

DEATH PENALTY IN INDIA

Ajay Kumar & Aditya Kumar Singh¹

Capital punishment, also known as death penalty, is execution of a convicted criminal by the State as punishment for crime known as capital crimes or capital punishment. The Romans used the word 'capitalis' (from caput, head) to describe that which related to life, that by which life is endangered² or the use of the neutral form of this adjective, i.e. capital, substantially to denominate death, actual or civil, and banishment imposed by public authority in consequence of crime.³

The idea of capital punishment is of great antiquity and formed a part of the primal concept of the human race. This has been one of the most primitive and commonly used forms of conflicting punishment for criminals as well as political enemies. In the worldwide scenario prevalent nowadays, countries like Canada, Australia, NZ, European countries except for Belarus, Latin American countries have abolished the death penalty in their criminal justice system. However, many countries, including India, China, USA, Botswana, Zambia etc have retained death penalty still as a part of criminal jurisprudence.

In the countries, where death penalty is still in practice, it is reserved for premeditated murders, espionage, rape or as part of military justice (India, China etc) or for sexual crimes such as adultery, sodomy, homosexuality or religious crimes like apostasy (Iran) or for drug trafficking, human trafficking and corruption (China).⁴

How many people have been executed so far in India is a contentious issue as there is no independent data or source to confirm the same. The State (Central & State Government including) has no clarity on the number. National Crimes Record Bureau was created in 1986 and has documented death penalties and executions since 1995 and there are no authenticated figures available for period prior to that. A National Law University Delhi compiled list of persons executed in India since 1947 found that at least 752 individuals had been executed,

¹ Ajay Kumar is Asst. Professor with JIMS School of Law, GGS IP University, New Delhi. Aditya Kumar Singh is student of 2nd Year, BBA LL.B (Hons.) with JIMS School of Law, GGS IP University, New Delhi

² Rao, Seema 'Capital Punishment-Penal Pride' LawZ, Vol.7 No.9, p.27, September 2007, New Delhi

³ ibid

⁴ Siddique, Ahmed 'Criminology' 5th edition, Eastern Book Company, Lucknow, 2005

including the period from 1 January to 15 August 1947. An independent civil rights organisation in Delhi, the People's Union for Democratic Rights (PUDR), claims to have located government records of 1,422 executions in 16 states in the decade from 1953 to 1963 alone.

In the decade between 2001 and 2011, 1,455 convicts or an average of 132.27 convicts per year were given the death penalty. During the same period, sentences for 4,060 convicts were commuted from death penalty to life imprisonment.

The first person in post-independence era to be sent to gallows was Nathuram Godse, the assassin of father of the Nation of India- Mahatma Gandhi. Yakub Memon, convicted of 1993 Bombay bombings, was executed by hanging in Nagpur Central Jail at around 6:30 am IST on 30 July 2015.

The death penalty has been always a volatile and intense subject for human rights agencies NGO's for they consider the death penalty as violation of basic right to life as guaranteed under the Art. 21 of Constitution of India.

The increasing intricacies and rapid increase in trends of heinous crimes and the brutality therein has revealed that India is rapidly heading towards criminalization and is in midst of crime explosion. The punishment prescribed by law for violators of its provisions is said to serve many purposes. Firstly, the suffering it inflicts on offenders satisfies the community's demand for what is called vengeance, retribution, retaliation, atonement, reprobation or justice. Second, it may be regarded as a positive mean of converting an offender into a consciously moral person. Third, it may make him law abiding simply by causing him to fear what would have too him if he were to commit a crime again. Fourth, it would serve as an abject lesson to other potential law violators. Fifth, by depriving him of his life or liberty, it would completely prevent temporarily or permanently curtail his criminal activities.⁵ Nowadays, these aims are called retribution, reformation, specific deterrence, general deterrence and prevention respectively. The supreme object of all measures taken to fulfil these aims is to achieve the protection of the community, its social institutions and rights of

⁵ ibid

its members, by reinforcing its moral code embodied in the law and strengthening in general: respect for law and justice.⁶

Though battle of arguments is ongoing between the two opposing ways of thinking-retentionists and abolitionists and sometime the situation gets to brink. India as well as many other countries is party to this controversy and this has been going through ages.

As a student of law, the author is propelled, through this paper, to deliberate on question of abolition or retention of death penalty in Indian context because there is lot of hue and cry for its complete abolition, more so, in context of many countries around the world have put an end to this irreversible punishment.

CAPITAL PUNISHMENT IN INDIA: HISTORICAL OUTLOOK

The ancient law of crimes in India envisaged death sentence for quite a number of offences. The Indian epics viz Mahabharata and Ramayana also contained references about offenders being punished with ‘Vadhadand’ which meant amputation by bits. Fourteen such modes of amputating criminals to death are known to have existed which included chaining and imprisonment of offender.⁷ Justifying the retention of Death Penalty, King Dyumatsena observed⁸:

“if the offenders were leniently let off, crimes were bound to multiply. He pleaded that the true ahimsa lay in execution of unworthy persons and therefore, execution of unwanted criminals was perfectly justified. He also said that distinction between virtue and vice must disappear and vicious elements must be eliminated from society.”⁹

Manu, the father of Indian Jurisprudence, also placed element of fear as an essential attribute of judicial phenomenon. According to him, in order to refrain people from sinful murders, death penalty was necessary and in absence of this mode of punishment, state of anarchy will

⁶ Kishore Chandra ‘Abolition or Retention of Capital Punishment’ Cut LT 2002 (93) p.34

⁷ Katyayan Pratyush ‘The Retention of Death Penalty in India’, The Indian Journal of Criminology, Vol. XXVI Issue No. 3, p.45, Sep to Dec, Ministry of Home Affairs, GOI 2005

⁸ Mahabharata, Shanitparva Chapter CCLXVII Verses 4-13

⁹ ibid

prevail and people would devour each other as fish do in water, the stronger eating up the weaker.¹⁰

During medieval period of Mughal's Rule in India, sentence of Death revived in its crudest form. At times, the offender was made to dress in the tight robe of freshly slain buffalo skin and thrown in scorching sun. The shrinking of raw hide, eventually, caused death of the offender, causing him agony, pain and suffering. Another mode of inflicting Death penalty was by nailing the body of offenders on the wall.¹¹

These modes of putting an offender to death were abolished under British System of Criminal Justice Administration during early decades of Nineteenth century when death by hanging remained only legalised mode of inflicting death sentence. The history of human civilization is testimony to the fact that Death penalty has been a mode of punishment in every phase of its development.

This finds support in observations made by Sir Henry Maine, who stated:

“Roman Republic did not abolish death sentence though its non-use was primarily directed by practice of self-banishment or exile and procedure of quarantine. Nor does the ancient Indian Civilization know of abolition of death sentence although its disuse at some point of time in history has been effected because the people were most truthful, soft hearted and benevolent and to them vocal remonstrance sufficed but in the event of failure of these measures, corporal punishment and death sentence were invoked to protect the society from violent criminals.”¹²

¹⁰ Kane PV, 'History of Dharamshastras, Ancient, Medieval, Religious & Civil Law' Bhandarkar Oriental Research Institute, Pune, Vol. 1-5, 1975

¹¹ Paranjpe N V., 'op. Cit'

¹² Supra n.9

DEATH PENALTY-AN EFFECTIVE DETERRENT IN INDIA

The Indian Criminal Jurisprudence is based on a combination of deterrent and reformatory theory of punishment. The punishment are to be imposed to create deter among the offenders on one hand and to provide opportunity to offenders for reformation.¹³

Under the Draft Code (IPC) formulated under the 1st Law Commission of India, it stated,

“We are convinced that it ought to be very sparingly used, and we propose to employ it only in case where either murder or highest offence against the State has been committed.”

The fear of being condemned to death is perhaps the greatest deterrent which keeps an offender away from crime and criminality. Death penalty in case of murder serves as an effective deterrent to remind the murderer about the severity of law towards this heinous crime and certainly helps in reducing the incident of homicide.¹⁴ The present trend, however, is to keep the number offence punishable by death to minimum and avoid death penalty as far as possible although its retention in the Statute book is favoured till today.

Deterrence encourages the offender by terror or naked fear from repeating the crime and at the same time, preventing others from following his path. It must, however, be remembered that deterrence is a relative term, its seriousness depending upon the category of the offender. Thus, the stigma attached to arrest, trial, conviction and sentence may have little effect on habitual offenders or hardened criminals but may act as a powerful deterrent to an average law abiding citizen. Undoubtedly of all the punishments, death penalty appears to be strongest deterrent for there can be nothing for which a man would be willing to give his life.¹⁵

In ancient times, the Law administrators unflinchingly executed murderers because they believed that “life of each man should be sacred to each other man”. Murder being the worst

¹³ Prasad Justice J Eswara, ‘Death Sentence as Effective Deterrent’, Journal of ILI, Vol. , p.447, 2004

¹⁴ Chatterjee PK, “ To Hang Him or Not: That is the Question”, Mainstream 44(45) Oct p.9, 2006

¹⁵ Sinha, Anil Kumar ‘Capital Punishment & Deterrence’, Guwahati University Journal of Law, Vol 1-3, p.9, North Eastern Law House, Assam, 1985

of crime must deserve the highest penalty which is death sentence. In Islamic Law also, death penalty has been prescribed for pre-meditated murder¹⁶

“ Oh wise persons! there is safety for your lives in death penalty and we hope that you would never violate it and would always abide by this law of tranquillity”

.....Verse 179, Sura II, Holy Quran

The very fact that the murders are being committed and in fact, they have been on increase throughout the world proves the necessity for retention of death penalty. Had the capital punishment not in force, there would not have been any place to live on this earth. The world would have become safe heaven for scoundrels, criminals and bad characters with no fear, whatsoever, of anything. It is thus natural that death penalty must act as a great deterrent for potential criminal.

The Law Commission presented its report¹⁷ on November 18, 1971 and inter-alia observed ‘Retribution’ involved in capital punishment does not connote the primitive concept of ‘eye for an eye’ but it is an expression of public indignation at a shocking crime, which can be better described as ‘reprobation’.

KRISHNA IYER, (J) was of the view that only imprisonment for life can be imposed in murder cases, unless security of state etc was threatened and the murderer should e given the opportunity to reform himself by incarceration. He did not believe in deterrent effect that death sentence has an potential murderers. He totally rejected the retributive nature of death sentence. It is interesting to note that the H’ble Judge had also noticed that imprisonment for life in jail did not reform a person convicted for murder, who after release again commit a murder or other heinous crime. He has also noticed the fact that the jails are overcrowded and they were hardly the place for reforming the prisoners he further realized that it was not

¹⁶ Verse 179 Sura II from Holy Quran

¹⁷ 42nd report of Law Commission of India

possible to provide necessary atmosphere in jails conducive for reformation of prisoners due to various factors, including overcrowding of prisons.¹⁸

DEATH PEALY IS PENOLOGICAL OR NOT

Article 20, 21 and 22 are primarily concerned with penal enactment of other laws under which personal safety or liberty of a person could be taken away in interest of society and they set down the limits within which the state control be exercised. In Paras Ram case¹⁹, it was emphatically stated that a person who in a fit f anti-social piety commits ‘blood curding butchery’ of his child, fully deserves to be punished with death. In Jagmohan’s case also, the court took note of the fact that for certain types of murders, death penalty alone is considered an adequate deterrent.

Dhanonjoy’s case is trend setter in history of capital punishment. Keeping in view the medical evidence that state in which the dead body of the deceased was found, proves the justification for death sentence.²⁰ In Renuka Bai Alias Rattan and Another v State of Maharashtra,²¹ the court observed that we are alive to new trends in sentencing system in criminology and appellants are not likely to reform. Therefore, their conviction and death sentence was confirmed. In Holiram Bordoloi v State of Assam,²² the Supreme Court approved death sentence as the dragging of the Nagarmol Bordoloi by accused to his house and then cutting it into pieces in broad day light in presence of bystanders reflect on the depravity and barbarity of offender. In UOI and Ors. V Devendra Nath²³, the Apex court ruled that in instant case, the High court had not attempted to do the exercise of drawing a balance sheet of aggravating and mitigating circumstances and came to the conclusion that it s not covered in special cases.

DELAY IN EXECUTION OF DEATH SENTENCE

With 375 convicts believed to be on death row in India as in 2015, the focus is back on Jail’s readiness to execute death sentence. Human rights groups and religious organizations are also

¹⁸ . Mehta, P L ‘Capital Punishment in India: Retrospect and Prospect’, Civil & Military Journal Vol. 32 July-Sep, p.190, Deep & Deep Publication Pvt td., New Delhi,1996

¹⁹ Paras Ram v State of Punjab(1981) 2 SCC 508

²⁰ Raj Reema ‘ Dhanonjoy Case-Desirability of Capital Punishment’ Sep 2004, p209

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²² Crl. Appl 1063/2004 decided on April 8, 2005

²³ 206 SCCL Com,27

lobbying hard for these convicts putting the government under pressure. A survey of available case laws on death sentence would reveal that the attention of Supreme Court was focussed on question whether inordinate delay in execution of death penalty can be considered to entitle the convict to claim commutation of sentence to that of life imprisonment. In the matter of *Triveniben v. Vatheeswaram and Javed Ahmed*,²⁴ the H'ble Court purported to deal with the 'two years delay' rule and held that no fixed period of delay could be held to make the sentence of death inexecutable. The court, however, observed that it would consider such delay as an important ground for commutation of the sentence. In *State of UP v Ramesh Prasad Mishra*²⁵, the Apex court reduced the death sentence of a total of nine accused to life imprisonment in view of long lapse of time from date of commission of crime. Notable among these were *Devendra Pal Singh Bhullar*, *Sushil Sharma*, *Santosh K Singh of Priyadarshini Mattoo Case* etc.

ABOLITION OR RETENTION RIDDLE

The current wave of reformation in field of criminal justice system has inspired law makers in India to launch a crusade against capital punishment. They have been constantly struggling to repeal the provisions relating to death penalty from IPC for past several years. The first proposal on this issue came in Lok Sabha in 1949 but was subsequently withdrawn at instance of the then Home Minister Sardar Patel who characterized it as the most inopportune proposal. The matter came up for debate again in Rajya Sabha in 1958 but met the same fate as above. The subject was, however, accepted for discussion in Rajya Sabha in 1962 but the general opinion of the House favoured retention of death penalty realizing that time had not come when its repeal from the Statute book could be justified. Consequently, the proposal was dropped. The retentionists in the House opposed abolition of death sentence on the ground that retention in the Statute book acted as an effective deterrent for hardened and habitual criminals and dangerous murderers whose elimination from the society was inevitable. The members also contended that that the government was already lenient in commuting death sentence to that of life imprisonment wherever it was possible.²⁶

²⁴ 1983 Cr LJ 481

²⁵ AIR 1997 SC 2766

²⁶ Sharma, Chandrika Prasad, 'Death Sentence: Repeal of Retention' Cr. LJ p.19 AIR 2004

In favour of the retention of capital punishment, an outstanding Justice, on an appeal to Court, stated²⁷:

“The irrevocable character of the death penalty is a reason why all possible measures should be taken against injustice not for its abolition. Nowadays, with the advent of armed criminals and substantial increase in armed robberies, criminals of long standing, if arrested, must expect long sentences, however, if they run, no risk of hanging, when found guilty of murder, they will kill policeman and witnesses with prospect of a future no more unhappy as one of them put then being fed, lodged and clothed for the rest of their lives.”

This paper is an attempt to dwell into the pertinent issue which emerges from the foregoing discussion and the case law, as to how far the present law relating to capital punishment was need of the time and whether its scope needs to be extended, curtailed or it should be abolished altogether. The proper approach to the problem, perhaps, will be that capital punishment must be retained for incorrigible and hardened criminals but its use should be limited to rarest of rare cases. Thus, the court may make use of death sentence sparingly but its retention on the statute book seems unnecessary as a penological expediency. Considered from this stand point, the position as contemplated by Section 354(3) read with Section 235 (2) of Code of Criminal Procedure, 1973 appears to be sound in as much as it limits the use of capital punishment to a minimum, without, however, abolishing it altogether. The removal of mandatory death sentence for murders and allowing judicial discretion to commute it to life imprisonment in suitable cases is perhaps the most appropriate approach to the use of capital punishment.²⁸ In view of the present deteriorating law and order situation in India, total abolition of death sentence would mean giving a long rope to dangerous offenders to commit rape, murders and other heinous crimes with impunity.

The death penalty serves at least two useful purposes. The first is to punish those who have committed atrocious crimes usually a murder, rape or genocide, against other individuals or

²⁷ Sellin. Thorsten (d) 'Capital Punishment' Harper Row, New York, p.290,1967

²⁸ Ayyathurai S. 2000, 'Should Death Penalty Go?' Cr.LJ Vol.2 p. 49,2000

society. In essence, the death penalty which is directed against such extreme crimes differs from other forms of punishment only in terms of severity.²⁹

Therefore, there is nothing inherently immoral about it. Indeed, in many cultures, the concept that 'a person who takes other's life must pay with his own' remains a commonly accepted principle.

The second and more important purpose the death penalty serves is to be a deterrent against the would be perpetrators of heinous crimes precisely because of the preciousness of life death penalty increases the possibility of making the potential felons think twice and hopefully give up before they commit such acts. Opponents to death penalty argue that execution of criminals is no less barbaric than the murderers they are convicted of and that it will not restore the life of victims anyway. Such arguments sound humane at first glance but do they hold scrutiny.³⁰

While one may consider any loss of human life deplorable, one cannot honestly deny that there is loss of innocent life and execution of die hard criminals in accordance with the law. The abolition of death penalty will embolden the felons by giving them assurance that whatever serious crimes they commit, they will survive and with some luck, go free I their life. Such a measure may indeed help to protect the lives of some felons but put in jeopardy life of many more innocent people, especially the weak and vulnerable.

Another question that needs consideration in regard to capital punishment is whether it is for court or legislature to decide about the retention or abolition of this sentence.³¹ Legislatures represent the public opinion and the wishes of the people are truly expressed through legislative enactments. Capital punishment is associated with **lex talionis**³² (**an eye for an eye**) retribution that involves punishment in kind. Those opposing capital punishment say that retribution is anachronistic ad repugnant to human values and citizen's right to life. However, these arguments are weak and flawed. There is no reason why capital punishment should not be retained in the country as the Supreme Court has tie ad again reiterated that death sentence

²⁹ Pande BB'Face with Death Sentence: Supreme court's Legal & Constitutional Dilemmas' Vol.4 p.6 SCC 1979

³⁰ Supra n.27

³¹ Ibid

³² Siddique, Ahmed 'Criminology' 5th edition, Eastern Book Company, Lucknow, 2005

should be given in rarest of rare cases.³³ In fact the reason that prompted the need for capital punishment two centuries ago seem as relevant today as earlier. For instance John Stuart Mill's ³⁴ speech before the British Parliament on April 21, 1868, in opposition to a Bill banning capital punishment is regarded as a treaty on the subject. Mill called for utmost circumspection while awarding death sentence. Mill held the view that if a person does not show regard for human life and commits an act depriving one of his right to life, he forfeits it for himself. Locke said that society may punish the criminals 'anyway it deems necessary so as to set an example for other would be criminals.'

ABOLITIONIST'S ARGUMENTS

- i. An execution arising out of miscarriage of justice is irreversible.
- ii. Capital punishment is lethal vengeance which brutalizes the society that tolerates it.
- iii. Death penalty is discriminatory against poor.

RETENTIONIST'S ARGUMENTS

- i. Elimination of murderer by executive is fair retribution and saves potential victims.
- ii. Punishment must match the gravity of the offence and worst crimes should be severely punished.
- iii. Societies must establish deterrents against crimes. Death sentence serves as an effective deterrent.
- iv. Death is a just punishment and death penalty has been held constitutionally valid to ensure justice for condemned offenders.³⁵

CAPITAL PUNISHMENT DEBATE

³³ Bachan Singh v. State of Punjab, AIR 1980 SC 898: (1980 Cri LJ 636). ³⁴

³⁴ <http://www.deathpenaltyinfo.org>

³⁵ Migivern, James J. 'Death Penalty' New York Paulist Press. 1997

- (a) **Wrongful Vengeance:** The death penalty is often opposed on the ground that every criminal system is infallible and death penalty is irreversible. Proponents argue that life imprisonment can also be imposed in error and incarceration is also irreversible if innocent dies in prison.
- (b) **Right to life:** Critics hold that because life is an unalienable right, the criminal cannot forfeit the right by committing a crime. Supporters argue that the opponents do not actually consider right to be inviolable. It is only the life which is specifically inviolable while other rights such as Right to Liberty can be violated to the extent that someone can be forced to spend entire course of natural life being incarcerated. Locke, Kant originated the concept of human rights. Proponents argue that death penalty is necessary to protect the right to life of victims of murder either because it entails the right of victim to have their murder avenged.
- (c) **Inhumanity:** Opponents argue that death penalty is inhumane. Proponents of death penalty point out that incarceration including life imprisonment often produces severe psychological depression and life in jails is often physically violent. The political writer, Peter Hitchens, has argued that the death penalty is more humane than life imprisonment.
- (d) **Brutalizing effect:** the brutalization hypothesis proponents argue that death penalty has a brutalizing effect. The counter argument is that death penalty enforces the sense of justice upon society by showing how the criminal justice system takes the right to life seriously; it reduces the number of murders in jurisdictions in which it is practiced.

Therefore, capital punishment makes society a better and safer place to live in. capital punishment acts like thunderstorm that makes up the strongest moral declaration a society can make to show that crimes are horrible. There is something within people that instinctively says that man has value, dignity and greatness that one who commits heinous crimes like murder doesn't deserve to live. It is difficult to find valid arguments against death penalty. When the death penalty is discussed, these humane ideas have to be placed in the limelight and be discussed in relation to victims and their relatives. If this takes place, there is no argument against death penalty that can shake position of death penalty as a legitimate and civilized method punishment.

Though modern society abhors death sentence, capital punishment is needed in the case of terrorists and rapist. The annals of Indian history show that certain era were called the golden age because people enjoyed a secure and peaceful life as punishment was very severe even for minor offences. In the post independence era, however, in the name of human rights, criminals indulging in inhuman destruction of life and property are shown much leniency. Clearly, the laws of law and judges interpreting the laws should not be so sympathetic to those who conspire to betray the society, humanity and the country. In case of Parliament Attack, the POTA court adopted a tough posture, even though none of the three convicted had a direct role in this outrage, the court asserted that those who hatch a criminal conspiracy to wage the war against the nation are equally guilty as the actual perpetrators of the crime.³⁶

CONCLUSION AND SUGGESTIONS

It may be reiterated that capital punishment is undoubtedly against the notions of modern rehabilitative processes of treating the offenders. It does not offer an opportunity to offender to reform himself.³⁷ That apart, on account its irreversible nature, many innocent persons may suffer irredeemable harm, if wrongly convicted and executed. As a matter of policy, the act of taking another's life should never be justified by the State except in extreme cases of dire necessity and self preservation in war. Therefore, it may be concluded that though capital punishment is devoid of any practical utility yet its retention in the penal law seems expedient keeping in view the present circumstances when the incidence of crime is on constant increase. Time is not yet ripe when complete abolition of capital punishment can be strongly supported without endangering the social security. It is no exaggeration to say that in present time, the retention of capital punishment seems to be morally and legally justified. It serves as a reminder to everyone that in case of unpardonable offences, one has to forfeit his own right to life and survival.

Shri S Venugopal Rao who chaired the session on Capital punishment of the International Congress of Criminal Law³⁸ rightly pointed out that there is no objection to according a humane treatment to offender but this should not mean that the victims be at the mercy of

³⁶ Ibid.

³⁷ CF. Charles Black. Jr 'Capital Punishment' Cr. LJ (New York: Norton 1974) p. 84-91, 2004

³⁸ Farzan Mustafa 'Death Penalty' Cr. LJ, Vol.101,Jan p.1,1995

criminals who pose a danger to society and deserve treatment through deterrent and preventive measures. However, the author believes that important changes are necessary in correctional system in order to make it truly conducive to the reform and rehabilitation of convicted and their re-integration in to society. The research paper acknowledges that there is a pressing need to deal with social conditions of poverty and injustice which provide breeding for serious/heinous crimes. In particular, the glamorising of violence in entertainment and its effect on children and society need to be addressed and taken care of.

Pt. Nehru was of the view that a certain method has to be found out to deal with the certain undesirable elements that are nuisance and threat to society. Even the countries which have abolished the death penalty have retained it for specific offences or re-introduced it in wake of peculiar circumstances. It was observed by the Supreme Court in AIR 1980 SC 898³⁹:

“In England, death penalty was retained for high treason in the Silver Man Bill of 1956. Even at present, for that offence, death penalty is a valid sanction. Israel sanctioned death penalty for crimes committed against the Jewish people.”

More so ever, it has been observed that in countries where the punishments are severe and capital punishment is in operation, crime rate is lower in comparison to the countries where it is not so. William Rogers, who as American Minister of Foreign Affairs, while visiting Saudi Arabia, admitted that he had such a feeling of security over there which he had not felt anywhere and there is no need of any guard (vide conference of jurists at Riyadh on 23.03.1972).⁴⁰

H'ble Justice J S Verma, ⁴¹(former Chief Justice of India) and ex-Chairman, National Human Rights Commission said,

“ The death penalty in India, which is anyway, given only in rarest of rare cases can be abolished only if the provision of life imprisonment is set to be for life in actual sense and not 14 years that is in practice. The sentence for life imprisonment in India 14 years but that also fetters down to lesser jail term because of the remissions.”

³⁹ Bachan Singh v. State of Punjab, AIR 1980 SC 898: (1980 Cri LJ 636). 34

⁴⁰ Cr.L.J. April 2000, p. 59.

⁴¹ Ibid.

The United Nations Economic and Social Council describe one of the important standards against the death penalty enunciated in Safeguard no. 9 as 'where capital punishment occurs, it shall be carried out so as to inflict minimum possible suffering.' India being a founder member of the United Nations, it is highly obligatory to conform to the standards envisaged in the Convention. It is however, submitted that hanging in present form in India must be done away with and execution by lethal injection be introduced in its lace. It is very simple and execution process takes 5 minutes to declare the convict dead. It is painless and swift method of execution has to be accepted as most civilized form of execution.

Death Penalty may be used as last resort considering the nature of offence, security of state or anticipated grave potential danger from dangerous criminals.