

It is difficult to ascertain accurately the prevalence of death penalty in the ancient period but the evidence is there to show that it was frequently practised across the societies. However, in some societies death penalty was avoided by means of alternative punishments such as by banishing or by making to pay compensation. For an instance, commutation of the death sentence by the emperor to deportation to a remote place was common during the period of peace in Japan (the Heian period from 794 to 1185). But the execution of offenders was reinstated after the happening of civil war in the middle of 11th Century. The colonial countries were greatly influenced by the Great Britain which has a long history of awarding death penalty. At around 450 BC, the death penalty was usually executed by throwing the culprit into a quagmire but in the course of time the mode of execution witnessed several changes and by the 10th century the most common mode of execution was the hanging the offender from the gallows. However, William the Conqueror of 11th century banned the death penalty for

³³ Holy Quran, Chapter 5 verse 32.
any offence except during war. Nevertheless, he gave permission to mutilate offenders for specified offences.

In medieval India, the Quranic criminal justice system, which had a foreign origin, was mainly in force in during Mughal era. The Quran and the precedents and the opinions of jurists made in the light of Quran were the main sources of the criminal law. As the abovementioned sources were Trans-Indian, it became a necessity to have a digest of Islamic law in India. Fatawa Alamgiri, which was compiled under the instructions of Aurangzeb, is an example of such digest. Muslim rulers in the medieval period used to administer justice in person. For example, Muhammad Tughlaq declared himself to be the highest court of Appeal and he kept four Muftis for this purpose. He reportedly made it clear to Muftis that they should be very careful in pronouncing judgement and if an innocent is executed then his blood would be upon the head of Muftis.34

The great emperor Akbar, in order to ensure justice, used to appear in front of his window every morning and anyone could seek justice from him personally.35 He was the final court of Appeal. Akbar had given clear instructions that death penalty should never be awarded in the exercise of immature deliberations. Moreover, his governors were required to send proceedings to him for confirmation before inflicting death sentence. However, such confirmation was not required in case of dangerous sedition. Akbar was opposed to the idea of awarding mutilation or another sort of cruelty to be combined with the punishment of death sentence.36

Similarly, in the period of Jehangir, capital punishment could be inflicted only after being confirmed by the Emperor.37 It is stated that death penalty was not in practice during the time of Aurangzeb. He, reportedly, never passed death sentence even under the influence of anger and passion.38 However, the part of Islamic law of crimes, covering acts which were regarded as a crime by all the nations e.g. murder, adultery, theft, etc., was made equally applicable to non-muslims as well by the Muslim rulers. Reportedly, Timur ordered the robbers and thieves to be put to death regardless of the place they were found and regardless of the fact by whom they were detected. This is noteworthy that abovementioned practice was not in strict accordance with the Quranic law (Islamic law).

34 Wahed Husain, Administration of Justice during the Muslim Rule in India 20 (University of Calcutta, 1934).
36 Supra note 36 at 33.
37 Id. at 41.
38 Id. at 53.
In order to have a better understanding of capital punishment prevalent during Muslim rule in the medieval period, it will be expedient to briefly discuss the classification of crimes and kinds of punishment under Islamic law. According to Islamic Jurisprudence, crimes can broadly be classified into three categories, namely: i. Crimes against God; ii. Crimes against the State; and iii. Crimes against private persons.

For crimes against God, there is a violation of right related to Almighty that is called Haqq Allah and for these crimes, there are no provisions for forgiveness or compounding of offences. On the other hand, for the crimes against the State as well as the private individuals, the offender can be forgiven or his act can be compounded by the aggrieved party. For example, homicide is neither a violation of Haqq Allah nor a violation of King’s peace, but it is a damage only to the family members of the victim and can be settled by paying them the monetary compensation by the guilty which is generally called as the “price of blood”. The criminal proceeding against the offender is initiated only when the next kin of the murdered man refused to accept the price of blood and insisted that the culprit should be punished for the crime and in that case, the Qazi, on proof of guilt, would pronounce the death sentence.

According to Islamic Law, the punishments prescribed for offences were mainly of four classes—

(i) Hadd

_Hadd_ is a punishment that is prescribed by Canon law and is regarded as the 'right of God' and hence a human judge has no authority to alter the same.

There are certain prescribed forms of punishment which come under the category of _hadd_, viz.

(a) Stoning to death for adultery;
(b) Scourging (hundred stripes) for fornication;
(c) scourging (eighty stripes) for false accusation of adultery on married woman;
(d) Scourging for drinking liquor;
(e) Amputation of right hand for committing theft;
(f) Amputation of hands and feet for committing robbery on highway. If robbery is committed with murder then death punishment by crucifixion or by sword.
(ii) Tazir

Tazir is a kind of punishment that mainly aims to reform the guilty person. It is inflicted for those offences for which neither the hadd punishment is prescribed nor their provision for expiration. It is entirely at the discretion of the judge to decide the kind and quantum of punishment under tazir. A judge has got the authority to even completely remit the punishment. The procedure of trial in tazir is simple as compared to that of hadd. These were the reasons for an attempt to escape tazir by bribery.39

Tazir could be inflicted by any of the following four forms—

(a) tadib (public reprimand)

(b) Jirr, where culprit is dragged to the door of court-house and is exposed to the public scorn.

(c) imprisonment or exile

(d) Scourging and boxing on the ear. The stripes in scourging must not exceed 39 but in no case it should be less than three. However, as per Hanafi School the stripes must not exceed 75.

(iii) Qisas and Diyat

Qisas (retaliation) is based upon the personal right of the victim or his next kin and this right can be exercised in certain offences notably murder. If the person demanded that offender should be punished as per law, the Qazi was bound to punish him accordingly and in such cases even the king could not exercise royal clemency by altering or abrogating the sentence. On the other hand, if the next kin of the deceased pardoned the murderer either unconditionally or by accepting price of blood from him then neither the Qazi nor the King had authority to take cognizance of the crime. For minor crimes, the qisas as laid down by Mosaic Law was, “a tooth for a tooth and an eye for an eye” with some exceptions. Under diyat law, victim’s family agrees that in lieu of life of the accused under qisas law, they are ready to settle the matter on blood money which is known as diyat in Islam.

(iv) Tashhir

Tashhir or public degradation was a popular practice of punishment universally applied throughout the muslim world and was even in practice in Hindu India and Medieval Europe. Though Tashhir was not recognized as a form of punishment in legal

texts of Islam, it was not condemned either and almost all muslim kings and qazis used to inflict Tashhir. Shaving off the offender’s head and mounting him on an ass-covering his face with mud and sometimes placing a garland of old shoes around his neck and parading him through the streets with loud music was a prevalent practice in India. Whereas, blackening the face of the guilty by a judge, cutting his hair or having led him through the streets etc., was the prevalent form of tashhir in Arab.\textsuperscript{40}

Following are the offences for which Capital Punishment was Prescribed or Permissible under Islamic Law:

(i) Qatl-i-Amd (Wilful Homicide)

The essential conditions for proving the offence of wilful homicide were the intention to kill followed by a voluntary act by a sane and adult person. Notably, homicide was not distinguishable on the basis of provocation or cold-blood murder and only proof of intention to kill was material in establishing the guilt of wilful homicide. However, the weapon actually used was a significant factor to determine the intention. If blood drawing weapon was used in wilfully striking another person that consequently resulted in death of victim, it was regarded as wilful homicide.\textsuperscript{41}

(ii) Zina (Unlawful Sexual Intercourse)

Death penalty by lapidation or stoning to death was prescribed if zina was committed by a married man of mature age and sound understanding with a woman of the same description. However, for carrying out the punishment there were detailed provisions to avoid cruelty and indecency in the execution of sentence. The sentence of death was imposed only when four respectable witnesses actually saw the guilty person while involved in the act. In stoning to death, the stoning had to be commenced by the witnesses. It is necessary to mention that if zina was committed by a non-muslim or unmarried then the punishment was 100 stripes and in case of the slave it was 50 stripes.\textsuperscript{42}

(iii) Repeated commission of Sariqa (Larceny)

In case of repeated offence of larceny, if the value of property is not less than 10 Dirhams then death penalty could be awarded as an exemplary punishment.\textsuperscript{43}

\textsuperscript{40} M.I. Siddiqui, \textit{Penal law of Islam} 145 (Adam Publishers, New Delhi, 1979)

\textsuperscript{41} Tapas Kumar Bannerjee, \textit{Background to Indian Criminal Law} 38 (Orient Longmans, New Delhi, 1963).

\textsuperscript{42} Holy Quran, Chapter 24 Verse 2 prescribes 100 lashes and Chapter 4 verse 25 mandates for half punishment of 100 lashes i.e. 50 lashes

\textsuperscript{43} Supra note 40 at 108
(iv) Sariqa-i-Kubra (Highway Robbery)

While committing robbery on the highway if murder is committed then Death penalty was permissible. It was immaterial whether the robbery is actually committed or not.\textsuperscript{44} For crimes against the State viz. rebellion, speculation and failure to pay revenue, the king used to inflict punishment at his pleasure because in such cases Quranic law gives no guidance.

Beside capital punishment exercised during medieval India by Islamic rulers, death penalty was accompanied by torture throughout the middle ages in most of the societies. For instance, drowning pit and gallows were usually present in barons to be used for major as well as for minor offences. Burning to death was the usual punishment for women, whereas, hanging, drowning and quartering were meant for male offenders.

Beheading was generally done to the criminals belonging to upper class. Burning to death was punishment for marrying a Jew. For offenders who would not make confession of their crime, pressing was made the punishment. In this punishment, the executioner would place heavy weights on the chest of the person and would give small bread to him to eat on the first day and on the second day, he would be given small amount of bad water to drink and so on until confession is obtained or the person dies.

Approximately 72000 persons were awarded death penalty during the reign of Henry VIII. Boiling the offender to death was another approved mode of capital punishment in 1531 and evidences are there to show that some offenders were boiled up to two hours for putting them to death. For burning a woman, the executioner used to tie her to a stake and then put a rope around her neck so that she could be strangled from outside the fire-ring but this method often failed because many women were burnt alive before they could be actually strangulated.\textsuperscript{45}

The execution of Captain George Kendall of Virginia in 1608 on charges of spying for a foreign country was the first ever documented execution in United States. Every early colony had its independent legal system and they were free to declare what sort of offences would entail capital punishment. For example, the Divine, Moral and Martial Laws incorporated by the governor of Virginia, Sir Thomas Dale in 1612 prescribed capital punishment for even minor offences like stealing of grapes, killing of horses and dogs without seeking permission, killing of chickens and doing trade with Indians. However, after seven years relaxation was made in those laws fearing that no

\textsuperscript{44} Id at 131
\textsuperscript{45} Supra note 1.
one would like to settle in Virginia. First legal execution in Virginia took place in 1622 for the offence of theft. The application of death penalty was not uniform in colonies; some were very strict while some adopted lenient approach. First execution in Massachusetts Bay Colony was carried out in 1630, but the earliest capital statutes do not occur until later. The laws in force in New England between 1636-1647 prescribed capital punishment for pre-meditated murder, rape, statutory rape, sodomy, bestiality, adultery, witchcraft, assault in anger, blasphemy, idolatry, man-stealing, perjury made in capital trial, poisoning, manslaughter and rebellion. Such laws were greatly influenced by the scriptures from the Old Testament. However, in the course of time a significant relaxation was granted in Commonwealth of Massachusetts and by 1780, the death penalty was prescribed for seven offences only which were murder, rape, sodomy, buggery, arson, burglary and treason. The Duke of York's Laws (1665-75) of New York, declared the capital punishment mandatory for even those who denied the true God and his Attributes. South Jersey and Pennsylvania were however rather tolerant in regard to death penalty. In South Jersey, excepting treason and murder, capital punishment was not prescribed for any crime.

In Britain, there was a persistent rise in number of capital crimes till the eighteenth century when death penalty was attracted for 222 offences. Such offences included theft equal to the value of 40 shillings from house or five shillings from shop, robbery of rabbit warren, counterfeiting tax-stamps and cutting down a tree. However, judges were not inclined to award conviction when the punishment was comparatively greater than the crime. Later, in the course of time, reforms started to take place and in 1823, five laws were incorporated by which around hundred offences were exempted from capital punishment. In a short span of time from 1832 to 1837, many more capital crimes were eradicated. Further in 1840, it was attempted to abolish all capital offences but that could not succeed. The period of 19th and 20th centuries witnessed the abolishment of more and more capital offences not only in Britain but across the whole European region. The present scenario is that the capital punishment is retained by few European countries only.

46 Joseph A. Melusky and Keith Alan Pesto, Capital Punishment 7 (Greenwood, California, 2011).
47 Ibid.
50 Supra note 1 at 9-14.
1.2.3 Death Penalty Law Reforms

Abolition of the death penalty and capital punishment law reforms are not to be understood the phenomena which developed in the modern world only. Traces can be found even in the ancient world concerning strong opposition to the death penalty and question its validity. The famous king of Satavahana dynasty of ancient Indian subcontinent refrained from awarding capital punishment even to an offending enemy. Similarly, King Rudradaman of Saka dynasty never put someone to death except in battlefield.

A vivid example of arguments questioning the validity of capital punishment is evidenced in Mahabharata wherein discussion about death penalty takes place between Prince Satyavan and his father King Dyumatsena. Prince Satyavan argues that execution of individuals can never be a virtuous act. In reply, King Dyumatsena makes an observation that there will remain no distinction between virtue and vice if those, who should be killed, are spared. Then Satyavan adds that Capital punishment not only kills the wrongdoer rather it kills a large number of innocent people. According to him, if a robber is killed it results into killing of his parents, wife and children hence, therefore, King should seriously think about the award of punishment. He further says that killing of wicked is not in conformity with the eternal law and awarding punishments, other than death penalty, can make the culprits expiate their offences and it will ensure that the innocent relatives of the wrongdoer are not punished by inflicting death penalty to him.51

The text of Sukra says that the bad practice of death penalty is violative of Vedic injunction which prohibits taking any life. It affirms that the capital punishment should be replaced with life imprisonment and if the necessity demands, the person should be transported to an Island.52

However, the early reforms of the death penalty happened during 1776-1800, when Italian jurist Cesare Beccaria who is considered to be the most influential personality in the death penalty abolition movement published a series of essays titled, "On Crimes and Punishments." His point of view was that since the man was not his own creator, he did not have the right to destroy or take the human life individually or collectively. Beccaria described the death penalty as “the war of a nation against a

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52 Supra note 24 at 569-90 (University of Hawaii, Honolulu, 1962).
citizen ... It appears absurd to me that the laws, which are the expression of the public will and which detest and punish homicide, commit murder themselves, and in order to dissuade citizens from assassination, commit public assassination”\textsuperscript{53}. Capital Punishment, he said, would be justified only in one case,

When, though deprived of his liberty, he has such power and connections as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government. But even in this case, it can only be necessary when a nation is on the verge of recovering or losing its liberty; or in times of absolute anarchy, when the disorders themselves hold the place of laws. But in a reign of tranquillity; in a form of government approved by the united wishes of the nation; in a state fortified from enemies without, and supported by strength within, and opinion, perhaps more efficacious; where all power is lodged in the hands of the true sovereign; where riches can purchase pleasures and not authority, there can be no necessity for taking away the life of a subject.\textsuperscript{54}

As a consequence, the ideas propounded by Beccaria spread throughout European region resulting in some reforms. In U.S., Thomas Jefferson along with four other officials, accredited to carry out comprehensive review of laws of Virginia, made recommendation to prescribe capital punishment only for the offence of murder and treason. That recommendation could not take shape of law as the proposed bill failed just for a single vote after a heated debate in the legislature. Other founding fathers, such as Benjamin Franklin, Benjamin Rush and General William Bradford too were influenced by Beccaria’s ideas. Dr. Rush who was a renowned Philadelphia citizen made a proposal to completely abolish the death penalty. The Attorney General of Pennsylvania, William Bradford under directions to investigate death penalty, published a report in 1793 named ‘An Enquiry How Far the Punishment of Death is Necessary in Pennsylvania’ Bradford strongly supported that the capital punishment be retained, but he did not hesitate to admit that it was futile in prevention of certain offences. In fact, he said that capital punishment made convictions harder to achieve; the reason being the mandatory nature of capital punishment in Pennsylvania and other states which would often force jury not to return a guilty verdict. His views regarding death penalty are as follow:

\textsuperscript{54}Ibid.
IT being established, That the only object of human punishments is the prevention of crimes, it necessarily follows, that when a criminal is put to death, it is not to revenge the wrongs of society, or of any individual—"it is not to recall past time and to undo what is already done:" but merely to prevent the offender from repeating the crime, and to deter others from its commission, by the terror of the punishment.

If, therefore, these two objects can by any penalty short of death, to take away life, in such case, seems to be an authorized act of power.55 Consequently, in 1794 Pennsylvania became the first State which limited the enforcement of death penalty. Death penalty was abolished for all offences except “murder in the first degree”. It was the first occasion that the offence of murder was categorised on the basis of ‘degree’.

In a similar instance, in 1796, the lawmakers of New York approved to construct the first ever penitentiary of the state, scrapped whipping and brought down the number of capital crimes to two only from the earlier figure of thirteen. Similar legislation was passed by Kentucky and Virginia. In the course of time, four more states brought down the number of capital offences which were: Vermont (1797) reduced the number to three; Maryland (1810) reduced the number to four; New Hampshire (1812) reduced the number to two, and Ohio (1815) reduced the number to two. Each of such states constructed state penitentiaries. However, some states adopted a reverse approach and showed favour towards capital punishment. For instance, in Rhode Island capital punishment was restored for the offence of rape and arson; Massachusetts, New Jersey, and Connecticut increased the number of capital offences from six to ten, which included robbery, maiming, sodomy and forgery. Similarly, many states in southern part declared more offences as capital and this practice was especially for slaves.56

Before the United States secured independence from Britain, all colonies had laws in force prescribing capital punishment for certain offences. Moreover, at that time, the only colony having less than ten capital crimes on the books was Rhode Island. The Eighth Amendment to the United States Constitution (ratified in 1791) which forms part of the ‘Bill of Rights’, prohibited "cruel and unusual punishments" for offences. The amendment expressly forbade certain punishments such as torture and also prohibited the punishments which were not proportionate to the offence committed.

56 Supra note 49 at xvi-xvii.
Since the Nineteenth century until today, the courts have had occasion to interpret the term “cruel and unusual” as challenged in several cases. As a result, some means of execution undoubtedly have been forbidden but in no way, this helped the prohibition of the death penalty as a response to offences. For example, when the controversy over public-hanging first surfaced in the 1830s on the premise of it being cruel in nature, the states started preferring private hangings.

In an early Nineteenth century, many U.S. states started to roll back the use of capital punishment by reducing the number of capital offences. Michigan, in 1846, became the first state to abolish capital punishment for all offences excepting the offence of treason. The Rhode Island, after about six years, while following Michigan went one step ahead and abolished the death penalty in entirety. Whereas some states seemed uncertain about applying capital punishment and went ‘back and forth’, for example, Maine firstly abolished capital punishment then re-enacted the same and then again abolished it. It was also noticed that states started to give more room for judicial discretion to sentence offenders.

However, when civil war broke out in the mid-20th century, the opposition movement of capital punishment got slowed down. During 1919-20, Arizona, Oregon and Washington reinstated capital punishment. In 1924, the first death punishment using cyanide gas was given in Nevada by executing Gee Jon who was found guilty of Tong war gang murder. It was intended to pump the gas in a secret way into the cell of Jon while sleeping at night as a humanitarian way of execution but it could not succeed owing technical difficulties and a special “gas chamber” had to be constructed in haste. Other concerns developed when less “civilized” methods of execution failed. In 1930, Arizona became the first state to execute a female named Eva Dugan. While executing her, that hangman failed to judge the drop and consequently, her head got ripped from the body. In the backdrop of such happenings, more states started using gas chambers and electric chairs to execute criminals. During that time, a large number of organisations seeking abolition of death penalty came into existence all over the United States but they could not make a significant effect. Execution of some offenders such as Julius and Ethel Rosenberg, convicted for committing felony attracted stormy protests but such protests were mainly against the individual cases of execution and did not oppose the capital punishment in itself. In fact, during the anti-communist period,
Allan Shivers, the Governor of Texas made a serious suggestion that death sentence should be awarded to those joining the Communist party as a member. However, by the end of the twentieth century, the abolitionist movements witnessed revival again paving way for rolling back the death penalty.

In 1972, the United States Supreme Court suspended the use of the capital punishment in *Furman v. Georgia* and called for state legislators to combat the arbitrary implementation of the capital punishment. However, this suspension remained only for the short period four years when United States Supreme Court in 1976 again reinstated this punishment in *Greg v. Georgia*. But in 2002 United States Supreme Court in the case of *Atkins v. Virginia* again restricted the use of capital punishment on the mentally retarded person and held its use as unconstitutional.

The history of capital punishment demonstrates the general turning away from its use and helps illuminate the reason why the issue is so divisive. The death penalty is and has been used as a tool in maintaining social order and also to appropriately punish the heinous offences. After the enlightenment, people started arguing against the use of capital punishment in an advanced and civilised society. A higher value had been placed on human life and the rights of individuals, so the federally sanctioned killing of humans became a stronger moral issue. The human life and individual rights have been declared to be of higher value and importance and hence the federally sanctioned killing of human beings turned out to be a strong and bigger moral issue.

### 1.3 Modes of Execution throughout Ages

Various modes and methods of causing death sentence upon the guilty have been in practice across the societies from time immemorial. However, here all the modes of execution have not been dealt exhaustively but only covers those important modes of execution remained in practice. Throughout the ages and across the societies death was the punishment for several specific offences which were hundreds in number. The capital punishment was executed in various ways. Several methods of execution of capital punishment of early centuries included stoning to death, boiling, burning at stake, beheading, quartering, hanging, crucifixion, crushing under elephant’s feet, etc.

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57 Supra note 10.
58 408 U.S. 238 (1972).
60 536 U.S. 304 (2002).
However, with the strong emergence of abolishment movement against capital punishment and with the growth of human rights movement many severe death punishments methods involving barbarism & torture began to die out since the 18th century. The number of crimes punishable by death was also reduced in all major countries. Following are some important practices of the death penalty being in practice since early societies:

1.3.1 Crushing by Elephant

Execution by elephant was a common method of capital punishment in Southeast Asia and particularly in India. Asian elephants were used to crush, dismember, or torture captives in public executions. The animals were trained and versatile, both able to kill victims immediately and to torture them slowly over a prolonged period. Employed by royalty, the elephants were used to signify both the ruler's absolute power and his ability to control wild animals. The Muslim traveller Ibn Battuta, visiting Delhi in the 1330s, has left the following eyewitness account of this particular type of execution by elephants:  

> Upon a certain day, when I myself was present, some men were brought out who had been accused of having attempted the life of the Vizier. They were ordered, accordingly, to be thrown to the elephants, which had been taught to cut their victims to pieces. Their hoofs were cased with sharp iron instruments, and the extremities of these were like knives. On such occasions the elephant-driver rode upon them: and, when a man was thrown to them, they would wrap the trunk about him and toss him up, then take him with the teeth and throw him between their forefeet upon the breast, and do just as the driver should bid them, and according to the orders of the Emperor. If the order was to cut him to pieces, the elephant would do so with his irons, and then throw the pieces among the assembled

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multitude: but if the order was to leave him, he would be left lying before the Emperor, until the skin should be taken off, and stuffed with hay, and the flesh given to the dogs.

During the Mughal era also, it was a common mode of execution in those days to have the offender trampled underfoot by an elephant. Captain Alexander Hamilton, writing in 1727, described how the Mughal ruler Shah Jahan ordered an offending military commander to be carried "to the Elephant Garden, and there to be executed by an Elephant, which is reckoned to be a shameful and terrible Death".62

1.3.2 Crucifixion

In the crucifixion, the convict is pinned to a wooden cross, and left in that state until he/she dies. This form of capital punishment was initiated by the Phoenicians and was in practice among the Persians, Seleucids, Carthaginians, and Roman from about the 6th century BC to the 4th century AD.63 Although in the contemporary times, it is a rare form of capital punishment. The most associative punishment pertaining to crucifixion is that of Jesus Christ who was crucified in 29 AD by the Roman Empire. The event has since then acquired a symbolic meaning and is an inalienable aspect of Christian faith. The cross in which the convicts were crucified were of three types:64

- Crux immissa- This was the cross which comprised four arms.

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64 Supra note 1 at 222.
• Crux commissar- This was the cross which comprised of three arms.
• Crux decussata- This was also referred to as the St. Andrew’s cross. It resembled the Greek letter chi and was three sided in which the victim was hanged by one leg and one arm.

Crucifixion was one of the most degrading and humiliating forms of capital punishment and was usually reserved for slaves and the criminals who had committed the worst crimes. Any convict who had been sentenced to death by crucifixion, if he/she could prove his/her Roman citizenship, he/she would be subjected to a different form of capital punishment, so that the person could be saved from the disgrace of being crucified. Before being crucified, the convict was first whipped. At the place of execution, the convict was stripped naked, leaving only a loincloth. Following this, the convict’s hands are nailed to the cross, or sometimes they were tied with cords, and the feet were made to rest on a wooden block called suppedaneum. Finally, the cross was then tied to a previously tied socket. It ought to be noted here that death in case of crucifixion was not immediate. Sometimes the convict would stay alive for even two days, and the combined physical pain of the cross and the pangs of hunger and thirst would all eventually lead to the death of the convict.65

There was another form of crucifixion in which the convict was tied upside down. Although more terrifying, this method induced unconsciousness upon the convict very soon and hastened death. It was a widespread practice to carry out multiple crucifixions at the same time so that its spectacular quality could be heightened.66 Crucifixion was uncommon in Rome and was more customary in the Empire’s provincial towns. Crucifixion was abolished in the Roman Empire by Emperor Constantine. There exists some discrepancy regarding the exact date when this was done. It is usually believed to have been abolished either in 315 AD or 345 AD. We also find evidence of crucifixion in Japan. Till the 19th century in Japan, the convict was tied to the cross by ropes, and his body was ‘transfixed’ with the help of spears by the executioner. There is also evidence that crucifixion was practised in France, where the Jews and heretics would be subjected to it.67

65 ibid
66 Id at 223
67 ibid
1.3.3 Burning at the Stake

‘Burning at the stake’ method of execution usually was practiced in Babylonia and ancient Israel and later on adopted in Europe and North America. This method was a popular death sentence and means of torture, which was used mostly for heretics, witches, and suspicious women. It was believed that Spanish heretics suffered this penalty during the Inquisition, as did French disbelievers and heretics such as St. Joan of Arc, who was condemned and burned in 1431 in Rouen, France. Then after, in 1555 the Protestant bishops Hugh Latimer, Nicholas Ridley, and John Hooper were condemned as heretics and burned at the stake in Oxford, England. Burning at the stake was a traditional form of execution for women found guilty of witchcraft. Most accusations of witchcraft, however, did not originate in the church but resulted from personal rivalries and disputes in small towns and villages. It is also believed that in some cases of ‘burning at stake’ method, mechanisms were afforded to the victim in order to curtail his pain and suffering. One of the mechanisms is by attaching a container of gunpowder to the victim, which would explode when heated by the fire and kill the victim instantly, and placing the victim in a noose, often made of chain, so that death occurred by hanging. In England, this method is ended for heretics in 1612 A.D. The last man executed for heretics was Edward Wightman; however, burning at stake method remained in practice for other crimes till the 18th century A.D.

69 ibid
70 ibid
1.3.4 Guillotine

A guillotine is a machine named after Dr Joseph Guillotine which was designed for efficiently carrying out executions by beheading. This method became a popular form of execution in the year 1789 in France when Dr Joseph Guillotine (Deputy of Paris) proposed to the Constituent Assembly that all condemned criminals should be executed by the same method and that torture should be kept to a minimum. Beheading was seen to be the least painful and most humane method of execution at that time and to achieve this end Dr Guillotine recommended that a beheading machine is built. The machine was first tested on sheep and calves, and then on human corpses. The first use of the guillotine in France took place in 1792 for killing a prisoner called Nicholas Jacques Pelletier. 71 Although it is popularly believed that the guillotine had its origin in the aftermath of the French Revolution, one can find instances of various punishing methods that were like the guillotine. One finds the record of usage of the guillotine in the 16th and the 17th Centuries in Italy, where it was described as ‘Mannaia’. The description of an execution by the guillotine in 1702 can be found in the account of Le Pere Labat in his book Voyage en Italie published in 1730. 72

It was extensively used during the French Revolution, where many of the executions were held openly outside the prison of Versailles. King Charles, I was also executed in the same way in England. This new form of execution, although it initially attracted a large crowd for public viewing, people very soon grew dissatisfied with it. This is because, they felt that the process was too quick and there was nothing in it for the crowds to enjoy, as was the case with other public forms of execution. The guillotine also became a part of the public culture in France. There were guillotine shaped

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71 Supra note 1 at 71-72
72 Id at 70
ornaments that were made available for women, and guillotine toys for children. The sellers of the guillotine toys also provided living sparrows for them to be guillotined at the toy. The son of the French queen Marie Antoinette was presented with a toy guillotine just before her trial was about to begin, after the French Revolution.  

In the reign of terror that started after the French Revolution, from January 1793 to June 1794, a total of 1255 people were guillotined. Some of the prominent figures from the French ruling class who had been guillotined during this period included the queen Marie Antoinette, Charlotte Corday, Madame Elizabeth, Marie Philpon and Madame Roland. The revolutionary tribunal that was constituted in the aftermath of the revolution, ensured that the guillotine was not removed after every execution (as was usually the practice), but kept it stationary at the Place du Carrousel in Paris, where these executions took place. The ubiquitous presence of the guillotine was not just in Paris but also in the other towns of France. For instance, in Rennes between December 24 to December 26, 1793, ninety people were guillotined. To expedite the flowing of the blood from the guillotine, it was constructed over a sewer at the Place de Palais (where these executions took place), so that the blood of the victims could be effectively drained out. The last public execution by guillotine was held in France, in June 1939. The last use of the guillotine came in 1977 in France, and the device has not officially been used since then. The guillotine remained the official method of execution in France until the death penalty was abolished in 1981 after France was admitted to the European Union.  

1.3.5 Hanging, Drawing, And Quartering

In Medieval England, those convicted of high treason were treated to a particularly brutal form of execution. First, the victim was fixed to a wooden panel that was drawn through town by a horse to the place of execution. Then, they were hanged, usually in front of a jeering crowd, until they were close to death, which could take hours if done properly. Finally, the victim was chopped into four pieces—or they were quite literally quartered. It was considered more humane to burn them at the stake, instead. The first notorious sentence of drawing and quartering, however, was inflicted

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73 Id at 73  
74 Id at 74  
in 1283 on the Welsh prince David ap Gruffudd, whose punishment, one early source claims, was for myriad crimes. He was drawn for treason, hanged for homicide, disembowelled for sacrilege, and beheaded and quartered for plotting the king’s death. Another infamous case is that of the Scottish patriot Sir William Wallace, who died in 1305. In 1803 Edward Marcus Despard and his six accomplices were drawn, hanged, and quartered for conspiring to assassinate George III. The sentence was last passed (though not carried out) upon two Irish Fenians in 1867, and it was officially abolished in 1870.76

1.3.6 Boiling to Death

Boiling was a rare form of punishment even in the ancient times and one does not find any evidence of it being in practice in the contemporary times. In this form of punishment, the convict is placed in a huge container comprising of a heated liquid such as water, oil, molten lead, wax, etc. until the person died. The Roman Emperor Nero had boiled thousands of Christians in oil. In 1522 a prisoner in London was punished to death by being put on boiling water, as recorded in the book called Chronicle of the Grey Friars of London. Boiling was legislated as a form of capital punishment in England in 1531 during the reign of Henry VIII. This Act made acts of petty treason such as poisoning a criminal offence which would be

punished by boiling to death. Under this Act, a cook named Richard Rouse was put to
death in 1531 for having put poisoned yeast in the porridge prepared for the Bishop of
Rochester and his family, which led to the death of a man and a woman. Other instances
of punishment by boiling include that of a maidservant for having poisoned her mistress
(in the same year) and in 1542 when Margaret Davy was boiled for having poisoned
her employer. This form of punishment also existed in France and Germany from the
13th to the 16th century for the crime of clipping coins. Clipping referred to the practice
of “scraping the fragments from coins that were then melted and casted into new
coins”.77

1.3.7 Beheading

Beheading is a mode of capital punishment by which the convict’s head is detached
from the body. An executioner, usually hooded, would chop off the person’s head with
an axe or sword. It was believed to be an honourable punishment both by the
Romans and the Greeks. This was because, being beheaded was considered equivalent to
getting killed in a battle. Getting beheaded by the sword would be more
honourable than by the axe.78

This was a punishment reserved for the convicts belonging to the noble classes and not for commoners. Some
of the high-ranking British noblemen who were beheaded include: Archbishop Scrope
(1405), Duke of Buckingham (1483), Catherine Howard (1542), Earl of Surrey (1547),
Duke of Somerset (1552), etc.79

Beheading was brought to England by William the Conqueror and the first
person to have been beheaded here was Waltheof, Earl of Northumberland in 1076.

brritannica.com/topic/boiling-punishment (last visited on Jan. 10, 2018)
78 Supra note 1 at 28
79 Id at 29
Beheading was also the method that was used for punishing the traitors. Along with being beheaded, the convict would also be disemboweled. It was only in 1814 that disembowelment was done away with. It was in the same year that beheading as a form of punishment was abolished in England, although the King still had the power to punish somebody by it.  

The heads of the traitors, after being beheaded, would be publicly displayed to serve as a warning for others. In London, places like the London Bridge, Aldgate, and Temple Bar would have heads on display. The means of administering capital punishment both in Sweden and Denmark was through beheading. In Sweden, beheading was carried out with an axe, in a prison, in the presence of state officials. The country had eventually banned capital punishment by 1921. In this process, ‘a sharpened board’ would be inserted on the victim’s neck and then it would be ‘driven through by the blows of a mallet’. Although beheading was the form of execution in China, the law over there had forbidden the display of decapitated heads or its slicing, as it was considered a ‘barbaric’ practice. Simon, Lord Lovat, was the last person to be beheaded in England, in 1747. The practice, along with all forms of capital punishment has been abolished in almost all European countries. However, it continues to be practiced in certain Asian and Middle Eastern countries. Some of the more recent instances of beheading has been carried out by terrorist groups. For instance, the murder of the American journalist Daniel Pearl by Al-Qaeda in Pakistan was one of the first instance of this kind in recent years. Other recent instances of beheading include those of Syrian and Iraqi captives by the terrorist organisation ISIS, which took place in 2014. These beheadings have usually been recorded and then disseminated online, both as a propaganda tool and to force Governments, especially in western countries to pay ransoms or make similar other concessions. At present, there are five countries that authorize beheading which includes Benin, Republic of the Congo, Iran, Saudi Arabia, and Yemen.

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80 Id at 30
81 Id at 32
82 Id at 35-36
84 ibid
1.3.8 Stoning to Death

The practice of stoning has been documented among the Ancient Greeks to punish people judged to be prostitutes, adulterers or murderers. It is also mentioned in the Jewish Torah, the first five books of the Bible, and the Talmud.

Referring to the religious origins of this form of capital punishment Mark Jones and Peter Johnstone in their book History of Criminal Justice writes:86

After the establishment of the Davidic monarchy (circa 1000 BC(E))... difficult cases... were taken to the priests and judges at Jerusalem... once (they) ascertained guilt, sentencing and execution followed immediately. They usually inflicted death penalties by stoning, with the community casting stones at the convict until death occurred.

Basically, there are two ways in which the condemned may be stoned to death. The first is to be surrounded or to stand up against a wall. The victim is then pummelled with stones until he/she dies. The second and most common mode is for the person to be partially buried. A hole is dug especially in the ground for this purpose. This renders it much more difficult for the individual to raise their hands to ward away the stones.

Stoning used to take place outside the precincts of the town, and the venue would be piled up with stones. A crowd would gather at the venue and each would hold a stone in their hands. The person who had been wronged by the convict would be brought to the execution venue wearing a white dress. The wronged would declare the accusation against the convict and then would be the first person to cast the stone upon the convict.

Following this, others would begin stoning the convict and continue doing it until the convict was dead, and a heap of stones was piled upon him/her.

At present, however, it is predominantly practised in Muslim countries. But, clerics of Islam are deeply divided on this method of punishment. Supporters of stoning say the Hadith depicts the Prophet as occasionally ordering stoning in cases of extramarital sex. But some scholars say these acts and sayings – recorded several hundred years after the Prophet’s death – have been misinterpreted. Others argue that the Prophet was simply following prevailing customs and Jewish law. Modern laws sanctioning stoning as a punishment for adultery emerged with the revival of political Islam in the late 20th and early 21st century.

Stoning is called Rajm (Arabic: رجم) in Islamic literature, and presently nine countries authorise its practice. These countries include Indonesia, Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, Sudan, United Arab Emirates, and Yemen. Many of these countries qualify the use of stoning stating that it can only be used for certain offences. For example, Mauritania authorises stoning only for adultery and homosexual relations, Nigeria authorises stoning only for adultery, rape, incest, and homosexual sodomy, and Pakistan states that it will only use this method for rape or adultery. In practice, stoning is almost never used to execute criminal offenders. Most stoning that has been reported in recent years have been carried out extra-judicially—for example, by armed groups in Somalia.87

1.3.9 Death By Hanging

Unlike beheading, hanging was believed to be a dishonourable and disgraceful form of punishment. It is one of the earliest forms of capital punishment, and the method of its administration has undergone numerous changes, to make it appear more humane and merciful. The earliest form of hanging was by tying a rope around the branch of the tree, by which the convict would be hung. Hanging, administered in this

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87 Supra note 85.
manner, therefore, was a public form of punishment. In England, convicts were hung with the help of ropes and ladders. The convict would climb a ladder, kept against the gallows, and then come over to a raised platform. From here, the convict would address the crowd narrating his misdeeds which have led him to this fate and listen to the sermons of the priests who would be present on the occasion, before being eventually hung by tying the noose around his neck. Sometimes, the executioner would put a white cloth over the convict’s head, but this was not followed always.

In the medieval period, the practice of torture accompanied hanging, especially for very serious crimes such as high treason. A prominent method of torture was the practice called ‘quartering’ in which the convict was ‘carved into pieces… before being hanged’. During the 17th century, the methods of hanging were changed, as the process of the middle ages were considered ‘barbaric’ during this time. The first change that was made was that the ladder was substituted by a cart. During this period, hanging was carried out some distance away from the gaol. The convict was brought to the hanging spot by a cart. Convicts who belonged to a higher rank were sometimes allowed to arrive at the hanging spot on their own carriage. There are five major ways of administering hanging, which includes:

- **The Short Drop.** This is the method most commonly in use in the world today, as it's favoured by Iran. It was also the way in which people were hanged at Tyburn. The victim is forced up a ladder or elevated on top of a truck. The noose is placed over their heads, then their support is simply removed. The victim usually slowly strangles to death.

- **The Long Drop.** This is the method favoured in late 19th-20th century Britain, thus all of its former colonies. The victim is placed over a trapdoor with the noose around their necks. The floor gives way beneath them and they fall through to hang. Done competently, this provides an instant death, as the neck is snapped. But that involves the rope being exactly the right length for the individual being killed.

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88 Supra note 1 at 42.  
89 ibid  
91 Supra note 1 at 43.  
The Standard Drop. This involves the same process as the long drop, but the rope is always between 1.2-1.8 meters (4-6ft). That makes it very arbitrary whether death will be instantaneous. This is rarely used but was notably the way in which condemned Nazi officials were hanged by American executioners after the Nuremberg Trials. Without exception, the individuals took a long time to die.

Suspension. This method involves the individual being lifted off the ground (or a platform) by some form of pulley system. It was used in the past in various European countries, while some Iranian towns and cities employ it as an alternative to the short drop. It always results in a slow strangulation.

Upward Jerker. Similar to suspension, this elevates the victim at speed and may include a sudden, jolting stop. The aim is to break the individual's neck so that it's a quick death. It was used for over thirty years in some American states and widely employed in Poland. Too many botched hangings have made this method of hanging out of fashion everywhere now.

At present, the countries that authorize hanging as a method of execution include: Afghanistan, Antigua & Barbuda, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Democratic Republic of the Congo, Dominica, Egypt, Equatorial Guinea, Eritrea, Gambia, Ghana, Grenada, Guyana, India, Iran, Iraq, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Malawi, Malaysia, Myanmar/Burma, Nigeria, North Korea, Oman, Pakistan, Palestine, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Singapore, South Korea, South Sudan, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Tonga, Trinidad and Tobago, Tunisia, Uganda, United States, Zambia, and Zimbabwe. The Democratic Republic of the Congo specifies that they use hanging only in military courts, but the president has the power to designate the method of execution. Equatorial Guinea, Iraq, Lebanon, Syria, and Uganda indicate that they only use hanging for offences tried in civilian courts and India is the only country to specify that they use hanging for offences tried in both civilian and military courts.93

93 Supra note 85.
1.3.10 The Garrotte

The initial form of the garrotte comprised of a post with a hole in it. Through this hole, a double cord would be passed. The wires of this cord would be put around the convict’s neck and then its free ends would be pulled by the executioner, causing the convict to die from strangulation. Following this, the free ends would be tied together, and a stick put inside it, and then the wires would be twisted again to ascertain without any doubt that death had occurred. The later developments in the garrotte comprised of an iron collar which was wound around the neck of the convict. This collar is then tied to a post. At the back of the post lies a screw which is connected to the collar and is operated with the help of a lever. This lever is then used to pull the iron collar thereby causing death by strangulation.\textsuperscript{94}

Currently, there exist two types of garotte. This change is usually attributed to bringing about a more humane form of the punishing device. In the first garotte, the collar is divided into two parts: an upper collar and a lower collar. The upper collar moves towards the pillar (against which the convict is attached), and the lower one moves from it. With the help of the screw, the collar joins together, the upper collar holding a vertebra and the lower one holding the one adjacent to it. Following this, the screw is turned leading to the dislocation of the spinal cord which is the cause of death. In the second form of the contemporary garotte, there exists a collar and a knife emerging from the pillar. Here, the collar tightens on the neck of the convict, while at the same time the knife proceeds towards the neck and passes between the two bones and divides the spinal cord causing death.\textsuperscript{95}

The garotte has mostly been in use in Spain. In the night preceding the execution, the convict is taken to the chapel, where he is joined by priests and other armed guards. The priests pray for the convict and ask him/her to repent for the crimes

\textsuperscript{94} Supra note 1 at 225.
\textsuperscript{95} Ibid.
that he/she has committed. In the morning of the execution, the convict is asked to confess his/her crime. This is a crucial step in the execution process, because, according to Spanish law a convict cannot be put to death unless he/she confesses the crime.  

1.3.11 Firing Squad

There is no fixed procedure when it comes to execution by firing squad. Usually, the convict is tied to the pole, with hands and is blindfolded and a cloth patch is put on his heart, or he is tied to a chair. In most cases, a team of five executioners is used to aim at the convict's heart. In some countries, few of the rifles are loaded with blank bullets and the shooters are not told about it so that the true killer is unknown.

There are 29 countries that approve shooting by firing squad as a method of execution and 22 more that sanction shooting. Many countries do not clarify the distinction between shooting by firing squad and shooting, but some countries indicate that shooting by firing squad includes multiple shots fired by multiple people while shooting includes a single shot to the back of the head. The countries which practices shooting by firing squad include: Afghanistan, Algeria, Bahrain, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of the Congo, Cuba, Equatorial Guinea, Ethiopia, Ghana, Indonesia, Kuwait, Lebanon, Libya, Mali, Mauritania, Niger, Nigeria, Palestine, Sierra Leone, South Korea, Uganda, United Arab Emirates, United States, and Vietnam. Equatorial Guinea, Lebanon, and Uganda indicate that this method is only used for offenses tried in military courts. In some states in United States like Utah and Oklahoma, choice is given to the convict whether he should be shot to death by firing squad or by lethal injection. The countries that employ shooting only includes, Bangladesh, Belarus, Democratic Republic of the Congo, Eritrea, Guinea, India, Iran, Iraq, Jordan, Laos, Mauritania, Morocco, North

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96 Id at 225-227.
Korea, Qatar, Russia, Somalia, Syria, Taiwan, Tajikistan, Tunisia, and Yemen. Democratic Republic of the Congo indicates that this practice is only to be used for crimes committed in civilian courts, but the president has the power to designate the method of execution. Additionally, India and Syria indicate that this method of execution is only to be used for offenses tried in military courts while Iraq states that shooting could potentially be used as a means of execution.\textsuperscript{97}

\textbf{1.3.12 Gas Chamber}

The most associative memory which is evoked with the Gas chamber is that of the Nazi holocaust. In concentration camps, the worst of which were in the Polish towns of Auschwitz and Birkenau, Nazi officers put Jews and other targeted ethnic groups into closed gas chambers, and poured lethal gas from the rooftops, which led to the immediate death of the victims. The Nazi holocaust is one of the most tumultuous events in world history and had led to the death of around two million innocent civilians.

In this method of execution, the prisoner is restrained and sealed in an airtight chamber which is filled with lethal gas like hydrochloric acid, hydrogen cyanide, carbon dioxide and carbon monoxide. After getting the signal, the executioner opens a valve which allows hydrochloric acid to flow into a pan behind the chair. Upon another signal, he then adds either potassium cyanide or sodium cyanide crystals into the acid by pulling a lever, producing white puffy clouds of lethal hydrocyanic gas. This gas destroys the body's ability to process blood haemoglobin and renders the prisoner unconscious within a few seconds. However, if the prisoner tries to hold his/her breath, the process can take much longer and lead to convulsions. In this process of execution, the victim takes between six to eighteen minutes to die. After the declaration of death, the chamber is evacuated using carbon and neutralizing filters. Corrections officers wearing gas masks decontaminate the body with bleach solutions and the body must be

\textsuperscript{97} Supra note 85.
decontaminated before being handled by an undertaker. If this process is not done, the undertaker or anyone handling the body would be killed.98

From 1921 to 1972, lethal gas was applied for 600 cases of capital punishment, whereas from 1976 to 1999 it was used for only 11 cases. The reasons behind this massive decrease in number are usually attributed to the prohibitively high costs associated with this process—especially in terms of renovating the used gas chambers, the growing perception that this was a cruel method of execution and hence unconstitutional, etc. 99

1.3.13 Electrocution

The death penalty of electrocution bears testimony to the changes and advancements in human life, and the corresponding demands that evolved due to these advancements, to administer more ‘humane’ forms of execution to criminals.

With gradual progress made in science and technology, humans began to control and regulate the power of electricity. It was owing to this, there began advocacy for usage of electrocution as a less severe form of capital punishment, instead of its earlier forms, which now began to be considered barbaric and brutal. The accidental deaths that took place in the initial periods after the discovery of electricity, and deaths that took place due to lightning, made people realise that electricity could be used as a process of execution.100

Electrocution has been defined as a process of execution “in which the condemned person is subject to a heavy charge of electric current”. Electrocution as a method of capital punishment was adopted for the first time in New York in 1888 as a quicker and

99 Ibid
100 Supra note 1 at 63
more humane alternative to hanging. Two years later, on August 6, 1890, New York State initiated its electric chair. The first person to be executed by electrocution was William Kemmler, who was executed at the Auburn State Prison on August 6, 1890, for murdering his mistress. The first woman victim was Martha Place.\textsuperscript{101} Contrary to what was speculated, electrocution turned out to be a gruesome and ghastly method of capital punishment. The execution of Kemmler drew a lot of public attention and its reportage in the press gives us an idea of the brutality of electrocution. According to a New York Times report, “[the incident was] awful [and] the witnesses were so horrified by the ghastly sight that they could not take their eyes off it”. The doctors who carried out the autopsy of Kemmler, reported that his body was charred extensively in those parts where the electrodes were attached.\textsuperscript{102} However, despite such sensational reports, electrocution began to be adopted by even more states in the United States of America. By 1949, 26 states had adopted it as the method of execution. There exists no unambiguous judgement by the US Supreme Court as to whether electrocution violates “the US Constitution’s Eighth Amendment prohibition of cruel and unusual punishment.\textsuperscript{103}

Prior to its adoption several tests and experiments were made on animals to ascertain the effectiveness of this form of punishment. Hence, varying voltage of electric current were passed through a calf and a horse. A calf was subjected to 50 volts of current, which although rendering the animal unconscious, did not kill it. Eventually, a voltage of 770 volts managed to kill the animal. In the period prior to the legislation of electrocution, there was stiff opposition from the electricity companies in using electrocution for capital punishment. Their opposition was made on the grounds that ordinary people might stop using electricity altogether in fear of electrocuting themselves. However, this opposition notwithstanding, the legislators eventually went ahead and legislated electrocution, as they wanted to do away with hanging as a capital punishment at any cost.\textsuperscript{104}

The due process to be followed during execution was duly set out by the law. It mandated that the electrocution process should take place in the presence of the prison

\textsuperscript{102} Ibid.
\textsuperscript{103} Ibid.
\textsuperscript{104} Supra note 1 at 64.
warden, two doctors, twelve citizens and the deputy sheriffs of the town. There existed a lingering doubt in the mind of the legislators that no quantum of electricity might be enough to ensure the death of the convict. To alleviate this doubt, the law mandated that a post-mortem must be carried out of the victim, after he/she had been subjected to electrocution.\(^{105}\)

Accordingly, several litigations have eventually forced courts to abandon electrocution and adopt lethal injection in its stead. Nebraska was the last state to do away with electrocution and eventually in 2008 it ruled the process unconstitutional. There is no evidence of electrocution being used outside the United States, except for Philippines, which abolished it in 1976.\(^{106}\)

**1.3.14 Lethal Injection**

In lethal injection, chemicals are injected into the bloodstream of the convict thereby causing death. The process consists of tying the convict to a padded stretcher and then injecting the chemicals into the body, usually the arm. In lethal injection, the following three chemicals are usually injected:\(^{107}\)

a) Sodium thiopental- This is used to generate unconsciousness in the convict.

b) Pancuronium bromide- This paralyses the voluntary muscles of the body, leading to suffocation.

c) Potassium chloride- This leads to cardiac arrest, thereby causing death.

The process of lethal injection is completed in about five minutes, and the convict is expected to die within two minutes after the final injection. However, there have been instances when poorly administered lethal injections have prolonged the process even up to two hours and have inflicted unnecessary pain and indignity upon the convict. The poorly administered lethal injection can take place due to a mix up in the sequence

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\(^{105}\) Ibid.

\(^{106}\) Supra note 98.

of injecting the respective chemicals into the body of the convict or injecting an inadequate amount of a chemical. For instance, if an inadequate amount of sodium thiopental has been injected, the convict might not be rendered unconscious, and in that case, he/she might experience immense pain, but not be able to show it due to his/her body being paralysed through the injection of potassium bromide. Lethal injection is the most prominent method of administering capital punishment in the United States. It was first adopted in the state of Oklahoma in 1977, as a cheaper and a humane alternative to electrocution and poisoning by lethal gases. The first state to execute a convict through lethal injection was Texas, where it executed Charles Brooks Jr. on December 2, 1982. There was widespread criticism by the lower courts in the US of the three-drug process that was used in lethal injection. To alleviate this, the US Supreme Court decided to hear the matter. In 2007, the Supreme Court “upheld the constitutionality of the method, determining that it did not pose a ‘substantial’ or ‘objectively intolerable’ risk of ‘serious harm’ to prisoners”.108

There are currently six countries where lethal injection is used. These include China, Guatemala, Taiwan, Thailand, United States, and Vietnam.109 Guatemala, the Philippines and Thailand have adopted lethal injection as their sole method for administering the death penalty. Guatemala switched to lethal injection from firing squad execution in 1996 and has carried out 3 executions since then. Vietnam has adopted a similar procedure from July 2011. In Vietnam, the first execution by lethal injection was carried out on August 6, 2013, when 27-year-old Nguyen Anh Tuan was put to death in Hanoi for a 2009 robbery/murder. Currently, 596 people remain on a death row in Vietnam. The Philippines decided to use lethal injection to replace the electric chair and carried out its first injection execution on the February 4th, 1999, when Leo Echegaray was put to death for child rape. A further 6 men have been executed by this method by the end of 2000. However, Philippines has abolished the death penalty in 2006.110

These are the prominent modes of executions which remained in practice throughout ages. Beside these prominent methods, there were other modes of execution as well which remained in practice in some societies such as ‘Breaking wheel’ method

108 ibid
109 Supra note 85.
110 ibid
which is also known as Catherine wheel was a torture device being used for the capital crimes. This method was in practice from antiquity till the 18th century A.D. The criminal would be attached to a cartwheel and his arms and legs stretched out along the spokes. The wheel would be made to turn while a heavy metal bar or hammer would deliver bone-breaking blows to various parts of the body between the spokes. If a merciful execution had been ordered, after a large number of bones were shattered, fatal blows would be delivered. In cases where mercy was not offered, the criminal would remain on the wheel until they died – this could sometimes take days and the person would die of shock and dehydration.

It is only within the last two hundred years that the attempt had been made to make executions more swift and humane. Let us now analyse the global trend of capital punishment practice region wise in order to have a more clear view of the global practice of capital punishment.

1.4 Global Trend of Capital Punishment

The global trend of capital punishment both in terms of international law and national law has advanced so much in the past centuries. As compared to the ancient society, where capital punishment was frequently practised for most of the crimes till 18th century to the twenty-first century when the majority of the countries in the world have abolished the practice of capital punishment in law or in practice. It is interesting to note that at the beginning of the 21st Century over sixty states had ratified the international treaties prohibiting capital punishment; apart from this, it has occupied the central stage on forums such as General Assembly of the United Nations and even on the Rome conference on the International Criminal Court. This just goes on to show that the death penalty is an issue which has been an area of priority for nations of the world. Globally, countries are classified on the basis of capital punishment status in the following ways:

- Abolitionist for all crimes
- Abolitionist for ordinary crimes\(^{111}\)

\(^{111}\) It means that the death penalty has been abolished for all ordinary offences committed in peacetime, such as those contained in the criminal code or those recognized in common law (for example, murder, rape and robbery with violence). The death penalty is retained only for exceptional circumstances, such as military offences in time of war, or crimes against the State, such as treason, terrorism or armed insurrection - Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.
Abolitionist de facto
Retentionist countries

An analysis of the legal systems of the various countries of the world would show that as of the year 2016, out of total countries of the world 104 have abolished the capital punishment for all crimes, thirty states have not abolished death penalty from the statute book but practically they have done away with the death penalty whereas seven countries have abolished the death penalty for ordinary crimes while retaining it for exceptional circumstances. On the other hand, only fifty-seven countries have chosen to retain the death penalty. In 2016, total 3,117 deaths sentences were awarded, whereas, 1,032 number of people were executed in 2016.\textsuperscript{112}

Let us now take a regional overview of capital punishment, in alphabetical order:

\textbf{1.4.1 Americas}

The American Human Right Convention of 1969 notably constrains the application of capital punishment. Its Article 4 of the said convention says that it can only be applied for serious crimes following a free and fair trial; it cannot apply for political offences or related common crimes, addition to this it cannot be re-established in the states that have done away with death penalty, and it did not apply for minor under 18, for elderly above 70 and to pregnant women.

Furthermore, America does have a specific convention pertaining to the abolishment of death penalty. Article 1 of the protocol to the American Convention on Human Rights explicit “The State Parties to this Protocol shall not apply the death penalty to any person subject to their jurisdiction.”\textsuperscript{113}

In accordance with the above said provisions in the year 2016 USA executed twenty convicts and on death sentence row it is reported thirty-two. This is the lowest number compare to the 1973& 1991. Execution declined by eight as against 2015, even number of states declined by one in the year 2016. The decrease in the report is owing to the difficulty in getting the lethal injection chemicals by states. The number of


\textsuperscript{113}Government Of India, ,262\textsuperscript{nd} Report on ,The Death Penalty, (Law Commission Of India August 2015).available.at:https://www.google.co.in/search?q=Government+Of+India%2CLaw+Commission+Of+India%2CReport+No.262%2CThe+Death+Penalty%2CAugust+2015.&oq=Government+Of+India%2CLaw+Commission+Of+India%2CReport+No.262%2CTThe+Death+Penalty%2CAugust+2015.&aq=chrome..69i57.1520j0j8&sourceid=chrome&ie=UTF-8,(last visited Jan 20, 2018).
execution in Georgia worryingly doubled, from five to nine compared to 2015. While on the other hand in Texas, it almost shortened by half (from thirteen to seven). These two states alone account for eighty percent of the execution in the USA. There are thirty-eight percent declines in death sentences in the USA as compared to 2015, it fell from fifty-two to thirty-two.

Table: Capital Punishment in different Countries in 2016

<table>
<thead>
<tr>
<th>Country</th>
<th>Recorded Execution</th>
<th>Recorded Death Sentences</th>
<th>People Known to be Under Sentence of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bahamas</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Barbados</td>
<td>0</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Belize</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Cuba</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dominica</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Grenada</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Guatemala</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guyana</td>
<td>0</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>Jamaica</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Saint, Kitts and Nevis</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Saint Lucia</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>0</td>
<td>2</td>
<td>33</td>
</tr>
</tbody>
</table>


There seems a significant positive development in other Americas region. In Guatemala death penalty for ‘aggravated murder’ found as unconstitutional, besides this, a draft is sent to the congress to do away with death punishment. Furthermore, two Caribbean countries, namely Antigua and Barbuda do not hold anyone to death
punishment in 2016. While Barbados, Guyana and Trinidad, and Tobago ensured death sentence for a murder case. Seventy-two people were kept on the death sentence in other Caribbean countries, and in which Trinidad and Tobago account for half.

UK supreme court held along with Judicial committee of Privy Council, which will have implications on Caribbean countries that, “in order for a secondary participation to be guilty of murder in so-called “joint enterprise” cases, it must be proved that they intended the killing or grievous harm to happen in the course of an offence and not simply that they foresaw this possibility”. The eastern Caribbean court reviewed the cases pertaining to the death penalty in Antigua and Barbuda and changed it to terms of imprisonment. In the Bahamas, one death sentence was quashed and sent for a retrial after a court found that trial was undermined by adverse pre-trial publicity.

As the figure shows about nine federal states of USA have favourably abolished the death sentences, together with six states that have done away with since 2007. Presently death sentence is prevalent in 31 states. Of which about twelve states namely Arkansas, California, Colorado, Kansas, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, Pennsylvania and Wyoming – have not carried out any execution for last ten years.

1.4.2 Asia Pacific

Nearly forty percent of the countries in the Asia-Pacific are retentionist.e keeping the death penalty and rigorously use the death penalty. Extremely opaque China, Islamic Republic of Iran, Sectarian violence-ridden Iraq and literalist interpreter Saudi Arab are dominant in death penalty executor globally, and for last few years Pakistan and Indonesia are breaking their “de facto moratoriums to return to executions”. As per Office of the High Commissioner for Human Rights for South-East Asia 2015, found that “ Global movement towards abolition of the death penalty in South-East Asia” failed to pursue to abolish death sentence in the countries Brunei Darussalam, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Viet Nam, while positively Cambodia, Timor-Leste and the Philippines had abolished as of 2015.114

114 High Commissioner For Human Rights Regional Office For South-East Asia “Moving Away From The Death Penalty: Lessons In South-East Asia”, available at: http://Bangkok.Ohchr.Org/Files/Moving %20 (last visited on Jan. 6, 2018)
At a minimum, nearly one hundred thirty executions were known to be carried out in eleven countries of this particular region. These figures do not count for China, which is almost opaque pertaining to the death sentence execution. Amnesty believes that there are thousands of executions occur in China without any release of official figure for the world community. This figure is significantly short to 2015; three hundred sixty-seven executions are reported previous year. This fall is due to Pakistan, where there is a decrease of two hundred thirty-nine from the previous year. Also in Indonesia decrease is recorded as compared to 2015, from fourteen to four. While in Bangladesh things gone otherwise, it reached from four in 2015 to ten in 2016. In India, no execution is carried out in 2016, while in 2015 it did.

Table: Capital Punishment in Asia Pacific Countries in 2016

<table>
<thead>
<tr>
<th>Country</th>
<th>Recorded Execution Cases</th>
<th>Recorded Death Sentences</th>
<th>People are known to under death sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>6</td>
<td>4+</td>
<td>600+</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>10</td>
<td>245+</td>
<td>1645+</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>0</td>
<td>0</td>
<td>+</td>
</tr>
<tr>
<td>China</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>India</td>
<td>0</td>
<td>136</td>
<td>400+</td>
</tr>
<tr>
<td>Indonesia</td>
<td>4</td>
<td>60+</td>
<td>215+</td>
</tr>
<tr>
<td>Japan</td>
<td>3</td>
<td>3</td>
<td>141</td>
</tr>
<tr>
<td>Malaysia</td>
<td>9 (as of 30th September)</td>
<td>36+</td>
<td>1042 (as of 30th April)</td>
</tr>
<tr>
<td>Maldives</td>
<td>0</td>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>Mongolia</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Myanmar</td>
<td>0</td>
<td>3+</td>
<td>+</td>
</tr>
<tr>
<td>North Korea</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Pakistan</td>
<td>87+</td>
<td>360+</td>
<td>6000+</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>0</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>Singapore</td>
<td>4</td>
<td>7+</td>
<td>38+</td>
</tr>
<tr>
<td>South Korea</td>
<td>0</td>
<td>0</td>
<td>61 with sentences finalised</td>
</tr>
<tr>
<td>Taiwan</td>
<td>1</td>
<td>2</td>
<td>42</td>
</tr>
<tr>
<td>Thailand</td>
<td>0</td>
<td>216</td>
<td>427</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>+</td>
<td>63+</td>
<td>681+</td>
</tr>
</tbody>
</table>

*Source: (Amnesty International, 2017).*

In Asia Pacific region, nearly one thousand two hundred twenty-four death sentences were awarded in 2016. This is worryingly a significant rise in the number of six hundred sixty-one in 2015.
The lack of transparency in a trail of cases continues to be a challenge throughout the region. In China and in Vietnam death sentence is classified as 'state secret', and extremely limited information available for Laos, Malaysia, North Korea and Singapore. The death penalty is repeatedly and conveniently used in contravention of the international law across the region. There are even reports from Pakistan, Bangladesh, Indonesia, Maldives, Papua and others that even below eighteen-year-olds are on death sentence row.

In Afghanistan, about six men were reported to be executed against the terrorist charges, and at least four death sentences imposed. Nearly after more than sixty years without any execution, Maldives took steps for resuming the implementation of the death sentences. In Myanmar seventy-seven death sentences were commuted to life imprisonment.

1.4.3 Europe and Central Asia

Europe

All most European nation, except Belarus, has formally abolished the capital punishment. The European Convention of 1950 original slated that “No one shall be deprived of his life intentionally save in the execution of a court following his conviction of a crime for which this penalty is provided by law”. In 1983, Protocol No.6 to the European Convention concerning the abolition of the capital punishment opines, “The death penalty shall be abolished. No one shall be condemned to such penalty or executed”, except “in respect of acts committed in time of war or of imminent threat of war.” As a final point, in 2002, Protocol No. 13 to the European Convention abolished the death penalty in all circumstances. 44 countries have acceded to this protocol, including all member states of the European Union. Belarus court held four death sentences and another four were executed during the year. Court of Kazakhstan sentenced the death in May against the terror charges in which reportedly ten peoples were killed. While in Russia as such no execution is reported. But some politicians advocated for death punishment and even submitted Bill in Duma (Russian parliament) for terror-related activities. Government and Supreme Court opposed the case.


Table: Capital Punishment in Europe and Central Asian Countries in 2016

<table>
<thead>
<tr>
<th>Country</th>
<th>Recorded Executions</th>
<th>Recorded Death Sentences</th>
<th>People Known to be under Sentences of Death</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belarus</td>
<td>4+</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Russia</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>


1.4.4 The Middle East and North Africa

This whole region is extremely volatile pertaining to terrorism and human rights issues. These countries are Muslim concentrated states, where the death penalty is prevalent. But surprisingly in 2016, the death penalty decreased, as per Amnesty international there is twenty-eight percent decrease from one thousand one hundred ninety-six in 2015 to eight hundred fifty-six in 2016. Iran leads the execution number, five hundred sixty-seven to its alone credit. Followed by KSA one hundred fifty-four, and war-torn Iraq eighty-eight. Only these three countries account for the ninety-five percent of all the execution in the region.

Table: Capital Punishment in the Middle East and North Africa Countries in 2016

<table>
<thead>
<tr>
<th>Country</th>
<th>Recorded Executions</th>
<th>Recorded Death Sentences 2016</th>
<th>People Known to be under Sentences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>0</td>
<td>50</td>
<td>+</td>
</tr>
<tr>
<td>Bahrain</td>
<td>0</td>
<td>0</td>
<td>+</td>
</tr>
<tr>
<td>Egypt</td>
<td>44+</td>
<td>237+</td>
<td>+</td>
</tr>
<tr>
<td>Iran</td>
<td>567+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Iraq</td>
<td>88+</td>
<td>145+</td>
<td>+</td>
</tr>
<tr>
<td>Israel</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Jordan</td>
<td>0</td>
<td>13</td>
<td>+</td>
</tr>
<tr>
<td>Kuwait53</td>
<td>0</td>
<td>49</td>
<td>+</td>
</tr>
<tr>
<td>Lebanon</td>
<td>0</td>
<td>126</td>
<td>+</td>
</tr>
<tr>
<td>Libya</td>
<td>Unconfirmed</td>
<td>1+</td>
<td>Unconfirmed</td>
</tr>
<tr>
<td>Morocco/Western Sahara</td>
<td>0</td>
<td>6</td>
<td>92+</td>
</tr>
<tr>
<td>Oman</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>State of Palestine</td>
<td>3</td>
<td>21</td>
<td>21+</td>
</tr>
<tr>
<td>Qatar</td>
<td>0</td>
<td>4</td>
<td>+</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>154+</td>
<td>40+</td>
<td>44+</td>
</tr>
<tr>
<td>Syria</td>
<td>Unconfirmed</td>
<td>Unconfirmed</td>
<td>Unconfirmed</td>
</tr>
<tr>
<td>Tunisia</td>
<td>0</td>
<td>44</td>
<td>+</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>0</td>
<td>26</td>
<td>+</td>
</tr>
<tr>
<td>Yemen</td>
<td>Unconfirmed</td>
<td>Unconfirmed</td>
<td>Unconfirmed</td>
</tr>
</tbody>
</table>

Source: (Amnesty International 2017)
Amnesty further notes that about seven hundred sixty-four death sentences were issued in 2016 in the region; this is decreasing number in comparison to eight hundred thirty-one in 2015. The major number is in Egypt, about two hundred thirty-seven. Amnesty is unsatisfied by the Iranian figure owing to its closed political system and limitations imposed on free media. While Algeria, Jordan, Lebanon, Morocco, Kuwait, Western Sahara, Qatar, Tunisia and UAE do impose death sentences but did not execute.

1.4.5 Sub-Saharan Africa

As of October 2014, around seventeen African countries had given away the capital punishment, while about twenty-five had not executed the death penalty for last ten years.\(^\text{118}\) Egypt (Misr), Equatorial Guinea, Sudan and Somalia do adhere to the death penalty and these countries are predominantly Muslim populated and religious scripture seems to have an impact pertaining to death sentences. Angola and Namibia have abolished the death penalty through the constitution while particularly in South Africa court championed the cause. As per Article 5(3) of the African Charter pertaining to Rights and Welfare of the Child stated, “Death sentences shall not be pronounced for the crimes committed by children”. In the year 2008 in its ‘motion urging on the state parties to examine the suspension on the death penalty’, the African Commission on Human and Peoples’ Rights requested “State Parties that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty.”\(^\text{119}\)

In South Africa, the capital punishment was abolished in the course of a pronouncement of the Constitutional Court, soon after the end of the apartheid regime.\(^\text{120}\)

In Benin, constitutional court decided to abolish the death sentence for all sorts of crimes while Guinea did away death penalty for ordinary crimes. In 2016 about


twenty-two execution was reported which is comparatively half to 2015, which is forty-three. Botswana and Nigeria resumed the death sentence, two countries had not executed since 2013. A disturbing trend is one hundred forty-five percent increase in the imposition of death sentences across the region. This sharp rise is in particularly Nigeria.

Table: Capital Punishment in Sub-Saharan Africa Countries in 2016

<table>
<thead>
<tr>
<th>Country</th>
<th>Recorded Executions</th>
<th>Recorded Death Sentences</th>
<th>People are known to be under sentences of death</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Botswana</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Cameroon</td>
<td>0</td>
<td>160+</td>
<td>+</td>
</tr>
<tr>
<td>Central Africa Republic</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Chad</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Comoros</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>The Democratic Republic of the Congo</td>
<td>0</td>
<td>93+</td>
<td>+</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Eritrea</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Ethiopia</td>
<td>0</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Gambia</td>
<td>0</td>
<td>0</td>
<td>+</td>
</tr>
<tr>
<td>Ghana</td>
<td>0</td>
<td>17</td>
<td>148</td>
</tr>
<tr>
<td>Guinea</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Kenya</td>
<td>0</td>
<td>24+</td>
<td>2+</td>
</tr>
<tr>
<td>Lesotho</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td>0</td>
<td>5+</td>
<td>+</td>
</tr>
<tr>
<td>Malawi</td>
<td>0</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>Mali</td>
<td>0</td>
<td>30</td>
<td>53</td>
</tr>
<tr>
<td>Mauritania</td>
<td>0</td>
<td>0</td>
<td>77</td>
</tr>
<tr>
<td>Niger</td>
<td>0</td>
<td>11</td>
<td>+</td>
</tr>
<tr>
<td>Nigeria</td>
<td>3</td>
<td>527</td>
<td>1979</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>0</td>
<td>5</td>
<td>18</td>
</tr>
<tr>
<td>Somalia</td>
<td>14</td>
<td>60</td>
<td>100+</td>
</tr>
<tr>
<td>South Sudan</td>
<td>+</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Sudan</td>
<td>2</td>
<td>21</td>
<td>+</td>
</tr>
<tr>
<td>Swaziland</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Tanzania</td>
<td>0</td>
<td>19</td>
<td>491</td>
</tr>
<tr>
<td>Uganda</td>
<td>0</td>
<td>0</td>
<td>208</td>
</tr>
<tr>
<td>Zambia</td>
<td>0</td>
<td>101</td>
<td>157</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>0</td>
<td>8</td>
<td>97</td>
</tr>
</tbody>
</table>

Finally, it is submitted that total one hundred and forty-four countries as of Dec. 2016 have abolished the capital punishment in law or practice. This trend in the direction of abolition is indicating the development that have taken place in the area of international law, which have restricted the practice of capital punishment by limiting the nature of crimes for which it can be imposed, not only that it also limits the mode of execution of capital punishment in which it can be carried out by introducing procedural safeguards. This abolition trend is also got reaffirmed as a result of recent political developments which have taken place at the international level in the form of political commitments to the UN General Assembly resolutions on a moratorium on executions.

**1.5 Concluding Remarks**

To summarize the whole discussion it is observed that from the earliest times death penalty remained in practice on the grounds of deterrence and retribution across the society throughout ages. The mention of capital punishment are found in world most ancient texts which includes Sanskrit, Buddhist and late Pali texts. However, Hammurabi code is considered to be the first written code on the law of capital punishment which was written on stone tablets around 1760 B.C. Since then, law of capital punishment had appeared in many ancient texts. The early death penalty laws were reserved for wide range of crimes which includes petty offences like theft and magic and applied accordingly. Various modes of executions were remained in existence across the societies which include stoning to death, boiling, burning at stake, beheading, quartering, hanging, crucifixion, crushing under elephant’s feet, etc. The practice of capital punishment were prevalent and unregulated. It has been observed that in order to satisfy individual vendetta on the basis of the principle of retaliation, many lives has been taken away in lieu of a single person's life. It was not prior to Quran was revealed when the law of capital punishment was specifically got reserved for two cases or crimes only i.e. murder and spreading anarchy/corruption in the land and the concept of just retribution in the form of *qisas* law had come into existence.

However, not much had changed at the ground level even after that and a wide range of crimes still was remained punishable with death to such a great extent that by the end of 1700 A.D. in Britain alone, 222 crimes were made punishable with death. It

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121 *Supra* note 112
122 Holy Quran, Chapter 5 Verse 32.
was not until the death penalty reform movement which occurred between 1776-1800 on the writings of Cesare Beccaria, theorists such as Montesquieu, Voltaire, and Bentham that the real change had started taking place in capital punishment laws. As a result, with the strong emergence of abolishment movement against capital punishment and with the growth of human rights movement many severe death punishments methods involving barbarism & torture began to die out since the 18th century. The number of crimes punishable by death was also reduced in all major countries to such an extent that as of December 2016, total one hundred and forty-four countries have abolished the capital punishment either in law or practice.123 Hence, the global trend on capital punishment is moving towards either abolishment or moratorium.

123 Supra note 112