
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

CRITICAL ANALYSIS ON CAPITAL PUNISHMENT- Aayushi Gaur¹**ABSTRACT**

The paper basically talks about the capital punishment comprises to the India meant to the International regions is always the need for whether the abolishment or implications of all of all of the death penalty the thesis therefore it talks about a wide regions of the society that whether there it shall failed or passed out the concept of occurrences punishments also the thesis remarking on the several of the landmark judgement the Indian penal laws and the validation of the pre and post constitutional ups and down in the theory of several. It is a variety that of the criminal laws and justice system particularly focuses on the laws that shall meant to the obligations and the critics of capital punishment. It also work upon the underlying causes of commit the crime by the offender and also includes how the punishment is giving a helping hand to the victims and the product of inhumanity towards the crime that the accuse opting for doing such wrong which given the society a bad impact of uses and the mislead representations in the parallel world how the capital punishment plays the vital role in a society and for individual also for providing the natural justice .

INTRODUCTION

“Capital Punishment is against the better judgement of modern criminology and above all against there are a highest expression of the love in a nature of god”

- Martin luther king,jr

India is a vast country we all know that on a day to day basis it leads to the several amount cases of the criminal cases and criminals therefore in India all other the punishments are though lead to the motive to penalize the wrongdoer.

Capital punishment or we can say a Death penalty derived from word “capitals” which means - ”regarding the head” The punishments leads to the round between the two of the aspects as one of them is that wrongdoer suffer and realize the wrong and the other aspect the punishment

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equivalent to his/her crime. In India the punishments comprise of the several formats i.e imprisonment, life imprisonment, fine etc therefore here we have goes into the deep extents of capital punishment or we can say penalty.

Capital punishment² is sounds to, be the important part in the Indian criminal justice system. Capital punishments or death penalty leads to the burden on the one and other wrongdoer as it is sentenced by the forms of court of law by referring each terms of the offence as therefore the death penalty processed the award for the grievous crimes made by the offender.

As Blackstone's commentary leads to the probability standard of the proof beyond the reasonable doubts that **“It is better than that of the ten guilty persons escape then that of one innocent suffer”**³ Death penalty states itself different from the place to the place, state and country it itself create a differentiation though there are many of the systems though organizations and human Rights that are argued for the capital punishment which effect person's right. Therefore, in India capital punishment is awarded for the most of the serious offence and the grievous offence it is all basically given for murder, robbery with murder waging for shall against the government and also the abetting mutiny etc.

In the era 54 numbers of the countries are retain capital punishment and among them all 107 countries who have completely states the abolishment of the death penalty. It is always a controversial terms in the several numbers of country and the state it is populated though the ideologies of the political relations where somehow it is very obvious that capital punishment are a sense of debate part that whether the victim⁴ suffer or the accused but one has to suffer though capital punishments are a sense of setting up the certain examples in the public communities that no other person did choose the path of crime to get their aggression off on sometimes the discriminatory part , educational lacking and sometimes it is the hatred that spread over the society. Capital punishments or the death penalty is not a necessity but it is all said something rare action taken against a person or the individual who has genuinely done something wrong in the eyes of the law and also punishments played a vital role in the society as to stop the crime from the society but the criminal that taken over such huge step as we look forward in the field of the law it leads the much suffocating part of the victim who faced or else the victim died due to heinous crime than that of one's suffer the same pain in the form of the

² CAPITAL PUNISHMENT- the legally authorised killing of someone as punishment

³ Blackstone's perspective of defining

⁴ Victim- a person harmed or injured or killed as the crime or accident and the other event or action .

living as the equal right of every person and yes there is no right of the person who does a crime that of he shall be not deprived to take over any person life and their personal liberty in the form of done some kind of an action towards the sufferer . The capital punishment exists because of the reason of some shock crimes the conscience of the wrongdoer done on the individual person admittedly of society they deserved to be punished harsh however the harsh penalty or punishment cannot take off his or her life in short penalty of death , and its abolishment doesn't even seems viable in the nearest future since the executions have been norm and taking the big step requires the political capital .

BACKGROUND

The capital punishment or the death penalty is said the vast term has been used for the vast punishment or we can say heinous crimes that shall be taken over but the single person or the group of people . In the past time period if we saw the Mauryan dynasties are the punishment which shows the stability was an eye for an eye and hand for a hand, etc...., later we talk about the dynasties who followed up different types of punishment which we being dragging in the cause of the punishment they are cut the head or any part of the body, stamping by the animal like elephant which seems to be brutal to punishments .

In the world full of different perspective though the criminal laws regarding the death penalty which was first codified under the King Hammurabi of babylon⁵ . As we have looked in the back time there were many of the death penalties which were prevalent in the whole world which were taken out as the state off punishment been granted for the guillotining in France , execution by the electrocution in Russia , beheading in the middle east countries of the world etc ,... the penalty of death id being codified the outlined in the DRACONIAN CODE IN ATHENS⁶ which made the Capital Punishment Formed the compulsion for the all types of the crimes committed by the one who made to serve punishment means of burning alive , beating till the death , drowning . It was the tenth of the century A.D. that of the hanging was became the customary method of the execution in Britain. In the factor Willian the conqueror was not even allowed to hang people without the reason of wars.

As we talked about the time after 1947⁷ , when India became a republic and free nation though at that point of time we get the independence from the ruling of British rulers that bring most of

⁵ He was formed as the one who sentenced the first of the codified the death penalty .

⁶ It is a written code of law for the created near the end of the 7th century BC

⁷ Independence to India.

the huge change in the law system for passing on the judgement of the death sentence to the culprit of accused. The death penalty states the positions of the rarest of the rare cases.

In the times of early history of the penalty to death and laws related to it which begins during the time of colonial, the very first execution in the “NEW WORLD” where stealing someone grapes, striking person mother or father etc,... the US supreme court tends to banned the capital punishment or we can say the death penalty in the nation in the year of 1972 as it states the it is ruling the arbitrary and such of discriminatory as applied at times but after the time passes for four years since the date the court reversed its decision and gives the allowance to perform the capital punishment again it also leads to the several changes in the form of reforms to the laws that of automatic appeals on death penalty and to reduces the efforts to sentencing disparities.

If we talked about the 21st century with the written and codified legislation and also the developed ethics as of now where the many human rights organization are protesting against the punishment and some of the NGO's also protesting for demand the abolishment of the death penalty or we can say the capital punishment which is beyond the thong and states the different practices made by the different countries, the UN also declares the capital punishment or we could mention the death penalty is violation of the humanity and also the rights of human.

DEFINITION OF CAPITAL PUNISHMENT

The term of capital has itself a Latin word of origin from the term capitalist which means “regarding the head”⁸. A capital punishment is all a process of legal where the person is set to be in a death by the state as the punishment creates on the individual for the crime he has done or committed by him. The judicial decree of the court that one should punished in the manner is said to be the capital punishment, while physically or we can say the most of it the process of the killing of the culprit or the person committed a crime are called the execution. The crimes that are considered in a death penalty are known as the capital crimes or we can say the capital offenses.

It also refers to the punishments or sentences of death that condemns a convicted defendant to the death. It is also an affliction or the situation that is being considered to be as fatal; and also a prognosis of the death.

METHODS OF EXECUTION TO DEATH-:

⁸ Referred to as the state of beheading

1. DEATH BY BURNING- This is seems a type of execution which was been seen in the famous of all the situation of the Joan of the arc was where the sentenced to death by burning on a ground that she was seems a witch.

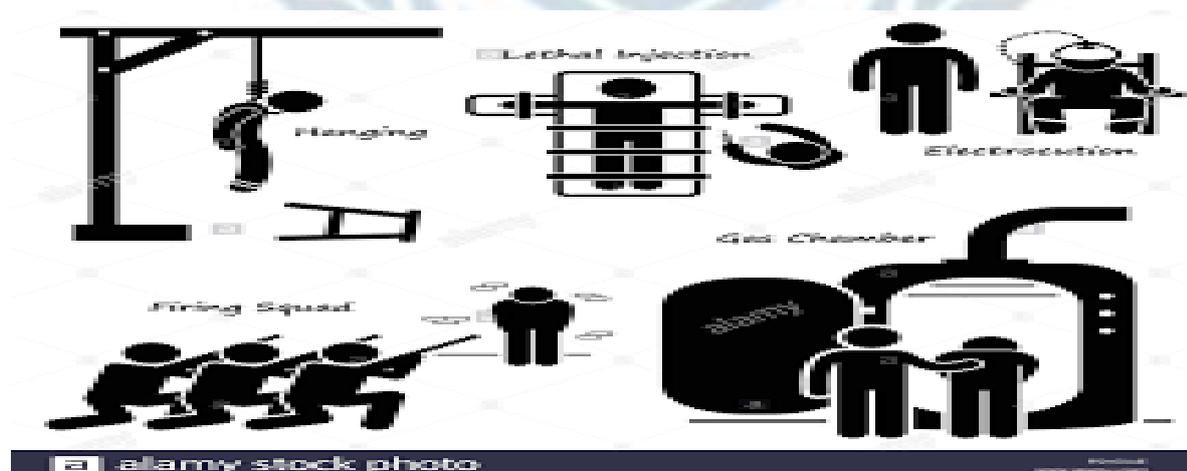
2. WHEEL- It is the sentences process that can include the rolling wheel of the wheel full of the spikes on the top of the person or the attaching of a person to the wheel and also roll him down to the hill.

3. EXECUTION BY FIRING- It is the most common form of all the method of the execution during the World War II whereby the firing squad was being called and the accused person was tied to the situated pole for the death and then fired upon him till he or she died.

4. HEADMAN'S AXE- This is the method where the head of the person was placed on the wooden platform and where the executioner chops off a head of the convicted person till death by the use of the axe.

5. GUILLOTINING- It is the Another source of form of common statement of the execution was seen in the French revolution where Dr Joseph guillotine⁹ invented as the person the method of execution whereby the accused person and their head was placed in the round hole on the wooden block and the blade is being dropped cutting the accused persons head till death.

6. GAS CHAMBERS- It is the statement process which was the most common execution of form where it is seen in the Nazi Germany where they were the enemies of the Adolf Hitler¹⁰ were sent to the concentration camps. They were sent to the chambers of suffocation where toxic gas is to be released for killing the people till the death.



⁹ He was the french physician politician and the freeman and states out to be the penalty of death to the world

¹⁰ Controller of the nazi party and known as the german reich



EXECUTION METHODS FOLLOWED IN INDIA-:

1. HANGING-

All the capital penalties are subjected to carry out by the process of hanging. After the era of the independence **GODSE¹¹** was the individual a first ever convicted person to be executed as awarded the death penalty in the case of the **MAHATMA GANDHI**. Supreme Court of India also suggested to the capital punishment was being imposed on the cases or rarest of rare cases in India.

2. SHOOTING-

Under the year of 1950 Army act both shooting and hanging are else listed in military court martial system as the official methods of the execution.

THEORIES ON CAPITAL PUNISHMENT

The punishment can be stated the defined as an infliction of the certain kind of equivalent to pain and loss to someone who states one who has committed a wrong or we can say then that of the misdeed. The punishment stated has further been defined in the form of the court of the whole country or the state could state be exert the social control and over its individuals or the citizens. Therefore , the punishment which is stated against the criminal it is mostly in the promotion to the kind of the crime that has been thought of the committed by the such of

¹¹ Nathuram godse the first ever person who shot the mahatma gandhi to the death .

wrongdoer , a criminal or it is the individual and against the society .

H . L . A HART¹² AND THEIR KEY ELEMENT--

* Punishment that shall sanctioned against an individual shall be can cause an unpleasant in the most of the pain or we can say ultimately make him realize of the state of missed deed which has committed by him against the other individual and on his or her cause.

* the punishment stated shall only be passed against the individual only , in the condition if it seems one committed the offence against the legal rules of the state .

* The person against whom the punishment state has been passed throughout shall be the actual offender of the cause or we can say the wrongdoer for commit such crime for what the punishment shall be grant to him against his will.

* Punishment be only granted as against to that of the offender and so the offender that cannot choose though his punishment own of his own.

* Punishment stated only is the wrongdoer by the legal authority that shall be established within that of the legal system of the state. according to the waste march that brings out the perception that a punishment is a suffering that shall be usually inflicted to against the crime and criminal , in the native name of the society as a whole states in which he or she is living or we can say o permanent number .

THEORIES ARE-:

1. DETERRENT THEORY OF PUNISHMENT-

In this theory of punishment that is grant against the criminal in such a way difficult in nature. The meaningful creation of deterrent is discouraging and the so of it inferred from this theory the punishment though grant against the wrongdoer is such a way which can discourage the criminal such a crime committed by him in such a state of the near future again as we saw before . If the ultimate defining of the deterrent theory it is the vary aim of the punishment, it is to create the some sort of the fear in the native minds of the wrongdoer and this can be thoroughly done by the either of imposing the penalty on the person or we can say by providing an exemplary of the punishment against the offender the one who keep that person away from committing of any of the crime held in the near future .

The stabilized aim of this theory is to be able to punish the culprits who done the criminal wrong and also it states to disparity to establishment of the penal discipline so what say no such

¹² Herbert lionel adolphus hart he was a glisten legal philosopher .

of the person which can be the offender either or we can say any person can lead to think of doing something wrong the theory says the punishment shall be applicable for the wrongdoer.

It is basically considered as the significant aspect stated in the of the system of criminal justice because it shall helps in controlling crimes as well as also protection of the interest by establishing the sense of fear in the mean of criminals of committing the serious crimes held by the individual in the future again . It shall understood that it is used for the extensively a theory used for the medieval period in the England, where there in the several as well as extensively extreme and insensitive punishment were been given to the one who have done something wrong basically it shall held on the minor and frivolous crimes.

-Example , if the person done the crime of stealing something then the punishment shall not equivalent therefore he or she is subjected to suffer a death punishment or a whipping . In India the theory says was applied during the Mughal period under for the pretty offenses the wrongdoer was killed mainly or mutilated.

2. THEORY OF RETRIBUTION-

In this theory been considered to one of the most of the ancient as it is denoted to be the old theory which states can meant to justify the vary high concept in the name of the punishment . The theory followed the stated principle of “you hurt me ,I will hurt you back ‘ the concept says it all the it is basically the stated punishment that was been granted of the punishment against the wrongdoer that shall be equivalent or we can say in the proportion to the subjected crime which was been convicted through the accused in terms of the bad intentions . The need for applying the retributive theory for granting the punishment during the old as well as we can also stated the present era of it is mainly to achieve the native sense of the scrutiny by the way to grant of the punishment against the offender , it is stated to be providing the justice to the society and also set such example so that no other person shall be thinking of committing no other offenses that shall be giving harm to the society which is similar states to the one who has given the retributive punishment . This theory is vary the balance create in the society and within the legal system since in it the other and all crimes have the valid punishment which is at times as shown to be the illegal act that was been committed by the offender or the culprit . The expiation which is also means blocking of the guilty that is directly in relation to the attribution of the theory under which it says the suffering that is being usable usually inflicted upon the culprit and is also absolutely appropriate as well as suitable to the committed crime by the

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offender .

The legal practitioner that supports the particular theory usually finds it appropriately firm to punish the criminal with the particular punishment that shall be make him suffer the same extent of the crime attempted by him towards the victim. Various other researchers also made several research on the theory that by not implementing this for a while grant the punishment against the offender therefore two significant where problems could occur the one being that of the victim may lose may be losing the trust within the legal system and also even refuses to filed the complaint thus of the hampering the ability of the state to the sense to provide justice to the victim and the punishment to the offender.

Although, it shall noted be that of the modern era of this kind of the punishment is therefore not really in supported much by the means of legal scholars or the practitioners and also the key reason to be that of neither a kind of the punishment therefore which is used to be considered wise not it shall be desirable to be punish to the accused with the similar kind of the punishment which seems at par with a crime that he has been committee.

3. PREVENTIVE THEORY OF PUNISHMENT-

As we think of the preventive theory therefore the punishment that shall granted to the accused that shall not to be revengeful for the means for the crime but though rather it shall be prevent from the crime.

The theory of this objective state is to protect the society from the culprits, and so that of the reason of key because of which it states to believe under this theory of the offender there shall be put behind the bars , for punishment of imprisonment so as of being remove the potentiality of danger that is been caused by the presence of it within the society . Although the various of the application of that of preventive theory, the accused person is disabled by the means of state from been committing of any other of the offence or we can say repeating the offence which he already been engage or committed by the inflicting the punishment upon the likewise of death , the exile or we can say even the forfeiture . Though a criminal can also be effectively prevent though from the similar or the more heinous crime means of being imprisonment for the life without the remission.

Therefore, there are means of several critics of this theory which believes that the above theory is not so effective enough to though prevent the commission of such of the commission of the such of the crimes in the future and that it is because of the accused person when they sent to

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the jail then with those of the criminals who had already as bad of the offender . however, it shall also been highlighted by the means of some researches that by putting the offender into the prison the motive of prevent him to committing of any other crime as against the society is to be fulfilled and this seems fulfilled and this Is means to be done against the society and eliminating the presence within a society thus, it seems disabling the crime and the criminal.

4. REFORMATIVE THEORY-

With the course of development in the criminal science that of the substantial change that has been brought within the thinking of the criminology research. Then that of under the reformative theory various other legal research are believe in analyze to the entire social and the economic also the other factors that can ultimately lead of the commission of the crime with the heinous or barbaric crimes by the criminals . If we talk about the supporters to this theory a criminal will not be studied to an isolation of his own circumstances for he does not been a cease to the human being though when he commits a crime that seems so important to means of study what actually force him to commit the such of a crime against the human.

Critics brings out from this theory state that if criminal sent to the jail for reformation then the jail if not the place of punishment rather it becomes the rehabilitation centers though there the criminals reformed and transformed into the new individuals by punishing of them will eliminate because punishing itself will be friendly in terms of familiar place for the culprits.

However for the one who supports the theory of reformative believe that offender shall serve the sentence to get off the free reformed and also leads to the change as individual because the aim of punishment is to change the thinking mind of the person who well has committed the crime and transform him into the better version of themselves as a better human being who can taught the some sort of the art and a craft within which they prison itself and the theory may not in support of many of the legal scholars or the researchers but it seems absolutely suitable for the country .

INTERNATIONAL CONVENTION IN CAPITAL PUNISHMENT

As Human Rights seems the most important issue, the capital punishment that has been the object that of the initiatives within the several of the international organization, the United Nation of the Europe it is said to be the security and the corporation in the Europe and European Union. Although the activity seems the creation of the positive of the legal norms it is

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the one who also said to be a matter of the ‘soft law’ as it is in the evolution of the International customs.

Capital punishment as it is a form of the particular punishment that been criticized by the several countries and the organizations. The United Nations General Assembly in this case of the punishment there is always a need of the highest standard of the fair trial that shall be followed up by the every country. United Nation Economic and Social Council has also asked its member to abolish the capital punishment , it stated that all those members that shall be retain the death sentence they ensure the speedy trial to the defendants , the most of countries in the European and its union has also abolished the capital punishment on may,3 of 2002 it states the 13th protocol to the European which is for convention for the protection of the right of the human and the fundamental freedoms was all open for the signatories of all members for abolishment of capital punishment in all circumstances .

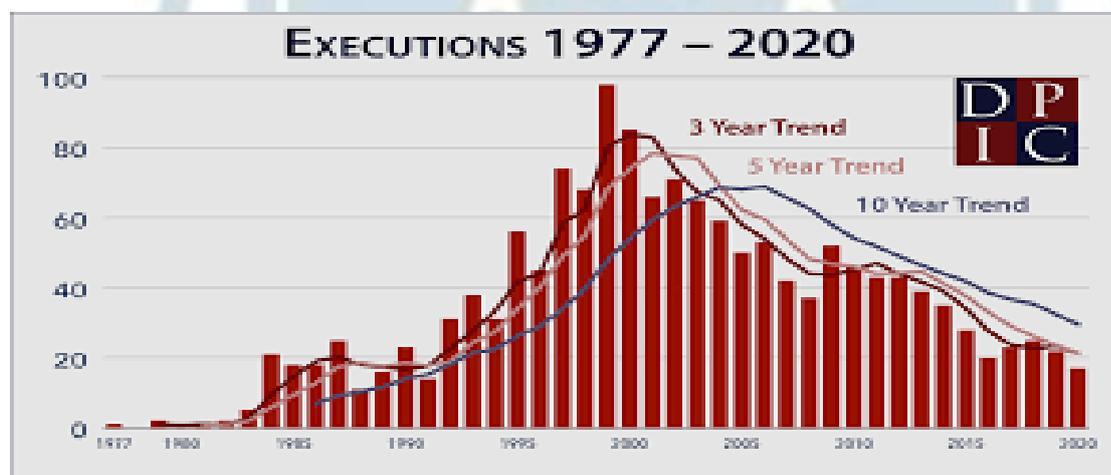
Many of the international legislatures also came in favour of the capital punishment. Article 5 says the Universal declaration of the Human Rights in 1948 and Article 7 says that of International Covenant that shall provide that of no one shall be the subjected to behave crucial and tortured and the inhuman or degrading behaviour or we can say punishment. Capital punishment arisen he terms of degrading , inhuman etc....., that infringement on the basic human rights of the offender as expressed in the Article 3 of all the universal declaration of the human rights provided the right to life and liberty of the human beings . In the means of the country England the abolishment of the Murder basically the capital punishment by the purview of(abolition of death penalty) ,1965 though at the era end of the eighteenth century its all about two hundred offenses that shall by the means when we say of the punishable by the death .

India is again the time of opposition of the UN¹³ resolution basically for the moratorium on the whole of the death penalty so as of the every member of the UN has the sovereignty right to the determined its own of the legal laws and their system and the appropriate legal penalties. In India the exercise of the death penalty it seems in the rarest of the rare cases when the crime seems committed to grave that the outrages the conscience of the whole of the said country and the society. United Nations where secretary general has also repeatedly mentioning the reports on of the memorandum of the capital punishment that all of the decisions taken by the Honorable supreme court of India had also they tried to look after for it shall in the limit to the

¹³ United Nation

awarding of the capital punishment or the penalty of death in the cases they also have been sentenced to the death.

In the parallel regions of the International legal forms with its drafting was found in the International and the covenant to civil and political rights are differentiated from the United Nations have been involved in the variety if the initiatives which were aimed to and eventually states the abolishment of the capital punishment. As these of the whole rules meant of commission then that on the human rights and though it is sub commissioner and therefore unanimity are resulted in the resolutions in the form of the Economic though and social council and that of the General Assembly .



CAPITAL PUNISHMENT IN INDIA

Capital punishment stated the legal death granted by the supreme court of India on behalf of the country for the serious offenses. In the legal system of India the Capital Punishment that is the shall be given to the most of the showed up grievous and hazardous offence and also the heinous crime that fall under the categorically in the rarest of the rare cases.

According to the Article 21¹⁴ of the Constitution of India, 1950 it guarantees the right to deprived of the life and the liberty and to live with dignity . In this article “no person shall be deprived of his liberty and life” except to the accordance of the procedures which meant out to be establishing by the laws of India . This shall means that the individuality of the person’s life and the personal liberty can be disputed only the means of the committed of the crime and their

¹⁴ Right to life and personal liberty of the constitution of India , 1950

own consequences. Therefore, the state shall abridge even when there is right in the name of the legal system or we can say the law may takes upon and public order with the following to the whole of the procedures by the law but also the process shall be the “due process”¹⁵ means the held in the [Maneka gandhi vs. Union of India \(1978\)](#)¹⁶ The means of all of the procedure that which takes away of all of the sacrosanct life of the human being that must be just fair and reasonable.

The India Non-governmental organizations are fighting against the inhumanity, the degrading and the cruelty of punishment and that their protection of the human and their rights which facilitate. The judiciary has evolved the principle of the **RAREST OF THE RARE**¹⁷ and that has been indicated that of the special reasons then that of the capital punishment which must be imposing in the cases of the exceptional and the aggravating circumstances therefore where the offenses are a vary grave in that of the nature of the application throughout the principle itself as the evident from the plethora of the most of the several cases that state it is a violation of the constitutional provisional forms . Justice V.R Krishna Iyer¹⁸ as an eminent jurist and the former judge of the supreme court of India was then that of the one who stood against the capital punishment. As according to the Justice Iyer god has gifted us the life then the taken of it shall be in the hands of god itself so that of the state has no right of taking the life of any of the person as execution states the inhumanity he further added to his statement that Gandhi and their country must be set the example of the abolishing the capital punishment even if the state have must not hang the people.

The stated and mentioned conditions of the people in the undergoing to the name of capital punishment is it quite horrendous when it shall compared to the Indian context of the various studies that shall conducted by the means of different of all of the organizations that shall have been found that of the death that shall convicts undergoing the both of the physical and mental tortured towards the person while waiting for the context of the news on what of the day are to be executed the prisoners are being mentally dead as they keep on waiting for that of the day of their execution where the means of the fact keeps on to getting delayed .

INDIAN PENAL LAWS ON CAPITAL PUNISHMENT

¹⁵ The legal and the requirement that the state must respect of all the rights that are owned to a person .

¹⁶ AIR 1978 SC 597 ‘ (1978) 1 SCC 248

¹⁷ THE DOCTRINE OF THE CONSTITUTION WAS FIRST APPLIED ON THE CASE OF BACHAN SINGH VS. STATE OF PUNJAB

¹⁸ Judge of the supreme court of India

The penal crimes are yet to be finalized by the penal laws that shall be established by the Indian legal system and Indian criminal laws therefore there are several of the cases that shall be included in the crime the case are-

***Aggravated Murder-**

It is the offence that shall be punishable under the Indian criminal laws in accordance to the section 302¹⁹ of the Indian Penal Code 1860, it is yet out to be the charge of murder that shall be applied on the Capital Punishment therefore the constitutional validity of then that of the exceptional penalty in the doctrine of the **rarest of the rare case**. As it is been mentioned in the case of Bachan Singh vs. State of Punjab the court held with the contribution to the death penalty as the constitutional and applied the meaning of the doctrine of the rarest of the rare case.

***Other offenses resulting in death-**

In the penal code of India the penalty of death is to be given to a person whosoever committing the murder during the armed robbery. Therefore the abduction of the victim for the sake of money is been punishable with the terms of death penalty therefore if the victim is been killed. It is organized by the means of the involvement if it shall lead towards death it is punishable by the, means of death committing or we can be helping the person to commit sati to another person is also punishable under the death penalty.

***Terrorism-related offenses not resulting to the death-**

In the particular means of the Muhammad Afzal was been executed by the hanging on the 9th of February 2013, He was been executed in the year of 2001 by attacking on India's laws and parliament in which the nine of people got killed by the 5 gunmen with armed and guns and the explosives. Mohammad Ajmal Amir Qasab was the only survivors of the shooter in year of 2008 as he hanged on date of 21 November 2012 for the means of various crimes though including the waging war on India murder and the terrorist acts.

Where a use of any of the special category of much of the explosive to the cause an explosion that shall could endanger life or the cause the serious damage to the property is been punishable by the capital punishment.

***Rape not resulting in death -**

A person shall been inflicts the injury in the sexual assault which resulted in the death or been left in the persistent which shall of vegetative state may be punishable with the death under the

¹⁹ Section of The Indian Penal Code, 1860

Criminal Law act 2013.

The gang rape shall be punishable with the death of the penalties. These were the changes impose after, Medical student named Jyoti Singh Pandey in year of 2012 the gang rape happened and the death in New Delhi. The means of the evolution of the capital punishment in India and who all the means are of excluded from the death penalty.

***Kidnapping not resulting in death-**

According to the Indian penal Laws section 364A the kidnapping that shall not in resulted to then that of the death is an offence of all of the punishable by the means of death .Therefore if any of the person detained anybody and threatens him to kill him or he or she harm him during the kidnapper's act that actually needed to resulted in the death of the victim though will be liable under this section.

***Drug trafficking not resulting to the death-**

If the person shall convicted towards the commission or the attempt to commit the abet or we can say the criminal conspiracy to commit the any of the legal range of the trafficking or the certain of all of the types of the offenses or the financing of all of the certain amounts or narcotic and psychotropic substances that shall he or she can be sentenced to the death.

***Treason-**

The penalty of death to anyone which of person who is waging or the trying of the war wage against government and helping the Navy army or air forces etc.

***Military offenses not resulting in death-**

The abatement of the assault mutiny or the attempting to the seduce airman of the various other offenses are shall be punishable by the death if the committed by the means of the member of the army navy or the air force.

***other offenses not resulting to death-**

- If the person has opted for the criminal conspiracy to commit the capital offenses is punishable by the means of death.
- Attempts to kill the sentenced to the life of imprisonment are shall punishable by the death though means if the victim is been harmed by the name of the attempt.
- therefore if the person provided the false evidences with the means of the knowledge that lead to the conviction of the belongings of person SC or ST of committing the capital punishment or the capital offenses on basis of the evidence that will be punished with the penalty of death resulted in the conviction and the execution of an innocent person.

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Section under IPC or other law	Nature of crime
Section 120B of the Indian Penal Code	Criminal conspiracy in terms to commit the capital offence .
Section 121 of the Indian Penal Code	Waging of the war against the <u>Government of India</u> .
Section 132 of the Indian Penal Code	Abetment of the <u>Mutiny</u> , actually committed.
Section 194 of the Indian Penal Code	Giving or fabricating of the false evidence with the intent to procure of a <u>conviction</u> of a capital and the offence
Section 195A of the Indian Penal Code	Threatening perform for the false evidences , resulting in the conviction and death of the innocent person
Section 302 of the Indian Penal Code	Murder of the individual personality
Section 305 of the Indian Penal Code	Abetting <u>suicide</u> by the minor, an <u>insane</u> or we can say the intoxicated person
Section 307 (2) of the Indian Penal Code	Attempted murder on the individual personality
Section 364A of the Indian Penal Code	<u>Kidnapping</u> for abducting of the individual for the sake of murder.
Section 376A of the Indian Penal Code	<u>Rape</u> and injury which causes death or leaves the women in a persistent vegetative state
Section 376AB of the Indian Penal Code	Rape of a child with the meant of below 12 years of age.
Section 376DB of the Indian Penal Code	Gang rape of a child which, meant below 12 years of age.
Section 376E of the Indian Penal Code	Certain repeat offenses in the rape.

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Section 396 of the Indian
Penal Code

Dacoity with the murder (group of five or more individuals)

CONSTITUTIONALITY OF CAPITAL PUNISHMENT IN INDIA

The constitutional validity of the capital punishment was been first challenged in the United States of America therefore which took upon the step towards the abolition of the capital punishment as we opt for the direction that Pennsylvania is the first ever state to abolish the capital punishment where different jurists in that of the United States regarding the different views on the unconstitutionality of the capital punishment . Even though after the decisions took over the many of the countries have not so fully abolish the capital punishment, example the penalty still exists in the countries like the Saudi Arabia, India etc.

India, the capital punishment is handed over by the neck area. The method has been practice since the British times and that has not been abolished till the date. Then that of the collective conscience that the community it is so of then that of shocked there that it will expect the norms of judiciary to been delivering the capital punishment on the offender. Supreme court of India stated that the cases of Murder²⁰ is been committed in the means of the state its extremely state that can be put to under the purview of the rarest of the rare cases.

Capital punishment or that of death penalty have been always a topic of contraception not one in India but though also several developed countries. The motive of provide the means of the punishments based on two aspects that of that of the first being the accused the person who suffer the injury of he or she caste upon the victim discourage the others for committing the crimes where wrong sanctioning of the punishment. The lawful and the execution of the accused who was been sentenced to the death that of the conviction by the time of the criminal court. It seems the execution here indicates the adherence too much to the means of due process of all of the law therefore which specifies the death sentence from the different though from the extrajudicial execution the capital punishments which was been most of all the carried out by the process of law.

THE CAPITAL PUNISHMENT FAILED TO BE DETERENT

In accordance of the capital punishment that falls under the preventive or the deterrent theory of

²⁰ Section 302 of The India Penal Code ,1860

the punishment in accordance to the 36th law report of the commission means of the India the theory of deterrent are aspects of all of the capital punishment I. e the imposing of the death penalty when will it be deter other from the committing the “ most important object” of saying considered as the means of the “strongest jurisdiction “

DOCTRINE OF” RAREST OF THE RARE “

In accordance of this doctrine the sentences of the person to the death the test of the crime should be fully satisfied and though it should not be in the favour of the accused in the terms of the offender in any circumstances. The philosophy fully depends upon the perceptions then that of the court should be consider the variety of the factors of such as the society’s abhorrence and the personality of the offender their motive and the manner of the commission to the crime in the extreme indignation's and the antipathy of the certain crime such as of the rape of the minor girls etc.

The courts of India awarded the capital punishment because the situation that demands for the extraction of it’s the constitutional compulsory that reflects the will of the society at the utmost level.

Factors on which the court shall impose the capital punishment-

- * When the murder has been committed with the planning and includes the extreme brutality.
- * When the murder states the involvement the exceptional depravity or we can say the murder has been commit to the person the public duty.
- * The capital punishment has not been given in every case though it should be given on the basis of the culpability of other the various cases before the grant of such circumstances of the accused and the crime that must be the taken care of.
- *The capital punishment awarded when the life imprisonment falls under too short of that of the crime that must be taken the falls under the life imprisonment of that crime done by the accused person.
- * Where both of the aggravating and the mitigating factor that must be considered and create the balance between what they maintained.

LANDMARK JUDGEMENTS

[Jagmohan vs state of U.P²¹](#)

The honorable supreme court of India held the Article 14, 19, 21 had been not violated the

²¹ Citation - 1973 AIR 947 , 1973 SCR (2) 541

capital punishment. The judge was said to make choices in between the capital punishment and the life imprisonment basically based on the particular circumstances and the facts and that of the nature of the recorded crime during the trial. The decision known to award the capital punishment was therefore made for the procedure laid down by the means of law as been required by the Article 21 .

[Rajendra prasad vs. State of U.P²²](#)

The judge held unless it was been shown to the criminal was in dangerous towards the society the capital punishment that shall not be justified. The judge learned pleads that of all of the retained only of the “white collar crimes” . It shall also that the punishment for the means of the murder offence awarded the pursuant to the IPC with section 302 which did shall been not violate the basic structure of the constitution.

[Bachan singh vs. State of Punjab²³](#)

The case where that has been explained to that of the accordance with the equitable fair and reasonable procedures which laid down by the means of law though the constitutional bench of the honorable supreme court of India which recognized the Article 21 of the states right to the deprive of a person life and liberty . In the addition of the violation of the basic character to the constitution by the capital punishment for the sake of the murder offence which was been granted under the section 302 of the IPC.

[Mithu vs. State of Punjab²⁴](#)

This seems the case where it state the one of the landmark cases where there is a supreme court of India despite of the upholding to the judgement in the Bachan singh had been declared the section 303 of IPC as unconstitutional. The section provides to the capital punishment to the person who has been committed the murder of the sentence of the life imprisonment already. It seems also argued the defence counsel then that of the section discriminates between the person who has complete his life imprisonment and then commits the murder and the person who is still a person who stands the unreformed after the long term of the incarceration is not by the logic to be entitled to the preferential treatment at as compared with the person who though still under the sentence of the life imprisonment .

[Furman vs Georgia 408 U.S 238²⁵](#)

The supreme court of U.S that has been declared that under which the imposition and though

²² 1979 AIR 916 , 1979 SCR (3) 78

²³ CITATION- AIR 1980 SC 898 , 1980

²⁴ CITATION- 27 MARCH, 2001

²⁵ CITATION- 408 U.S 238 92 CT. 2726 ;33L ED. 2ND346 , 1972 , U.S LEXIS 169

carrying out of the capital punishment that shall constitutes as the cruel and the unusual punishment in the violation of the Eight and the Fourteenth amendments of the U.S constitution . The serious issues considering the possibilities of the miscarriage of the justice in resulting to death the civil rights organizations likewise the international, the UN and many of the rights of activists are clamoring for the abolishment of the death penalty.

CONCLUSION

The means of the capital punishment seems the whole new concept that it has need to be then that of the practicing since of the era of the kings and though of the emperors but it though seems an offence against to the human rights. Article 21 and 3 of the constitution states the United Nations of universal the declaration of the means of human rights though it provides the right to life and the right to personal liberty of the capital punishment or penalty of death that shall be declared it unconstitutional and against to the humanity .

The practice is to aim of the capital punishment to preventive of the increasing rate to the crime rate in India. If we talk about the criminal statistics of our nation on the capital punishment that has more power and said to be the effective weapon which decreasing rate. Even of the Law commission of India as recommended in its report that of the Indians need to be abolishment to capital punishment of all crimes that expect of the offenses been related to the terror . Though we need to go for the reformative form of the punishment to punish the offenders and to educate them better human being in the eyes of law who abiding citizens of nation. The reforms of law should be adopted the necessary requirement with the steps to eliminate the punishment of the capital form of the socially.

SUGGESTION

“NO HUMAN BEING SHOULD BE REGARDED AS BEYOND IMPROVEMENT AND SHOULD THEREFORE ALWAYS HAVE THE PROSPECT OF BEING RELEASED” -”

Dirk van zyl smit”

“The capital punishment or penalty of death are yet the mode of all of the give the sufferer the equivalent to the victim suffer of the punishment that states in the form of the heinous crimes’ as of now the capital punishment shall be the part of the punishment purposes it is because the person get the equal forms of the compensation to the one who done something wrong on them.

It seems the restriction that shall be made for the equal suffering of the victim .It seems always the worth noting of the effective and the alternative to the capital punishment is to improve the working of the criminal and the justice system. The effective of the policing and the reduction in time for the furthermore that of focuses more of it for the reforming the offender which dignified life with the perspective of the offence and the solutions.

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