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CONSTITUTIONAL PERSPECTIVE WITH SPECIAL REFERENCE TO DELAY IN EXECUTION OF DEATH SENTENCE

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CHAPTER – I

INTRODUCTION

1.1 INTRODUCTION

"Punishment itself was an evil, however an important evil"- setting the perpetrator to loss of life to educate other minds a lesson. – Bentham Anybody is privy to the essential function of human behavior i.e. love for existence. It is the most treasured wealth for an individual and not best a man or women, however additionally for an animal, even an animal does not want to lose the existence. For a person not anything may be beloved than life sentence and death penalty is that type of punishment that takes this loved one assets.

Capital punishment approaches a sentence of death. It is the severest i.e. a severe point of sentence. The punishment is excessive as a result of it turnoff the life of human existence. The capital punishment is to be awarded only for gruesome, frightening, anti-social, grievous and disgusting crimes towards humanity. Despite the fact that the definition and quantity of such crimes range from country to country and phase to phase; there may be in all opportunity no any us of a inside the international wherein death penalty has never existed. It has been in located from the past.

Capital punishment became in realistic as an effective degree to struggle crime and for hundreds of years its legitimacy was now not puzzled. The ancient kings believed that if the offenders had been with mercy excuse, crimes had been accelerated so massive. It genuinely was thought that the best manner of defensive society from risky criminals became to sentence them to death. Its reputation, in historic

societies, seems to possess depended on three principles:

First of all, insignificant price linked to human lifestyles, or at least to the existence of any precise character. Secondly, death of the criminal became taken into consideration to be simply and honest due to the fact for deviation he must pay. Thirdly, the executing turned into to hunt down natural reinforcement with the aid of the advent or sluggish institution of an omnipotent state. These three motives created the recourse to executing vital. But with the change of society the voice against the executing started to stand up and on the grounds that closing century capital punishment has become a totally warm and arguable situation in legal world.

The degree of punishment in a given case needs to rely on the brutality of the crime; the behavior of the criminal and the defenseless and unprotected nation of the sufferer. Burden of suitable punishment is that the manner throughout which the court responds to the society's wants for justice in opposition to the criminals. The courts should impose penalization fitting the crime in order that the courts reflect public disgust of the crime. The court need to not only keep in view the rights of the criminal, however also the rights of the sufferer of crime and the society at big whilst thinking about imposition of appropriate punishment.

India stands dignified a number of the international fashion to finish the penalty and people international locations that preserve to execute, like numerous of the lowering variety of nations that also apply the penalty of death, over the past 20 years, India has decreased the variety of executions achieved. The Indian judiciary has dominated that the death penalty for homicide must be confined to the rarest of rare cases; however this practice has been contradicted via the legislative meeting increasing the quantity of offences punishable by means of death. There are serious concerns approximately arbitrariness and discrimination inside the tactics that cause people being sentenced to death penalty. Such type of things might render India's use of the death penalty. Amnesty international is influencing the government of India to announce an immediately suspension on executions so that it will abolish the death penalty. As an growing international and nearby power and a party to the global Covenant on Civil and Political Rights and other international human rights treaties, India has an chance to exercising local management and to sturdy sign of its dedication to absolutely support human rights with the aid of abolishing the death penalty.

In the past three a long time, quality paces are created in the direction of an international unfastened from executions. In 1980, best twenty five countries had abolished the execution for all crimes. That variety currently stands at 91, with a further 11 international locations having abolished the penalty of death for 'regular' crimes. 33 international locations are considered to be abolitionist in practice in that they preserve the death penalty for normal crimes which includes homicide however have now not carried out all of us over the last 10 years and are alleged to have a method or installed practice of not carrying out executions, which means that a total of one hundred thirty five of the world's international locations have turned their

returned on death penalty in law or practice. India reserved, at the time of independence the 1860 Indian Penal Code that provided for the capital punishment for murder. In 1973, the Apex courtroom of India upheld the constitutionality of the capital punishment for the very first time inside the case of Jagmohan Singh v. state of UP[1]. Inside the comparable year, a brand new Code of Criminal Procedure turned into permitted. In 1980, the Supreme Court over again upheld the constitutionality of the death penalty in the case of Bachan Singh v. state of Punjab[2], and emphasized that the penalty of death should be used handiest within the Rarest of rare instances.

The Indian judiciary is following the worldwide trend of transferring far from the selection of capital punishment and turns closer to 'whole-existence-in-jail' sentences. These days, the lesser sentences compulsory at the killers of the law student Priyadarshini Matoo, Bangalore call- Centre employee Pratibha Srikanthamurthy and Punjab leader Minister Beant Singh suggests that Indian judiciary is transferring far from the choice of death penalty. It might appear so from the frustration expressed by family members of each of those victims, who declared that not anything less than capital Punishment might have glad their look for justice. As reflected inside the media, this sentiment was shared by using a considerable phase of public opinion. It was indeed an act of braveness at the part of judges to defy any such clamor of death. But, their verdicts have given ample reason for situation too liberal as similarly. Evidently judges within the lower courts are also acquiring increasing averse to apply the executing in many excessive profile instances. Instances regarding premeditated cold blooded murder, rape and murders of minors all through rioting, terrorist bombings etc. have not attracted the capital punishment. however activists reveal a flaw, that because of the absence of sentencing guidelines in what constitutes "rarest of rare", in some much less ugly murders, the lower courts have provided death sentences probably because of negative defense presented via the legal professionals of theeconomically backward.

Even though there has been huge unhappiness that the executing become now not proclaimed inside the coronary heart-wrenching cases of Priyadarshini Mattoo and Pratibha Srikanthamurthy, but certain place unit we have a propensity to that the corporal punishment is that the pleasant punishment for the worst of our criminals? Currently a few social activists and social reformers are stressful the imposition of death penalty for corruption, graft, bribe, rip-off and cash reserve cases. The death sentence of former law scholar Santosh Singh for the rape and

[1] AIR 1973(1) SCC 20.
[2] AIR 1982 SC 1325.

homicide of 23 years old Delhi law scholar Priyadarshini Mattoo changed into commuted to the imprisonment for life via the Supreme Court. In the case of the 22 years old newly married enterprise procedure Outsourcing (BPO) worker from Bangalore, Pratibha Sri kanthamurthy, the cab driving force who raped and murdered her, turned into sentenced to the life imprisonment until death.

The general agreement turned into that the two cold-blooded criminals deserved nothing much less than

the execution. The courts, in their understanding, but, did no longer see the crimes because the "rarest of the uncommon" which might have invited any such penalty. There may be decisiveness concerning the death sentence that appears to meet the famous perceptions of justice in topics of crime and punishment. This conjointly explains the democrat stance of some political events who demanded that the 26/11 terrorist Mohammed Ajmal Kasab be "publicly hanged from the Gateway of India without a tribulation."

Consistent with the record of the Amnesty international in United States of America. As on may additionally 1, 1970 executions are compulsory for aggravated murder in 35 states. Drawing upon the penal laws of the States in United States of America. Framed after Furman v. Georgia[3], in trendy and clause 2(a), (b), (c) and (d) of the Indian Penal Code (amendment invoice) passed in 1978 through Rajya Sabha, specially. Dr. Chitle has set off the worrying circumstances, where, execution can be offered:

(a) If the murder has been devoted after previous making plans and entails intense brutality; or

(b) If the homicide involves top notch depravity; or

(c) if the murder is of member of any of the defense force of the union or of a member of any police pressure or of any public servant and was committed even as such member or public servant turned into on responsibility; or in consequence of anything accomplished or attempted to be executed via such member or public servant in the lawful discharge of his duty as such member or public servant whether or not on the time of homicide he turned into such member or public servant, as the case can be, or had ceased to be such member or public servant; or

(d) if the murder is of a character who had acted inside the lawful discharge of his responsibility underneath section forty three of the Code of Criminal Procedure, 1973 or who had rendered

[3] 408 U.S. 238.

help to a Magistrate or a Police Officer demanding his aid or requiring his help under section 37 and section 129 of the said Criminal Procedure Code.

After the perusal of the same study, the studies pupil's view that retaining in view the structure of the Indian society; death penalty must be retained. Safety of society and deterrent impact on the criminals that the declared object of regulation and this is had to be performed by way of implementing an appropriate sentence. A responsibility is cast upon the court to impose a proper punishment relying upon the degree of criminal activity and desirability to impose such punishment as a measure of social necessity and as a means of deterring other capacity offenders.

The writer is of the view that imprisonment has to be the guideline and the penalty of death of life must take delivery of in "rarest of uncommon instances". Each time court imposes the capital punishment, it need to report unique motives for the same. The capital punishment must be given handiest, while the act

of accused is of extraordinarily brutal, inhuman, barbaric, outstanding depravity and when the crime has been dedicated in a totally merciless manner, including rape accompanied by means of homicide of a female of very tender age," dacoity accompanied by way of vehemently killing of innocent folks, extremist persons killing innocent men and women, murder of politicians, killing of individual in a totally barbaric manner and socio-economic offences and so on. The very Supreme Court has very pertinently determined in Jai Kumar v. State of M.P[4]. That civilization and the due system of law alongside social order ought now not to permit the Courts to be hasty in awarding capital punishment but act as a speed breaker in the use of this kind of punishment.

The examine provide an explanation for that during agricultural primarily based countries like India, the hassle of death penalty arises in case of murders devoted at some point of agrarian riots and disputes referring to ownership or ownership of land-belongings, in such instances, the offenders are well privy to the consequences of their act but they fall a prey to criminality due to passion, exhilaration or anger for the victim whom they want to position out in their manner once for all. hence, those individuals though aware of the consequences, in truth do no longer intend the ones effects to follow, therefore they can't be categorized as expert killers and death penalty can infrequently serve any useful purpose in such instances, in particular where act become now not pre-mediated. Likewise, when the loss of life has been devoted with the aid of the accused in

[4] AIR 1999 SC I860.

unexpected provocation or because of warmth exchange of talks and if he does now not have any criminal antecedents death penalty have to be imposed in such type of cases. Arguments in favour of the capital punishment relaxation on the call for completely putting off the worst criminals from society, not wasting public exchequer on their imprisonment and providing a strong deterrence in opposition to serious crimes.

The worldwide trend, however, favours the abolition of capital punishment, thinking about it as inhuman at the part of the country, regardless of the crimes devoted. The European Parliament has been inside the forefront for the abolition of the death penalty and has discovered that slightly forty three countries keep this punishment. Consistent with it, the best wide variety of executions in 2009 passed off in China (five hundred) observed by Iran (four hundred and two), Iraq (seventy seven) and Saudi Arabia (sixty nine). India has no longer had handiest 4 executions inside the ultimate 10 years, and in that sense has been moving far from capital punishment, although extra than 50 humans have been sentenced to death in 2015, inside the Asian subcontinent, Nepal and Bhutan have abolished the death penalty.

The huge numbers of countries which have abolished capital punishment believe that the precept of lax talionis[5] is not appropriate in modern society; innumerable voices have wondered this practice. In July that month, former president APJ Abdul Kalam delivered his voice to the decision for a countrywide

debate at the want to hold with the death penalty. Life Imprisonment until death is not a smooth sentence as it appears but is frequently taken into consideration a harsher punishment than the death sentence. In 2007, 311 Italian prisoners who were sentenced to life imprisonment until death sentence petitioned the government for the proper to be carried out. They described life without parole a "dwelling death".

As the world actions away from the retention of the death penalty, the time has come for the authorities of India to abolish this form of punishment. One fears that the leader of India can also lack the political braveness to abolish the capital punishment. The penalty of loss of life is presented only for the "rarest of rare cases", a formulation that works thoroughly. This restraint indicates the maturity of our judiciary. Some of the documents in the case of restrained and banned the death penalty, at least in its use of the death penalty is plenty debate over the appropriate punishment for a heinous crime, politics, the global law, the not yet. The issue of

[5] An eye for an eye, Available at www.en.rn.wikipedia.org, last accessed on 12/02/2021.

capital punishment also dubbed as death penalty usually draws fierce debate amongst the supporters and the protests as the loss of death penalty. The death penalty is the remaining human proper, arguing towards forgiveness. Network existence is sacred and. that the capital punishment, that the state's right to behave in self-protection to guard the harmless, but not the obligation to and one way to shield the life of the innocent is to have exemplary punishment for folks that bask in heinous crimes.

In recent years, the debate and the truth that massive numbers of innocent people sentenced to death have proven that the use of recent technologies infected. currently the Supreme Court has at the same time as taken a severe word of the spate or kidnapping for ransom across the country, by asking the law that lets in judges to say, tough to punish traffickers in the country, to award despite the fact that they may be now not worried in murder, kidnapping for ransom, in splendid instances, the penalty of death, A bench comprising Justice H.S. Bedi and J.M. Panchal determined that "records abducted for ransom has emerge as a rewarding and well in tough instances, in line with the courtroom a duty to the alternative dealt with." That capital punishment speaks as legal philosophers, Justice, judges and other intellectuals as social scientist commented at the discussion board. In many nations, the death sentence it's far a vital dimension of the criminal righteousness system. Its miles a form of geography, culture and the motives may be distinctive, despite the fact that the passing of time is not perfect shape of justice through the while.

When penalties are imposed to deter the offender must be given a hazard to reform the Indian jurisprudence that the perpetrator is a part of the Indian criminal jurisprudence, expression and the aggregate of various theories. Bearing in thoughts those primary concepts, the Registrar legislature draft Criminal Procedure Code primarily based at the man or woman purpose of this sub-capital offenses and lays down the death penalty that the courtroom may additionally ought to sign in. therefore, Criminal Procedure Code and legal status very special instances when the death penalty became imposed in 1973, the general rule became that a life sentence.

Now a days in India Rape is emerge as the maximum heinous crime within the country. Judiciary has supported severe punishment in instances of rape. The hassle is that the way to decide the rarest of rare in certain cases. Now researcher might examine the all relevant aspect associated with making capital punishment in instances of rape. Capital punishment is one by using which and culprit is sentenced to death for committing the heinous crime of murder.

Death penalty is the practice of executing a person as punishment for a particular crime after a proper trial. It could most effective be utilized by a country, so whilst non-nation corporations talk of getting 'carried out' a person they have got certainly committed a murder. It is generally used as a punishment for specifically grave kinds of murder, but in a few nations treason, varieties of fraud, adultery and rape are capital crimes. The not unusual modes of punishment widespread in one-of-a-kind components of the world consisting of corporal punishments inclusive of flogging, mutilation, branding, pillories, chaining people collectively, stoning, banishment, transportation and death penalty or capital punishment.

Most of written history across world over has many references to corporal punishment indicating that as antique as civilization itself. The primary recognized codification of the execution was within the 18th century BCE, within the code of Babylonian king Hammurabi. The 14th century BCE Hittite code, the 7th century BCEs Draconian code of Athens and also the 5th century BCE Justinian code all had a provision of death sentence.

History gives times of loss of death sentence executed via crucifixion, drowning, beating to loss of life, stoning, burning alive, impalement, striking, firing squads, electrocution, deadly injection, and so forth. Kautilya's "Arthasastra" additionally imposes death penalty for crimes like rape of a minor and robbery in the government treasury.

Capital punishment is a legal but hardly ever achieved sentence in India. For Indians capital punishment is nearly synonymous with hanging. Imposition of the penalty isn't always accompanied by execution (even if its miles upheld on enchantment), because of the possibility of commutation to life imprisonment. In recent times there was numerous gaps; between the putting off on auto Shanker[6] and Dhananjay Chaterjee[7], and thereafter until the execution of Ajmal Kasab[8] and Afzal Guru[9] and Yakub Menon[10]. The thirty fifth report of the law commission of India has vouched for the deterrent effect of capital punishment. but, whether or

[6] Hanged in 1995.
[7] Hanged in 2004.
[8] Hanged in 2012.
[9] Hanged in 2013.
[10] Hanged in 2015.

now not capital punishment acts as a deterrent may not be statistically proved either manner due to the fact records as to how many probably murderers were deterred from committing murder but for existence of capital punishment for murder are hard, if no longer altogether not possible, to conclude.

The Supreme Court of India dominated in 1983 that the death penalty must be imposed most effective in the Rarest of uncommon cases. Capital crimes are murder, gang robbery with murder, abetting the suicide of a child or insane individual, waging conflict in opposition to the authorities, and abetting mutiny by means of a member of the military. In present day years the penalty of loss of life has been imposed below new anti-terrorism law for humans convicted of terrorist activities. Lately, the Indian Apex Court in Swamy Sharaddananda v. state of Karnataka[11] made imposing the capital punishment even harder. The judgment held that the "rarest of the rare case" test prescribed in case of Bachan Singh[12] changed into diluted inside the Machi Singh case[13]. The judgment then is going on to mention that the "rarest of the rare" must be measured no longer most effective in qualitative but additionally in quantitative phrases. Thus, for the reason that the overall crime ranges had been worsening considering that Machi Singh's case was determined, the categories of "rarest of the rare" should also alternate. Consequently, all the classes specified in Machi Singh need not in shape in with "rarest of the rare". Today a whole lot of the categories are no longer as rare.

The Supreme Court justified the practice of capital punishment in India, particularly in view of growing terrorist hobby that has value the lives of masses of harmless civilians and uniformed employees. If the atrociousness of the crime is such that a big range of harmless people are killed with none motive, then, too, award of the acute penalty of death will be justified. All these elements have to be taken into consideration by way of the President or the governor at the same time as deciding mercy pleas. India is one of the worst sufferers of inner and external terrorism. Inside the closing three a long time, innocent lives had been misplaced attributable to that of terrorists, who've killed humans by the usage of bullets, bombs and other weapons. If the murder is dedicated in an extremely brutal or dastardly way which gives rise to severe and severe indignation inside the community, the courtroom may be folly justified in awarding the death

[11] (2008) 13 SCC 767.
[12] 1980 AIR 276.
[13] 1983 AIR 1957, 1983 SCR (3) 413.

penalty. If the murder is dedicated, by way of burning a bride, for the sake of cash or delight of different types of greed, there will be adequate justification for awarding the death penalty. at the same time as there's no abatement in crimes committed because of non-public animosity and property disputes, people across the world have suffered on account of latest kinds of crimes. The monster of terrorism has spread its tentacles in most international locations.

The question of the constitutionality of death penalty has obtained new importance because of liberal judicial interpretation of fundamental rights guaranteed through article 14, 19 & 21 of the constitution. Due to this some of human rights have been diagnosed. The Doctrine of simply, truthful and affordable process propounded in Maneka Gandhi's case turns into a new floor for attacking the constitutionality of death penalty. In addition the character of the problem is such that it desires to take vicinity in the society.

The impact of legal adjustments and global duties also becomes crucial on this connection.

1.2 SIGNIFICANCE OF THE RESEARCH

This doctrinal research covers the broader contours of the constitutional perspective with special reference to delayed execution of death sentence. It furthermore seeks to confine the present national and international position of death sentence. This research incorporate with a critical analysis in theme to the current trends paramount to the present notion about abolition or retaining of death sentence which can be notable in understanding the impact of death sentence in our society and the control of the state in it.

1.3 AIMS AND OBJECTIVE OF THE STUDY

The purpose of research work is to analyses the relevance of Capital Punishment in Present scenario and causes of delay in execution in India. Object of this study is to make out and analyze the statutory provisions provided in India. Another object of this study is also to figure out the following spheres:-

a) To know the relevance of death penalty in heinous cases.

b) Death penalty helps to deter other from committing crimes, attracting capital punishment.

c) The relevancy of principle of the rarest of the rare is good in the criminology in India.

d) To know the Constitutional validity of death penalty.
e) To examine the President's power to commute death penalty is often politicized or not.

f) Applicability of the reasoning of rarest of rare in case of death penalty.

g) Delay in execution after covering period of life imprisonment, whether the accused deservedfor death penalty?

h) Statutory limit of time in passing the order in mercy petition, whether time limit is availableafter pronouncement of judicial order.

i) Does capital punishment put in danger our sense of the "dignity of life"?

j) Is it wrong to consider the penalty of death as cruel and unusual?

k) Can death penalty appropriate in modern society?

l) Can capital punishment implemented consistently and fairly?

1.4 RESEARCH HYPOTHESIS

The purpose of the research work is to explore and analyze the relevance of Death Sentence in India and effects and reasons of delayed execution. It also analyzes the provisions under the Indian laws in connection of death sentence. This study is based on the hypothesis that present laws are capable of curb

the relevance of Death Sentence. The problem is relating to enforcementof these laws in spirit and letter.

1.5 RESEARCH METHODOLOGY

The study undertaken is doctrinal research. The evaluation and research is based on the roots of death sentence in Indian penal system and cases of retention in Indian scenario. The researcher has endeavored to find out the various incidents provision and cases wherein the background of retention lies. Hence, as far as coverage of the various positions on death sentence is concerned, arguments between the retentionists and the abolitionist positions are by and large analytical. Therefore all the data collection will have its base from research papers, articles, books, encyclopedias, e-source, some texts and national and international law journals, the analysis of which will eventually help in reaching the conclusions and suggestions on this study. In furtherance of this research work, various approaches are taken into account so as to squarely analyze the issue and to contrive the entire study in more circumspective, analytical and receptive manner for the readers.

APPROACHES TO THE RESEARCH

EVALUATIVE APPROACH

This is to elaborate on the concepts of capital punishment and its historical evolution. Basically, the process is used to digest the roots to study all the concepts from its inception. An attempt is made to study the paradigm provisions on the subject of Capital Punishment.

INTERPRETATIVE APPROACH

This aspect is useful in interpreting different legal provisions in question relating to Death Sentence. The process aims at interpreting the various concepts used in defining the law. It is vital in grasping the study of the Constitution and other Statutes relating to death penalty and to analyze the same.

IMPACT ANALYSIS APPROACH

All the probabilities relating to retention and abolition of death sentence are taken into account and the impact of the same on our society is studied. In this very research an attempt is made to highlight the delayed execution of death sentence. Ultimately, this helps us in changing the outlook towards the objectives sought to be achieved.

1.6 REVIEW OF LITERATURE

1.6.1 BOOKS

Dr. N. V. Pranjape in his book "*Studies in Jurisprudence and legal theory*"[14] (2007) explain the purpose of convenient study the book has been divided into three parts. Part 1 relates to the province of jurisprudence, legal theory and administration of justice. Theories of punishments are also explained

under this part i.e. retributive, reformative, deterrent and retributive theory. The attempt has been made to examine the various jurisprudential topics in the Indian perspective. The different juristic concepts have been explained with the help of administration

[14] Dr. N.V. Pranjape, *Studies in Jurisprudence and Legal Theory* (Central law Publication, Allahabad, 2013).

and relevant judicial pronouncements wherever necessary. The author has drawn extensively from the works of Salmond, Austin, Pound, Maine, Holmes and others. Various jurists gave different views about the concept of punishment.

Surender Malik and Sudeep Malik in his book "*Supreme Court on Death Sentence in Murder cases*"[15] (2012) explain all rulings of the Supreme Court on Death Sentence from 1950 till the present has been arranged in terms of the well-established doctrine of aggravating and mitigating conditions relevant to award the sentence of death. The most striking feature that emerges from a study of this mini-encyclopedia on the death penalty is that there is not a single situation wherein it can be said in advance as to whether death sentence will be imposed/confirmed or not. Every case that awards or confirms death sentence has an opposite ruling in almost identical circumstances which commutes death sentence to life imprisonment.

J.W. Cecil Turner in "*Kenny's outlines of Criminal* Law"[16] (2013) in his book there is brief reference regarding the development of punishment system in England. Reports of various Law Commissions and committees contain abundant literature regarding the development and changes in Criminal Justice System since several years. The 18th Law Commission of India under the Chairmanship of Justice A. R. Lakshmanan worked with one of the objective that to review and repeal of absolute laws. The Ministry of Home Affairs, Govt. of India constituted the committee on the reforms of Criminal Justice System to make a comprehensive examination of all the functionaries of the Criminal Justice System, the fundamental principles and the relevant laws. This committee popularly called as Malimath Committee.

M.P. Jain in his book "*Outlines of Indian Legal and Constitutional history*" (2014)[17] gives the growth, evolution and development legal system in India. In which he gave brief information about the development of criminal justice system during the Hindu, Muslim and British periods. It contains short, coordinated, integrated and coherent account of the important phases of the development of legal institutions in India. It also contains various chapters on modem judicial system, from Privy Council to Supreme Court, high courts, development of law, personal laws, codification, law reform, law reporting and legal profession, legal education, development of

[15] Surender Malik and Sudeep Malik, *Supreme Court on Death Sentence in Murder cases* (Eastern Book Company2012).
[16] J.W. Cecil Turner, *Kenny's outlines of Criminal Law* (Cambridge University Press UK 2013).
[17] M.P. Jain, Outlines of Indian Legal and Constitutional History (Lexis Nexis, 7th edn. 2014).

constitutional law, criminal law, development of civil law, etc. with reference to case law and exhaustive commentary. The present edition has been thoroughly updated and revised with recent amendments and case law. In his book he gave some information about the origin of Indian Penal Code which makes the beginning of the period of codification of substantive law.

H. L. A Hart in his book "*Punishment and responsibility criminal punishment and justice system*"[18] (1968) the punitive measures of the punishment in the society by deterrence, by incapacitation, by rehabilitation. The guilt and innocence can figure principles for the criminal punishment. The punishment of nature involves guilt as well as suffering. The punishments are made for the wrong that vows committed. The punishment is awarded by vicarious and collative punishment the punishments as represented punishment and responsibility. The punishment carries heavy burden to justice it is a considered and intended response to wrong doers. The punishment that seeks restitution, reparation or apology from the wrong doers is the rule of law distinction between intended effects and the side effects of the actions. It is foreseen as certain, foreseen as probable and foreseen as possible. The Latin maxim actus non facit reum nisi means sit area (retroactive, secret and vague laws).

Avtar Singh Sohal in his book "*Capital Punishment: An extreme Penalty*"(2008) debate on the vexed question "DEATH BE OR NOT TO BE" engaged acceptable answer and also discuss the trends prevailing the world over in regards to the capital punishment have been catalogued for the benefit of the discernable intellectuals, social scientist, political analysts and anthropologists. The historical perspective on the extreme corporal punishment is included. In his book he enlightens the readers about the socio- political, economic and legislative aspects of the issue.

S.N. Misra in his book "*Indian penal code*"[19] (2014) explains section wise comment on the code. First of all, there is introductory part has been prefaced with a view to give the readers an idea about the meaning and elements of crime, mental element in crime, causes of crime, strict liability, vicarious liability and various landmark decisions. Various theories punishment and the history, constitutionality and justification of Capital Punishment have also been dealt with in detail. Till criminal law (amendment), 2013 all the amendments have been substituted in this book.

[18] H.L.A Hart, *Punishment and Responsibility Criminal Punishment and Justice System* (Oxford University press,London 1968).

[19] S.N.Mishra, *Criminal Procedure Code*, 1973 (Central Law Publication Allahabad 19th edn. 2014).

C.K. Thakkar Takwani and MC Thakker in his book "*Criminal Procedure*"[20] (2014) explain that the Court procedure is a critical aspect in the administration of criminal justice. This classic work lays bare the fundamental principles of procedural law and examines the subject topic-wise, explaining important and complicated issues with the help of illustrations and case laws. The authors discuss with clarity and precision, the principles of criminal jurisprudence which are the core of criminal procedure. This book examines in detail the amendments introduced by the Criminal Law (Amendment) Act, 2013. Landmark cases of the Supreme Court, Privy Council and High Courts have been critically analyzed. Several new topics have been added in this edition and existing ones further examined. The present book will prove to be useful to law students, professors, prosecuting agencies, the Bench and the Bar.

Roger Hood and Carolyn Hoyle in his book "*The Death Penalty: A Worldwide Perspective*"[21] (2008) is the Fourth Edition of a text that highlights the latest developments in the death penalty around the world. Roger Hood utilizes his experience as a consultant to the United Nations' annual survey of capital punishment in compiling a wide range of information from non- governmental organizations and academic literature. The book explores both the advances in legal challenges to the death penalty and the reduction in executions, while noting the continued existence of human rights abuses. Problems include unfair trails, police abuse, painful forms of execution, and excessive periods of time spent in inhumane conditions on death row. The authors explore the latest issues related to capital punishment such as deterrence, arbitrariness, and what influence victims' families should have in sentencing.

Michael Tonry had written in his book "*Punishment and Politics*"[22] (2004) the evidence emulation in the making of English crime control policy he had written the offender, fairness consistency applicability and new penalties the government does not care about the fairness of offenders the government and judiciary have discretion over the sentence in the political and constitutional matter; the government's role is different from judiciary that imposes the sentence of lose offenders sentencing policy of the system is fair and with clear guidelines it is enacted as have been written in criminal justice act 2003 in this act the judge under the judiciary plays an administrative role and what guidelines drafted in the status it is the need of the government and

[20] CK Thakker, Takwani and MC Thakker, *Criminal Procedure* (LexisNexis ISBN-9789351432913, 2014).
[21] Roger Hood and Carolyn Hoyle, *the Death Penalty: A Worldwide Perspective* (Oxford University Press 2008).
[22] Michael Tonry, *Punishment and Politics* (Wilson Press, ISBN- 978-1843920625 USA 2004).

judiciary to make fair and clear guidelines to pronounce punishments especially when the decisions of the two are in contrast or opposition.

Roger Hood and Surya Deva in his book "*Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion*"[23] (2013) deals with the strengthening focus on human rights; there has been a rapid increase in recent years in the number of countries that have completely abolished the death penalty. This is in recognition that it is a violation of the right to life and the right to be free from cruel, inhuman and undignified punishment. There has, simultaneously, been pressure on countries that still retain capital punishment to ensure that they at least apply the United Nations minimum human rights safeguards established to protect the rights of those facing the death penalty. This book shows that the majority of Asian countries have been particularly resistant to the abolitionist movement and tardy in accepting their responsibility to uphold the safeguards. The essays contained in this volume provide an in-depth analysis of changes in the scope and application of the penalty of death in Asia with a focus on China, India, Japan, and Singapore. They explain the extent to which these nations still fail to accept capital punishment as a human rights issue, identify impediments to reform, and explore the prospects that Asian countries will eventually embrace the goal of worldwide abolition of capital punishment.

Michael Meltsner in his book "*Cruel and Unusual: The Supreme Court and Capital Punishment*"[24] (2011), explain the challenges that led to Furman v. Georgia in 1972. This Supreme Court decision resulted in overturning every death penalty law and every death sentence in the country. The book traces the history of that case and fits it into other significant events in the 1960s and early 1970s.

Anthony Santoro has written a new book about religious perspectives on the death penalty, "*Exile and Embrace: Contemporary Religious Discourse on the Death Penalty*"[25] (2013). In describing the book, John D. Bessler, a law professor at the University of Baltimore, said, "Santoro tells the stories of everyone from death row chaplains to bloggers and Bible study participants. In discussing transgression, retribution, and 'the other,' he skillfully demonstrates

[23] Roger Hood and Surya Deva, *Confronting Capital Punishment in Asia: Human Rights, Politics and Public Opinion* (Oxford University Press, UK 2013).
[24] Michael Meltsner, *Cruel and Unusual: The Supreme Court and Capital Punishment* (Quid Pro Books, 2011). [25] Antony Santoro, *Exile and Embrace: Contemporary religious Discourse on the Death Penalty* (Northeastern University Press, August 2013).

how executions say more about us than about the offenders." Santoro is a postdoctoral fellow at Heidelberg University in Germany.

Subba Rao G.C.V In his book "*Jurisprudence and Legal Theory*" [26](2008) explained the difference between sanction and punishment in Chapter 28 and in Chapter 30 he explained the object of criminal proceedings in very narrow manner. He stated that according to different theories of punishments its main purpose is the prevention of crime and they can be achieved in three ways 1) Punishments act on the body of the offender so as to incapacitate him for a repetition of the crime. 2) By the punishment of criminal the others are deterred by fear from infringing penal law. 3) Punishment minimizes crime by reforming the character of the criminal.

Johnson, David T. and Zimringin his book "*The Next Frontier: National Development, political change and death penalty in Asia*"[27] (2009) gives an overview of death penalty in Asia with reference to retentionist countries, the political conditions of these countries and trends in death penalty. There is no particular chapter dedicated to India however, there is an appendix which has information about death penalty in terms of jurisprudence and the patterns that are evident in the execution in India. It further discusses the role of courts and executive clemency in terms of judicial execution in India.

1.6.2 ARTICLES

Arun Beriwal in his article *Capital Punishment: A Matter of Prudence, Not of Law*[28] explains various facts about the death penalty. Theories of punishment and arguments in favour or against the death penalty explain in this article.

D.P. Das in his article *Discretion in the Sentencing Process: Case studies under the Indian Criminal Justice System*[29] explain various methods of executions and various cases regarding it. Relevant provisions under Criminal Procedure Code, Indian Penal Code and Indian Constitution and other law also. This article is really helpful in research regarding this topic.

[26] GCV Subba Rao, *Jurisprudence and Legal Theory* (Eastern Book Publishing, 9th edn. 2008).
[27] Johnson, David T. and Zimringin, *The Next Frontier: National Development, political change and death penaltyin Asia* (Oxford University Press London 2009).
[28] Arun Beriwal, *Capital Punishment: A Matter of Prudence, Not of Law* (1998) Cr. L.J. P. 67.
[29] D.P. Das, Discretion in the Sentencing Process: Case studies under the Indian Criminal Justice System, July(1996)

Cr.L.J. P.65.

LG. Ahmed in his article *Death sentence and criminal justice in human rights perspective*[30] explain about the retention or abolition of capital punishment, debates are raging the world over amongst social activists, legal reformers, judges, jurists, lawyers and administrators. Criminologists and penologists are engaged in intensive study and research to know the answer to some perennially perplexing questions on Capital Punishment. A. Whether capital punishment serves the objectives of Punishment? B. Whether complete elimination of criminals through capital punishment will eliminate crime from the society? C. Whether complete elimination of crime from society is at all possible or imaginable?

Dr. A. Krishna Kumari in his article *Capital punishment: the never ending debate*[31] deals with different theories of punishments. The retentionists interpret the retributive and deterrent theories on such a way to suit their arguments. They advocate the retention of Capital Punishment on moral, ethical and religious grounds. Abolitionists argue on the other hand in favor of abolition on the same ground as that of retentionists.

Arnim Aggrawal in his article *Abolition or retention of death penalty in India: A critical Reappraisal*[32] deals with on one hand there is demand for abolition of death penalty and on the other hand there is an increased rhetoric for Capital punishment for rape, heinous crime against women, trade and trafficking of women and narcotics. The court may make use of death penalty sparingly but its retention on the statute book seems necessary as a penological expediency. Therefore, it can be safely concluded that death penalty should not be subjected to ultimately death penalty.

Dr. D.P. Sapre and Dr. M.D. Karmarkar in his article *Capital Punishment*[33] deals with different aspects of Capital Punishment offences where capital punishment is awardable, world and Indian Scenario, procedure of execution of capital Punishment and pro and anti-views about legality of Capital Punishment.

[30] Banaras Law journal Vol. 35&36 Jan. 2006 Available at; www.bhu.ac.in/lawfacultv/bli2006-072008- 09/BLJ2006/2 Prof.%201.G.Ahmad.doc, last accessed on 15/03/2021.
[31] Available at SSRN-www.ssm.com/abstract=95629, last accessed on 09/02/2021.
[32] Amim Aggarwal, *Abolition or retention of death penalty in India: A critical Reappraisal*, ISSN-120-5427 pp.275-289 (2000).
[33] Dr. D.P. Sapre and Dr. M.D. Karmarkar, *Capital Punishment*, Journal of forensic Medicine, Science and law, Vol.21, No. 2(2001).

Dr. Faizan Mustafas in his article *Doctrine of "Rarest of Rare" & Increase in Imposition of Death Penalty*[34] explains the concept of Rarest of Rare cases its applicability and relevancy. Various cases also covered under this article which is very useful for lawyers, researchers and students.

Dr. Moot Singh in his article *Death Sentence: Rethinking in terms of its abolition*[35], explains various arguments in favour or against the death penalty and also describe the provisions under which death penalty given to the accused.

Imke Degering, in his article *Capital Punishment in India and Problem of its prospective abolition*[36] deals with the constitutional validity of death penalty and other relevant provision. It is a fabulous work on the relevant topic with the relevant case law.

1.6.3 MISCELLANEOUS

WEBSITES

A number of standard websites such as Death penalty projects, Law Commission of India, etc. were visited and consulted for latest information on various issues; a detailed list of all these websites is given in the internet reference section of the bibliography.

NEWSPAPERS

Some national dailies like The Hindu, The Indian Express, The Times of India, and The Hindustan Times etc. were also overviewed on day to day basis for latest news regarding Capital Punishment. A list of these dailies is also given in the newspaper section of the bibliography.

MAGAZINES

The legal magazines like Judicial Times, Criminal law journal, Criminal Judgments were consulted for updated information on Capital Punishment. A list of such magazines is provided in the magazine section of the Bibliography.

[34] Dr. Faizan Mustafas, *Doctrine of Rarest of Rare and Increase in imposition of death Penalty*, C& MLJ vol. 28,pp. 244(1992).
[35] Dr. Mool Singh, *Death Sentence: Rethinking in terms of its abolition*, (1989) Cr.L.J. p. 126.
[36] Imke Degering, *Capital Punishment in India and Problem of its prospective abolition* (1980)10 ISLJ pp. 76.

1.7 CHAPTERISATION

CHAPTER – I: Introduction- This chapter provides a background of the study and states the major research objectives with which the study is done.

CHAPTER – II: Comparison of death sentence with other countries- This chapter deals with comparison of death sentence in India with other countries like USA, UK and Saudi Arabia. This chapter explains the death sentence in different eras and it deals with death penalty under Hindu law and Muslim law.

CHAPTER – III: Sentencing process and procedure- This chapter deals with sentencing process and procedure such as Competency to pass death sentence, powers of High Court in capital punishment, circumstances when appeal can be filed to Supreme Court, right of appeal where death sentence has been affirmed or awarded by High Court and remedies other than appeals in cases of capital punishment before the Supreme Court.

CHAPTER – IV: Capital punishment and statutory frame work- This chapter deals with the capital punishment and statutory frame work under the core statutes such as Indian Penal Code, 1860, Criminal Procedure Code, 1973, Indian Evidence Act, 1872 and also under various special legislations which provide for the capital punishment.

CHAPTER – V: Article 21 and Delay in execution reasons- This chapter deals with Article 21 and delay in execution reasons under constitutional law, causes for delay and effect of delay in execution.

CHAPTER – VI: Pardoning power- This chapter deals with the pardoning power such as examining the background of the power to pardon, under constitutional scheme, pardoning power and the council of ministers, the theory of separation of powers, the extent of the power to pardon, checks on power to pardon.

CHAPTER – VII: Conclusion and suggestions- This chapter deals with the conclusion and suggestions of constitutional perspective with special reference to delay in execution of death sentence.

CHAPTER – II

COMPARISON OF DEATH SENTENCE WITH OTHER COUNTRIES

The capital punishment or the death penalty is the eventual punishment that is enacted via almost all the societies at the planets[37]. The first law inside the written form that had the provision of death penalty is the 'Code of Hammurabi' within the 18th century BC at Babylon[38]. Human beings were accomplished for all sorts of crimes during the primitive society and the techniques used for execution have been very brutal and exemplary including burning alive, drowning, imputation and Crucification and many others. The records of UK had brethren thousands of their residents to the death penalty for even minor crimes that had been punished very harshly which includes boiling, burning at the stake, drawing and quartering and so forth. Evolution of capital punishment in unique international locations may be studied underneath four heads as follows.

2.1 DEATH SENTENCE IN USA

In United States the death penalty can be studied in 4 eras[39].

2.1.1 COLONIAL AGE

The death penalty in the past years of USA can be traced again to the colonial period. Its first penned example is traced again as some distance as 1608[40] when George Kendall who changed into a Virginia colony's member became accomplished for a criminal offense of spying for Spain in line with some pupils whilst any other organization of scholars web site the execution of Daniel Frank because the first execution of USA which turned into completed in 1622 or for an offence as petty as theft in Virginia. Within the colonial age the execution in the USA were usually completed with the aid of the local governments. The colonies had exceptional measures to hit upon & punish the crimes. The early American settlers agreed that even though death penalty turned into applicable but the grade of punitive vary. The discrepancy a number of the offences punished through death vary from the petty offence of stealing grapes that became

[37] Banner, S. (2003). The death penalty: an American history. Cambridge, MA: Harvard University Press.[38] Death Penalty Information Centre. (2006g). History of the Death Penalty. http://deathpenaltyinfo.org/article.php?did=199&scid=15, last accessed on 15.02.2021.
[39] Bohm (2003).
[40] Espy, M. & Smykla, J. (1987). Executions in the United States, 1608-1987: the ESPY file.

punished by using death even as to the quantity of man slaughter now not to be looked on as a capital crime[41]. The early death penalty of American practice has become quite distinct than in England[42]. England evolved a list of three hundred fifty crimes known as the "Bloody Code" and this code turned into very sizable than the crimes for which the Early American can be executed[43].it is very evident that the England's history is a good deal longer than that ofAmerica[44].

There are enough examples of juvenile's executions in the USA history of colonial period. The primary instance of teenager's execution this is recorded is of the year 1642 when Thomas Graunger was accomplished for an offence of bestiality in Poly mouth colony. Document of the youngest juvenile completed has been at the name of Ocuish Hannah was just 12 years and become performed within the yr. 1786 for an offence of murder in Connecticut[45]. The top notch historian Stuart Banner has termed the execution in Colonial period as an emphatic display of strength and acted as a reminder for all the humans approximately what the country can do to individuals who broke the legal guidelines of the land.

At some stage in the Colonial period the only motive of awarding death penalty turned into deterrence i.e. instilling fear in the citizens through this extreme punishment so that they do no longer violate the legal guidelines. Diverse livid methods like burning at stake or fake executions have been conducted publicly with a view to contemplate and boom the deterrent effect of death penalty at the society. In the eighteen century death penalty additionally served as incapacitation device in USA as its purpose changed into to remove the freedom of the perpetrator in order to prevent him from committing any further offences. As there were no prisons and death penalty changed into the major method of inefficiency at that time. Any other vital reason of capital punishment within the eighteen Century become correcting the tribulations as a result of the perpetrator by means of giving him the ideal punishment. It has been taken into consideration no longer handiest appropriate however additionally important to impose retribution for capital crimes.

[41] Banner (2003), pp.6, pp.13.
[42] Bohm (1999), pp.2.
[43] McAllister (2003), pp.18.
[44] A History of capital Punishment. (1960)New York: Citadel Press.
[45] Bohm (2003).

In the decade of 1760s to 1770s that the USA was using death penalty towards the offender of assets commenced to be questioned[46]. Pennsylvania becomes first state in 1786 to abolish capital punishment for offences like robbery, burglary and so forth. Primarily death penalty become abolished for offences related to assets but about twenty years later capital punishment for offences like murder changed into additionally questioned[47]. The abolitionist motion became a critical part of greater considerable penal reforms, rejections of other social institution inclusive of slavery and so on. Had been performed a good way to make punishment greater humane across the world. There had been five states of Pennsylvanian, New Jersey, New York, Kentucky and Virginia abolished capital punishments for all crime apart from murder whilst three of these five abolished it for a few types of murders. In late 1700s the primary prison was started in New York, New Jersey, Virginia, Kentucky and Massachusetts. The established order of prisons gave time and felling of punishment to the inmates in preference to straightaway giving them death punishment. There was a difference among degrees of murder mentioning that all murders had been no longer to be punished with death. Pennsylvanian was the primary state in 1793 to offer the exclusive tiers of murder. The first federal execution became of Thomas Bird on 25.06.1790 by the way of hanging in Maine for murder as recorded[48].

2.1.2. THE NINETEENTH CENTURY

In the nineteenth Century death penalty became presented very often and their execution became carried out in public. Hanging was the maximum usually used strategies of execution in the nineteenth century. The general public executions of the culprit with the aid of the approach of hanging have been somber event like church. Until that point there have been no felling against the execution and they have been attended by gathering of common individuals as well as the elite and powerful class of the society. Execution have been an occasion for the whole network a covered many ceremonies like procession, speeches, prayer's and eventually the actual execution[49]. Until the cease of the nineteenth Century it becomes a healthful occasion for all without any sympathy for the condemned. Initially this sympathy didn't confirm any competition to the capital punishment however in the end this changed and this sympathy for condemned

[46] Against Capital Punishment: The Anti-Death Penalty Movement in America, 1972-1994. New York: Oxford University Press.
[47] Banner (2003). pp.88, pp.98, pp.99.
[48] http://www.deathpensaltyinfo.org/article.php?scid=29&did=147, last accessed on 26.02.2021.

[49] Banner (2003), pp.25, pp.30-31, pp.112, pp.113, pp.131, pp.134.

modified and elevate the abolition efforts. Public executions intended to heighten apprehension, strengthen order and discrete prohibited despicable violence by people for genuine, traditional brutality committed by state. To start with death penalty turned into mandatory for a number of crimes which include murder but 1838 commenced with an extraordinary change when a permissive death penalty statute became enacted by the state of Tennessee[50]. This initiation turned into observed through approximately twenty extra states too; by means of 1939 there have been only four states and Colombia district which had obligatory death penalty for first grade murder.

The northern states of the USA have been eager closer to make laws for the abolition of capital punishment. A variety of effort changed into during 1820's between 1850's and various legislation have been enacted which required three hundred and sixty five days duration between capital punishment and execution. Many states along with Vermont, New York & the New Hampshire Massachusetts were the states which possess this three hundred and sixty five days clause and there had been no execution from 1837 to 1863. In 1846 Michigan was the 1st state to wipe out capital punishment for all offences except sedition. Death penalty changed into absolutely removed through Rhode Island for all crimes in 1852 and different North American states followed it late. In the southern states of the USA had still followed the practice of death penalty for criminalities related to spread disgruntlement among charge less black people, revolt among slaves. A black attempt rape against white was in opposition to white became added in the list of capital offences. Capital punishment turned into no longer completely abolished in any of the southern states of the USA and the abolitionist movement had been short lived due to politics, apprehension and other social conditions.

The public execution scene was changed with passage of time in both North and South USA. Even though southern states of USA took longer time period to exchange to non-public executions. South USA shifted from public executions to non-public execution within the interior regions of the prisons with very much less wide variety of those who may want to view it. Connecticut changed into the primary state to cease public execution and turn as much as private execution is 1830 it become observed by means of Pennsylvanian in 1834 and New York

[50] America's experiment with capital punishment: Reflections on the past, present and future of the ultimate penal sanction. Durham, NC: Carolina Academic Press.

in 1835. The general public execution in USA ended in 1936 with Owensboro Kentucky[51] citing the ultimate instance of public execution. The state government took over the characteristic of awarding and executing the capital punishment. It became in 1864 that the first male fellow to be hanged by way of the country authorities become Sandy Kavanagh. This changed into the instance while the country government has resolved to take over the execution of death penalty in vital location positioned a long way from the municipalities where the crime simply occurred and this become a progressive step toward the change that was additionally visible within the form of abolition of public executions which were subsequently constrained to within the prisonshandiest.[52]

2.1.3 EARLY TWENTIETH CENTURY 'THE MODERN ERA'

The twentieth Century marked a rigorous change in the strategies of execution in USA. The execution in Public which become overtaken through the personal executions now have been changed to new and latest techniques along with electrocution and by means of deadly gas etc. Such new strategies needed fastened locality for execution that become currently away from the place of crime. The starting of the twentieth Century referred as the modern era due to the variety of reforms that came about in the USA but had been very quick lived. it is known as quick lived due to the fact among in the decade of 1907 to 1917 about six states abolished the capital punishment and a few limited the death penalty to the offences of murder and treason[53]. In 1920 the capital punishment was re-established by state due to fear of numerous reasons such as the members of criminal gang, wide coverage of media and revolution. The death penalty history of USA noticed a peak of execution in Nineteen Forties which noticed an everyday decline of executions proper from 1950's to 1990's the variety of executions reached to 1289 in 1940 to be decreased to hundred and twenty in 1989[54] as per the records to be had in USA branch of crime. This decline in capital punishment has been represented as administrative abolition. It regarded that juries had been no longer truly just sentencing capital punishment as often.

The decline in capital punishment in USA records became an everyday chronological technique which reached its destination of 0 executions in 1968 and there had been genuinely no

[51] http://www.geocities.com/lastpublichang, last accessed on 01.03.2021.
[52] Laurence (1960), pp.169.
[53] Banner (2003), pp.223.
[54] Bedau (1982).

executions until 1977. In 1950 about 70% of the states who had abolished capital punishment had once more reinstated it but its use had clearly diminished practically[55]. The reasons for this downfall will be summed up as foremost at this span of time fundamentally the European countries were shifting away from the concept of capital punishment and the UDHR turned into handed in 1948 via the general assembly of UN which proclaimed a prevalent right to existence. within the length of 1950's and 1960's many worldwide treaties had been signed just like the international convention on civil and political rights, the European convention on Human Rights and the united states conference on Human Rights and a majority of these treaties collectively has the identical say of fundamental right to life of all.

Secondly there has been a tremendous change in the deliberating the society towards the fact of belief in char will which had by means of now alternate to the fact that the environmental and biological elements play an crucial function in the human conduct and by using now the normal fact become that each these elements effected the human behavior to the grade of people attributing criminal activity and murder and it will become out of the manipulate of the people and leaving no senses behind to apprehend the consequences of the act. 1/3 and one of the most vital motives is the social conditions that modified the general public opinion towards the death penalty. The result became decline in death eligible crimes and abolishment of death penalty by many states.

The duration from 1957 to 1969 noticed abolition of death penalty from many states of the USA like Alaska & Hawaii, Iowa, New York, West Virginia, Vermont and eventually New Mexico which might be termed as a result of a literary revolution by way of the discovered of the society including Caryl Chessman who become presented capital punishment and this aroused a revolution among the people or even religious employer who mentioned him internationally[56] and ultimately in 1961 Prof. Gerald Gollieb of law mentioned the decision of US Supreme Court in Trop v. Dulles announcing that awarding capital punishment in this example was violating the modern ethical standards and consequently it turned into unconstitutional below the 8th amendment of the US constitution. And it became in 1966 the capital punishment assist reached the bottom of 42%. In the course of this era both variety of executions and the charge of

[55] Bohm (1999), pp.7, pp.10, pp.11
[56] Banner (2003), pp.241.

executions of capital punishment had to see substantial decline and the progressive step become the increase in quantity of successful appeals.

2.1.4 THE LATE TWENTIETH CENTURY

Capital punishment presented in the famous case of Furman v. Georgia (1972) become formally prohibited with the aid of the ideally suited Supreme court of the USA in 1972 stating that such statutes had been harsh and unusual and those penalties violated the provisions of 8th and the 14th amendments of the USA constitution. But this verdict of Furman v. Georgia changed into overruled by the Supreme Court in case of Gregg v. Georgia wherein capital punishment changed into known as to be constitutional simply after fourth year in 1976. In 1972, the case of Furman v. Georgia it was identified by the Supreme Court by way of five-four vote that death penalty turned into being used randomly, frequently and frequently minorities had been selectively focused for awarding this punishment[57].

In the post Furman era the discussion was no longer on the capital punishment itself but the issue was how this punishment became being presented disproportionately and arbitrarily to some groups of humans. the belief of the discussion that came about after the historical instances become that capital punishment changed into now not per se unconstitutional but it become simplest the arbitrary and unfair use of capital punishment that made it unconstitutional. Now the laws were renewed with almost all the states wherein capital punishment become getting used and now the general public safety of the citizens was considered and quickly exceeded capital punishment laws have been enacted. Guided discretion statutes were handed by using maximum of the states for the juries and sentencing judges had been supplied a few suggestions to be accompanied while considering death sentence. Obligatory death penalty becomes enacted with nearly one-1/3 of the states for some unique crimes.

The main case of Woodson v. North Carolina (1976) rejected the obligatory death sentence and called it unconstitutional[58] while in the case of Gregg v. Georgia the honorable court by seven: two Votes typical the guided discretions statutes. The American law group recommended a model Penal Code in 1959 to eventually make the capital punishment extra fair which became ultimately normal in 1976 after Gregg v. Georgia when the court maintained the use of

[57] Bohm (199), pp.23.

[58] Bedau (1997), pp.15-16.

bifurcated trials, where within the segment one the guilt or innocence might be determined and the segment two might decide the sentencing and the automated appellate review of conviction & sentencing turned into next step and the proportionality assessment of evaluation of sentence among similar cases turned into very last level to make certain simply sentencing practices.

The famous case of Furman & following cases were the end of obligatory death sentence, end of death sentence for crimes apart from murder and give up of executions without assessment of conviction and sentence by means of country appellate courts. It changed in 1976 that practice of awarding capital punishment becomes restored by the case of Gregg v. Georgia. Gary Gilmore became the first individual to be put to death after the reinstatement of capital punishment in 1976. He presented all his appeals and requested execution of capital punishment by the state of Utah which becomes achieved by means of the shooting squad in 1977 and this turned into the return of capital punishment in the USA.

2.1.5 FEDERAL CAPITAL PUNISHMENT IN USA

The USA record noticed a protracted destroy of about 26 years between the period of 1963 to 1988 when there have been infrequently any executions and this era also marked its importance with the pre & post Furman v. Georgia period. For the reason that this wreck the federal capital punishment served merely as a 'symbolic approval' for the states that still practiced death penalty. There was an attempt to spread nationalization or federalization of capital punishment with the aid of enacting certain legal guidelines as an attempt to amplify capital punishment. To conclude it may be said that USA history has seen various trends evolving for capital punishment again and again and until today. In the end this sort of death penalty has advanced wherein the executions are extraordinarily rare and best a handful of states still observe & perform executions in non-public simply to avoid the severe troubles which can also evolve because of the cause of the manner wherein death penalty is executed in USA.

2.2 DEATH SENTENCE IN UK

Records of capital punishment seem to be the oldest in history. Now the exercise of death sentence has become to be part of past penal system in United Kingdom. It is distinguished to study the records of capital punishment in United Kingdom under the given bifurcation as

abolition procedure of capital punishment has been taken up very exactly from the point of view in capital punishment execution.

2.2.1 DEATH SENTENCE IN THE ANCIENT ERA

About 2500[59] year ago it is acknowledged that the hanging method originated in Persia absolutely for the male prisoners. England had the exercise of capital punishment since 5th century which might be the oldest available statistics. There have been many accepted methods of execution like beheading which became reserved for the elite people of the society, burning at state drawing, boiling alive, quartering, shooting by the armed services and drowning etc. By the Saxons hanging brought to UK around fifth century AD and it is in practice till the last abolition of capital punishment in 1964[60]. It was abolished by the conqueror William in the eleventh century but it turned into reinstated in 12th Century which abolished finally in the twentieth Century. England noticed a long period of different faces of capital punishment.

The 1st written refer to the death penalty is mentioned in the laws of King Alfred (871-899).[61] Offences like high treason and drawing guns or combating in the presence of the king have been taken into consideration a grave offence and were penalized with the capital punishment[62]. King Athelstan who seems to be a modern ruler raised the age restriction for criminal obligation from twelve years to sixteen years as per him execution of adolescent became cruelty[63]. The reign of William the conqueror[64] was a capital punishment abolition generation but his successors yet again restarted capital punishment, His inheritor Henry I had his list of felonies that fascinated death penalty. there was a well-organized legal system which had proper system of opportunity to be heard & sentenced become possible only after the finishing touch of the trial[65] no person might be executed until he's well attempted and convicted of a capital crime.

[59] C. 2100 BC.
[60] Hanging in the Balance: A History of the Abolition of Capital Punishment in Britain (Waterside Press, 1997), pp.271.
[61] 849-899, King of Wessex, who styled himself King of the Anglo-Saxons.
[62] For example, article 4 entitled 'Plotting against a lord', provided: 'If any one plot against the king's life, of himself, or by harbouring of exiles, or of his men; let him be liable with his life and in all that he has;or let him prove himself according to his lord's war.'
[63] Ethelstan: The First English King (Yale University Press 2011), pp140-142.
[64] C. 1028-1087, Duke of Normandy and the first Norman King of England (1066-1087).
[65] 'The Jury of Presentment and the Assize of Clarendon', English Historical Review (1941) 56 (223).

The courts had been referred to as Eyres and a number of their information still exist. King Henry II (1154-1189) declared Assize of Clarendon and it became very well identified that what instances were to be decided after right hearing[66]. There has been additionally a grand jury which consisted of 8 in 100 and 4 in every township who would report to then of any of the mentioned offences for the trial one of the duty of this assize turned into to decorate the list of felonies. This resulted into a positive notation that now England had a countrywide regulation instead of local laws and this become referred to as the 'common law system'. There were six assize circuits underneath the authority of Assize clerk. The courts of Assize could look on parts of the country two times in a year due to which the human beings needed to spent plenty of time within the prisons and diverse countries had this go to yearly because of lack of transportation centers and this continued till the past due nineteenth century. Lastly this system becomes overtaken by the courts Act of 1171 within the yr. 1171 while the new Crown court system becomes delivered.

The first execution with the information of the individual completed within the statistics to be had to this point seems to be of the year 1177 of John Sanex who become hanged for the crime of residence breaking at Tyburl which was the key location of execution for London is that days. In the period of 11th and 12th Century noticed many executions on the want of the ruler without proper hearing and trial. It changed in 1212 while King John who became pressurized to sign the Magna Carta at Runnymede and it changed into the guarantee of rights and a standardized legal system for the primary time. Proper policies have been laid down for the first time whilst the court of common pleas becomes installed and by way of this the proper behavior of criminal trials turned into made viable. There have been approximately eleven capital crimes defined at some stage in the reign of Henry VIII in 1540 while this range of crimes reached to the peak of about 222 capital offences explained in the statute book. This turned into the volume whilst these laws had been together called the 'bloody code'.[67]

2.2.2 DEATH PENALTY IN THE EIGHTEENTH CENTURY IN UK

There have been nonetheless many sorts of strategies of execution that were being used. Execution being the conventional form of death penalty different methods frequently being used

[66] Plucknett T., A Concise History of the Common Law (1956), pp.148.

[67] One of the many capital offences created by the Black Act 1723 (9 Geo 1, c. 22). The last hanging under the Black Act took place on 12th August 1814 when William Potter was hanged at Chelmsford for the crime of cutting down

an orchard.

by the regulations have been quartering, burying, drawing and beheading. The most excessive punishments taken into consideration at that point were to hand over the body to the doctors for autopsy. This became an effective deterrent step for the human beings at that time.

2.2.3 DEATH PENALTY IN THE NINETEENTH & TWENTIETH CENTURY IN UK

The ninetieth century became a mark for widespread alternate within the records of death penalty in UK. There have been exquisite names that were the closing in their category to quit this terrifying revel for the society slowly but step by step. The variety of capital crimes became reduced to four by 1861 which covered high treason, murder, arson, and piracy in the Royal Dockyards. In 1868 in Britain hanging was publicly done for the last time with the executive of Michael Barrette[68]. In the year 1930 Violet Van de Eist who was a rich lady started out the open full fledge opposition in the societies and streets of UK in order to enlighten the public she wrote a book "on the gallows" which acted like a gunpowder to the matchstick in the UK society and gradually by means of the mid-20th Century the general public opinion became against the death penalty. Many examples of innocent humans being done are now in the records of UK for e.g. Timothy Evans who become convicted and hanged in 1950 for the crime of murder of his spouse and daughter changed into determined out to be harmless and pardoned in 1966 but it became too past due as he had already faced the non-reversible form of the punishment which become capital punishment. Identical was the fate of Derek Bentley who become hanged in 1953 but his conviction was turned over in 1998. The depraved judicial pronouncement within the given examples and many more instances was a reason for the competition of the loads toward death penalty.

In abolition of death penalty a main step had been taken in 1957 for some kinds of murder while beneath some particular homicide it became still allowed. Peter Allen and Gwynne Jones had been the remaining offenders to be hanged in United Kingdom in 1964. The system of abolition did not began in 1964 but it was commenced previously in 1864 capital punishment amendment Act 1868 stopped the hanging in open. The children's Act 1908 stopped the hanging of children below sixteen years from 1931; conceived women could not be executed any longer. This minimum age for executing becomes raised to 18 from 16 in 1933. For death penalty the royal

[68] Pratt J., Punishment and civilization: penal tolerance and intolerance in modern society, (Sage, 2002), Chapter 2.

commission was setup in 1949. In 1953 it represented its report which said that until there has been a sturdy aid of public in desire of abolition of capital punishment it ought to be retained.

Eventually in 1965 Sydney Silverman who was in position, MP of the labor party brought private members bill to abolish capital punishment which became passed with majority in House of Commons & progressively in House of Lords too. The Murder Abolition of death Penalty Act 1965 stopped capital punishment primarily for five years then it was made perpetual in 1969 by way of a motion progressed in each the houses in great Britain and North. Ireland in 1973 by way of passing emergency North. Ireland provisions Act 1973. Gradually the capital punishment become definitely abolished for all the Crimes even though until 1997 votes had been executed to restore capital punishment but failed although capital punishments were being presented until 1973 but they are not executed.

At the end House of common voted to uphold sixth protocol of European conventions on Human Rights prohibiting death penalty besides in struggle time or eminent threat to battle. This remaining provision has been removed by section 21(5) of Human Rights Act 1998. Now United Kingdom had agreed and signed the thirteenth protocol which forbids the capital punishment in all events. Ever for the reason that abolition there have been persisted public & media requires reintroduction of loss of life penalty in particular after the excessive profile murder cases ultimate nonetheless there were no clear reduce say as any referendum has not been conducted and the 2016 survey by Nalcen British social attitudes record display a non-stop drop is percent of public assist for death penalty. Even the parliament has worked often by introducing numerous bills for death penalty for reintroduction from 1973 when House of Commons voted towards reintroduction to 2013 when yet again and in the end a bill changed into introduced for reinstating death penalty but changed into withdrawn without any similarly progress.

2.3 DEATH SENTENCE IN INDIA

Death sentence has been an indispensable part of the penal structures of the globe and India is no exclusion to it and practice of capital punishment is witnessed due to the fact time immemorial. To be extra systematized allow the records of capital punishment be evaluated under following 4 heads.

2.3.1 DEATH PENALTY UNDER THE HINDU LAW

Punishing has been a vital elements of the society since then the primitive period of the humankind. Capital punishment changed into present together with exile as two most inexpensive strategies to take away the antisocial factors from the society which were the exceptional examples of retribution as well as deterrence for the society. The instances of capital punishment are as older as the Hindu community. Mention of capital punishment has been to be had in our primitive scriptures and law books. The stand of Hindu law didn't discover hateful in the punishing of capital punishment and it became presented with infliction of torture as a great deal viable as to generate the deterrent impact amidst the society. Glance of capital punishment are determined as back as fourth Century. Kalidas has superbly noticed the need of capital punishment[69]. The want of capital punishment has been pondered within the historical, mythological epics including Mahabharata and Ramayana declaring that it is the highest precedence of the king to shield the society from any form of risk and this may be won ever through taking the life of the incorrect doer. Brahaspati and Katyayana both are the supporters of capital punishment when it's wanted for the protection of many and it is feasible simplest by wayof execution of wrongdoer for sacred deserves.

In Buddhist era Ahimsa was the rule of behavior even then Ashoka didn't think death penalty is wrong. The foundational basis of the dandniti in India were mental rehabilitation and impediment. The idea of social defense perfectly and non-correctional principle is the extremely evident factor in the Hindu Penal system. Manu has very widely taken account of subjective and objective condition of crime & problem of the perpetrator in his mythical work Manu Smriti. We find the point of capital punishment even in the writings of Kautilya[70], in step with him punishment become the time-honored manner of ensuring public safety. consistent with a few scholars of law Brahmans have been exempted from capital punishment and that they had been granted banishment otherwise, whilst still we see some examples in the past have been capital punishment turned into presented to a Brahman and consequently they cannot be referred to as to be absolutely exempted[71]. According to Mrechakatika facts Charudatta was a Brahman he was

[69] Quoted in Shukla Das, Crimes and Punishment in Ancient India, Abhinav Publications, NewDelhi, 1977, pp.56.
[70] Arthshastra of Kautilya, 4.11.
[71] Dr. Sen P.N. Hindu Jurisprudence pp.242-43.

punished with capital punishment for the for Vasantasena's murder. Women were additionally dealt strictly and equally as men. At the last it could be concise that capital punishment and corporal punishment both have been equally bonded to for making sure law and order in the community.

2.3.2 DEATH PENALTY UNDER MUSLIM LAW

The provision related to punishment and offences are available in some form or other and are mentioned in the sacred books which include Gita and Quran many others. The Mohammedan law believes that the principle goal of punishment is to generate a deterrent impact amidst the society. The Mohammedan Doctrine in particular propagates the good of humanity and shield from the wrongful deeds by way of giving penalties in opposition to the perpetrator. There are three forms of crimes under Mohammedan law. Some of these three sorts of crime have a specific prescribed punishment and these vary in the gravity of crime and punishment each.

The offences that affected the community were referred to as the Had or the Huhud i.e. Allah ordered the punishment by himself. The crimes beneath this class are rebellion, larcency, shedding of blood, adultery, apostasy and imputation of adultery. These offences shall be handled very strictly and there is no rights to remit the punishment or forgive the offence are not even by the Judge or the victim. The 2nd categories of comparable crimes are those for which penal punishment and tazeer implement. For these sorts of crimes the courts are empowered to determine the punishment unlike the first class of crimes. The 3rd categories of social crimes have been the ones concerning Qisas (retaliation) and Diyut blood money or the payment mullet. The instances of murder and willful or willful or accidental harm or to be particular the offences protected beneath Qisas were accidental or felonious murder, suspected willful homicide or unintended murder, wounding intentionally or by accident. These offences will be punished with the diyut or qisas and in such cases the lawful guardian or the victim or legal heir can forgive or change the proportion of punishment.

2.3.3 CAPITAL PUNISHMENT UNDER THE MUGHAL KINGDOM

During the medieval period India ruled over by the strong Mughal rulers. They especially administered on the means of the Quranic laws. There was no uniformity in the regulation administered in the numerous parts of the nation and problems being resolved and the judges

particularly based on the Quranic concepts but nonetheless that they had discretionary punishments with the official who was figuring out the case. The Indian Quzes had their personal digests of all the Mughal laws that became being propounded outside the nation. There have been many such digests that were being organized and the remaining changed into the "Fatwa-i- Alamgiri" compiled beneath the order of Aurangzeb.

The views of Akbar the remarkable have been very lenient and consistent as per him capital punishment ought to be last order in spite of everything matured deliberations[72] and in keeping with Akbar's order handiest below extreme offences of sedition death may be ordered and which must be provided through the king himself and no death ought to be accompanied with the aid of mutilation and other crimes. Same changed into the rule of Aurangzeb and Jahangir in which capital punishment was not to be ordered in hurry or anger & ardour. The last order of capital punishment become executed with livid and painful strategies like throwing the offenders in sizzling solar while he became dressed in freshly slain fluffed slim to decrease raw conceal and ultimately reach a death in affliction and ache or the offenders were mailed within the partitions with active bodies. These methods have been overtaken through legally executing the accused to death in the New British system of criminal justice & administration.

2.3.4 CAPITAL PUNISHMENT UNDER THE BRITISH PERIOD IN INDIA

The arrival of the British East India Company to the Indian Territory at some stage in the Mughal reign in India saw the statutory changes in the Islamic criminal law at that time the law was in practice. The Bengal resolution of 1773 introduces some adjustments regarding homicide and there were handiest such minor adjustments as had been very required to take away the existing defeats. Now the most crucial issue became the reason of the act no longer the technique of execution of offence that might determine the punishment. Now the sentence of punishment can make bigger to capital punishment additionally if Muslim regulation prescribed so. To commute the capital punishment also now the power was given by the government.

In 1846 by the law commission murder and culpable homicide were primarily 1st time differentiated after a manner of alterations and references by means of noted scholars. In 1857 read for the primary time the code which became surpassed by using the legislative council and

[72] AIR 1979 SC 916.

agreed by governor general on 6th October 1860. Systematic penal code and system for criminal trials were designed by the British. The capital crimes had been strictly limited under the Indian penal code and consequently the British may be held responsible for partly abolishing capital punishment. Considering the fact to systematize to conferring of capital punishment that then various amendments had been made in the Indian Penal Code as well as the procedural laws. Indian parliament has witnessed the problems of abolition of capital punishment in many instances but nevertheless Indian Penal code have the provision of death penalty and capital sentence each in practice and exercise.

In 1947 after independence it was remained in effect. The 1st hanging in unbiased India turned of Nathuram Godse and Narayan Apte in the Mahatma Gandhi assassination case on 15.11.1949. The history of capital punishment execution after independence aren't showed by using the government, there is distinction of opinion on the whole wide variety of executions due to the fact independence. Dhananjoy Chatterjee became hanged in 2004 which become the 1st execution after an extended ruin in view that 1995. Mohammad Ajmal Amir Qasab became executed until death on 21.11.2012, in Mumbai attack on 2008 he was the gun men, and on 08.02.2013 Muhammad Afzal Guru was executed. He becomes convicted of plotting the 2001 assault on India's Parliament. The final judicial hanging to take place in India become on 30.07.2015, it was execution of Yakub Memon, who became convicted of financing the 1993 bombings in Mumbai.

2.4 DEATH SENTENCE IN SAUDI ARABIA

The state of Saudi Arabia organized in 1902 with capital Riyadh. The criminal law of the country turned into based totally at the conventional Islamic law. Quran and the Sunnah are the guiding bodies of legal guidelines and principles are there to guide criminal law. 3 categories of criminal crimes were enlisted in the Sharia law[73] that are the idea of Saudi Judiciary particularly

(1) Huhud or the fixed Quranic punishments constant for particular crimes which are critical in nature[74].

[73] Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present. pp.166.
[74] Harry R.; Albanese, Jay S. (2010). Comparative Criminal Justice Systems. pp.56.

(2) Qisas which might be the retaliatory punishment and accept as true with an eye for an eye significantly awarded for the crimes like murder.

(3) Tazir or a common category of punishment as defined in the countrywide laws and regulations.

A majority of these three classes of offences can be punished with capital punishment in Saudi Arabia. The Saudi Arabian justice system was influenced by way of the Hanbali School of jurisprudence ever since the improvement of the 4 important schools of Sunnis within the eleventh Century in the Islam world. The period of 1927 to 1960 there was a paramount change in the judicial set up of the justice system. There was introduction of new legal system "The Hejaz"[75] which consisted of common and summary court who added the Hanbali combat and together with it the Nejd's the 'conventional system of judges' turned into also left in addition to work on religions affairs. Simultaneously government committees or tribunals have been working at the regions in which royal decrees have been in exercise. On the basis of Shria court system[76] the Saudi Arabian court system is constituted, Ulema are the framework of judges & advocates and religious leaders[77]. There are three sorts of different bodies for jurisdiction.

(1) Government tribunals dealing with disputes especially of royal decrees.

(2) Expert courts such as Board of grievances[78].

(3) The specific criminal Courts.

Each the Sharia court and tribunals government ahead the final appeal to the king. Sharia rules of evidence and system are being accompanied by way of all of the courts and tribunals from 2007. All the criminal and civil matters come beneath the general jurisdiction of the Sharia Court. The manner of judicial court cases is divided in two forms of courts i.e.

1. Courts of first times which might be well known courts

2. The summary courts that cope with the lesser cases.

[75] Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present. pp.144–145, pp.174, pp.159, pp.160
[76] Esposito, John L. (1998). Islam and politics. pp.110, pp.111.
[77] Powell, William (1982). Saudi Arabia and its royal family. pp.102.
[78] Baamir, AbdulrahmanYahya (2010). Shari'a Law in Commercial and Banking Arbitration. pp.23.

In instances of death, imputation and so forth. Which have grave offences there may be a panel of three judges and otherwise there's 1 judge usually. The circle of relatives and spiritual matters are being looked by using the Sharia minority in the eastern Province[79]. The Appellate courtroom is situated in Riyadh and Mecca and the choices are reviewed in accordance with Sharia[80]. The specialized criminal Courts have been created in 2008 to attempt the suspected terrorists. In 2009[81] the king appointed a latest board of grievance. In 2013 a royal decree become exceeded through which the justice minister turned into to be made the head of the prime judicial council.

The records of criminal courts is complete with the capital punishment for a huge-ranging crimes including apostasy, adultery, robbery, rape, murder and etc. Public hanging, public beheading, stoning and the extreme maximum punishment strategies within the form of Crucification are usually practiced in Saudi Arabia. There have been non-stop breaches of Human rights by means of execution of juvenile who're executed publically. The quantity of executions is rapidly growing. There are provisions of obligatory capital punishment under the laws of Saudi Arabia. The history and the present position of capital punishment do no longer see any sizeable exchange as nevertheless the laws for capital punishment are very harsh and Saudi Arabia continues to be the various nations having the majority practices of execution of death penalty.

[79] Transnational Shia politics: religious and political networks in the Gulf. pp.248–249.
[80] Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past andPresent. pp.160.

[81] Baamir, Abdulrahman Yahya (2010). Shari'a Law in Commercial and Banking Arbitration. pp. 23.

CHAPTER – III SENTENCING

PROCESS AND PROCEDURE

3.1 INTRODUCTION

Whenever an accused is positioned to trial and at the end of the trial, the opinion of the judge that such a crime committed by an accused that his very presence is treated as a risk to the community as an entire, he his penalized with the crucial punishment of all i.e. death penalty or capital punishment. The method of penalizing one to giving death penalty or capital sentence to a person isn't similar to executing any individual of the identical offence. Penalizing any individual with capital punishment and in reality setting any individual to death are perfectly exceptional as after the penalize there are numerous tiers through which the sentencing or the penalize is going and at every stage the veracity of the identical is examined and if after cruising through the complete method, if nonetheless the sentence is managed, best then the identical reaches the extent of sporting out of the execution.

3.2 COMPETENCY TO PASS DEATH SENTENCE

The Code of Criminal Procedure, 1973, pronounce that sentences by High court, any magistrates, assistant district judge, additional district judge and district judge are authorized to pass. The Code of Criminal Procedure, 1973 offers with what sentences a high court or a session judge can move primarily based totally at the punishment prescribed for the offence below the relevant provision of law. The Code of Criminal Procedure, 1973 reveals as below;

3.2.1 SENTENCES WHICH HIGH COURTS AND SESSIONS JUDGES MAY PASS

A High Court may pass any sentence authorized by law, a Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court and an Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years. Go with, The Code of Criminal Procedure, 1973 provides for those sentences which magistrates may pass. It reveals as follows;

3.2.2 SENTENCES WHICH MAGISTRATES MAY PASS

The Court of a Chief Judicial Magistrate may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years, the Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or both, the Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding one thousand rupees, or of both and the Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class. The section clearly states that any sentence authorized by law might be passed by the magistrates, besides a sentence of death or life imprisonment or a sentence of imprisonment for a time period exceeding seven years. Thus, despite the fact that the high court or the session judge or the additional session judge, all are capable to pass any sentence mentioned by law, however in the case of death penalty passed by additional session's judge or the session judge, the death penalty must be confirmed by high court.

3.3 POWERS OF HIGH COURT IN CAPITAL PUNISHMENT

The Constitution of India[82] offers for a High Court for every state. Further, in addition to the Constitution of India permitted by the Parliament to set up a prevalent High Court for 2 or more states and a Union Territory. The jurisdiction of the High Court is very ultimate with admire to the territorial limits of the State besides where a High Court has been set up for 2 or more States/Union Territories. An appeal to the High Court lies in case a Sessions Court has presented the punishment of 7 years or greater. All instances related to death penalty presented by the Session Court which as an appeal in High Court. A capital punishment offered to a criminal by Session Court may be done best if the High Court upholds the decision.

There is more statutory provision in the Code of Criminal Procedure, 1973, which permit the High Court to award or affirm the death penalty. Under Section 368 of the Code, a High Court can affirm the capital punishment passed by the Court of Session. High Court can withdraw a case pending earlier than a subordinate court and may attempt itself and may proceed by death

[82] Durga Das Basu, Commentary on the Constitution of India, Vol. 5, S.C. Sarkar, 1973, Ed. 8th.

penalty. The High Court on attraction towards an order of acquittal passed by a session court can convict someone and promote death sentence. Apart from this, High Court even as exercise strength of improving the sentence can award the death sentence. But as of now attraction to the Supreme Court can't be filed of proper in all of the instances wherein the High Court has passed the sentence of death. In the subsequent instances, wherein the High Court passes a death sentence, appeal to the Supreme Court may be filed as right:-

(i) Where High Court convicts individual on a trial held by it in its extra ordinary criminal jurisdiction.

(ii) Where High Court has withdrawn for trial earlier than itself any case from any court subordinate to it and in such trial convicts the accused individual and sentence him to death.

(iii) Where High Court on appeal reversed an order of acquittal of an accused individual and sentences him to death.

(iv) Right to appeal to the Supreme Court is likewise furnished wherein the High Court on appeal reversed an order of acquittal of an accused individual and sentences him to life imprisonment or imprisonment for a time period of ten years or greater. However, in the further instances, an individual towards whom sentence of death is passed or authenticate by the High Court, no appeal to the Supreme Court as of its right on that condition:-

i) Where the High Court under Section 368 of the Code of Criminal Procedure, 1973 confirms the death sentence presented by the session court, no appeal as of right can be favored to the Supreme Court. In this view, the finding of the full bench of the Madras High Court made in K. Govindswamy v. Govt. of India[83], is likewise relevant, which refers as; “Hence, as towards an order of affirmation of sentence of death passed under section 368 of the Criminal Procedure Code, 1973, there may be and there may be no similarly right of first appeal on facts to the Supreme Court, except the High Court in executing its power under Article 134(1)(c) grants leave to appeal to the Supreme Court, or, the Supreme Court provide special leave under Article 136(1) of the Constitution for an appeal being favored”.

In Chandra Mohan Tiwari v. State of MP[84], the Supreme Court has held that, in instances which aren't included by Article 134(1)(a) and (b) or Section 2(a) and (b) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 or by Section 379 of Criminal Procedure Code, 1973, appeal in the Supreme Court will lie best both on a certificates granted by the High Court under Article 134(1)(c) or sanction of Special Leave to appeal by the Supreme Court under Article 136 of the Constitution of India.

That approach that individual whose death sentence presented by the Session court is affirmed by the High Court, no appeal as of right may be endorsed to the Supreme Court.

ii) As consistent with Section 377 of the Criminal Procedure Code, 1973, the State Govt. or the Central Govt. because the case might be, might also direct the general public prosecutor to give an appeal to the High Court towards the sentence passed by a trial court at the ground of inadequacy. The High Court might also increase the sentence to a death sentence after giving a possibility of listening to the convict.

The High Court can increase the sentence passed by trial court now no longer wherein the State has favored an appeal against the sentence, wherein no appeal has been favored by the State at the ground of inadequacy of sentence, in action of its revisional suo moto power vested in it under section 397 read with Section 401 Criminal Procedure Code, 1973. The Supreme Court in Nadir Khan v. The State (Delhi Admn.)[85], has held that High Court even as exercise its criminal revisional jurisdiction has power to suo motu action to increase the sentence in suitable case even in absence of an appeal against the adequacy of sentence as furnished in Section 377 of the Criminal Procedure Code, 1973.

In Sahib Singh v. State of Haryana[86], the Supreme Court has found that the failure at on the part of the State Govt. to opt for an appeal does now no longer, however, avoid the High Court from exercise suo-motu action of the revision under section 397 read with section 401 of the Criminal Procedure Code, 1973, for the reason that High Court itself is empowered to call for the file of proceedings record court cases of any court subordinate to it. But earlier than improving the sentence the High Court has to give notice and hearing opportunity on question of sentence to the convict, both in individual or through counsel. The view was upheld in Surjit Singh v. State of

[84] AIR 1992 SC 891.
[85] AIR 1976 SC 2205.

Punjab[87]. It is obvious that High Court can increase the sentence under its revisional suo-motu power, even unaccompanied by an appeal filed by the State. But wherein the High Court increases the sentence passed by trial Court and passes even death sentence, no appeal, as of right may be favored in the Supreme Court against the order sentence enhancement.

As mentioned, in each the occasions noted above, no appeal as of right, to the Supreme Court may be favored against the judgment of the High Court wherein it has presented the capital punishment. Appeal can solely be filed both whilst a certificates under Article 134 (1) (c) of the Constitution of India has been granted by means of the High Court that the case is in apt one for appeal to the Supreme Court, or if the Supreme Court itself presents grants leave to appeal under Article 136(1) of the Constitution of India. But as of right no appeal may be favored to the Supreme Court in such occasions. Capital punishment may be passed by a Court Martial constituted under the Army Act, 1950[88], Air Force Act, 1950[89], Navy Act, 1957[90], and this needs to be confirmed by the Central Government or by way of means of different authorities. But as of now, there may be no provision under which appeal against such order may be filed. Even special leave to appeal to Supreme Court against such order of the Court Martial does now no longer lie under Article 136(1) of the Constitution in view of the bar contained under Article 136
(2) of the Indian Constitution.

Additionally, the afore quoted findings of the Supreme Court in Bachan Singh v. State of Punjab[91] that during each case wherein the sentence of sentence is confirmed through the High Court there shall be an automated evaluation of the sentence of death by the Supreme Court sitting as a complete and that the sentence of death shall now no longer be affirmed or imposed by the Supreme Court except it is accredited unanimously by the whole court sitting en banc, are apposite right here. Accordingly, within the Consultation Paper, a precise query changed was mooted as to whether or not withinside the Supreme Court a Bench of now no longer much less than five Judges ought to determine instances wherein death sentence has been presented to invite the perspectives of all concerned. This calls for the Supreme Court Rules to be amended. There will also be instances of acquittal or sentence of imprisonment for a term or life

[87] AIR 1984 SC 1910.
[88] Army Act, 1950.
[89] Air Force Act, 1950.
[90] Navy Act, 1957.
[91] (1980) 2 SCC 684.

imprisonment given by the High Court against which the State might also appeal to the Supreme Court. In E.K. Chandrasenan v. State of Kerala[92], the Supreme Court held that it could suo-motu increase the punishment to sentence of death. There is consequently also the want to make suitable provision to address conditions wherein case the Supreme Court thinks that the acquittal is incorrect and the accused ought to be convicted and sentence of death; or it thinks that the sentence for a time period or life imprisonment is to be increased to a sentence of death, then the Supreme Court might also direct the case to be rested before the Hon'ble Chief Justice of India for being heard by of a Bench of as a minimum 5 judges. This additionally calls for the Supreme Court's rules to be amended.

3.4 CIRCUMSTANCES WHEN APPEAL CAN BE FILED TO THE SUPREME COURT

When an appeal is filed in the Supreme Court under the pertinent provisions of law, the Supreme Court is going by the whole facts of the case and examines the judgment of the high court in the light of the settled legal provisions in addition to the provisions of law under which the capital punishment has been presented. Provided that Supreme Court after going by the judgment and the facts and occurrences of the case is of the opinion that the judgment is a failure of the legal provisions and in no manner is in conformity with the settled legal position, then if in that case the Supreme Court might also permit the appeal and set aside or make alterations to the judgment of the high court, relying upon the facts and circumstances of every case. But, if at the opposite, the Supreme Court involves the realization that the judgment of the high court is on sound footing and holds correct in the light of the settled legal position in addition to different legal provisions as relevant in the facts and occasions of the case, then the supreme court might also dismiss the appeal and uphold the punishment of capital punishment as passed by high court. An appeal may be favored to the Supreme Court against the death sentence confirmed by high court under the subsequent provisions of law;

3.4.1 APPEAL AGAINST ORDER OF CONVICTION BY HIGH COURT IF CAPITAL PUNISHMENT AWARDED

The Criminal Procedure Code, 1973 offers that wherein the High Court has, on appeal, reversed an order of acquittal of an accused individual and convicted that accused person and sentenced

[92] AIR 1995 SC 1066.

him to death punishment or to life imprisonment or to imprisonment for a time period of 10 years or greater, he might also additionally appeal to the Supreme Court. It is pertinent to say right here that appeal to the Supreme Court can be presented under this section only provided that it has changed the order of acquittal of the lower court and presented sentence of death or life imprisonment or imprisonment for a term of greater than ten years and now no longer in different instances where the imprisonment presented is lesser or where the lower court had already convicted the offender.

3.4.2 HIGH COURT CERTIFIES THE CASE TO BE FIT FOR APPEAL

Provided that after going by the facts of the case, if the high court is of the opinion that the immediate case is in apt for appeal to the Supreme Court, it is able to certify the case to be in apt for appeal under Article 132 or Article 134A of the Indian Constitution. The Indian Constitution reveals that; an appeal shall rest in the Supreme Court from any judgment, decree or very last order of a High Court within the territory of India, whether in a criminal, other proceedings or a civil if the High Court certifies under article 134A that the case includes a substantial question of law as to the interpretation with respect to the Constitution. Where the sort of certificates is given, to any party within the case might also appeal to the Supreme Court on the ground that any such a question as aforesaid has been wrongly determined. The manifestation "final order" consists of an order identifying an issue, provided that determined in favour of the appellant, might be enough for the very final disposal of the case.

Whereas, the Constitution of India states that; each High Court, passing or creating a judgment, decree, final order, or sentence, cited in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134,—

(a) May, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.

3.4.3 MANDATORY APPEAL TO SUPREME COURT

If the High Court does no longer certify that the case is apt for appeal to the Supreme Court, then an obligatory appeal may be filed to the Supreme Court under Article 134 of the Indian Constitution. It states that that an appeal shall rest to the Supreme Court from any last order or sentence or criminal proceeding sentence of a High Court within the territory of India if the High Court— has on reversed appeal to free from a charge of an accused individual and death sentence him or has withdrawn for trial earlier than itself any case from any lower court to its authority and has in such trial convicted the accused individual and death sentence to him; certifies under Article 134A that the case is a in apt one for appeal to the Supreme Court: Provided that an appeal under sub-clause (c) shall lie concern to such provisions as can be made in that behalf under clause (1) of Article 145 and to such situations because the High Court might also additionally set up or require. Further, parliament might also by regulation confer at the Supreme Court any similarly powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court within the territory of India concernto such situations and boundaries as can be laid out in such law.

3.4.4 SUPREME COURT GRANTS SPECIAL LEAVE TO APPEAL

In sure instances whilst neither the high court certifies the case to be apt for appeal, nor the necessary appeal to Supreme Court lies under Article 134 of the Indian Constitution, then the Supreme Court might also additionally if it considers suitable provide special leave to appeal under Article 136 of the Indian Constitution. It express that however whatever on this Chapter, the Supreme Court might also, in its discretion, provide special leave to appeal from any determination, order, decree, sentence or judgment in any motive or matter passed or made by any court or tribunal within the territory of India. (2) Not withstanding anything in clause (1) shall apply to any sentence or order passed or determination or tribunal or made by any court constituted by or under any law regarding the Armed Forces reaches the degree of enforceability, after it is upheld at diverse levels. On, the alternative hand if the trial court passes a sentence of death and later the high court or the supreme court disagree with the findings arrived at by the trial court or the law elucidate by the trial court, they are able to overturn or make alterations to the sentence passed by the trial court, as they will deem necessary.

3.5 RIGHT OF APPEAL WHERE DEATH SENTENCE HAS BEEN AFFIRMED OR AWARDED BY THE HIGH COURT

After inspecting this difficulty of an appropriate mode of execution, what stays to be tested is the method of the confirming the capital punishment relevant to Courts or different authorities.

As has been furnished in the United Nations Economic and Social Council resolution, as to safeguard No. 6[93] that anybody death sentence shall have the right to appeal to a court of high jurisdiction and steps ought to be taken to make sure that such appeals shall come to be obligatory. The comparable view has additionally been revealed by the Supreme Court of India in Bachan Singh v. State of Punjab as consistent with of dissenting judgment by Justice Bhagwati. Before I component with this subject matter I might also additionally factor out that the best manner wherein the vice of arbitrariness within the punishment of death penalty may be eliminated by the law imparting that during each case wherein the death penalty is assured by the High Court, there will be an automated evaluation of the death penalty by the Supreme Court sitting as an entire and the death penalty shall now no longer be affirmed or imposed by the Supreme Court except it is accredited unanimously by whole court sitting en banc and the best splendid instances wherein death penalty can be affirmed or imposed ought to be legislatively constrained to the ones, wherein the culprit is located to be so depraved that it isn't viable to reform him via by any healing or rehabilitative therapy or even after his release, he might be a critical threat to the society and consequently within the interest of the society, he's required to be discharged. Of course, for motives I even have already mentioned such splendid instances might be nearly nil due to the fact it is nearly not possible to predicate of any individual that his past reformation or redemption and consequently, from a realistic factor of view, sentence of death might be nearly nonexistent.

But theoretically, it is able to be viable to mention that if the State is able to set up definitely that the culprit is the sort of social monster that even after struggling imprisonment for life and present process reformative and rehabilitative therapy, he can in no way be claimed for the society, then he can be presented sentence of death. If this take a look at is legislatively followed and carried out by following the process noted above, the punishment of sentence of death can be

[93] United Nations Economic and Social Council Resolution as to Safeguard No. 6 – Repertory of Practice of UnitedNations Organization, Supplement No. 6, Volume 4.

rescued from the vice of arbitrariness and caprice. But that isn't so below the regulation because it stands today. Justice Bhagwati in Bachan Singh v. State of Punjab has made the subsequent observations pertinent to the arbitrariness concerned in awarding the capital punishment and has said that this end reached by me isn't primarily based on a priori or theoretical considerations. On an evaluation of decision given over a span of years, we discover that during fact there may be no uniform pattern of judicial conduct within the imposition of demise capital and the judicial practice does.

Now no longer reveal any coherent suggestions for the award of death penalty. The judges had been awarding sentence of death or refusing to award it in step with their very own scale of values and social philosophy and it isn't viable to parent any steady technique to the hassle within the judicial decisions. It is obvious from a have a look at of the judicial decisions that a few judges are without difficulty and often willing to maintain death penalty, different are further disinclined and the remaining waver from case to case. Even in the Supreme Court, there are varying opinions and attitudes in regard to the punishment of death penalty. If a case comes in front of one Bench inclusive of Judges who consider in the social efficacy of death penalty, the sentence of death might in all opportunity be assured however if the identical case comes earlier than some other Bench inclusive of Judges who're morally and ethically against the capital punishment, the sentence of death might maximum probably be commuted to existence imprisonment for life. The former might find and I say this now no longer in any derogatory or disparaging sense, however consequently of mental and attitudinal elements running at the minds of the Judges constituting the Bench "notable reasons" in the case to justify award of capital punishment even as the latter might reject such a reasons as notable reasons. It is likewise pretty viable that one Bench might, having regard to its perceptions, suppose that there are unique reasons in the case for which capital punishment ought to be presented even as some other Bench might also additionally bona fide and carefully take an exceptional view and keep that there aren't any unique reasons and that life imprisonment ought to be imposed and it is able to now no longer be viable to claim objectively and logically as to who's proper and who is incorrect, due to the fact the exercise of discretion in a case of this kind, wherein no extensive requirements or suggestions are provided by the legislature, is certain to be motivated by means of the subjective mindset and technique of the judges constituting the Bench, their value system, the character tone in their mind, the color in their revel in and the character and sort of their pursuits and their

predispositions. This arbitrariness in the punishment of capital punishment is significantly accentuated by means of the fragmented Bench structure of our courts wherein Benches are inevitably shaped with exceptional diversifications and combinations from time to time and the cases regarding the crime of murder arise for listening to every now and then before one Bench, a few instances earlier than some other every now and then earlier than a third and so on.

It is well acknowledged that to date the Supreme Court is concerned, even as the sum of Judges has improved over the years; the sum of Judges on Benches which pay attention death penalty cases has clearly decreased. Most instances at the moment are heard by two bench Judges. In Rajendra Prasad v. State of Uttar Pradesh[94], the sentence of death imposed on Rajendra Prasad changed into commuted to imprisonment for life by a majority inclusive of Krishna Iyer, J. and Desai, J., A.P. Sen, J. dissented and was of the view that the sentence of death ought to be confirmed. Similarly in one in all the instances before us, namely, Bachan Singh v. State of Punjab[95] whilst it was first heard by a Bench inclusive of Kailasam and Sarkaria, JJ. Was virtually of the view that almost all selection in Rajendra Prasad case is incorrect and this is why he referred that case to the Constitution Bench. So also in Dalbir Singh v. State of Punjab[96], the majority inclusive of Krishna Iyer, J. and Desai, J. took the view that the death penalty imposed on Dalbir Singh ought to be commuted to imprisonment for life even as A.P. Sen, J. struck to the unique view taken by him in Rajendra Prasad case and changed into willing to affirm the death penalty. It will as a result be visible that the exercise of discretion whether or not to inflict capital punishment or now no longer relies upon to a considerable extent on the value system and social philosophy of the Judges constituting the Bench. The maximum striking instance of freakishness in punishment of sentence of death is furnished by some other case titled as Harbans Singh v. State of U.P.[97], which worried 3 accused, namely, Jeeta Singh, Kashmira Singh and Harbans Singh. These 3 people have been given death sentence by the Allahabad High Court by means of a judgment and order dated October 20, 1975 for playing a same component in jointly murdering a family of 4 people. Each of those 3 people lodged a separate petition in the Supreme Court for special leave to appeal against the same judgment sentencing all of them to capital punishment. The special leave petition of Jeeta Singh got up for hearing in front of Bench inclusive of

[94] (1979) 3 SCC 646.
[95] (1980) 2 SCC 684.
[96] (1979) 3 SCC 745.

[97] (1982) 2 SCC 101.

Chandrachud, J., Krishna Iyer, J. and N.L. Untwalia, J. and it was dismissed on April 15, 1976. Then got here special leave petition preferred by Kashmira Singh from prison and this petition was placed for listening in front of other Bench inclusive of Fazal Ali, J. and myself. We granted leave to Kashmira Singh constrained to the query of sentence and way of means of an Order dated April 10, 1977, we allowed his appeal and commuted his death sentence into one of life imprisonment.

The result changed into that even as Kashmira Singhs capital punishment changed into commuted to imprisonment for life by one Bench, the capital punishment imposed on Jeeta Singh by some other Bench and he was hanged on October 6, 1981, although each had performed same part in murder of the family and there has been not anything to differentiate the case of 1 from that of the alternative. The special leave petition of Harbans Singh then got here up for listening to and this time, it changed into nonetheless some other Bench which heard his special leave petition. The Bench inclusive of Sarkaria and Shinghal, JJ. And that they rejected the special leave petition of Harbans Singh on October 16, 1978. Harbans Singh carried out for review of this decision, however the review petition dismissed by Sarkaria, J. and A.P. Sen, J. on May 9, 1980. It seems that although though the Registry of this Court had noted in its Office Report that Kashmira Singhs death penalty was already commuted, that truth changed into now no longer delivered to the attention of the Court mainly whilst the special leave petition of Harbans Singh and his review petition have been dismissed. Now, for the reason that his special leave petition as additionally his review petition have been dismissed by this Court, Harbans Singh might had been hanged on October 6, 1981 alongside Jeeta Singh, however fortunately for him he filed a writ petition on this Court and on that writ petition, the Court passed an Order staying the execution of his hanging. When this writ petition got here up for listening to earlier than a nonetheless some other Bench inclusive of Chandrachud, the then C.J., Desai and A.N. Sen, JJ., it changed into mentioned to the Court that the sentence of death imposed on Kashmira Singh were commuted by a Bench inclusive of Fazal Ali, J. and myself and whilst this truth was mentioned, the Bench directed that the case be despatched again to the President for reconsideration of the clemency petition filed by Harbans Singh. This is a traditional case which illustrates the judicial vagaries within the punishment of death sentence and demonstrates vividly, in all its merciless and stark reality, how the infliction of capital punishment is motivated by the composition of the Bench, even in instances ruled by Section 354, Sub-section (3) of the

Criminal Procedure Code, 1973. The query could be requested by the accused: Am I to stay or die relying upon the manner wherein the Benches are constituted on occasion? Is that now no longer sincerely violative of the essential ensures enshrined in Articles 14 and 21? If we have a look at the judicial decisions given by the courts over some of years, we find judges resorting to an extensive range of things in justification of affirmation or commutation of death penalty and these elements whilst analyzed fail to expose any coherent pattern. This is the inevitable outcome of the failure of the legislature to deliver extensive requirements or suggestions which might shape and channelize the discretion of the court in the count number of punishment of sentenceof death.

Although adequate requirements or suggestions may be formulated or now no longer which might remedy the aspects of arbitrariness and capriciousness, however the truth stays that no such requirements or suggestions are furnished by the legislature at present, with the end result that the courts have unguided and untrammeled discretion in deciding on between sentence of death and imprisonment for life as penalty for the offence of murder and this has led to sizeable arbitrariness and uncertainty. This is obvious from a have a look at of the determined instances which sincerely indicates that the motives for commutation or affirmation of death penalty relied by the Court in exceptional instances defy coherent evaluation and there may be an full-size ability of arbitrary award of sentence of death by the High Courts and the Supreme Court however that, in truth, sentence of death had been presented arbitrarily and freakishly. Where capital punishment is given by General Court Martial inclusive of 5 officers, it could be given best if there may be 2/3rd majority and now no longer easy majority. Moreover, within the armed force, sentences passed by courts-martial under the Army, Navy, or Air Force can't be appealedto a higher court.

3.6 REMEDIES OTHER THAN APPEALS IN CASES OF CAPITAL PUNISHMENT BEFORE THE SUPREME COURT

In India various legal guidelines along with the magna carta of all legal guidelines i.e. the Constitution of India, 1950 and different legal guidelines along with the Criminal Procedure Code, 1973, etc. have furnished the right to appeal or approach the Supreme Court in instances wherein the penalizing of sentence of death has been presented to an offender. But there are sure instances wherein the accused has appealed to the apex court of country and failed. In such like

conditions the accused can knock the doors of the apex court of the country or the Supreme Court by taking aid of certain other remedies which had been enshrined within the Indian Constitution or had been developed by the Supreme Court of India on its very own. These corrective measures are as follows;

3.6.1 REVIEW PETITION UNDER ARTICLE 137 OF CONSTITUTION OF INDIA

If after the Supreme Court has upheld or dissatisfied with the judgment of the high court, the events aggrieved on any order of the Supreme Court on any apparent error can file a review petition. Taking into attention the precept of stare decisis, courts normally do now no longer unsettle a decision, without a strong case. This provision concerning review is an exception to the legal precept of stare decisis. A criminal review petition may be moved be on the ground of an error apparent on the face of record. The review petition may be filed in the Supreme Court under Article 137. It states that; concern to the provisions of any laws made by Parliament or any rules made Article 145, the Supreme Court shall had power to study any judgment pronounced or order way of means of it. It is to note that a review petition isn't maintainable as a matter of right and there of necessity to be an error on the face of the record, for the Supreme Court to enthrallit.

Thereafter, the discretion of the Supreme Court that it is able to or might not entertain it, because the Supreme Court might also additionally or might not be expressed in the review petition. If the Supreme Court after going by the review petition concludes that the review petition wishes to be allowed and the grounds noted therein are justified, the Supreme Court might also permit the review petition and set aside the judgment of the high court. But, if the Supreme Court arrives to an end that is opposite to the stand taken in the review petition, then the Supreme Court might also disregard the review petition and uphold the judgment of the high court and refuse to intrudewith it.

The Supreme Court in P.N. Eswara Iyer v. Registrar, Supreme Court of India[98], upheld the constitutional validity of Order XL, Rule 2 (requiring review in chambers), bringing up the heavy burden upon the Supreme Court to pay attention to oral arguments in all instances within its jurisdiction. The law laid down by the Supreme Court in P.N. Eswara Iyer‘s case held best for

[98] AIR 1980 SC 808.

lots of years, till the Supreme Court, in Mohd. Arif v. Registrar, Supreme Court of India and Others[99], treated the question of whether death penalty cases might themselves form a division by themselves, awarding separate treatment. In Mohd. Arif's case he denied the possibility to file a review petition himself. This because a curative petition was already submitted by him, the final choice in the Supreme Court and the Court held that to provide him a review petition now infinitely the process is delayed. The review petition is submitted and admitted or dismissed preceding to the curative petition.

Eventually, a Constitution Bench of the Supreme Court on 19th January, 2016 allowed Arif to re-open his review petition on the ground that he will be the only individual now no longer receiving the advantage of a review petition, which might be unfair to him; similarly, the dismissal of the curative petition ought to now no longer avoid the petitioner from receiving the advantage of a review petition in open court, regardless of how slender the achievement can be. The cause changed to make sure that, regardless of how slender, people receiving the death penalty ought to be given as many possibilities as permissible under the law for proof to be re- appreciated.

The cause of the review bench, as is obvious from Order XL of the Supreme Court Rules, is to simply test whether or not there is an apparent on the face of the record. However, frequently the identical Bench listening to the unique case on merits deals with the review petition except any of the judges retire and it's not going consequently, that they might extrude their opinion on whether or not the convict ought to acquire the capital punishment; as a result, the cause of the review petition isn't realized. The composition of the bench ought to consequently, now no longer matter, as the matter for appraisal ought to now no longer result in exceptional conclusions. Mohd. Arif's case is however, a course breaking judgment of the Supreme Court, given its implications for prisoners on row of death, that on the penultimate degree of proceedings on the Supreme Court, they may be entitled to an open court listening to and appreciation of proof of their case argued by their advocate.

3.6.2 CURATIVE PETITION IN SUPREME COURT

The idea of Curative petition was developed by the Supreme Court of India in the case of Rupa Ashok Hurra v. Ashok Hurra and Anr.[100], wherein the question Into whether or not an aggrieved individual is entitled to any relief against the final judgment/order of the Supreme Court, after rejection of a review petition. The Supreme Court in the stated case held that in order to prevent abuse of its method and to remedy gross miscarriage of justice, it is able to rethink its judgments in exercise of its inherent powers. For this cause, the Court has devised what has been termed as a "curative" petition. In the Curative petition, the petitioner is required to aver mainly that the grounds noted therein were taken in the review petition filed in advance and that it rejected by means of circulation. Senior Advocate should certify that review petition. The Curative petition is then circulated to the 3 senior maximum judges and the judges who brought the impugned judgment, if available. No time restrict is given for submitting Curative petition.

To entertain the curative petitions, the court has laid down sure precise situations. It's laid down so as the necessities that are needed to be able to receive the curative petitions are:

(i) The petitioner could have to set up that there has been an authentic violation of principles of natural justice and apprehension of the prejudice of the judge and judgment that adversely affected him.

(ii) The petition shall express mainly that the grounds noted were taken in the review petition and by circulation it was dismissed.

(iii) The curative petition should accompany certification by a senior advocate relating to the attainment of the above necessities.

(iv) The petition is to be dispatched to the 3 senior maximum judges and judges of the bench by affecting the petition they passed the judgment, if accessible.

(v) If the most of the judges at the above bench agree that the problem needs listening to, then it'd be dispatched to the identical bench (as far as viable).

(vi) The court should impose "exemplary costs" to the petitioner if his petition lacks merit.

CHAPTER – IV

CAPITAL PUNISHMENT AND STATUTORY FRAME WORK

As a ways as India is concerned, the provisions referring to Capital Punishment are embodied in Indian Penal Code and Criminal Procedure Code. Indian Penal Code is the substantive law which indicates the offences which might be punishable with sentence of death. Criminal Procedure Code is the procedural law, and is the reason the process to be observed in capital punishment instances. The substantive law of India viz., Indian Penal Code became enacted in the 1860. Though only a few Amendments are made right here and there, in total it stays unchanged, in which as Criminal Procedure Code became amended considerably as soon as in 1955 and reenacted in 1972. Though majority of the provisions continue to be unchanged Section 235(2) and Section 354(3) underwent a major alternate. The current chapter especially offers with the procedural and substantive laws relating death penalty. It is likewise proposed to speak about the power of the government to furnish pardon and commute death into imprisonment for life as furnished under the Indian Constitution.

4.1. CAPITAL CRIMES UNDER THE INDIAN PENAL CODE

The Indian Penal Code offers for the imposition of death penalty the following instances: Section 121 offers that whoever wages war against the Government of India or tries to wage such war, or abets the waging of such war, will be punishable with death, or life imprisonment and shall additionally be susceptible to fine. The offence under Section 121 is a capital offence as it threatens the very survival of an organized Government that is important for the safety of human existence.

Section 124-A offers capital punishment for sedition. The line dividing preaching disaffection closer to the Government and valid political pursuit in a democratic set-up can't be exactly drawn. Where the valid political appraisal of the Government in power ends and disaffection begins, can't be ascertained with precision. The delimiting line among the two is very thin. What became sedition in opposition to the Imperial Rulers can also additionally nowadays pass of as

valid political pursuit in a democratic set-up under our libertarian Constitution. The interpretation must be moulded inside the letter and spirit of Indian Constitution.[101]

According to Section 132 whoever abets the committing of mutiny with the aid by an officer, soldier, sailor or airman, in the Army, Navy, or Air Force of the Government of India, shall, if mutiny be performed in result of that abetment, be punished with death or with life imprisonment, or imprisonment of either description for a time period which can also increase to 10 years, and shall also be susceptible to fine. Section 132 is likewise a capital offence, as it ambitions on the destruction of the very forces which might be meant to shield the machinery of the State. Sections 121, 124-A and 132 prescribe capital punishment for the offences meant to have an effect on the political independence, territorial integrity and stability of the nation.

Section 194 aims on the people who provide or fabricate fake proof with motive to procure conviction of death sentence to harmless people. It runs thus: "Whoever offers or fabricates fake proof, proceeding thereby purpose, any character to be convicted of an offence that is capital with the aid of using the law for the time being-in force in India will be punished with life imprisonment or with rigorous imprisonment for a time period which can extend to 10 years, and be susceptible to fine.

And if an harmless character be convicted and executed in result of such fake proof, the person that offers such fake proof will be punished with both death or the punishment herein earlier than described." Section 194 part II is punishable with death at the good judgment that the character worried gave fake proof with the goal of or information of likelihood of deprivation of harmless human life. Section 302 of Indian Penal Code is the most vital section in the jurisprudence of death penalty. It prescribes capital punishment for the crime of murder. But the section offers discretion to the sentencing judge with the aid of prescribing imprisonment for life as a substitute punishment. Though the authors of the Code prescribed death as a punishment, they may be satisfied that it need to be sparingly inflicted. They determined "Though the sentence consequent upon a conviction of murder need to be death, if there exists any grounds for mercy, that situation will ought to be taken into consideration with the aid of using the Government or its government minister, and all that a Court of Justice can do is to publish a advice after passing thesentence of law."

[101] Ratan Lal and Dhiraj Lal; Law of Crimes: 398 (1995).

According to Section 307, "whoever does any act with such goal or information, and under such situations that, if he with the aid of using that act brought about death, he could be responsible of murder, will be punished with imprisonment of either description for a time period which can extend to 10 years, and shall be susceptible to fine, and if harm is brought about to any character with the aid of using such act, the culprit will be in charge either to life imprisonment, or to such punishment as is herein earlier than referred to. When such an attempt is made with the aid of a life convict, he might, if harm is brought about, be punishable with death." The offence under Section 307 is one in which the attempt isn't successful; the push aside of the sanctity of human life is, but, obvious right here. But, the death sentence may be provided simplest in which harm is brought about and the character offending is already under life imprisonment sentence. The remaining requirement is simply an example of the proposition that the law has now no longer dominated out the attention of the individual.[102] The reasoning which implemented for containing section 303 as unconstitutional could have implemented with identical pressure to the remaining a part of Section 307 additionally, and the very same, if it had left no discretion with the Judge, could have met the very same fate. Fortunately, but, the availability for the death penalty, in that section isn't obligatory however spells out its desirability. The phrase "may be" is indicative simplest of an acceptable direction.[103] The remaining capital crime in the order in Indian Penal Code is in Section 396. It runs thus: "If any individual of 5 or more individuals, who're conjointly committing dacoity, commits murder in so committing dacoity, every sort of people might be punished with death, or life imprisonment, or rigorous imprisonment for a time period which can extend to 10 years and shall additionally be susceptible to fine."

The offence under Section 396, is a particular case of vicarious legal responsibility in reverence of the death penalty, however even right here it could be hard to speak about the precept of safety life of human: the section needs for that there need to be 5 or greater individuals who're conjointly committing dacoity and that certainly considered one among such individuals need to devote murder in so committing dacoity. Joint legal responsibility under this section does now no longer rise up until all the individuals conjointly devote dacoity and the murder became dedicated in so committing dacoity.[104]

[102] Law Commission of India: Thirty-Fifth Report: 35 (September-1967).
[103] Chaturvedi and Chaturvedi: Theory and Law of Capital Punishment: 50 (1989).

[104] Supra note 3 at 36.

The Indian Penal Code offers death sentence in 3 different patterns. Sections 303 and 307 relate to 2 crimes for which the death sentence is the only pattern of punishment. Section 302 is the 2nd pattern in which death sentence is with simplest one replacement namely, imprisonment for life. The 3rd pattern is observed in appreciate of different crimes mentioned above, in which death sentence is the most to be implemented along with huge variety of different minimal sentences. In appreciate of the guidelines or rules for the operation of the selection out of the variety of sentences the penal code is fairly bold. The query of whilst or why the death sentence have to be imposed is left to judicial discretion in each case.[105] Guided with the aid of using missiles with deadly potential in unguided hands, even judicial, is a grave chance in which the peril is mortal although tempered with the aid of using the appellate procedure.[106] Section 303 of Indian Penal Code is a distinctive section, due to the fact it's far the simplest section within the entire Code which prescribes obligatory death penalty. It runs thus: "Whoever being under sentence of life imprisonment, commits murder, will be punishable with death." However, this section became struck down with the aid of using the Supreme Court of India as ultra vires of the Constitution.

4.2. PROVISIONS UNDER CRIMINAL PROCEDURE CODE

The new Criminal Procedure Code, 1973 offers provision in Section 235(2) on the level of sentencing. The objective of this section is to offer a clean possibility to the convicted character to carry to the attention of the court in awarding suitable sentence having regard to the social, personal and different situations of the case.[107] The accused can also additionally have a few grounds to induce for giving him attention in regard to the sentence which includes that he's bread winner of the family of which the court might not be made aware about at some point of the trial.[108] The social compulsion, the stress of poverty, the retributive intuition to are searching for an more legal remedy to a feel of being wronged, the dearth of method to be knowledgeable within the hard art of an sincere living, the parentage, the heredity most of these and comparable different concerns can, with any luck and legitimately, tilt the scales at the propriety of sentence. The mandate of Section 235(2) needs to consequently be obeyed in its letter and spirit.[109]

[105] Pande, B.B: "Face to Face with Death": Supreme Court Cases: 124 (1986).
[106] Rajendra Prasad v. State of Uttar Pradesh: AIR 1979 S.C. 916.[107]
Ram Nath Iyer, P: Code of Criminal Procedure: 1865 (1994). [108]

Subhash C. Gupta: Capital Punishment in India: 119 (1986). [109] Dagdu v. State of Maharashtra: AIR 1977 S.C. 1579.

Under the Criminal Procedure Code, 1898, whatever the accused needed to publish in regard to the sentence needed to be said with the aid of using him earlier than the arguments concluded and the judgment became delivered. There became no separate level for being heard in regard to condemn. The accused needed to produce evidence and make his submission in regard to condemn at the assumption that he became in the long run going to be convicted. This provision became maximum unsatisfactory. The Legislature consequently, determined that it's far simplest whilst the accused is convicted that the query of sentence have to arise for attention and at that level, an possibility have to receive to the accused to be heard in regard to the sentence.[110] The requirement of listening to the accused is meant to fulfill the guidelines of natural justice.[111] The Judge need to make an authentic attempt to elicit from the accused all records so one can eventually undergo at the query of sentence.[112] This is certainly one of the motives in Mithu's case[113] for the Supreme Court to strike down Section 303 of Indian Penal Code as unconstitutional. "Is a regulation which offers for the death sentence for the crime of murder, without affording to the accused a possibility to show cause why that sentence have to now no longer be imposed, just and fair?" Section 235(2) will become a meaningless ritual in instances bobbing up under Section 303 of Indian Penal Code.

Prior to 1955, Section 367(5) of the Criminal Procedure Code, 1898 insisted upon the court pointing out its motives if the death sentence became now no longer imposed in a case of murder. The end result became that it concept that within the absence of extenuating situations, which had been to be said with the aid of using the court, the normal punishment for murder became death. In 1955, section 367(5) became deleted and the deletion became interpreted, at any cost with the aid of using a few Courts, to intend that the sentence imprisonment for life became the regular sentence for murder and death sentence will be imposed simplest if there had been stressful situations. In the Criminal Procedure Code of 1973, there's a similarly swing closer to imprisonment for life. The discretion to impose the death sentence or imprisonment for life isn't so huge now because it became earlier than 1973 Code. Section 354 (3) of the new

[110] Santa Singh v. State of Punjab: AIR 1976 S.C. 2386
[111] Allauddin Mian v. State of Bihar: 1989 Cri.L.J. 1486 S.C. [112] Muniappan v. State of Tamil Nadu: AIR 1981 S.C. 1220. [113]

Mithu v. State of Punjab: AIR 1983 S.C. 473 at 478.

Criminal Procedure Code has narrowed down the discretion. Now death penalty is often dominated out and may simplest be imposed for unique reasons.[114]

The closing shift in legislative emphasis is that, under the New Criminal Procedure Code, 1973, imprisonment life for murder is the rule and death penalty the exception - to be resorted to for motives to be said as in line with Section 354(3) of Criminal Procedure Code.[115] "Now unique motives, this is to mention, unique records and situations in a given case, will warrant the passing of death penalty."[116] But, it's far unnecessary, neither is it viable to make a listing of special reasons which can also additionally justify the passing of death penalty in a case.

In preserving with the modern-day penological concept life imprisonment is a rule and sentence of death is an exception if sentence of death is to be provided, the court has to justify it with the aid of using giving unique motives.[117] Thus Judges are left with the mission of discovering "special reasons", determined Krishna Iyer, J.[118] He similarly held that "special reasons" vital for enforcing capital punishment need to relate now no longer to the crime as such to the criminal. However, in Rajendra Prasad's case, Kailasam J. did no longer be given this view of Krishna Iyer.J. And determined that this kind of precept became no longer warranted with the aid of using the law because it stands nowadays. "Extreme penalty will be invoked in utmost situations", he opined. In Rajendra Prasad's case the majority more extreme held "Such tremendous grounds alone constitutionally qualify as unique reasons as to leave no choice to the Court however to execute the culprit if society and state are to survive. One stroke of murder infrequently qualifies for this drastic requirement, but ugly the killing or pathetic the scenario be, until the inherent testimony oozing from that act is impossible to resist that the murderous urge for food of the convict is just too persistent and lethal that ordered life in a given society or locality in jail itself could be long past if this man had been now or later to be at large. If he's a hardened murderer, like a blood-thirsty tiger, he has to stop this terrestrial tenancy. These ideas of unique reasons are similarly defined with the aid of using the Supreme Court by Bhagwati, J.

[114] Subhash C. Gupta: Capital Punishment in India: 120 (1986).
[115] See (i) Ediga Annamma v. State of Andhra Pradesh: AIR 1974 S.C. 799: (ii) Har Dayal v. State: AIR 1976 S.C.2055 and (iii) Peter Joseph v. State of Goa: 1977 S.C. 1812.
[116] Balwant Singh v. State: AIR 1976 S.C. 230.

[117] Ambaram v. State: AIR 1976 S.C. 2169.
[118] Bishnu Deo v. State of West Bengal: AIR 1979 S.C. 964.

within the case of Bachan Singh.[119] What is the relative weight to receive to the aggravating and mitigating factors relies upon at the records and situations of the specific case. It is simplest whilst the culpability assumes the share of excessive depravity that "unique reasons" can legitimately be stated to exist.

The "special reasons" referred in Section 354(3) of Criminal Procedure Code have to be taken as equal and synonymous to "compelling reasons".[120] Murder is exceptional isn't a reason to impose capital punishment. All murders are exceptional and if the reality of murder being exceptional is an enough reason for enforcing sentence of death, then each murder shall ought to be visited with that sentence and sentence of death turns into the rule, now no longer an exception and Section 354(3) Criminal Procedure Code turns into a dead letter. Section 354(5) Code of Criminal Procedure mentions with the execution of capital punishment. It offers that "whilst any character is sentenced to death sentence, the sentence shall direct that he be hanged with the aid of using the neck until he's lifeless." Even if it isn't referred to so additionally, there's no difficulty. Because, besides the High Court has to verify the sentence of death imposed with the aid of using the Sessions Court. The shape of the warrant this is issued whilst the sentence is showed with the aid of using the High Court direct the convict to be hanged with the aid of using the neck until he's lifeless and in which the sentence is imposed with the aid of using the High Court either in appeal under Section 378 Code of Criminal Procedure or in exercising of the power of revision, the formal order that flows from the High Court includes a comparable direction.

The state need to set up that the process prescribed by Section 354 (5), Code of Criminal Procedure for executing the sentence of death is simply, truthful and affordable and that the stated process isn't harsh, merciless or degrading. The approach prescribed with the aid of using Section 354(5) Code of Criminal Procedure for executing the sentence of death does now no longer violate the provisions of Article 21 of Indian Constitution. The system is compatible with the responsibility of the State, to make sure that the procedure of execution is performed with decency and decorum without related to brutality or degradation of any kind.[121] The way for execution of capital punishment with the aid of using hanging publicly is unconstitutional and if any Jail Manual had been to provide hanging in public the Supreme Court could claim it to be

[119] Bachan Singh v. State of Punjab: AIR 1982 S.C. 1325.
[120] State v. Heera: 1985 Cri.L.J. 1153 (Raj).
[121] Deena v. Union of India: AIR 1983 S.C. 1155.

violative of Article 21 of the Constitution.[122] Section 366 of Criminal Procedure Code insists upon the affirmation of capital punishment with by the High Court. The first provision of this specific section mentions, "When the session court passes a death sentence, the lawsuits will be submitted to the High Court, and sentence shall now no longer be achieved until it's affirmed by the High Court. " The 2nd provision insists that the Court passing the sentence shall devote the convicted character to jail custody under a warrant. The 1st provision of the stated section related to Section 374 of the Old Code, with none alternate and Subsection (2) has been newly added.

It is the exercise of the High Court to be glad at the facts in addition to the law of the case, that the conviction is proper, earlier than it proceeds to affirm the sentence.[123] The High Court has to return back to its personal individual conclusions as to the innocence or guilt of the accused, unbiased of the opinion of the Sessions Judge.[124] The High Court is duty bound to independently consider the problem cautiously and have look at all applicable and material evidence.[125] The High Court is under a responsibility to take into account what sentence have to be imposed and now no longer to be content with trial court decision at the point.[126] When an accused is convicted and given death sentence, he's simplest a convict prisoner and now no longer to be dealt with as condemned prisoner. The sentence of death isn't executable without affirmation of the High Court. Such a prisoner might be ruled with the aid of using Chapter XVII of the Jail Manual and might be given facilities under that chapter as a minimum until he's declared as condemned prisoner in the attention of law.[127] Neither is he serving rigorous imprisonment nor simple imprisonment. He is in prison so that he's saved secure and guarded with the motive that he can be had for the execution of sentence of death.[128]

Section 367 of Criminal Procedure Code offers with the discretion of High Court to direct similarly enquiry to be made or extra proof to be taken. Sub-section (i) of this section offers "If, whilst such lawsuits are submitted, the High Court thinks that a similarly inquiry have to be made into, or extra proof taken upon, any factor bearing upon the guilt or innocence of the

[122] Attorney General of India v. Lichhma Devi: AIR 1986 S.C. 467.
[123] Masalti v. State: AIR 1965 S.C. 202. See also Guru Bachan Singh v. State: AIR 1963 S.C. 340 and Ram Shankar v. State: AIR 1962 S.C. 1239.
[124] Balak Ram v. State: AIR 1974 S.C.2165.

[125] Iftikhar Khan v. State: AIR 1973 S.C. 863.
[126] Neti Sri Ramulu v. State of Andhra Pradesh: AIR 1973 S.C. 255.
[127] Kehar Singh v. State: 1987 Cri.L.I. 291 (Del).
[128] Smt. Triveni Ben v. State of Gujarat: Cri.L.J. S.C.3.

convicted character, it could make such inquiry or take such proof itself, or direct it to be made or taken by the Session Court." Where an application by an accused individual to call material proof relating his line of defence became refused by lower court however became renewed in the High Court, it became held that the accused have to be accepted under this section to submit further proof. As mentioned by the Supreme Court, whilst the reference is made for the affirmation of the sentence of death, the High Court is to see the perfectness of order made by the Sessions Judge however need to have a look at the whole evidence by itself.[129] The High Court may direct more inquiry or the taking of extra proof for figuring out the guilt or innocence of the offender after which come to its personal end at the whole material on record whether or not the capital punishment have to affirmed or not.[130]

Section 368 Code of Criminal Procedure empowers the High Court to affirm annual conviction or sentence. It envisages "In any case proceeded under Section 366, the High Court –

In any case submitted under section 366, the High Court;

(a) may confirm the sentence, or pass any other sentence warranted by law, or may (b) annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or (c) may acquit the accused person;

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of." Section 369 of the Code prescribes that either affirmation of the sentence or new sentence is to be signed by 2 judges of High Court. It states that: "In each case so submitted, the affirmation of the sentence, or any new sentence or order exceeded by the High Court, shall whilst such Court includes 2 or more Judges, be made, exceeded and signed by minimum 2 of them."

Where the Court includes of 2 or more Judges and the order of affirmation of death sentence is made, exceeded and signed by 1 among them, the death sentence isn't validly affirmed however stays submitted to the court which has to get rid of the identical under Sections 367 to 371.[131]

[129] Subhash v. State of Uttar Pradesh: 1976 Cri.L.J. 152 S.C.
[130] Bhupendra Singh v. State of Punjab: 1969 Cri.L.J. 6 S.C.
[131] Ram Nath Iyer, P: Code of Criminal Procedure: 2713 (1994).

The Code mandates that once the concerned high court includes 2 or more Judges, the affirmation of death penalty or various other sentences will be signed by minimum 2 of them and this implemented only in which the court, on the time of affirmation of the death penalty, includes 2 or more Judges. But, whilst a single judicial commissioner by him is functioning, Section 369 of the Code isn't attracted and the affirmation of the death penalty can be signed by him alone and there might be no illegality.[132] Section 370 of the Code offers with the process in instances of distinction of opinion. "Where this kind of case is heard in front of a Bench of Judges and such Judges are similarly divided in opinion, the case will be determined in the way furnished by using Section 392 of the identical Code."

When a death sentence is mentioned to the High Court for affirmation and the Judges vary, the problem have to be referred to a 3rd Judge, under section 370, who have to now no longer determine it in step with the opinion of the Judge for acquittal or conviction, however shall deliver his opinion. The 3rd Judge's obligation is to have a look at the entire proof and is available to a very last judgment. No fetters may be placed at the 3rd Judge. He is at liberty to specific and acts upon the opinion which he himself arrives at. If the 3rd Judge chooses he can move a death sentence, despite the fact that one Judge favours an acquittal and the opposite offers a lesser sentence whilst convicting the accused. But, the golden rule to be observed with the 3rd Judge is to offer the benefit of doubt to the accused. The statement of this kind of rule does no longer amount to abdication of his task as a Judge under Sections 370 and 392 of the Code.[133] However, whilst there's distinction of opinion in the High Court no longer only at the query of guilt however on that sentence, the sentence has to be decreased to life imprisonment.[134] In the identical case as a precautionary approach the Supreme Court similarly maintained that once appellate Judges who agree on the query of guilt vary on that of sentence, it's far standard no longer to impose sentence of death until there are compelling reasons.

Section 371 of the Code offers with the process in instances submitted to High Court for affirmation. It offers "In instances submitted by the Session court to the High Court for the affirmation of a death sentence, the right officer of the High Court shall, without postpone, after the order of affirmation or another order has been made by the High Court, post a copy of the

[132] Jopseph Peter v. State of Goa, Daman & Diu: AIR 1977 S.C. 1812.
[133] In re Narasiah: AIR 1959 A.P. 313 at 317-318.
[134] Pandurang v. State of Hyderabad: AIR 1955 S.C. 216 at 223.

Order, under the seal of High Court and attested together along with his official signature, to the Session Court."

Section 385 Code of Criminal Procedure deals with the process for listening to appeal often no longer to dismiss such appeals totally. (1) If the Appellate Court does no longer dismiss the appeal totally, it shall purpose note of the time and area at which such appeal might be heard to be given –

(i) to the appellant or his pleader
(ii) To such officer because the State Government can also employ on his behalf:
(iii) If the appeal is from a judgment of conviction in a case initiated upon complaint, to the complainant:
(iv) If the appeal is under section 377 or section 378, to the accused, and shall provide such officer, complainant and accused with a replica of the grounds of appeal.

(2) The Appellate Court shall then sent for the record of the case, if such report is now no longer already to be had in that Court, and close to the parties:

Provided that if the appeal is sole as to the extent or the legality of the sentence, the court can dismiss of the appeal without sending for the record.

(3) Where the only ground for appeal at from a conviction is the alleged severity of the sentence, the appellant shall now no longer, besides with the depart of the Court, urge or be heard in assist of some other ground."

This section corresponds to the Old Code of section 422 with a few adjustments and additions. This section embodies the ideas of natural justice by offering that the appellate court shall cause notice of the time and place at which such appeal will be heard to be inclined to the appellant or his pleader and that is obligatory.

"Section 389 offers with the suspension of sentence pending the appeal and release of appellant on bail. It states that:" (1) any appeal pending with by a convicted individual, the Appellate Court can also, for motives to be recorded it in writing, order that the execution of the order or sentence appealed in opposition to be suspended and, additionally, if is in-confinement, that he will be released on bail, or on his personal bond.' This section relates to the provisions of Section 426 of the

Old Code.

Section 413 offers with the execution of order exceeded under Section 388: It states that "When in a case submitted to the High Court for the affirmation of a death sentence, if the Session Court gets the order of affirmation or another order of the High Court thereon, it shall purpose such order to be carried into impact by issuing a warrant or taking such different steps as can be vital." This section relates to section 381 of the Old Code with none alternative in the substance. No constant time period of delay may be held to make the death sentence in executable. A warrant does now no longer suggest simplest one warrant, even whilst interpreted in isolation and out of context. A warrant as soon as issued can go unexecuted and is susceptible to be rendered useless in some of situations. But, can it's stated that due to the fact warrant has become to be infructuous and that sentence of death have to robotically stand vacated. No provisions of the Code bars go back of the primary warrant without the execution having been carried out. Nor does it accomplish that in case of issuance of a second warrant.

Section 414 Code of Criminal procedure offers with the execution of death sentence passed by High Court. When a death sentence is proceed by the High Court in revision or appeal, the Session Court shall, on receiving the order of the High Court, purpose the sentence to be carried into impact by giving a warrant.

Section 415 of Criminal Procedure Code offers with the postponement of executing death sentence in case of appeal to Supreme Court. "(l) Where person is given death sentence by the high court and an appeal from its judgment lies to Supreme Court under sub-clause (a) or sub- clause (b) of clause (1) of Article 134 of the Indian Constitution, the High Court may order the execution of the sentence to be postponed till the length allowed for who prefer such appeal has lapsed, or if an appeal is desired within that period, till such appeal is dismissed of."

The sub-clause (2) of the identical section states that "Where a death sentence is confirmed or passed by the High Court, and an application made by the sentenced person to the High Court for the furnishing of certificates under Article 132, or under sub-clause (c) of clause (1) of Article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed till such application is dismissed by the High Court, or if a certificate is granted on such application, till the time allowed for who prefer an appeal to the Supreme Court."

The sub-clause (3) of the section states that "Where a death sentence is confirmed or passed by the High Court, and the same has agreed that the sentenced person intends to provide a petition

to the Supreme Court for the sanction of special leave to appeal under Article 136 of the Indian Constitution, the High Court shall order the execution of the sentence to be postponed for such a period of time as it considers enough to permit him to provide such petition."

Section 416 of Criminal Procedure Code is a vital provision as it offers with the postponement of death penalty on pregnant female. It envisages: "If a women who is given death sentence is observed to be pregnant, the High Court shall order the execution of the sentence to be postponed, and can if it thinks apt reduce the sentence to life imprisonment."

This provision does now no longer specify the time for which the execution must be postponed. There isn't any clue, whatsoever, in the section whether or not such postponement is for proper or until delivery of the women. Further, the High Court is the only forum wherein the regulation vests the power of postponing the execution of a death sentence confirmed and passed on a female proved to be pregnant. The Sessions Judge, can also additionally, of direction, direct the delay in the executing sentence, till suitable orders to that impact are exceeded by the High Court. The High Court, under such circumstances, is empowered even to reduce the sentence to certainly considered one of imprisonment for life, if it thinks apt and that is one example creating a departure from the mandate of Section 362 of the Criminal Procedure Code, 1973 that no Court, whilst it has signed its judgment or very last order dismiss of a case, shall modify or review the identical besides to accurate a clerical or mathematical error.[135]

The provision of Section 416 of the Criminal Procedure Code, is an example of "Reprieve" or "Respite". It is said that once a female is convicted and given death sentence, clerk of the Crown, after sentence, is to ask whether the female has something to mention in the stay of the execution of the sentence. If she then claims the Court, then or later on, has motive to assume that she is pregnant, a jury of twelve matrons is empanelled and sworn to attempt whether or not or now no longer she is quick with baby. If the Jury calls for the assistance, of a medical person, is asked with by the Court to retire and have a look at the prisoner and is then tested as a witness. If the Jury finds that the prisoner is quick with baby, the Court stays the execution of the death penalty till the prisoner delivers a baby or it's far no longer viable that she have to deliver a baby. It is but, for the prisoner to plead being pregnant, due to the fact the proper to a Jury of matrons accrues to her simplest whilst she pleads

however now no longer otherwise. In India, also, it's

[135] Chaturvedi & Chaturvedi: Theory and Law of Capital Punishment: 60 (1989).

implied, under the Section 416 Code of Criminal Procedure Code, that the convict herself or her council should mention status of her pregnancy, although, for the postponement of execution, it isn't in any respect vital that she have to be quick with baby. What is vital is that she must be pregnant, and the time factor as to the time period of the being pregnant on the time of conviction is immaterial.

In Australia, China, Czechoslovakia, Central African Republic of Morocco, Netherlands, New Guinea, Laos, United Kingdom, USSR, France and Yugoslavia in these countries pregnant women are exempted from being executed. The law offers simplest for the postponement of the execution for a time period which varies relying upon the reality whether the women given death sentence breast-feed the kid or not.[136] The thing of breast-feeding isn't taken into consideration in India. It is pretty exciting to observe whether or with the aid of using depriving a baby from being fed with the aid of using mother is violative of her fundamental right or not. However, in real exercise, the postponement of the execution in such situations normally ends in next reduction of the death penalty.

Section 432 of the Code offers with suspension, remission and commutation of sentences. It stated the following terms: “Power to suspend or remit sentences:

(1) When any character has been sentenced to punishment for an offence, the proper Government can also additionally, at any time, without situations or upon any situations which the person sentenced accepts, suspend the execution of his sentence or remit the entire or any a part of the punishment to which he has been sentenced.

(2) Whenever the application is made to the suitable Government for the suspension or remission of a sentence the suitable Government can also additionally require the presiding Judge of the Court earlier than or with the aid of using which the conviction was confirmed, to state his opinion as to whether the application have to be granted or refused, collectively together along with his reasons for such opinion and additionally to ahead with the assertion of such opinion a copy of the certificate of trial record or of such record thereof as exists.

[136] Bhattacharya, S.K: "Issues in Abolition of Capital Punishment": Employment News Weekly: 1 Dt.21-27, December, 1994.

(3) If any situation on which a sentence has been remitted or suspended is, in the opinion of the proper Government, now no longer fulfilled, the proper Government can also additionally cancel the remission or suspension, and thereupon the character in whose favour the sentence has been remitted or suspended can also additionally, if at large, be arrested with the aid of using any police officer, without warrant and remanded to go through the unexpired part of the sentence.

(4) The situation on which a sentence is remitted or suspended under this section can be one to be fulfilled with the aid of using the person in whose favour the sentence is remitted or suspended, or one unbiased of his will.

(5) The suitable Government can also additionally, with the aid of using preferred guidelines or unique orders, provide guidelines as to the suspension of sentences and the situations on which petitions have to be offered and dealt with:

Provided that in the case of any sentence (different than a sentence of fine) exceeded on a man above the age of 18 years, no such petition with the aid of using the sentenced person or with the aid of using some other person on his behalf will be entertained, until the character sentenced is in prison, and –

(a) Where this kind of petition is made with the aid of using the person sentenced, it's far offered by the officer in charge of the prison; or
(b) Where such petition is made with the aid of using some other person, it includes a statement that the person sentenced is in prison.

(6) The provision of the above sub-sections shall additionally follow to any order exceeded with the aid of using a Criminal Court under any section of this Code or of some other law which restricts the freedom of any individual or imposes any legal responsibility upon him or his property.

(7) In this section and in Section 433, the expression "suitable Government" means, -

(a) In instances in which the sentence is for an offence in opposition to or the order mentioned in sub-section (6) is moved by any law referring to a depend in which the government power of the Union extends, the Central Government:
(b) In different instances, the Government of the State in which the culprit is sentenced or the

stated order is passed."

Section 432 contains the provisions of section 401 and 402(3) of the Old code. There isn't any alternate in substance of the old regulation.

This section does no longer provide any power to the Government to revoke the judgment of the Court, however offers the power of remitting the sentence. The minimal sentence awardable under section 302 of Indian Penal Code, being imprisonment for life no reduction is viable. This power is executive in nature.

While Article 161 of the Constitution speaks of furnish of reprieves, pardons and remissions etc., it does no longer talk of imposition of situations for furnish, while section 432 Code of Criminal procedure speaks of suspension or remission with any situation. Section 432(3) especially offers for effects of the situations which might be pondered with the aid of using Section 432(1) Code of Criminal Procedure no longer being fulfilled. Section 432 (3) contemplates remanding the offender so subjected to remission to prison as soon as again. Section 432 of Criminal Procedure Code isn't manifestation of Articles 72 and 161 of the Indian Constitution however a separate, although comparable provision.[137]

In instances of murder, the Judge can also additionally document any extenuating situations calling for a mitigation of punishment to the Government and the Government can also additionally thereupon take such motion under this section because it thinks apt. The phrase remit as utilized in Section 432 isn't a time period of art. Some of the meanings of the phrase "remit" are to pardon, to give up. There is consequently, no impediment in the manner of the Governor in remitting a death sentence.[138] When the worried Court feels sympathetic closer to the accused, attributable to a few motives which includes the spouse of the accused is a most cancer affected person with six kids[139] or the accused is a boy culprit of tender years[140] or accused is a younger girl who committed murder under they have an impact on others[141] however legally restricted to expose mercy, then it recommends such instances to the

[137] Krishna Nair v. State of Kerala: 1994 Cri.L.J. 86 Ker.
[138] The Deputy Inspector General of Police, North Ranges, Waltair and another v. D. Raja Ram and others: AIR 1960 A.P. 259 and Manepragada Ramachandra Rao v. The Revenue Divisional Officer, Kowuru: AIR 1957 A.P. 249.
[139] Sadhu Singh v. State of Punjab: 1968 Cri.L.J. 1183 (P&H).

[140] Nawab v. Emperor: AIR 1932 Lah. 308.
[141] Kartar Singh v. Emperor: AIR 1932 Lah. 259.

Government, due to the fact the power of granting mercy is vest with the government however no longer with the judiciary.

An order passed under Section 432 Criminal Procedure Code is justiciable on any of the subsequent grounds:

(1) That the authority exercises the power had no jurisdiction.
(2) That the impugned Order is going past the extent of power conferred with the aid of using regulation.
(3) That the order has been acquired at the ground of fraud or that it's been exceeded contemplating the extraneous concerns no longer germane to the exercising of the power or in different words, is an end result of malafide exercising of power.[142]

The brother of the murdered man is taken into consideration to one of the maximum aggrieved events and has the locus standi to challenge the order of remission punishment. While the State Government isn't legally obliged to offer motives for remitting sentence, its far obligation sure to answer to allegations made in petition hard the remission. The State Government is no longer sure to supply the statistics under writ of certiorari. The preliminary onus is at the petitioner to offer prima facie proof to expose that the power has been exercised malafide. Reference under sub-section (2) of section 432 Criminal Procedure Code isn't obligatory and consequently non- compliance of the stated provision does no longer make the impugned order without jurisdiction.[143] Even although the Sentence Revising Board isn't required to offer special motives, although the executive orders are issue to judicial review.[144]

Section 433 Code of Criminal procedure offers with the power of commuting the sentence." The suitable Government can also additionally, without the consent of the sentenced person, commute –

(a) Death sentence, for some other punishment furnished with the aid of using the Indian Penal Code:
(b) Section 433 relates to the provisions of Section 402(1) of the Old Code.

[142] Ram Nath Iyer: Code Criminal Procedure: 3233 (1994).
[143] Hukam Singh v. State of Punjab: 1975 Cri.L.J. 902 (P&H).

[144] Rakesh Kaushik v. Delhi Administration: 1986 Cri.L.J. 566 (Del).

A mixed analyzing of the provisions of the Articles 72, 73, 161, 162 and 246 of the Indian Constitution and those of Section 433(a) Code of Criminal Procedure suggests that the State Government maintains to enjoy the power of commuting a death sentence; for the reason that expression "State Government" means the Governor under the General Clauses Act and under Section 433 Code of Criminal Procedure, the Governor can reduce death sentence of Section 433 Code of Criminal Procedure.[145]

Albeit the Court to start with felt that reasons need no longer be given in the case of commute death sentence under prerogative of mercy of State[146]. Later observations of the Supreme Court[147] insist that if there are any mitigating situations, no longer delivered on record for lowering the death to life imprisonment, the right direction is to carry them to the attention of the proper Government. It is actual that during right instances an inordinate postpone in the execution of the sentence of death can be appeared as a ground for reducing it. But, that is no rule of law and is an issue mainly for attention of the State Government.[148] Accordingly no rule may be laid down that postpone exceeding 2 years the execution of sentence of death may be used to call for its conversion into imprisonment for life.[149]

Section 434 of Code of Criminal Procedure envisages that the power conferred with the aid of using Sections 432 and 433 upon the State Government can also additionally, in the case of death sentence, additionally be exercised with the aid of using the Central Government. This section relates to Section 402 (2) of Old Code. However, this section is relevant solely to a death sentence and to no different sentence. The Supreme Court keeps and need to hold an inherent power and jurisdiction for managing any tremendous situations in the bigger interests of administration of justice and for stopping manifest injustice being done.[150]

[145] Parkasho v. State of Uttar Pradesh: AIR 1962 All. 151.
[146] King Emperor v. Sheo Shankar Singh: AIR 1954 Pat 1093.
[147] Kartar Singh v. State: 1977 Cri.L.J. 214 (S.C).
[148] AIR 1964 S.C. 276.
[149] Sher Singh v. State of Punjab: AIR 1983 S.C.465.
[150] Supra note 50 at 3238.

CHAPTER – V

ARTICLE 21 AND DELAY IN EXECUTION REASONS

5.1 ARTICLE 21

5.1.1 CONSTITUTIONAL LAW

Article 21 of the Indian constitution ensures right to life and personal liberty to all which incorporates right to live with human dignity. No individual will be deprived of his right excepting according to the procedure established by law. Therefore, the state might also additionally put off or abridge even right to life in the call of Law and public order following the procedure established through Law. But this method ought to be "due procedure" as held in Maneka Gandhi v. Union of India[151]. The method which takes away the sacrosanct life of a person ought to be just, honest and reasonable. So, fair trial following concepts of natural justice and procedural Laws are of maximum significance whilst death penalty is at the statute book. Therefore, our constitutional precept is in track with procedural necessities of Natural Law whichrepresent the internal morality of Law which can be said as follows:

- Death sentence is for use very sparingly most effective in unique cases.
- Death sentence is dealt with as an excellent punishment to be imposed with unique reasons.
- The offender has a right of hearing.
- There ought to be individualization of sentence thinking about respective circumstances.
- Death sentence ought to be affirmed through the High Court with right utility of mind.
- There is right to appeal the Supreme Court under article 136 of the Indian Constitution and under section 379 of the Criminal Procedure Code. The Supreme Court ought to take a look at the problem to its very own satisfaction.
- The offender can pray for pardon, commutation etc. of sentence under sections 433 and 434 of the Criminal Procedure Code and other articles 72 and 161 to the President or the Governors. Articles 72 and 161 incorporate discretionary power of the President and the Governor past judicial power to intervene on deserves of the problem; although judiciary has confined power to check the problem to make sure that everyone applicable files and

[151] AIR 1978 SC 597.

substances are placed before than the President or the Governor. However, the essence of the power of the Governor ought to be primarily based totally on rule of Law and rational concerns and no longer on race, religion, caste or political affiliations.

- The accused has a right to rapid and honest trial under articles 21 and 22 of the Constitution.
- The accused under article 21 and 22 has right no longer to be tortured.
- The offender has freedom of speech and expression within custody of articles 19 and 21 of the Constitution.
- The offender has right to appoint a duly qualified legal practitioner.

5.1.2 JUDICIAL APPROACH

In Jagmohan Singh v. State of U.P.[152] it turned into argued that death penalty for murder violates articles 21 and 14 of the Constitution. The legal representative for the appellant contended that once there are discretionary power conferred at the judiciary to impose imprisonment for life or death penalty, enforcing death penalty is violative of article 14 of the Constitution if in comparable cases one receives death penalty and the alternative imprisonment for life. On this factor the Supreme Court held that there may be no benefit in the argument. If the Law has given to the judiciary huge discretionary power in the matter of sentence to be passed, it will likely be hard to assume that there could be uniform utility of Law and flawlessly constant choices due to the fact data and instances of one case can't be similar to that of the alternative and accordingly those will stay enough ground for scale of values of judges and their mindset and belief to play a role. It turned into additionally contended that sentence of death violates no longer most effective article 14 however additionally articles 19 and 21 of the Constitution. Here method isn't always clean due to the fact after the accused is observed guilty, there may be no different method mounted through law to decide whether death penalty or different much less punishment is suitable in that precise case.

But this rivalry turned into rejected through the Supreme Court and the Court held “in crucial cases like murder the court constantly offers a chance to the accused to cope with the court at the query of capital punishment”. The Court additionally held “deprivation of life is constitutionally

permissible supplied it's finished in line with procedure mounted through Law. The sentence of death consistent with se isn't always unreasonable or no longer in opposition to public interest. The coverage of the Law in giving a completely huge discretion in the matter of punishment to the Judges has its starting place in the impossibility of laying down requirements. Any try to lay down requirements as to why in a single case there ought to be extra punishment and in the different much less punishment could be a not possible task. What is real with reference to punishment imposed for different offences of the Code is similarly real in the case of murder punishable under section 302 Indian Penal Code. No system is viable that might offer an affordable criterion for endless variety of instances that could have an effect on the gravity of the crime of murder. The impossibility of laying down requirements is on the very center of the criminal law as "'administered in India which invests the Judges with a completely huge discretion in the matter of solving the degree of punishment".[153]

In Rajendra Prasad v. State of U.P.[154] V. R. Krishna Iyer, J. determined "the humanistic vital of the Indian Constitution, as paramount to the punitive approach of the Indian Penal Code, has rarely been explored through the courts on this area of 'death or life' at the hands of the Law. The fundamental awareness of our Judgment is in this poignant hole in human rights Jurisprudence in the limits of the Indian Penal Code, impregnated through the Constitution in the Post-Constitutional phase section 302, Indian Penal Code and section 354(3) of the Criminal Procedure Code ought to be study in the human rights of Parts III and IV, in addition illuminated through the Preamble to the Constitution." The Court held that it's constitutionally permissible to swing an offender out of corporeal existence if the safety of nation and society, public order and the pursuits of the overall public compel that direction as supplied in article 19(2) to (6). Social justice needs to be study with reasonableness under article 19 and non-arbitrariness under article

14. V. R. Krishna Iyer, J. additionally determined that such awesome grounds on alone constitutionally qualify as unique motives as to depart no choice to the court however to execute the wrongdoer if the nation and society are to continue to exist and progress. He turned into in favour of abolition of capital punishment in general and retention of it most effective for White Collar Crimes.

[153] See supra note 5, at 956-959.

[154] AIR 1979 SC 916.

In Bachan Singh v. State of Punjab[155] the Supreme Court through 4:1 majority has overruled it's previous Judgment said in Rajendra Prasad's case and held that sentence of death under section 302 Indian Penal Code does no longer violate article 21 . The International Covenant on Civil and Political Rights, to which India has become a party in the year 1979, does no longer abolish imposition of capital punishment totally. But it ought to be moderately imposed and no longer arbitrary; it ought to be imposed in maximum severe crimes. In this example the Court held that "Judges ought to no longer be blood thirsty. An actual and abiding difficulty for the honor of human life postulates resistance to taking a life through laws' instrumentality. That ought no longer to be finished keep in the rarest of rare cases whilst the opportunity choice is certainly foreclosed."

In T.V.Vatheeswaran v. State of Tamil Nadu[156] the problem turned into whether delay in execution of capital punishment violates Article 21 of the Constitution and whether on that ground sentence of death can be changed through imprisonment for life. A Division Bench along with Chinnappa Reddy and R B. Misra JJ. held that extended delay in execution of capital punishment is unfair, unjust, inhuman and unreasonable; which additionally deprives him of primary rights of person, assured under article 21 of the Constitution i.e., right to life and personal liberty. Mr. Reddy and Mr. Mishra JJ. Observed accordingly, "Making all affordable allowance for the time vital for enchantment and attention of reprieve, we assume that delay exceeding 2 years in the execution of a death sentence ought to be taken into consideration enough to entitle the individual under death sentence to invoke Article 21 of the Constitution andcall for quashing of the death sentence."

Therefore, 'due process' i.e. just, honest and affordable method as held in Maneka Gandhi[157] does no longer end with most effective affordable pronouncement sentence of death alternatively it extends until the right and due execution of sentence. There turned into 2 years delay in executing sentence of death. The court reiterated that rapid trial is an quintessential a part of Part III of our Constitution and it's inclusive under article 21 and there has been extended detention earlier than execution of capital punishment and the accused turned into ready each second for

[155] AIR 1980 SC 898. See also (1980) 2 SCC 684, 715 para 88.
[156] (1983) 2 SCC 68.
[157] Maneka Gandhi v. Union of India, AIR 1978 SC 597.

due execution of capital punishment. Every second he turned into terrorized. Therefore, it ought to be dealt with as violation of the Constitutional mandate.

In Noel Riley v. A.G. of Jamaica[158] the Privy Council held that extended delay in execution of death penalty because of outside elements is inhuman and degrading. But from which date the phase might be counted and whether length like 2 years is the yardstick? It isn't always clean even from the choices of various benches of the Supreme Court. In Ediga Anamma v. State of A.P.[159] V.R. Krishna Iyer and R.S. Sarkaria, JJ: substituted death penalty through life imprisonment no longer most effective for 12 delay of hanging however additionally on non- public grounds which include imbalance, youth, intercourse and expulsion from her conjugal relation.

In Sher Singh v. State of Punjab[160] (Y. V. Chandrachud C.J.; V.D. Tulzapurkar and A. Varadrajan, J.J.) Chief Justice disaffirmed the selection in Vatheeswaran[161] in which the court had held that 2 years delay in execution of death penalty could get replaced through imprisonment for life as binding rule and rejected the plea for substitute of death penalty through imprisonment for life. When delay in execution is in issue, the court ought to discover motives for delay. Therefore 2 judges' selection turned into overruled through 3 judges' bench. The court held that extended delay in the execution of a death penalty is a crucial attention to decide whether the sentence ought to be allowed to be executed.

As the doctrine of rarest of rare case advanced in Bachan Singh v. State of Punjab, the Supreme Court attempted to formulate particular standards to decide scope of 'rarest of rare case' in Macchi Singh v. State of Punjab[162]. The court opined that whilst one is killed through another, the society might not experience sure through this doctrine. It as to recognize that all and everybody ought to stay with safety. Rarest of rare doctrine needs to be decided in line with following elements

- Manner of Commission of murder: If the murder is devoted in a very brutal, revolting, grotesque, diabolical or dastardly way to extreme indignation of the community.

[158] (1982) 3 WLR 557.
[159] (1974) 4 SCC 443.
[160] (1983) 2 SCC 344.
[161] Supra note 10.
[162] AIR 1983 SC 957.

- If Motive for the Commission of Murder suggests depravity and meanness.
- Socially or anti-social abhorrent nature of the Crime.
- Character of Victim of the murder that is, helpless Woman, public discern, child and so forth.
- Enormity of the crime.

The Supreme Court held in Attorney General of India v. Lachmi Devi[163] that the mode of wearing out capital punishment through public executing is barbaric and violative of Art.21 and that there ought to be procedural equity until final breath of life as held in Triveniben v. State of Gujarat[164].

In Madhu Mehta v. Union of India[165] the mercy petition of the accused turned into pending before than the President of India for approximately 9 years. This count turned into delivered to the awareness of the court through the petitioner. The court directed to commute sentence of death to life imprisonment due to the fact there have been no motives to justify extended delay and rapid trial turned into stated to be included in article 21 of the Constitution. There turned into 9 years' delay in execution of death penalty. Sabyosachi Mukharji J. and B.C. Roy J. permitted and depended on Triveniben[166] and once more held "Undue lengthy delay in execution of the death sentence could entitle the condemned individual to proceed towards this court or to proceed towards under article 32 of the constitution, however this court could most effective take a look at the character of delay triggered and instances. No constant length of delay may be taken into consideration to be decisive. It has been emphasized that article 21 is applicable here. Speedy trial in criminal instances although might not be essential right is implicit in the vast sweep and context of article 21. Speedy trial is a part of one's primary essential right i.e., liberty and right to life. This precept isn't any much less crucial for disposal of mercy petitions. It has been universally acknowledged that a condemned individual has to go through a degree of mental torture despite the fact that there may be no bodily mistreatment and no primitive torture".

[163] AIR 1986 SC 467.
[164] AIR 1989 SC 142.
[165] (1989) 4 SCC 62.
[166] See supra note 10.

In the State of U.P. v. Dharmendra Singh[167] the U. P. High Court commuted death to imprisonment for life at the ground that the accused had spent 3 years in a death cell after very last order of the court for death due to the fact he was dying each moment.

5.2 CAUSES FOR DELAY

For the reasons of delay in execution, at first the delay in inquiry need to be taken in an effort to get worse the problem in the right aspect and to plan methods and way of checking the malady. Though the judiciary isn't always blamable for lots delays that arise in the public perception; Judiciary is more often blamed without appreciating the actual motives. The judiciary, on its part, stays silent and refrains from conveying to the general public that sure delays are past its manage. This being the ground reality, what the judiciary is predicted to do, is to introspect at the delays because of it and to vigorously adopt such measures, as are important, to position its residence in order. It is on this heritage that a few important remedial measures to be followed with the aid of using the judiciary are highlighted and that they have direct or oblique bearing at the prosecution and trial of influential public men.

5.2.1 PRE-TRIAL DELAY

The delay in execution isn't always best a judicial work however there may be additionally delay on the first step of the case this is in the course of the investigation by the police i.e. Pre- trial delay. The function of police is likewise a crucial element in delay of the execution of the death sentence. “Some important elements concerning the police pursuit are as follows:

- Idleness and state of being inactive at the part of the police in registration of the First Investigation Reports and taking over the investigation in proper excessive for diverse motives. This is so regardless of Police Manuals emphasizing the want for quick and prompt investigation.
- Police are both hesitant to continue with the investigation towards influential people or they're under stress no longer to behave rapidly mainly if the person accused is in power or an lively member of the ruling party. They undertake a frightened mind-set whilst the accused are such individuals.

[167] Decided on September 21, 1999.

- Corruption at Police Station stage is shifting the well timed and qualitative investigation. Further, the Police Stations are understrength and the police employees lack motivation to behave without worry or favour.
- When the FIR isn't always registered in a reasonable time or the step of investigation is behind schedule, there may be no inner machinery to test this correctly. Even in States in which ASP are posted in each District to be especially in charge of crimes the state of affairs has no longer improved, besides marginally.
- There isn't any well timed exercising to development the talents of investigation. There isn't any intelligence communication really well worth the call to get the inputs of corruption and crime and to absorb precautionary measures.
- Sufficient precedence isn't always given for crimes investigation. The diversion of employees from the Police Stations for diverse particularly unimportant duties consisting of 'Bandobust' is a usual phenomenon. In maximum of the States, the present police pressure connected to police stations is fully insufficient and even the sanctioned strength continually stays in deficit.
- Sanctions for prosecution are unduly behind schedule with the aid of using the Governments. These motives aren't strange to instances of public men; they're all issues surrounding the Criminal Justice device as a complete."
- Police are pretty frequently handicapped in obligation of powerful investigation for need of contemporary-day equipment consisting of video instrument, camera, forensic science laboratories etc. Number of laboratory are scarce or even on the district level, there may be no lab that could render well timed help to the investigating Police. Further, it's that there may be loss of forensic and cyber professionals in police departments of diverse States. The end result is that Police closely lean closer to oral evidence, instead of targeting clinical and circumstantial evidence.
- Sufficient care and attempt isn't always dedicated for inspecting and recording the statements of witnesses. Further, promptness on this regard is located to be wanting.
- The reviews recorded aren't fed to the system without delay both due to the fact there may be no network community or there may be no employees educated in the task or for needs of particular commands.

- Sufficient time and care isn't always bestowed in drafting the very charge sheets/final reports. Defective charge sheets without narration of all applicable facts and charge sheets unaccompanied with the aid of using annexures are reported to be very usual and generally tend to delay the lawsuits. This crucial document that's commonly organized with the aid of using a 'Writer' on the Police Station is now not cautiously scrutinized by the Station House Officer. The 'Writer' appointed at heavy Police Stations is overworked and might rarely spare the needed time.
- The photos of accused (no longer to talk of witnesses) aren't affixed to the arrest memos/charge sheets etc. nor even the identity marks are noted, making it tough to perceive the accused in the direction of trial or to search the absconding accused.

5.2.2 DELAY DURING TRIAL

- Absence of a few or all of the accused or not produced of under trial prisoners on the degree of framing of charges and in the course of trial. Deep efforts aren't being made with the aid of using the Police in producing and apprehending the absconding accused. Execution of warrants has end up the least precedence for the police who've their personal motives; true in addition to artificial. Where there are massive numbers of accused, the delays in this account have end up a habitual feature. If the accused are dwelling out of doors the District or the State, it compounds the hassle in addition.
- Police fail to make certain that prosecution witnesses flip up in time and pretty frequently, even Investigation officials are defaulters. Trial instances are postponed pretty frequently for non-attendance of authentic witnesses.
- The advocates representing for the accused searching for adjournments without justification specially to delay the trial or to provide manage to the accused party to win over the witnesses. The heavy workload in the courts is taken gain of with the aid of using the advocates to press for adjournments. The witnesses are frequently restrained to depart the court without being examined. Sometimes, the Prosecution additionally seeks adjournment without proper notice for the accused.
- Lack of right witness safety measures and the Court failing to behave right away in instances of proceedings of harassment/inducement of witnesses.

- Trial Judges no longer initializing powerful case control measures such as solving up right time-schedules and making sure continuity in trial and coping with the advocates with firmness and tact. Further, there may be a tendency at the part of a number of the Judges to be complacent, as soon as they attain the prescribed quantity of units (i.e. required quantity of disposals in step with month).
- Judges attempting extreme offences under the unique Acts consisting of PC Act, NDPS Act, Economic offences being transferred (even if there are no particular proceedings) earlier than they complete their 3 year term.
- Trial Judges no longer correctly availing of sure provisions of Criminal Procedure Code, Sections 293, 294 and 296, Section 299 (recording of proof in absence of accused) being resorted to belatedly. So additionally delays are observed in issuing proclamation orders towards absconding accused.
- Inadequate quantity of Courts mainly in a few primary States.
- Inadequate body of workers strength and poor recruitment manner.
- Absence of powerful mechanism on the High Court level to perceive topics mainly Session cases and to take vital remedial measures on everyday basis.
- District Judges no longer bringing to the awareness of the High Court extraordinary delays being brought about in particular instances even as furnishing monthly/quarterly statements to the High Court.
- Trials are frequently held up attributable to pendency of quash lawsuits in the High Courts after the charges are framed.

The hassle of a litigant in getting delayed justice starts off evolved right from the stage of District Court. “The manner of the District Courts is so sluggish going and expensive, that each practical guy attempts his pleasant to keep away from knocking the door of the Court. There are diverse motives for delay in disposal of cases in the District Courts however the most important among them is repeated adjournments of instances. One party is continually interested by delaying the disposal of instances; such party adopts all viable strategies for receiving the case adjourned. The High Court need to issue a few particular commands laying down the time restriction and norms for granting adjournments. No suit need to be adjourned extra than two times; at the 3rd occasion the court need to repair the listening to the case peremptorily. A peremptorily constant case need to no longer be adjourned besides in excellent situations, the

judge adjourning a peremptorily attempted case need to file motives for adjourning the case and need to additionally make certain that the case is disposed of in a month from the date it turned into constant for peremptory hearing to."

The courts would require supervisory method in accepting this manner and must act with high-quality care and caution. It may be the obligation of the Court to make certain that a peremptorily constant case isn't always adjourned with the aid of using the court for its personal incapability to pay attention the case besides in excellent situations. Since even as laying down a rule, all exceptions to the guidelines cannot be conceived of and at all charges the discretion of the court need to be kept intact in coping with the topics earlier than him however the excellent situations for adjourning the case need to be obvious at the face of the record.

"For eliminating peremptorily constant instances the everyday purpose listing of the court will must be deliberate in a way that a peremptorily constant case isn't always adjourned at the ground that the court is left and no time to pay attention the case. In this connection an in depth schooling may be required for preserving the everyday purpose listing of the court. Experienced officials, who've unique information of court control, need preparation of daily cause list to frame guidelines. The difficulty may be dealt with in an exclusive sub-head."

Many instances, cases must be adjourned at the ground that legal professionals have determined to quit work or they're on strike or adjournment is sought on a few private ground of legal professional. In the existing system it's tough to determine instances on deserves in the absence of legal professionals, litigant on the District ranges no longer in a function to plead his personal purpose in the absence of his legal professional. The courts don't have any manage over Advocates; Advocates are under the disciplinary managing of Bar Council. On occasions, Bar Council itself offers a name of strike. In the existing system and in view of the truth that legal professionals of District courts are regularly on strike, the courts are pressured to determine instances after significant delay. No legal professional may be imposed on a litigant.

The High Court need to come ahead to remedy the hassle with the aid of using issuing particular course on this regard laying down that instances will no longer be adjourned more than two times even on personal ground of legal professional or legal professional's strike. Unless a few such drastic measures are followed, the hassle of delay in disposal of cases cannot be looked after out.

- Vacancies in the places of work of Public Prosecutor ensuing in a single Public Prosecutor shuttling from one Court to another thereby inflicting dislocation of Court work. There isn't any powerful mechanism to supervise the functioning of Public Prosecutor. The recruitment manner is both poor and politically manipulated. The provision in Section 24(4) of Criminal Procedure Code which calls for the District Magistrate to put together a panel of names in shape to be appointed as PPs/ Additional Public Prosecutors for the district in session with the Sessions Judge, has been deleted or amended with the aid of using many States. It is the only prerogative of State Government to hire PPs and Additional Public Prosecutors in their preference in many States.
- Though the Code of Criminal Procedure enjoins the charter of Directorate of Prosecution and commonly a Director of the rank of District Judge is appointed as Director, he's required to feature under the administrative control of the Home Secretary by Section 25A(3). Home Secretary rarely evinces any importance in topics associated with Directorate of Prosecution. The Director and Deputy Director don't have any functional independence and they are able to best exercising peripheral supervision over the PPs/APPs.
- Lack of coordination among the Police and Public Prosecutor. The help of involved Police Officers is seldom to be had to Public Prosecutors. Prosecutors frequently experience helpless.

The actual hassle is that the group of instances in the courts a long way exceeds their disposal. Though there may be a significant growth in the disposal of cases in diverse courts, the group of case has extended extra rapidly. The average disposal in step with judge involves 2370 cases in the High Courts and 1346 cases in lower courts, if calculated on the idea of disposal in the 2010 and running strength of judges as on 31-12-2010. Applying this average, we require 1539 High Court judges and 18,479 subordinate judges to clean the backlog in a single year. The requirement might come right all the way down to 770 extra High Court judges and 9239 extra lower court judges if the arrears alone must be cleared in the subsequent years. The present strength being insufficient, even to get rid of the real group, the backlog cannot be worn out

without extra strength, particularly, whilst the group of instances is in all likelihood to growth and no longer come down in the coming years[168].

- Lack of punctuality, laxity and shortage of manage over case-documents and court proceedings, attending social and different capabilities in the course of running hours make contributions in no small degree in inflicting delays in the disposal of cases[169].
- In granting adjournments some judges are very liberal in nature.
- Some judges come to courts without analyzing case-documents; therefore, the legal professionals must spend a number of times simply to give an explanation for the records of the case and legal points concerned therein. Therefore, they argue at period and all this ends in wastage of precious 'Courts Time'. There is a high-quality want for self- improvement with the aid of using Judges."

The function of legal professionals could be very crucial in justice delivery system. The commitment of those specialists can alternate the complete scenario. Unfortunately, they're additionally answerable for delay because of various motives.

- Lawyers aren't precise; they take pleasure in prolonged oral arguments simply to galvanize their clients.
- Lawyers are acknowledged to take adjournments on frivolous grounds. The motives vary from the family celebrations to the death of distinct relative. With each adjournment the manner turns into costly for the court and for the litigants; however the Lawyers receive a commission for his or her appearance and time. More frequently than no longer, legal professionals are busy in another court. They have taken up excess cases than they are able to manage; as a result, adjournments are regularly sought.
- It is likewise real that legal professionals do no longer put together their cases. A higher guidance of the brief is certain to growth the performance of the system.
- It is visible that legal professionals frequently strike to moves. The motives may be any – it degrees from misbehaviour with their colleague either inside the court or out of doors the court to implementation of a few enactment. The strike with the aid of using legal

[168] CJI Justice K.G. BalaKrishnan, Efficient Functioning of India's Justice Delivery System (2007) 4SCC J-16, 17.
[169] CJI A.S. Anand, Indian Judiciary and Challenges of 21st century, The Indian Journal of Public Administration,

July-Sept 1999 vol. XLV No. 3, p 300.

professionals towards the decision of the authorities to put in force a modification in the Civil Procedure Code is an example. This turned into very unlucky due to the fact the principle goal at the back of those amendments turned into to curtail delays in disposal of cases.

However, the Supreme Court's Judgment in Harish Uppals v Union of India[170] that legal professional had no right to move on strike or provide a name for boycott no longer even a token strike, will clearly discourage the legal professional to move on strike except they simply had a strong purpose.

In this case the Supreme Court had issued particular guidelines that Lawyers need to no longer to strike besides in rarest of the rare cases and instead, peaceful demonstrations need to be held, consisting of carrying of the arm band, in order that courts' running isn't always affected. The Supreme Court held: "The law is already properly settled a legal professional who has general a brief cannot refuse to attend court due to the fact a boycott name is given with the aid of using the Bar Association the courts are under an responsibility to pay attention and determine case delivered earlier than it and cannot adjourn topics simply due to the fact legal professionals are on strike that it's the obligation and responsibility of courts to move on with topics or in any other case it'd be tantamount to turning into a aware of the strike Lawyers have acknowledged, at the least considering the fact that Mahabir's case[171] that in the event that they take part in a boycott or a strike, their motion is Prima-facie awful in view of declaration of law by court that advocates might be answerable for results suffered by their clients if the non- look turned into totally at the grounds of a strike call."

The court in addition observed: "The court may also, however, forget about protest, absentation from work by legal professionals for 1 day in 'rarest of rare case', in which the dignity, integrity and independence of the bar and/or bench are at stake. Stating it in clean phrases that any interference from everyone or authority in every day management of justice cannot be tolerated and that the court can and could take disciplinary motion towards an suggest for non-look with the aid of using motive of a name for strike or boycott it's been suggested (as in step with justice B.M.Shaw) that the advocates can get redressal in their grievances by passing resolutions, making representations, taking out silent processions, retaining dharnas, can resort to relay rapid

[170] AIR 2003 SC 739.
[171] Mahabir Prasad Singh v. Jack Aviation (P) Ltd. AIR 1999 SC 287.

and might have dialogue with the aid of using giving T.V interviews or press statements. So the want of the hour is that the legal professionals have to behave in accountable way and restrain themselves from resorting to strikes etc." There are two types of laws – procedural laws and the substantive laws. Substantive laws outline the rights and liabilities[172]. However the procedural laws offer a mechanism to put in force those rights and liabilities[173].

Most of those laws are round 100 years old and aren't properly drafted. Since it isn't always viable to dispense with them, the best opportunity is to reshape them due to the fact they've end up the largest hindrances in the manner of speedy disposal of cases. The Law Commission of India by its diverse reports[174] has highlighted those issues. So plenty time is wasted at the arguments of jurisdiction, purpose of motion, sufficiency of word, amendments of plaint and different procedural topics. Moreover, the phrases or phrases used in the Bare Acts are noticeably technical and tough (just like the phrases - notwithstanding, nevertheless, proviso, furnished difficulty to the Provision herein after Provided) and as a result past the comprehensions of a Common person The procedural laws want to be simplified due to the fact howsoever correct the major law may also be, it could be powerful best if procedural guidelines are simple, powerful and expeditious. There are many provisions in those Acts, imparting adequate possibilities for delaying the disposal of cases. Even after preliminary judgment, the possibility of filling appeals in addition reasons for delay, in which the very last judgment is secured, execution is more than in all likelihood to be returned unsatisfied. All these contributeto delays.

There is another strange practice. Whose purpose is baffling: that of rotating the bench periodically? In this, judges coping with a specific case get shifted to pay attention different cases. This impacts continuity and ends in addition delays and costs. "Another motive at the back of the unhappy scenario is that the quantity of Judges is noticeably disproportionate to the population. A human being, howsoever intelligent, has a constrained capability to work. So do the judges. The population of our country is over one 100 crores, but the quantity of judges for

[172] The Indian Contract Act, 1872, the Transfer of Property Act, 1882, and Indian Penal Code, 1860 etc. are all substantive laws.
[173] The Code of Civil Procedure 1908, the Code of Criminal Procedure 1973, and the Indian EvidenceAct 1872 is the principal procedural laws.
[174] The law commission through its 14th, 27th, 41st, 48th, 54th, 71st, 74th, 77th, 79th & 144th report has dealt withreforms in legislation.

the aforesaid population is only 17,615[175]. Thus the quantity of judges in step with millions of population is 10.5 judges/million[176]. Recently it has long past as much as 13 Judges per million as towards a predicted requirement of 50 judges in step with millions of the population. In All India Judges Association's Case[177], the Supreme Court has expressed its decision that the quantity of Judges be extended in a phased way in 5 years so one can enhance the Judge- Population ratio to 50 in step with million. A comparative have a look at of the quantity of judges running in different international locations can inform us lots approximately how a long way we're lagging at the back of. Further, a Judge has 30 Plus cases at[178] the listing each day towards the most of 10-15 instances which a Judge can manage, ensuing in liberal supply of adjournments at the mere asking, which once more ends in delay. Hence the Judges' strength have to be extended with instant impact."

5.2.3 POST-TRIAL DELAY

The delay in execution is likewise viable after the intending is fulfilled i.e. post- trial delay. "The State and Central Governments have powers to commute sentence of death after their very last judicial confirmation. This power, not like judicial power, is of the widest amplitude and no longer circumscribed, besides that its exercising have to be bona fide. Issues frequently alien and beside the point to legal adjudication – policy considerations, ethics, public good and morality are intrinsically suitable to the exercising of clemency powers. These powers exist due to the fact in suitable instances the strict necessities of law want to be tempered and departed from to attain honestly simply final results in its widest sense.

The government's powers to commute a sentence of death, in different phrases, exist to treatment deficiencies in the strict application of the law. Therefore, in jurisdictions preserving death penalty, the right exercising of mercy powers is of the maximum significance for the reason that human lives rely on it. Every citizen has a right to petition the authorities to commute any sentence of death, because the state's power to take existence emanates from the people, and executions are accomplished in their name.

[175] Only .0013% of our population consists of Judges.
[176] R.C. Lahoti, Envisioning Justice in the "21st Century" 2004(7) SCC Journal p 13.
[177] (2002) 4 SCC 247.
[178] Of some 30 Plus cases listed per day around 28 get adjourned – as reported in Industrial Economist:November, 2011.

Clemency powers of both pardoning a wrongdoer or decreasing or altering the punishment awarded,[179] have their provenance in comparable powers, which, considering the fact that time immemorial, have vested in the sovereign. However, their exercising today, in contemporary-day democratic states, isn't always, because it turned into of yore, a private act of grace, however one of solemn constitutional obligation.[180]

Clemency powers in India are enshrined in the Constitution. Article 72 vests those powers in the President, and Article 161 vests comparable powers in the Governors of the States. There are a few loopholes because of which the time restriction no longer constant for mercy petition, so there may be delay in the execution. After the trial length a few years passed without execution with pending mercy petition.

5.3 EFFECT OF DELAY IN EXECUTION

Due to the delay in execution there may be impact no longer best at the accused or sufferer however additionally at the society and law and order.

5.3.1 EFFECT OF PUT OFF IN EXECUTION ON ACCUSED

Pain of ready to be accomplished hurts and kills the convict many more instances than the real execution. Also, the government wishes a guide who has a few degree of independence from persons that prosecuted the underlying criminal case; who can carry an exclusive values to be undergo on the problem and whose impartial political duty can offer the president a degree of safety from public criticism. The usual law rule of nemo debet vis vexari this means that no person needs to be positioned two times at risk for the equal offence. “The accused is included under Article 20(b) for double jeopardy while there may be no law restraining dual punishment which the convict countenanced for postponement in execution of capital punishment.”

5.3.2 EFFECT OF DELAY IN EXECUTION ON VICTIM

Victim is going to the court for justice however if there may be a delay in justice the perception of the sufferer in justice loosed. Victim receives injustice because of delay. Not best the accused however additionally the sufferer mentally tortured in the course of the pendency of the case. Due to police investigation, courts intending, witnessing, questioning with the aid of using legal

[179] Govt. of NCT of Delhi v. Prem Raj, (2003) 7 SCC 121.

[180] Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161.

professionals and additionally with the aid of using the media daily torture felt by the sufferer. No repayment furnished to the sufferer for the torture which felt with the aid of using him/ her day to day until the disposal of case. Victims get many issues for which he/she isn't always accountable like in rape cases, it end up very plenty tough for the sufferer to pop out for the justice and to preserve the regular existence. At each location she faces the remarks concerning that accident.

5.3.3 EFFECT OF PUT OFF IN EXECUTION ON SOCIETY

Death sentence is deterrent sort of punishment. "The principal objective of awarding Capital punishment is to create worry in the thoughts of different offenders and restraining reoccurrence of this sort of grave offence." As an end result of delay in execution for several years, the effectiveness of making danger amongst society isn't always fulfilled this could be finished with the aid of using instant execution. Pertinently delay consequences in useless and the alternate of situation won't warrant for this sort of grave punishment after years. Thus, death punishment won't be required. Due to the delay in execution the deterrence of the capital punishment is being ruined. So the quantities of hardened criminals were given extended day by day. The law turns into joke for the offenders due to the fact they recognize the loopholes of the law and got here out thoroughly from the all crimes. The perception of the usual person at the judiciary is going dwindled due to the fact the case turns into pending in the courts and the parties dead earlier the decision of case. Due to this sort of lengthy delay of very last disposal of the case the perception of the general public broken.

5.3.4 EFFECT OF DELAY IN EXECUTION ON LAW AND ORDER

Due to the delay in execution the deterrent impact of punishment turns into finished. The perception on law and order is going down and the quantity of crimes is going up.

5.3.5 EFFECT ON NATIONAL ECONOMY

The impact of delayed execution is likewise at the countrywide financial system of the state due to the fact the expenditure of the jail may be paid with the aid of using the general public by their taxes. National financial system of a state is going disturbed because of such sort of expenditure at the prisoners.

CHAPTER – VI

PARDONING POWER

6.1 INTRODUCTION

An important role of the President and the Governors of States under the Constitution is the power to pardon. This seeks to delve study into a look at of this power by means of inspecting a number of the complex troubles that it poses. For the reason of convenience, the chapter has been divided into seven parts. Part I of the paper offers with the historical past of the power to pardon, by means of discussing the historic origins of the power and the numerous functions sought to be carried out by an exercising of the power. Part II analyzes the way wherein the Constitution of India presents for this power. Part III relates to the significance of the recommendation of the Council of Ministers in regards to the pardoning power and shows that such recommendation must no longer be taken into consideration binding at the President or Governor. Part IV examines the regions wherein the executive power to pardon ought to doubtlessly intervene with the legislative and judicial branches of the government, thereby provoking the concept of separation of powers. Part V tries to check the dimensions of the discretionary power to pardon. Part VI highlights the significance of a evaluate mechanism of the pardoning power. Lastly, Part VII discusses the power to pardon within the realistic context through way of means of impartinga critique of the Mohammad Afzal Guru case.

6.2 EXAMINING THE BACKGROUND OF THE POWER TO PARDON

The power to pardon, because it exists within the Constitution, have to be tested in light of the historic evolution of the pardon concept, and the reason sought to be carried out by way of means of vesting the sort of power within the government department of the State. This part of the research seeks to delve right into a conceptual expertise of the belief of pardon, or clemency, as it's very frequently referred to.

6.2.1 HISTORICAL DEVELOPMENT OF THE POWER TO PARDON

In historical Rome, circa 403 B.C., a procedure recognized as ‘Adeia’ facilitated a democratic pardon for people, which include athletes, orators and different powerful figures, who have been

a hit in acquiring the approval of as a minimum 6000 residents by means of secret ballot.[181] Although the supply of this power to pardon changed into no longer an government privilege, it isn't always hard to peer the similarities within the historical idea of Adeia and the present day exercise of pardon, which additionally frequently takes into attention elements which include the general public opinion when it comes to the man or woman sought to be pardoned. Another historical exercise analogous to the power of pardon existed in historical Rome, wherein as opposed to executing a whole army of transgressors, the Romans might execute each 10th condemned troop member. The motives for sporting out the sort of exercise seem like in large part political, and for this reason, it's extra hard to attract parallels from this exercise to the present day exercise seeing that it's no longer clean whether or not mercy changed into the meant motive. However, the impact of such an act appears to be just like the impact of pardoning accused person in present instances: even though man or woman is discovered responsible and sentenced to a punishment, the real execution of the punishment does no longer take place.

Notwithstanding the viable analogies that can be attracted to the aforementioned historical practices of pardoning accused persons, the idea of pardon as enshrined within the Indian Constitution can maximum realistically be stated to be derived from the British subculture of granting mercy. Granting mercy has traditionally been the private prerogative of the Crown, exercised by way of means of the monarch on the idea of recommendation from the Secretary of State for the Home Department.[182] This exercise is primarily based totally at the expertise that the sovereign possesses the divine right and for this reason, can exercising this prerogative at the ground of divine benevolence.[183] While under the British system, the monarch is the Head of the State, under the Indian Constitution, it's the President who's deemed to be the Head of the State, which might give an explanation for the purpose why the power to supply pardon has been vested in him, at the side of the Governors of States, who act in a way just like the President at the extent of the states. The English idea of pardon changed into additionally borrowed by way of means of the U.S. Constitution which, under Section 2, Clause 1, positioned the power to

[181] R. Nida and R. L. Spiro, The President as His Own Judge and Jury: A Legal Analysis of the President's Self-Pardon Power, 52 OKLA. L. REV. 197 (1999).
[182] B. V. Harris, Judicial Review of the Prerogative of Mercy, PUBLIC LAW 386 (1991).
[183] G. B. Wolfe, I Beg Your Pardon: A Call for Renewal of Executive Clemency and Accountability inMassachusetts, 27

B.C. THIRD WORLD L.J. 417 (2007).

pardon within the President of the USA.[184] The United States Supreme Court has clarified on multiple event that the time period 'pardon' must receive the identical meaning under the USA Constitution as changed into given to it in England.[185]

6.2.2 THE PURPOSE UNDERLYING THE POWER TO GRANT PARDON

There are many perspectives concerning the intent at the back of granting pardon to accused persons. The Hegelian view advocates that pardons are justified most effective whilst they're 'justice-improving', this is, in sure instances justice might not be served with out the grant of pardon because of the unduly harsh nature of the sentence or because of an man or woman being sentenced wrongly.[186] As in step with this view, the grant of pardon in instances wherein a bigger purpose of justice isn't always sought to be carried out might be unwarranted. The Hegelian view can be related to the bigger philosophy of retribution: the retributivist school of thought believes that pardon is most effective justified as an extra-judicial corrective degree to treatment any failure of the system, such that the closing purpose of the accused receiving simply deserts can be secured. The philosophy of retributivism most effective issues itself with the purpose of improving justice and no further.

In evaluation to the retributivist view is the school of thought primarily based totally on rehabilitation and redemption, which believes that pardons can be justified even whilst the purpose is 'justice-impartial', this is, no longer always worried with the purpose of securing remedial justice. For instance, the redemptive philosophy gives significance to the submit-conviction achievements of the accused, which the retributivists refuse to don't forget applicable. The redemptive school of thought gives a justification for pardon at the grounds of compassion and public welfare.

It is argued that the contemporary-day exercise of granting pardons displays a mixture of each the abovementioned philosophies, seeing that pardons can be granted as each justice-improving and justice-impartial measures. In the case of Kehar Singh[187], the Supreme Court mentioned the grounds on which the power to pardon may be exercised. Pathak, C.J. said that personal liberty

[184] Art. II, Section 2, Clause 1, United States Constitution.
[185] U.S. v. Wilson, (1833) 7 Pet. 150; Ex parte Wells, (1855) 59 U.S. (18 How.) 307.
[186] M. Strasser, The Limits of Clemency Power on Pardons, Retributivists, and the United States Constitution, 41 BRANDEIS L. JL. 85 (2002).
[187] Kehar Singh v. Union of India, (1984) 4 SCC 693.

and right to life, as granted to residents of India under Article 21, is of paramount significance. Since judicial blunders can't be precluded because of human fallibility, recourse from misguided judgments has been supplied within the Constitution of India within the shape of the executive power to pardon. It was noticed that under the British subculture, this power changed into exercised through means of the sovereign head of the state, this is, the monarch so as to shield in opposition to judicial blunders, in addition to on the idea of reasons of state. The Supreme Court agreed that such a method appears the maximum suitable within the Indian context as well, albeit failing to complicate upon such 'reasons of state'.

It is submitted that the expression 'reasons of state'[188] must be interpreted to intend the ones motives that the judiciary isn't always worried with, and must no longer be concerned with, even as arriving at a selection concerning the guilt of the accused primarily based totally in basic terms on a attention of the records of the case and the applicable law relevant thereto. Hence, promoting the overall welfare or recognizing the want for compassion in light of nice contributions of the accused after conviction might be coverage-primarily based totally issues that most effective the government can give impact to. In Satpal v. State of Haryana[189], one of the motives given by the Supreme Court for quashing the grant of pardon by the Governor was that behaviour and conduct of the convict in the course of the time that the sentence served by him was not considered by the Governor even as rejecting the mercy petition.

Further, it's the executive which could supply impact to substantial public opinion in favour of or in opposition to the sentence of a selected accused; thereby upholding the precept of public responsibility this is so pricey to each democratic state. Discussing the records of the British subculture of the grant of pardon by the monarch, Blackstone said that the reason of such an act of mercy changed into "endear the sovereign to his subjects, and make contributions extra than something to root of their hearts that filial affection and private loyalty which can be the sure status quo of a prince." In nations wherein the power is exercised by means of an elected head of the state, this principle ought to translate into upholding the substantial perspectives of the general public which has, without delay or indirectly, selected the head of the state as its representative.

[188] Professor Upendra Baxi's critique of the expression 'reasons of state' would be discussed at a later stage in thecontext of the extent of the pardoning power of the President and Governor, in Part VI of this research.
[189] Satpal & Anr. v. State of Haryana, (2000) 5 SCC 170.

6.3 POWER TO PARDON: THE CONSTITUTIONAL SCHEME

The power of the government wing of the State to grant pardons unearths point out within the Constitution of India in two forms: first, the power of the President to grant pardon under Article 72 of the Indian Constitution and second, and the power of the Governor to grant pardon under Article 161 of the Constitution. Before delving right into a dialogue of the myriad prison troubles that the exercising of the power to pardon presents, it might be beneficial to look at the character of this power, as conveyed by bare studying of the textual content of the Indian Constitution. The power to pardon covers the power to suspend, remit, and commute sentences. In the direction of this research, the phrase 'pardon' might be used as a widespread general term, which might include those modes of decreasing the sentence handed by the court.

6.3.1 THE POWER OF THE PRESIDENT TO GRANT PARDONS

Under Article 72(1) of the Constitution, the President is authorized to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence of any man or woman who has been convicted of offences which can be included in the ambit of clauses (a) to (c) of Article 72(1). The times enumerated under Article 72(1) are: first, instances wherein the punishment or sentence has been issued by a Court Martial; second, instances wherein the punishment or sentence pertains to an offence in opposition to any law regarding topics that the power of the Union extends to; and third, all instances wherein the sentence in query is a sentence of death. Article 72(1)(a) is certified by Article 72(2), which states that the power by law on any officer of the Army for the reason of suspending, remitting or commuting a sentence handed through way of means of a Court Martial might no longer be affected by the power of the President mentioned in Article 72(1)(a). Further, Article 72(3) expressed that the power of the President to suspend, remit or commute a death sentence under Article 72(1)(c) might no longer have an effect on the power of the Governor of a State to suspend, remit or commute a death sentence under any relevant law in force.

6.3.2 THE POWER OF THE GOVERNOR TO GRANT PARDONS

In addition to vesting the power of pardon within the Indian President, the Constitution additionally presents the Governor of a State the power to grant pardons; however, this power of the Governor, handled under Article 161 of the Constitution, is narrower in scope than the power

of the President to grant pardons under Article 72. Article 161 of the Constitution empowers the Governor to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence of any individual who has been convicted of an offence in opposition to any regulation that pertains to a rely included by the executive power of the State.

6.3.3 THE SUPERIOR POWERS OF THE PRESIDENT: A COMPARATIVE ANALYSIS OF THE SCOPE OF ARTICLE 72 AND ARTICLE 161

A undeniable studying of the Constitution of India might, by means of itself, display that the nature of the power of pardon granted to the President under Article 72 is some distance advanced to the power of pardon granted to the Governor under Article 161. Two factors of evaluation that can be gauged from the specific wording of Articles 72 and 161 is probably said on this regard: first, the power of the President to grant pardon extends to the power of pardon to sentences granted by a Court Martial, while there may be no similar power vested within the Governor of any state; and second, the President is expressly granted the power to don't forget all instances wherein the death sentence has been granted.

At this juncture, it's crucial to take a look at that a mixed studying of Articles 72 and 161 expresses that a place of overlap among the pardoning powers of the President and the Governor
– this is, instances regarding topics to which the executive power of the Governor extends and that have resulted within death sentence – has been pondered by the framers of the Constitution. However, the Constitution guarantees that the President is more superior to the Governor even as granting pardons to persons convicted for such instances. Article 72(3) has the impact of permitting the Governor of a State to capture the mercy petition in respect of death penalty; however there may be no bar to the sort of petition being offered to the President at a later stage.

Hence, it deserves point out that, even though the power of the President to grant pardon extends most effective to the ones instances that challenge topics for which the Union Government has the power to make legal guidelines, the realistic impact of Article 72(1)(c) read with Article 72(3) is that the pardoning power of the President has a tons wider ambit and extends even to topics that the State Government has the power to make legal guidelines when it comes to, provided that instances regarding such topics have resulted within the death sentence.

It isn't always not possible to conceive of conditions wherein a mercy petition in opposition to a death sentence, as soon as rejected by the Governor of a State, unearths its manner to the President, and certainly the Constitution does no longer explicit any aim to create a bar in opposition to the sort of state of affairs. It follows that the Constitution seeks to treat conditions regarding a sentence of death on a better pedestal than all different sorts of sentences, which include imprisonment for life or rigorous imprisonment. By imparting the ones condemned to death a recourse in opposition to the rejection in their mercy petition by the Governor in their respective State, the Constitution places the President on the very pinnacle of the constitutional scheme of pardons, indicating that the exercising of the discretion of the President might be deemed to be more advanced than that of the Governors of various States. While the Constitution's implicit reputation of the significance of the right to life is commendable, the introduction of the sort of hierarchy has the plain downside of growing the time taken for the death penalty of a petitioner to gain the maximum finality.

6.4 PARDONING POWER AND THE COUNCIL OF MINISTERS

As mentioned above, the Constitution of India vests the power to pardon within the President and the Governors of the States. Although the Constitution presents for the President and the Governor to be aided and advised through way of means of the Council of Ministers on the Union and State level, respectively, whether such recommendation have to be mandatorily observed even as granting or declining pardon is an problem that calls for examination.

6.4.1 A TEXTUAL INTERPRETATION OF THE CONSTITUTION OF INDIA

Article 74(1) of the Constitution states that the Council of Ministers headed by the Prime Minister might aid and advice the President, "who shall, in the exercising of his capabilities, act according with such recommendation". Similarly, Article 163(1) of the Constitution states that the Council of Ministers headed by the Chief Minister might aid and advice the Governor within the exercising of his capabilities. However, Article 163(1) differs from Article 74(1) in a single crucial respect, because the former half of the provision is certified by the latter, which states: "except in thus far as by or under the Constitution required to exercising his capabilities or any of them in his discretion". Further, Article 163(2) presents that if a query arises as to whether a sure rely calls for the Governor to behave in his discretion, the decision of the Governor in his discretion might be very last and the validity of such decision can't be referred to as in to

impeach at the ground that he must no longer have acted in his discretion at the rely. The frequent view seems to be that the Governor is predicted to play an extra activist function than the President,[190] specially seeing that within the period of coalition governments, Governors have to act because the hyperlink among Centre and the States, and for retaining an powerful constitutional machinery in the States.

However, there may be a want to differentiate among capabilities that can be carried out the use of a sure degree of discretion, for the reason of retaining an powerful constitutional machinery inside States, and a power within the nature of the power to pardon, that is meant to provide a far broader degree of discretion to the President and the Governors. Articles 72 and 161 expressly use the phrase 'power', and keep a staunch silence concerning the tips on the idea of which such power is to be exercised. The uses of phrases which include 'mercy', 'clemency' and 'grace' when it comes to this power imply that it's meant to be within the nature of a prerogative, totally based at the subjective pleasure of the President and Governors. An inference that the President and the Governor might no longer be bound means by recommendation of the Council of Ministers even as exercising the power to pardon does no longer appear unjustified, on a bare studying of the textual content of the Constitution.

6.4.2 JUDICIAL PRECEDENT

Although a textual interpretation of the Constitution fails to convince that the framers of the Constitution meant for the recommendation of the Council of Ministers to be binding at the President and Governors even as exercising their pardoning powers, the judicial interpretation of the Constitution shows an totally one of a kind proposition. In Samsher Singh v. State of Punjab[191], a 7 judge bench of the Supreme Court held that the pleasure of the President or the Governor required by Constitution isn't always their private satisfaction, however the pleasure of the Council of Ministers on whose aid and advise the President and the Governor exercising their powers and capabilities. The judgment in Samsher Singh changed into carried out to the power of pardon within the case of Maru Ram v. Union of India[192], wherein the Supreme Court held that it isn't always as much as the President or the Governor to take unbiased decisions even as

[190] M. P. Jain, Indian Constitutional Law 404 (2003).
[191] Samsher Singh v. State of Punjab and Anr., (1974) 2 SCC 831.
[192] Maru Ram v. Union of India, (1981) 1 SCC 107.

determining whether to pardon an man or woman, seeing that they are certain by the aid and advice of the Council of Ministers.

6.4.3 THE HISTORICAL TRADITION IN BRITAIN

As in step with the established practice, the power to grant pardon in Britain is exercised by the reigning monarch in consultation with the Secretary of State for the Home Department. The Supreme Court, in Maru Ram, laid emphasis at the British practice even as arriving at its conclusions concerning the Indian role. Krishna Iyer, J. said: "it's essential to the Westminster system that the Cabinet regulations and the Queen reigns". The British practice seems to be integrated in India as well, wherein a Section Officer within the Ministry of Home Affairs prepares a note, "which actions up the hierarchy with changing degrees of indifference or interest".

6.4.4 THE POSSIBILITY OF ABSURDITY

An interpretation of the Constitution to the impact that the President and Governors are certain to behave as in step with the recommendation of the Council of Ministers even as exercising their pardoning powers might also additionally cause conditions of absurdity. For instance, within the case of Kehar Singh, the accused when it comes to who pardon was sought for the murderer of Ms. Indira Gandhi, a former Prime Minister of India. In the sort of state of affairs, the opportunity of the recommendation of the Council of Ministers, this comprised ministers from the identical political party because the former Prime Minister, struggling from bias or a loss of objectivity can't be precluded. Further, within the era of coalition governments, there may be a risk that the recommendation given to the Council of Ministers might no longer mirror a 'genuine, simply, affordable and unbiased opinion',[193] and might as an alternative be primarily based totally thoroughly on political motivations. In light of such possibilities, it's submitted that a few leeway for the President to exercising the power to pardon without being certain through way of means of the advice of the Council of Ministers, and without bowing to political pressures, is sincerely important. Hence, I am of the opinion that the choices of the Supreme Court in this regard were some distance from prudent.

[193] N. Thakur, President's Power to Grant Pardons in Case of a Death Sentence, 105 CRI.L.J. 101 (1999), 104.

6.4.5 THE SOLUTION

A look at of the winning state of affairs shows that there may be a want to locate an affordable answer such that the exercising of the pardoning power is primarily based totally on equitable, logically sound motives, and that the advice of the Council of Ministers is given impact to, wherever applicable. It has been encouraged that there must be a constitutional change which expressly vests the power to pardon within the President, such that he's under no responsibility to act and advice of the Council of Ministers.[194] I found that the sort of view is defective on 2 counts: first, such an change to the Constitution might be sincerely not possible to pass, because the reigning party within the Parliament or State Legislature might be sincerely unwilling to divest themselves of the power of aiding and advising the President or the Governor, respectively; and second, irrespective of the opportunity of absurdity in sure instances, the reigning party is the representative of the need of the people, and its recommendation have to receive impact to as some distance as viable, to uphold the general public confidence.

I submit that the answer to the foreseeable hassle defined above can be discovered by manner of the President or Governor exercising his/her discretion in a self-decided way. That is, the President/Governor must be allowed to use his/her discretion to differentiate among conditions wherein the recommendation of the Council of Ministers is extraordinarily crucial in light of the context of the case and the want to impact policy decisions of the ruling party (for instance, a sturdy stand in opposition to terrorism), and people conditions wherein giving impact to the recommendation tendered by the Council of Ministers might be most manifestly complex and lift doubts as to the correctness of the selection to grant or deny pardon. It is crucial that the judiciary takes notice of the truth that the power to pardon has been vested within the President and Governor, instead of the Prime Minister, Cabinet or the Legislature, for a purpose: the President is an unbiased Head of the State, who stands on a better pedestal than the Prime Minister, Cabinet or the Legislature; similarly, the Governor is deemed to be in a role just like that of the President in his respective State. Thus, to disclaim the President and Governor the discretion meant to be vested in them through the Constitution might be a grave injustice.

6.5 THE POWER TO PARDON AND THE THEORY OF SEPARATION OF POWERS

The power to pardon, vested in the President and the Governors of State, is an executive power. This is a crucial power, and as verified above, it's primarily based totally on a huge form of discretion. It calls for to be tested how this prerogative of the government may be reconciled with the functioning of the opposite branches of the country, particularly the legislature and the judiciary, and whether there are any areas of conflict.

6.5.1 THE POWER TO PARDON AND THE LEGISLATURE

In my opinion, there are methods wherein the Parliament and State Legislatures in India can intervene with the President or Governor exercising their pardoning power: first, under Article 61 of the Constitution, the President can be impeached by the Parliament; and second, by sporting out the characteristic of enacting legislation, which might also additionally have a right away or incidental effect at the sporting out of the discretionary power of granting pardons. The first degree acts as a right away take a look at the President, and could be mentioned finally in part VI of this research.

As regards the second aspect, particularly interference with the pardoning power by enacting legislation, it changed into held within the United States selection of Ex parte Grossman[195] that the "government can reprieve or pardon all offences after their commission, both earlier than trial, in the course of trial or after trial, by means of people, or by classes, conditionally or sincerely, and this without change or law through the Congress". This shows that the Legislature isn't always at liberty to regulate the decision of the President when it comes to a pardon. In the Indian context, it could be mentioned that the vesting of this power within the President and Governors, instead of the Prime Minister or Legislatures, might also additionally were deliberate, as a way to save you the grant of pardon being made open to any kind of legislative debate.

In addition to directly altering the decision of the President or Governor, the Legislature also can enact legislation, which can be without delay applicable to troubles which include sentencing. The decision of the Constitution Bench in Maru Ram v. Union of India, even as discussing Section 433A of the Criminal Procedure Code, 1973, which relates to restrictions at the power of remission or commutation in sure instances, said that it couldn't be stated to be violative of

[195] Ex parte Grossman, 267 U.S. 87 (1925).

Articles 72 and 161 of the Constitution, because the source and substance of the 2 powers changed into one of a kind, and even though Section 433A did no longer act as a fetter at the powers laid down in those Articles, it might be suitable if the spirit of Section 433A changed into no longer not noted even as exercising the power to pardon.

It was held in Ashok Kumar v. Union of India[196] that the Rules enacted under the Prisons Act and different comparable legislation through State Governments must be dealt as guidelines of the President and Governors even as exercising their power to remit sentences, earlier than the government can formulate guidelines for itself in relation to the exercising of this power. It is submitted that this decision is incorrect in that it departs from the view expressed through the Constitution Bench of the Supreme Court in Kehar Singh v. Union of India that because the power to pardon is of the widest amplitude, it isn't always open to the Court to signify guidelines.

However, it stays to be visible whether the enactment of a legislation reflecting a significant policy decision, instead of an insignificant procedural change, might have an effect at the exercising of the power to pardon. For instance, within the occasion of an change to install place sentence of death as a punishment for a class of crimes, which include crimes relating terrorism, it's viable that a few degree of deference can be proven to such an change through the President/Governor even as exercising the pardoning power, specially whilst the advice of the Council of Ministers might also additionally echo the identical policy.

6.5.2 THE POWER TO PARDON AND THE JUDICIARY

In the context of the power to pardon, the opportunity of conflict among the government and the judiciary is more obvious than that of the conflict among the government and legislature. This stems from the truth that the power of the President/Governor to grant or deny pardon might also additionally overlap, to a few degree, with the power of the judiciary even as announcing its sentences. However, this friction has been sought to be minimized by them who argue that the power of the government and the judiciary exist in totally one of a kind realms.

The decision in Kehar Singh changed into extraordinarily significant for expressly announcing that even as exercising the pardoning power, the President/Governor might have liberty to go into the deserves of the decision moved by the court: “it is open to the President within the

[196] Ashok Kumar v. Union of India, (1991) 3 SCC 498.

exercising of the power vested in him through Article 72 of the Constitution to scrutinize the proof at the document of the criminal case and come to a one of a kind end from that recorded through the Court in regard to the guilt of, and sentence imposed at the accused". It isn't always hard to peer why the sort of ruling checks the idea of separation of powers, by means of permitting the government to carry out the identical characteristic because the judiciary. As in step with one view, vesting investigative and adjudicative powers within the President threatens the rule of law, especially because the limits of exercising those capabilities are decided by the President.[197]

The Supreme Court in Kehar Singh certified the pronouncement mentioned above in Section V (B) (1) by means of stating that: "The President does no longer amend or modify or supersede the judicial record. The judicial record stays intact, and undisturbed. The President acts on an entirely one of a kind different plane from that on which the Court acted. He acts under a constitutional power, the character of that is totally one of a kind from the judicial power and can't be seemed as an extension of it. And that is so notwithstanding that the realistic impact of the Presidential act is to get rid of the stigma of guilt from the accused or to remit the sentence imposed on him".

A comparable proposition was made in Sarat Chandra Rabha v. Khagendranath Nath,[198] wherein the Supreme Court outstanding among the realistic impact and the legal impact of an order of remission through the President/Governor: "An order of remission therefore does no longer in any manner intervene with the order of the court; it influences most effective the execution of the sentence passed by the court and frees the convicted individual from his legal responsibility to go through the whole term period of imprisonment inflicted by court, although the order of conviction and sentence passed by the court nonetheless stands because it changed into in law, the order of remission simply approach that the rest of the sentence want no longer be undergone, leaving the order of conviction through the court and the sentence passed by it untouched."

[197] H. J. Krent, Conditioning the President's Conditional Pardon Power, 89 CAL. L. REV. 1665 (2001).

[198] Sarat Chandra Rabha v. Khagendranath Nath, AIR 1961 SC 334.

In the opinion of Seervai, the Supreme Court's decision in Sarat Chandra Rabha disadvantaged the decision of the Court in K. M. Nanavati,[199] a case determined by the Court in advance within the same year, of its binding value.[200] In the case of Nanavati, the Supreme Court had said that the judicial power of the Supreme Court under Article 142 of the Constitution, wherein it may make orders 'for doing whole justice' and the government power contained in Article 161 may be exercised in the identical area inside sure slender limits. The Court had advised a harmonious interpretation of the 2 provisions of the Constitution. Seervai cautions in opposition to the misapplication of the precept of harmonious construction, such that disharmony is created among constitutional provisions wherein such disharmony does no longer exist in the first place.

Another argument this is made to differentiate among the powers of courts and the government power to grant pardon is that even as the previous is worried with the legal rights of a man or woman, the latter is worried with compassionate grounds for alleviating the man or woman of the punishment imposed on him/her. In the phrases of Lord Diplock: "Mercy isn't always the challenge of legal rights. It starts where legal rights end".[201] While making decision, the judiciary considers the legal grounds for implementing punishments and isn't always at liberty to make pronouncements on the idea of compassion. It is stated that through its exercising of the power to pardon, the government plays the characteristic of neutralizing the insufficiently compassionate judgments of the judiciary. This precept has been identified in India in Mohinder Singh v. Stateof Punjab.[202]

It is submitted that the power of the judiciary to make decisions concerning the guilt of an accused and the perfect sentence in every case can be stated to be more restrained than the power to determine the attractiveness or rejection of a mercy petition for 2 reasons. First, it could no longer be viable for the judiciary to take into account sure elements that may be taken into consideration most effective after the sentence of the convict has begun, which include the post- conviction behaviour and contributions made by the convict. The Supreme Court has regarded that that is an crucial attention and must receive due significance by means of the President/Governor even as you make a decision on whether pardon must be granted.

[199] K. M. Nanavati v. State of Bombay, AIR 1961 SC 112.
[200] H. M. Seervai, Constitutional Law of India: A critical commentary, volume II 2104 (2004).
[201] De Freitas v. Benny, [1976] A.C. 239, 247 (Judicial Committee of the Privy Council).
[202] Mohinder Singh v. State of Punjab, (1977) 3 SCC 346.

Second, the decision to grant pardon can be primarily based totally on sure motives that might not be suitable for the court to don't forget even as sentencing a person. It has come to be accepted that decisions granting or declining pardon include a sure policy element. Courts might not be the most suitable forum for giving impact to such policy decision, seeing that they're worried most effective with ascertaining the guilt or innocence of the accused. Further, it's talked about that courts can be logistically handicapped to determine cases on the idea of policy issues: "policy decisions frequently require get entry to empirical statistics and the advantage of the perspectives of a huge variety of people, neither of which can be too available through the judicial process".

It have to be mentioned that the government and judiciary confer due regard to the principle of comity among the branches of government. That is, each branch were inclined to realize the bounds in their geographical regions of functioning and behave in a way deferential to the other department of government, or help the other department of government in sporting out its capabilities. In sure instances, the Supreme Court has declined to adjudicate on a petition delivered earlier than it at the ground that the identical rely has been seized by the President under his pardoning power. The principle of comity has additionally been prolonged to instances wherein, for instance, 2 out of 3 persons who have been accomplices within the identical crime were granted commutation, while the 3rd has been unsuccessful on this regard – the Supreme Court might also additionally advocate to the President that within the pastimes of equity, the punishment of the accomplice be commuted as well.[203]

Lastly, it have to be stated if the power to pardon is exercised in an indiscriminate way, then it could undermine the precedential value of judicial choices and disillusioned the equilibrium that must preferably exist among government and judicial action. Unless the President and Governors exercising a sure degree of self-restraint even as making choices under the pardon to power, using this power ought to doubtlessly destabilize the authoritativeness of decisions made by the judiciary, and feature a poor effect at the deterrent impact sought through such judgments. It is crucial that the President and Governors offer cogent and convincing motives even as exercising their pardoning power.

[203] Harbans Singh v. State of Uttar Pradesh, AIR 1982 SC 849.

6.6 THE EXTENT OF THE POWER TO PARDON

6.6.1 THE NATURE OF THE POWER AND THE ABSENCE OF GUIDELINES

That the character of the power envisaged under Articles 72 and 161 of the Constitution is a discretionary power can be mounted through a textual interpretation of those Articles. An undeniable studying of those provisions suggests that there may be whole silence concerning the elements which have to be taken under consideration by the President and the Governor even as exercising the power to pardon. It is affordable to anticipate that this silence changed into deliberate, because the power to pardon has traditionally been within the nature of a prerogative.

The view that it isn't always suitable to fetter the power to pardon by implementing guidelines has been advocated in some of decisions. The judiciary has been reluctant to impose guidelines at the government for exercising the power to pardon in maximum instances, with some exceptions.[204] In Kuljit Singh v. Lt. Governor of Delhi,[205] the Supreme Court expressed the view that the pardoning power of the President is a total power that must be exercised 'because the justice of a case might also additionally require', and that it might be unwanted to restrict it by manner of judicially evolved constraints. In Kehar Singh, the Supreme Court said that the power under Article 72 must be construed within the widest viable way without the Court interfering to put down guidelines of any sort. However, the Court went on to mention that the power to pardon can be exercised to accurate judicial errors, and for 'reasons of state'. Even although the sort of proposition seems to be extraordinarily large, imparting enough scope to the President to exercising his discretion, it has come under assault from Upendra Baxi, whose of the opinion that the sort of announcement might fetter the scope of the power in a way no longer pondered by theConstitution:

"To expand to clemency power the good judgment of the doctrine of the reasons of state is constitutionally perverse within the face of the fundamental right to life and liberty in Article 21. The Constitution does no longer authorize a coverage of demise to 'traitors', 'insurgents', 'naxalites', 'dacoits', 'terrorists' within the exercising of the discretion inherently entailed in the clemency power. Nor can the Constitution authorize the sort of sample of exercising of that

[204] Where the Supreme Court expressed the view that the executive should formulate its own guidelines for exercising the power to pardon.
[205] Kuljit Singh v. Lt. Governor of Delhi, (1982) 1 SCC 417.

power. It must be exercised case by case, and under the Article 21." It is submitted that the view that fundamental rights act as enough guidelines for the exercising of pardoning powers under the Indian Constitution is accurate. To pass past the maximum essential prescriptions within the Constitution for circumscribing the power to pardon might also additionally have the harmful impact of unjustly curbing the power of the President and the Governor, which isn't always meant by the Constitution. Hence, the exam of the instances and context of every case on its very own deserves represents the maximum suitable method even as exercising the pardoning power.

6.6.2 THE REPERCUSSIONS OF THE WIDE DISCRETION OF THE PRESIDENTAND GOVERNOR

Having mentioned the deserves of an method wherein pardoning power is determined in light of the facts and circumstances of every case, and the undesirability of fettering the power through prescribing guidelines, it have to be stated that sure first rate times might also additionally warrant a mechanism of evaluate of the exercising of power.

As said above, the fundamental rights prescribed by the Indian Constitution contain the fundamental minimal guidelines that the President and Governor have to defer to, even as exercising their pardoning power. It follows that during times wherein there may be a failure to do this, the aggrieved man or woman must have a few remedy, wherein a contravention of his essential rights is regarded. To my mind, the conditions wherein the fundamental rights of an man or woman can be violated within the direction of the President/Governor exercising the power to pardon can be classified into large categories: first, the discretion of the President/Governor can be exercised in an arbitrary way on the time of decision-making, whether in phrases of the procedure hired or the significant motives given for accepting or rejecting the mercy petition; and second, within the occasion that the pardon granted is conditional– this is, the individual searching for pardon have to fulfill sure situations earlier than the pardon will become powerful – and the circumstance imposed by the President/Governor is violative of fundamental rights.

In the absence of any well-described guidelines for the exercising of the pardoning power, the opportunity of the President/Governor granting pardon to himself/herself can't be precluded. Undoubtedly, the sort of state of affairs might be rare, and it's argued that any man or woman worth of preserving a role as crucial as the placement of a President must be vested with the

power to pardon. Although it's predicted that the placement of the President and Governors of States, being such privileged positions, might be occupied by the people who do no longer own a criminal record, there are crucial records that require to be mentioned: first, the Constitution of India does no longer prescribe a bar on convicted or under-trial persons contesting the placement of President/Governor; and second, neither Article 72 nor Article 161 prescribe a bar at the power of pardon being exercised in relation to the individual exercising the power. Although no longer predicted within the normal direction, the opportunity of the sort of state of affairs arising can't be excluded completely, and in such times, it might be important for the propriety of the decision of the President/Governor to be reviewed.

6.7 CHECKS ON THE POWER TO PARDON: PROPOSING A MODEL OF DISCIPLINED JUDICIAL REVIEW

As mentioned in part VI above, there may be an opportunity that during sure times, the decision of the President/Governor under Articles 72 and 161 might require to be subjected to a mechanism of evaluate, within the interests of justice. This phase of the research discusses the viability of numerous strategies of checking the power of the executive, such that it isn't always exercised in a capricious way, and arrives at an end concerning the maximum suitable mechanism.

6.7.1 PUBLIC ACCOUNTABILITY

There is a substantial notion that the political or electoral procedure acts as the proper take a look at the President even as exercising the power to pardon. This view is primarily based totally on the idea that the voters continues a take a look at the President by balloting the President out of power whilst the prerogative of pardon is exercised in an arbitrary way. While this could be applicable for containing the President responsible in nations which include the USA, wherein the President is elected directly, in nations which include India, wherein the common people directly elect the members of Parliament and State Legislatures, and now longer the President/Governor, the relevance of this degree for the reason of preserving the President and the Governor responsible is notably diminished. The political procedure can act as a take a look at most effective as some distance as balloting out political parties who exercising a power at the President when it comes to the power to pardon is concerned. Moreover, it has come that

permitting judicial review to accompany current political assessments might yield extra beneficial results by facilitating more accountability.

6.7.2 IMPEACHMENT OF THE PRESIDENT

As in step with one school of thought, the impeachment of the President acts as an enough take a look at in opposition to the misuse of the pardoning power.[206] The Constitution of India presents for the impeachment of the President under Article 61 of the Constitution. It is submitted that within the Indian context, impeachment can't be stated to exist as an enough take a look at in opposition to the pardoning power being exercised in an arbitrary way. Three reasons can be provided in assist of this argument.

First, the Constitution of India most effective presents for the impeachment of the President and does no longer include any provisions for coping with the impeachment of State Governors. Hence, the procedure of impeachment is of restrained value in relation to the power to pardon, which can be exercised by the President and additionally followed by the Governors of States.

Second, the procedure of impeachment, as mentioned under Article 61, is performed by the Members of Parliament. In the occasion that the Council of Ministers have cautioned the President to render the unsatisfactory decision of granting or declining pardon, it might be not going that the ruling party or coalition might be in favour of assignment the degree of impeachment in opposition to the President, because the President's decision might, in such an instance, be a mirrored image of the decision of the Council of Ministers. Indeed, if within the state of affairs envisaged here, the council of Ministers has been to actively try and impeach the President, it might be a fully irresponsible act.

Third, within the occasion that there may be a widespread dissatisfaction with the way wherein the President has exercised his power under Article 72, one of the motives for which may be that the recommendation tendered by the Council of Ministers changed into rejected by the President, the Members of Parliament can start complaints for impeaching the President. However, because of the inherent nature of the necessities of Article 61, it could be extraordinarily hard for the impeachment procedure to achieve success. Since the President occupies such a crucial role, stringent situations were imposed for his/her removal. As in step with Article 61(2), the first step

[206] See also M. Strasser, Some Reflections on the President's Pardon Power, 31 Cap. U. L. Rev. (2003).

within the procedure of impeachment is the submission of a decision to question the President that have to be signed by a minimum one-fourth of the entire members of the House searching for to question the President. It is to be mentioned that the decision have to be signed by one- fourth of the total members of the House, instead of the members of the house as opposed to number of members and balloting within the House, that is the time period used when it comes to passing Bills in a joint sitting of each Houses of Parliament. Similarly, after the charges in opposition to the President were tested, and after the President has had an possibility to seem earlier than such investigation, it's required that a resolution is passed by a minimum two-thirds of the total members of the House for the impeachment to achieve success. Hence, the impeachment of the President isn't always probable to achieve success within the normal course, except there may be an extensive agreement of settlement among the members of the House of Parliament beginning impeaching proceedings that the President must be impeached.

6.7.3 THE UNDENIABLE IMPORTANCE OF JUDICIAL REVIEW

After discussing the restrained viability of the political procedure and impeachment as ability measures to save the arbitrary exercising of pardoning power by the President and Governor, I would really like to suggest a version of judicial review in which the judiciary might act in a disciplined way to put down limits for itself, such that the principle of comity among the judiciary and executive stays intact, however the exercising of the pardoning power in blatant violation of the fundamental rights and concepts of natural justice does no longer pass unchecked.

The appropriateness of judicial review of a selected subject rely is measured on the idea of 'justiciability'. Courts are stated to have a constitutional responsibility to uphold the rule of law by implementing the procedural rights in relation to government decision-making.[207] Being within the nature of an executive power, the power to pardon can be stated to be justiciable insofar as inspecting the procedural propriety of decision of pardon is concerned. The view that this government power must no longer be challenge to judicial review simply seeing that it's within the nature of a prerogative has been criticized via by a few as being simply 'a bald assertion'. The version of judicial review sought to be proposed by me is one that might function

[207] B. V. Harris, Judicial Review, Justiciability and the Prerogative of Mercy, 62(3) Cambridge Law Journal 631(2003).

on the idea of self-law through the judiciary. It is a well-regarded precept of administrative law that judicial review might also additionally range in depth primarily based totally at the challenge relies sought to be reviewed. It has been observed: "It is an increasing number of turning into common for courts to undertake a variable popular of review, the depth of which alters depending upon the challenge rely of the action. Terms which include irrationality and proportionality may be carried out with differing stages of rigour or intensity. This function has become extra marked because the courts have proven a more willingness to guard individual rights, using extra extensive review in such times".[208]

Hence, in cases regarding judicial review, courts might also additionally pick to go into the area of review most effective insofar as procedural impropriety and the rights of people are concerned, and no longer at the significant deserves of the decision made by the President/Governor. In the occasion that courts have been divested of the power to exercising this certified power of evaluate, people struggling because of the arbitrary action of the President/Governor might don't have any remedy to accurate procedural wrongs and the injusticein their fundamental rights being violated.

One of the motives why the judiciary is visible as being undeserving for sporting out the review of the pardoning power is that decisions of pardon are policy-laden, corresponding to overseas affairs and the distribution of resources, and for this reason courts might not have get entry to real and empirical statistics to help them with making decisions. It is submitted that the review of decisions regarding pardon must be exercised in a restrained form, such that the deserves of the decision made the President/Governor aren't scrutinized or interfered with; rather, it have to be ensured that the fundamental rights of the man or woman in query aren't violated, and that procedural norms were complied with. Since the reason of review might no longer be to intervene with the propriety of the policy sought to receive impact by the executive, this worry approximately the inadequacy of the judiciary is unfounded.

It is likewise apprehended that assessment of applicable procedural issues might also additionally by itself introduce subjectivity within the evaluate procedure and might also additionally reason the review procedure to be primarily based totally on deserves. It is submitted that even as the sort of opportunity can't be ruled out, the sort of criticism of judicial review isn't always unique

[208] P. P. Craig, Administrative Law 552 (2003).

to the judicial review of pardon decisions however can be stated to be genuine of the judicial review of maximum sorts of government action. Such a worry might be belied through the constant functioning of the judiciary in an accountable way over a length of time.

As noted above, I am searching for to suggest a version of judicial review wherein the judiciary might act in a mature, disciplined way by putting its very own limits and respecting the exercising of discretion by President and Governors insofar because it does no longer border on arbitrary action. It has been recommended that "as opposed to classifying the prerogative of mercy as no longer reviewable, the court must decide the appropriateness, and consequently the availability, of judicial review, after attention of every application delivered earlier than the court". It is submitted that is the maximum affordable method to the judicial review of decisions of pardon, one that moves a stability among imparting a remedy to the aggrieved man or woman in case of the violation of his/her rights and restraining the judiciary inside realistic limits.

The Supreme Court has regarded the life of its power to review decisions made by President/Governor even as exercising their pardoning power in a restrained elegance of times. The power under Article 72 of the Constitution stated to "fall squarely in the judicial area" and therefore, open to judicial review, in Kehar Singh. In G. Krishta Goud v. State of Andhra Pradesh,[209] the Supreme Court said that it'd now no longer flip a blind eye to public power being exercised in an arbitrary or mala fide way, together with times wherein the President exercises his power under Article 72 in a discriminatory way. In Satpal v. State of Haryana, it changed into held that because the power of the Governor to grant pardons changed into a constitutional power, it might be open to judicial review on sure restrained grounds, for instance, in cases wherein the Governor has did not practice his/her mind, or wherein the order has been primarily based totally on extraneous issues. While the Supreme Court has been short to realize its power to review decisions of the President/Governor under their pardoning power, it's crucial that the Supreme Court accepts that this power calls for to be exercised in a regimented way, without falling prey to the temptation of creating judgments at the significant grounds on which the power to pardon has been exercised by the President/Governor.

[209] G. Krishta Goud v. State of Andhra Pradesh, (1976) 1 SCC 157.

6.8 THE CASE OF MOHAMMED AFZAL GURU

One of the pending mercy petitions, which has been within the information in current instances is that of Mohammed Afzal Guru, who changed into discovered responsible for the Parliament Attack case and was given death sentence.[210] He has been at the death row for 3 years, and the UPA Government has been again and again delaying its decision at the petition.[211] The Government has hinted that the purpose it has selected no longer to take a decision yet is due to the fact the execution of Mohammad Afzal Guru might also additionally cause his achieving the repute of a martyr, which might also additionally have a damaging effect at the state of affairs in Jammu and Kashmir. Such inactivity at the a part of the Government has been criticized by the Bharatiya Janata Party, which feels that sturdy motion have to be taken in opposition to acts of terrorism.[212] The reluctance to do so can also be reflective of an aim to no longer antagonize the Muslim voters earlier than the elections in 2009.

It is submitted that irrespective of the way wherein the exercise to grant pardons has developed, wherein the political events in power play a number one function in granting or rejecting the mercy petition, the Constitution acknowledges the President and Governor because the repositories of the power to pardon. In the case of Mohammed Afzal Guru, it's the duty of the President to behave in a proactive way, such that the prerogative of pardon isn't always allowed to be made hostage to political pressures. Although the President is at liberty to base her opinion for granting or rejecting the petition on the recommendation of the Council of Ministers, as has been verified through this research, she must no longer be visible as being obliged to defer to the advice of the Council of Ministers. Hence, in the sort of case, wherein there has been unreasonable delay at the a part of the Council of Ministers in arriving at a decision, the President must make prudent use of her power to pardon and dispose the petition in an expeditious way. In the occasion that the damaging effect on the general public expected because of the execution of Mohammed Afzal Guru outweighs the deserves of executing him, the petition

[210] No Urgency to Dispose of Afzal's Clemency Petition, Economic Times, June 11, 2008, available at http://economictimes.indiatimes.com/News/PoliticsNation/No_urgency_to_dispose_of_Afzals_clemency_petition/articleshow/3121228.cms, last accessed on April 24, 2021.
[211] Government Doesn't Want Another Martyr, Hindustan Times, June 10, 2008, available at http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=4cfa1ba0-536e-417e-acfb8ccc2b80c1be, Last accessed on April 26, 2021.
[212] Take Decision on Afzal: BJP, Hindustan Times, June 9, 2008, available at http://www.hindustantimes.com/Redir.aspx?ID=d924c139-363a-46c0-aa24-286716707a78, Last Accessed on April 28, 2021.

have to be rejected and motives of public interest have to be provided for the same. However, the indefinite deferral of a selection within the mercy petition has the unwanted effect of casting the constitutional power to pardon in terrible light.

CHAPTER – VII

CONCLUSION AND SUGGESTIONS

7.1 CONCLUSION

Death penalty isn't always accurate solution however its function in society is likewise unforgettable. The organization of humans dispensed in this controversial subject matter a few are in favours of capital punishment and others are opposite to it. The number of execution in India may be very much less than the other international countries like china due to the fact Indian law is absolutely works at the precept of natural justice. The criminologists, reformists, penologists, sociologists etc. argue for abolition of capital punishment i.e. accurate to listen however it isn't always of any use in practice.

In India, the problem of the abolition of death penalty became arises for the primary time in the Legislative Assembly in 1931, at that time one of the members from Bihar, Sri Gaya Prasad, hunted to introduce a bill to abolish capital punishment, however it became defeated. In 1933 once more permission became permitted to introduce a bill to abolish death penalty, however it was never moved. After the independence, a bill became brought in Parliament in 1956, however became rejected by the Lok Sabha. Further efforts made in Parliament in 1958 and 1962 have been of no avail and resolutions have been withdrawn after a few dialogue in the House. The matter of abolition or retention of death penalty in India became additionally tested by the Law Commissioner of India which favoured the retention of the loss of life penalty thinking about the vastness, unity and diversity of India.

Many instances the bill became forwarded in the Parliament for the abolition of capital punishment however until now the punishment in use legally. As forwarded in the bill of 1971 in Lok Sabha the bill shows that the capital punishment must not be given to the minor i.e. under the age of 18 years. But until now it's controversial that the capital punishment to the minor could be given or not given. The abolition of death penalty will bring about worsening of the scenario i.e., peace and protection within the state. Whether death penalty has not served its favored ends as a powerful deterrent is but a query to which no solution can be ventured with any degree of reality. The capital punishment isn't a right; it's a war of country towards a citizen whose destruction is judged to be important and useful.

Secondly, the scrapping of death penalty will also not make the ghastly offence of murder disappear. It is, but, falling into an increasing number of disuse by its restrained imposition however it can now no longer be accurate to contend that a penalty which is more infrequently in a while imposed turns into valueless, in any protecting, prohibitive or deterrent experience. The restrained use isn't any argument towards its retention.

The scope of capital punishment, but, has already been prolonged to the Arms Act (in 1988), TADA Act (in 1985 and 87), the N.D.P.S. Act (in 1988), the S.C. and S.T. Act (in 1989) and Sati Act (in 1987) and additionally amendment made in 2013 in Indian Penal Code referring to the sexual attack instances with provision of capital punishment. Retention of the Capital Punishment is the want of the day preserving in view the weakening law and order scenario in the country. Abolitionists, but, endorse that it will be a becoming praise to the remembrance of Late Mahatma Gandhi if capital punishment is abolished. But the retentionists argue that the purpose of non-violence is similarly served if the reasons of express violence irrespective of ideals are visited with implicit violence of death penalty and pressure on its application in one of these way that its harshness is mitigated however performance retained.

At present as many as 122 countries have retained the capital punishment however they're constantly making renewals in the technique of execution. Before awarding the sentence of death the judge offers a possibility to the sentenced man or woman to be heard getting ready to sentence, satisfy the rule of natural justice and truthful play. It appears that, on every occasion there may be a crime there may be must be a criminal. Undoubtedly, there are admirable ideas which the Judges who've obligation for passing sentence, must undergo in thoughts even as finalizing the sentence of the accused for criminal is tempted to commit the crime in an unusual circumstance. The goals of sentences and the range of sentences have widened through the years and this calls for correctly preceding commentary of the outcomes of comparable sentences imposed in comparable instances in the past. The sentencing courts must, consequently, preserve themselves up to date of the penological trends, especially whilst the selection is among death or imprisonment for life.

In the decisive analysis, it is going to be taken into consideration from the perspective of social justice and safety of society from hard core criminals, death penalty isn't always unreasonable or unwarranted or out of date kind of punishment. The famous Italian criminologist Graofalo, even

as disapproving the abolition of death penalty from the statute Book commented, "When state abolishes the death sentence, it authorizes assassin and says to the criminal the hazard you run in killing a man or women is a change of abode, the need of spending your days in my residence rather than your personal will it be right to do so"? "Whenever there may be a criminal, there may be a sufferer. Whenever there may be a sufferer there may be a judicial system. And on every occasion there may be a judicial system there may be a punishment". And earlier than the execution of accused man or woman, the case has been touched by the numerous authorities with due gratitude of thoughts. It is consequently not important to abolish the capital punishment however enhance the criminal behaviour.

Historically speaking, India has by no means perceived any sturdy motion for the abolition of capital punishment. However, this doesn't suggest that any try has not been made for the abolition. In truth, many trials were made to get clearance of this excessive penalty. The constitutional validity of capital punishment has been challenged particularly at the ground that it violates the fundamental rights assured in Articles 14, 19 and 21. Further, this constitutional issue has particularly been taken into consideration in the context of section 302 of Indian Penal Code. It is abundantly clear that the Supreme Court in handing over its pronouncements took into consideration more than a few of things viz. the magnitude of the crime, the horrible nature of the offence and brutal way of this perpetration, the innocence and the helpless state of the sufferer, premeditation, religious, political or caste variations because the purpose of murder anti-social nature of crime and excessive political or social status of the victim.

Today, the need of the time isn't always for abolition or retention of death penalty however for quick and powerful utility of criminal laws to create higher self-belief and respect for law in the public. Time isn't always but appropriate whilst entire abolition of capital punishment may be strongly supported without threatening the social protection. It isn't any overemphasis to mention that in the present time the retention of death penalty seems to be morally and legally justified. It need to additionally be cited that the core of criminal jurisprudence has constantly been to offer safety, as additionally to set up tactics towards the fears from within and without, for the people and additionally for the social order itself. Thus, the criminal jurisprudence even as it presents protective regulations through punitive sanctions, additionally goals at securing higher social

order through way of protective towards the unwarranted acts originating from the person. It is with this backdrop that the desirability or in any other case of the death penalty must be judged.

The capital punishment isn't any doubt unconstitutional if done arbitrarily, capriciously, unreasonably, discriminatorily, freakishly or wantonly, however if it administered rationally, objectively and judiciously, it's going to increase individuals confidence in criminal justice system. The relevant issue which develops from the foregoing dialogue and the case law is how a long way the existing law referring to death penalty solutions the need of the time and whether its scope desires to be prolonged, curtailed or it must be abolished altogether. Considered from this stance, the position as taken into consideration by Section 354(3) read with Section 235(2) of the Criminal Procedure Code, 1973 seems to be sound in as a whole lot because it limits the usage of capital punishment to a minimal without, but, abolishing it altogether. The exclusion of obligatory sentence of death for murderers and permitting judicial discretion to shuttle it to imprisonment for life in appropriate case is possibly the maximum suitable approach to the usage of death penalty. In view of the recent worsening law and order scenario in India entire abolition of death penalty might suggest giving a protracted rope to risky offenders to commit murders and heinous crimes with license. Of late, opinion is mobilizing in favour of extending the scope of death penalty to rape cases, terror instances and a few financial offences inclusive of profiteering, hoarding, smuggling, black-marketing and comparable different anti-social acts which disillusioned the team spirit of society.

As state increase worldwide network to lessen and in the end to avoid from the usage of the capital punishment; despite the fact that the capital punishment is prohibited under International Law Act, numerous United Nations human rights bodies, in lots of cases, the abolition of the capital punishment in favour of the developing worldwide consensus that has been showed once more. It is obvious that the several techniques of execution of death penalty in olden time but they're now a days not in existence and develops day by day. Out of the numerous techniques of the execution of death penalty hanging is one of the better alternative before the Government however human rights protection definitely went against of capital punishment they shield the right of man or women although human who is likewise a criminal or culprits.

Death penalty is a global issue, a few countries are absolutely against the capital punishment and a few countries are keeping the capital punishment due to the fact they assume that tit for tat

policy and the relevant the theory of deterrent. Capital punishment must accept however it relies upon the facts and instances of that specific case and it's to accept in, only the rarest of rare case laws. Those who've been working with and looking the functioning of our criminal justice system might agree that it has come to be more criminal friendly. “It is shocking and amazing however authentic that it can take at the least 324 years in disposal of pendency of cases if we run by means of the equal tempo as we've in at present.” Even in the Supreme Court of the country, numbers of cases are looking forward to disposal and in High Courts, until Dec. 2020, almost crore cases are pending and in Lower Courts, this number more than five Crores. That is why, New York Times writes in its report, “The Wheel of Justice infrequently actions in India, Almost 550 lakh (i.e. five and half of crore) cases are pending in various Courts of the country”.

To evaluate capital punishment with the penalty of eye for an eye' is best argumentative. The quotation of the abolition of capital punishment in England and Australia might also additionally help however can't substantiate the argument against capital punishment. If as soon as the State abolishes capital punishment at the ground that it does not act as deterrent, then no penalty might be deterrent against murders and it's going to result in retaliatory murders. It is more secure to have capital punishment by the State, governed by rule of law in preference to witness capital punishment being imposed by inmate people conditioned by rule of lawlessness, for, even as the previous might offer at least a few experience of social protection and stability, the latter might best aggravate social lack of confidence and instability.

What emerges from an analysis of the decisions of the Supreme Court over past 30 years is that the court has miserably failed in defining what is suppose by of means of "rarest of rare" and what's worse, what one judge considers a rarity, any other does not. There isn't any manner wherein the difficulty detail in sentencing may be stored out of the court. As the foregoing survey indicates; the statute book already consists of a number of provisions illustrating the tries made to deal efficaciously with social and financial offences. Finally, the stage at which the defect operates can be legislative (within the system of the law), government (in implementation), judicial (on the degree of trial); or the defect can be linked with sentencing. In this context, it can be pertinent to nation that one may want to distinguish among exceptional meanings of phrases used to indicate criminal sanctions. "Punishment" must suggest the authorization by the legislature of the employment of criminal sanctions; even as "sentencing"

must suggest the utility by means of the judiciary of the criminal sanctions authorized by the legislature. The Legislature presents the sword for widespread use; however the judiciary unsheathes the sword and makes use in special cases.

In India there may be in need of capital punishment on a few background of merciless common criminal statistics and terrorist attacks. In such case India isn't always capable of abolishing the capital punishment. However the rarest of the rare test need to be taken sincerely to lessen number of executions in India. The retentionist mode can be transformed with converting nature of society, nature of crime and for this reason the alteration and change of laws are sure to occur with such sound change. There is likewise problem of delay in execution for which different factors are accountable like pre-trial delay, all through trial delay and post-trial delay. First of all, there may be delay in police investigation. Police manner is so sluggish in India due to the fact outdated modes of investigation are used there may be no any modern equipment facility for the police. Likewise forensic labs, pc facility and no other modern equipment's etc.

During trial there may be some delay on behalf of prosecutor and judicial machinery. Advocates take numerous adjournments in a case because of which evidence is going to finished. There isn't any witness protection scheme because of which no person comes as a witness. The rotation of Judges is likewise an applicable component for delay in execution. After trial there may be additionally delay on the behalf of government clemency. The President/ Governor get the mercy petition and block there for limitless time. Due to which there may be delay within the disposal of the case ultimately. The time restrict to determine the mercy petition need to be constant in order that there may be no trouble in final decision of the case. Thus, I would really like to conclude announcing that except the inherent ethical values in person can efficaciously control his basic character of jealousy bitterness, greediness unjust enrichment and hatred etc., the death penalty must be retained. The abolition might be risky for the betterment of both nature and society. There is need to enhance the procedure for the execution in order that the cases disposed of speedy.

7.2 SUGGESTIONS

Mahatma Gandhi used the term 'An eye for an eye' and because the end result the entire world might be blind it means that appeared the criminal isn't always appeared as human favour of

reformative theory of punishment it's the correction of 1st time offenders and the juveniles. Some suggestions for the development are discussed as follows:

• There is want of police reforms.

• Modes of investigation additionally advanced like forensic lab, computerization of proceedingsetc.

• There need to be a provision for witness safety in order that the witness comes ahead with none worry and come to be precious for disposing the case ultimately.

• The doctrine of Rarest of rare need to be strictly implemented.

• Capital punishment is prescribed best to the hardened criminals and for the recidivist.

• Offence for which sentence of death is provided must be disposed of speedily.

• Only one appeal may be allowed.

• Death Penalty done by means of appeal duration is over and implementation may be accomplished quickly.

• Long delay is denial in itself, so fast-track courts are crucial for quick disposal of instances.

• In each district a Special Judge appointed by the government to take away the subjects in which there may be punishment is imprisonment for life or sentence of death.

• In the Supreme Court of India, each Sunday a bench established which best deal the petition/ appeal associated with imprisonment for life or sentence of death if we set up the bench in Sunday that no longer disturb the everyday running of Apex Court and on this manner the life of each citizen in query need to be covered that is the high prime object of Justice delivery system.

• Time restrict fixed for the Pardoning power of President/ Governor.

• If there may be violation of State Law for which the punishment is imprisonment for life or sentence of death the Governor can be the very last authority to determine the case.

• Provide compensation and care to the ones determined to be the sufferers of miscarriages of justice in capital cases.

• Ensure that cases of humans suspected to be juveniles on the time of the offence and currentlyon death row are tested without in addition delay.

• Recognize the requirement of unanimity of judges as a procedural shield within the award ofthe capital punishment.

• Government must offer centers to sufferer to stay their life by means of giving loans/employment in order that they come to be impartial and self-sufficient.

• Death penalty need to be given in case of child rape, gang rape, murder etc.

• A Special Compensation Fund and Compensation Board must be organizing at central, stateand district level to offer remedy to sufferer.

• Law need to be carried out and observed strictly.

• Order an investigation into the cases of prisoners on death row who have been reported to be tortured, ill-handled or denied get admission to legal counsel all through police questioning.

• Having made to be had such statistical facts and having carried out an impartial examine of capital cases and their conformity to countrywide and international law, provoke a parliamentary debate on capital punishment.

• Law Commission of India advocated the capital punishment (such as any military court) granted an "obligatory appeal to the Supreme Court in all cases provided."

• Disallow the award of the punishment of death or enhancement of a death sentence by the High Court or Supreme Court; in any case in which a tribulation court has directed an acquittal out, presented some other type of sentence.

• Who are sufferers, the killer and the killed families, lengthy delay is denial itself, the sufferings of the families of the sufferers of crime in addition to the sufferers of law – are financially as psychologically struggling families they're appeared down as upon murderers kids and society humiliates end result harasses them.

• Arbitrariness can be managed and checked with nearly nullifying the opportunity of sentence to any Innocent with minimizing unnecessary some of executions.

• Ensure that the capital punishment isn't always imposed or achieved on all of us stricken by a mental disability – either everlasting or temporary; eliminate all of us stricken by a mental disability from death row and offer them with suitable medical remedy.

• Initiate an pressing impartial examine into the extent to which national law and worldwide requirements for fair trial and different applicable worldwide requirements were complied with in capital cases in at least the closing 2 decades (as in keeping with the advice of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions).

• End the secrecy surrounding utility of the capital punishment by means of making all facts concerning the beyond use of the capital punishment, and the overall number of individuals currently on death row with info in their cases, publicly to be had.

• Implement the Law Commission's recommendation that a Bench of 5 judges comes to a decision any capital case in the Supreme Court.

• Ensure that 'confessions' acquired under pressure are by no means invoked by means of state prosecutors in legal proceedings towards criminal suspects.

• Confirm that all of us who faces the capital punishment have a powerful right to able state appointed legal counsel of the defendant's choice all through the complete legal process, such as appeals and mercy petitions.

• Ratify the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as additionally its Optional Protocol.

The present work has forged light upon numerous elements associated with capital punishment all around the globe. Thinking over the appearance of modern cruelty and prejudiced revengeful attitudes ones wonders if all are absolutely civilized in order to cancel the overall manners and techniques of the capital punishment. In such instances the abolishment of capital punishment will appear absolutely inconsiderate and foolish. In the present work the issues in addition to the answers are concept over objectively and the query of death penalty and it's not on time execution is a component earlier than all to assume over it from a 3rd persons point of view.

It is obvious that argument for and towards the retention of capital punishment will come to the floor time and once more. Like some other controversial be counted a few will help its retention

while different will oppose it. Human Rights motion, to oppose it, has added new thoughts approximately dealing humanly with offenders. Gandhian reformative philosophy of "hate the crime but not the criminal" has additionally affected our penal philosophy. But the unassailable truth is that crime is growing alarmingly, heinous crimes like brutal murder, rape and murder, rape of minor girls, bride burning, and socio-financial offences especially law referring to spurious drugs, meals adulteration, narcotic offences and corruption etc. have come to be an everyday characteristic of our newspapers indicating that our society suffers from deep ethical degeneration. Considering the existing scenario inclusive of terrorists and disruptive activities, political or religious genocide, trade in human organs or white collar etc., it's predicted that extra legislation offering capital punishment in destiny might also additionally come. In this context it may be correctly opened that the claim to abolish capital punishment is highly unwanted to this point as protection of our society and integrity of our country is worried. According to an eminent jurist Mr. Nariman, abolition of capital punishment might be a risky test and we must preserve to have this shape of deterrent punishment until we attain a "positive nation of enlightenment" and additionally a want to proper implementation of law in order that the cases disposed quickly and the trouble of delay can be resolved.

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