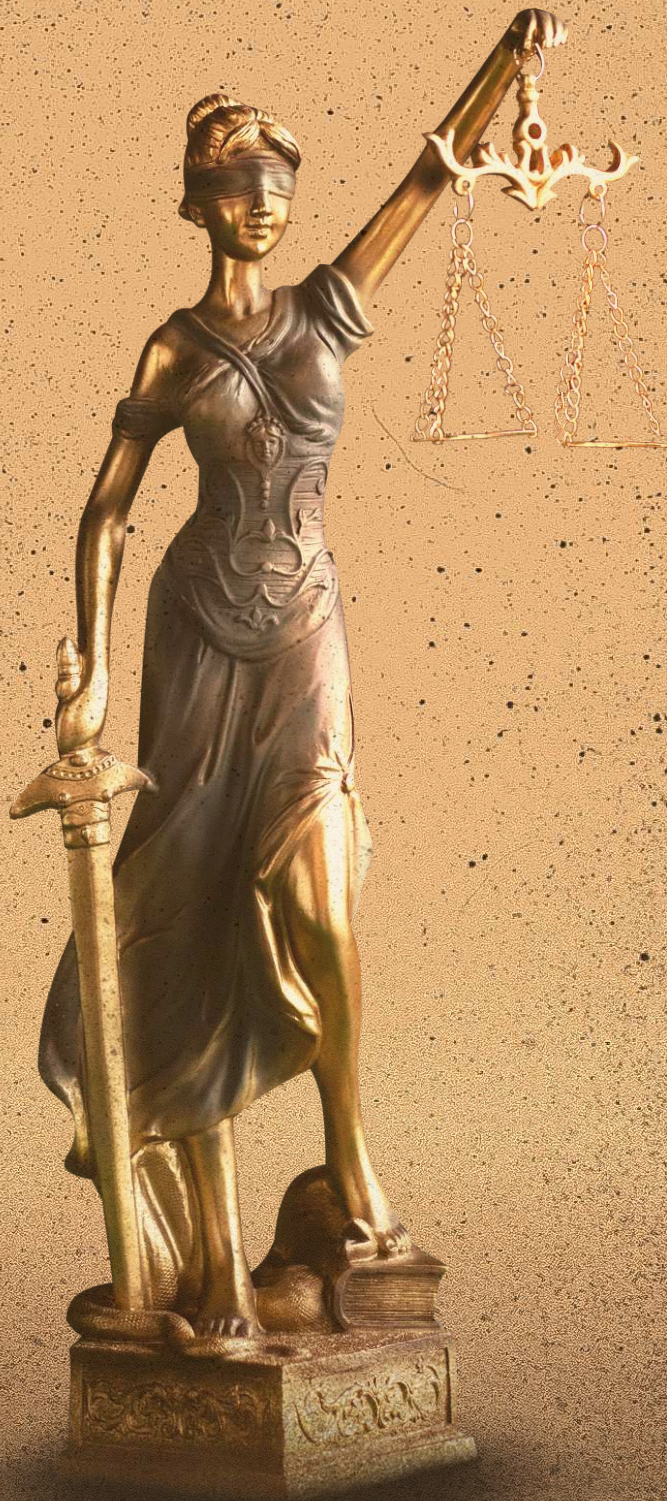


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DEATH PENALTY: CRIMINAL JURISPRUDENCE

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ABSTRACT

The death penalty has a long and complex history in India, dating back to ancient times. In modern India, the use of the death penalty has been a topic of intense debate and controversy. This essay will provide a historical background of the death penalty in India, focusing on its use in the post-independence era.

This paper examines the use of the death penalty in criminal jurisprudence. It provides a comprehensive overview of the history of the death penalty and analyzes the legal, ethical, and moral considerations surrounding its use. The paper also explores the efficacy of the death penalty in deterring crime and considers alternatives to capital punishment. The research draws on a range of primary and secondary sources, including legal texts, scholarly articles, and public opinion surveys. Ultimately, the paper concludes that the death penalty remains a highly controversial and divisive issue in criminal jurisprudence, with no clear consensus on its use and effectiveness in modern society.

It also explores the complex relationship between the death penalty and criminal jurisprudence. The paper provides an overview of the historical and contemporary use of the death penalty as a form of punishment, as well as an analysis of the various legal and ethical arguments for and against its use. The paper examines the impact of the death penalty on the criminal justice system, including its effects on sentencing, the appeals process, and the administration of justice. The paper also explores the role of race, class, and other social factors in the application of the death penalty.

Ultimately, the paper argues that the use of the death penalty is fraught with significant legal and moral challenges, and that its continued use is incompatible with a fair and just criminal justice system.

I. INTRODUCTION

Death penalty, also known as capital punishment, is a legal sanction in which a person is put to death by the state as a punishment for a crime they have committed. The use of the death penalty as a form of punishment has been a controversial issue for many years, with advocates arguing that it serves as a deterrent to potential criminals and opponents arguing that it violates fundamental human rights and has no proven deterrent effect.

Criminal jurisprudence, on the other hand, is the study of the principles and practices of law as they apply to criminal acts and criminal investigations. It covers the entire process of criminal justice, from the investigation of a crime to the trial and punishment of the offender.

In the context of the death penalty, criminal jurisprudence plays a crucial role in ensuring that the legal process is fair and just. This includes ensuring that the accused is provided with legal representation, that evidence is collected and presented in a fair and unbiased manner, and that the accused is given a fair trial. It also involves ensuring that the punishment imposed is proportional to the crime committed and that the accused's rights are protected throughout the legal process.

The use of the death penalty is a complex and contentious issue that requires a careful



examination of both legal and moral considerations. On one hand, proponents argue that the death penalty serves as a deterrent to potential criminals and that it is an appropriate punishment for heinous crimes such as murder, terrorism, and treason. They also argue that it brings a sense of closure to the victim's families and provides a sense of justice.

On the other hand, opponents argue that the death penalty violates fundamental human rights, including the right to life and the prohibition of cruel and unusual punishment. They also argue that it is ineffective as a deterrent and that there is a risk of executing innocent people, which is an irreversible mistake that cannot be undone. Additionally, opponents argue that the death penalty is often applied unfairly, with poor and marginalized individuals being disproportionately represented on death row.

In many countries, the use of the death penalty has been abolished or restricted in recent years, with some countries choosing to use alternative forms of punishment such as life imprisonment without parole. In the United States, the use of the death penalty varies from state to state, with some states using it frequently and others rarely or not at all.

The legal process of imposing the death penalty involves several stages, including the trial, sentencing, and appeals process. During the trial, the accused is provided with legal representation and is given the opportunity to present evidence in their defense. If found guilty, the accused may be sentenced to death, although this sentence may be appealed and overturned by higher courts.

One of the most significant issues in the application of the death penalty is the risk of executing innocent people. The use of DNA evidence and other advanced forensic techniques has led to the exoneration of several individuals who were wrongly convicted of crimes and sentenced to death. However, there have also been cases where innocent

individuals have been executed, which highlights the need for a fair and just legal system.

Another issue in the application of the death penalty is the question of whether it is applied fairly and without bias. Studies have shown that individuals from marginalized communities, including people of color and those from low-income backgrounds, are disproportionately represented on death row. Additionally, there have been cases of wrongful convictions due to racial bias or misconduct by law enforcement officials or prosecutors.

In conclusion, the use of the death penalty is a complex issue that requires careful consideration of legal, moral, and ethical considerations. Criminal jurisprudence provides the legal framework for the application of the death penalty; and plays a crucial role in ensuring that the legal process is fair and just, and that the rights of the accused are protected throughout the legal process and are consistent with fundamental human rights. While there are arguments both for and against the use of the death penalty, it is a punishment that must be applied with great caution.

II. DEATH PENALTY IN WORLD HISTORY

The death penalty has been a form of punishment throughout human history. It has been used in almost every society and culture, and its origins can be traced back to ancient times. In this article, we will discuss the historical background of the death penalty, its evolution over time, and its current status around the world.

A. ANCIENT TIMES

The first recorded instance of the death penalty was in Ancient Egypt. The Pharaohs used the punishment to maintain order and to punish crimes such as murder, treason, and theft. The Babylonians also used the death penalty, and their code of laws, the Code of Hammurabi, prescribed death for crimes such as burglary and the selling of stolen goods.

In ancient Greece, the death penalty was used for a variety of crimes including murder, theft, and sacrilege. The philosopher Plato argued that the death penalty was necessary to maintain social order, while his student Aristotle believed that it should only be used in cases of extreme crimes.

In ancient Rome, the death penalty was used as a form of entertainment. Gladiators were often sentenced to death for their crimes, and their executions were carried out in front of large crowds in the Colosseum.

B. MIDDLE AGES

During the Middle Ages, the death penalty became even more widespread. In Europe, the Catholic Church played a significant role in the use of the death penalty. The Church believed that it was necessary to punish sinners in order to save their souls. The Church also believed that the death penalty was a way to deter people from committing crimes.

In England, the death penalty was used for a wide range of crimes including theft, forgery, and even witchcraft. The punishment was carried out in public, with crowds often gathering to watch the execution.

In the Islamic world, the death penalty was also used extensively. Islamic law prescribed the death penalty for crimes such as murder, adultery, and apostasy. The Ottomans, who ruled much of the Middle East and Europe during the 16th and 17th centuries, used the death penalty to maintain order in their vast empire.

C. MODERN ERA

During the Enlightenment period of the 18th century, there was a growing movement to abolish the death penalty. Philosophers such as Voltaire and Cesare Beccaria argued that the punishment was cruel and ineffective, and that it did not deter crime. The movement led to the abolition of the death penalty in some European countries, including Portugal and Tuscany.

In the United States, the death penalty was first used during colonial times. The first recorded

execution in the United States took place in 1608 in the Jamestown colony. The death penalty was used extensively in the United States throughout the 19th century, with the number of executions reaching a peak in the 1930s.

During the 20th century, there was a growing movement to abolish the death penalty. Many countries abolished the punishment, including Australia, Canada, and much of Europe. In the United States, the Supreme Court declared the death penalty unconstitutional in 1972, but it was reinstated four years later.

D. Current Status

Today, the death penalty is still used in many countries around the world. According to Amnesty International, 53 countries still have the death penalty, while 142 countries have abolished it in law or in practice. The countries that still use the death penalty include China, Iran, Saudi Arabia, and the United States.

The use of the death penalty remains controversial. Supporters argue that it is necessary to deter crime and to punish the most heinous crimes, while opponents argue that it is cruel and ineffective, and that it is often applied unfairly. There is also evidence to suggest that the death penalty is not an effective deterrent to crime.

III. DEATH PENALTY IN INDIA

The death penalty has been a part of India's legal system since ancient times. However, its use and application have evolved over the years. This essay provides a historical background of the death penalty in India from ancient times to the present day.

A. ANCIENT INDIA

The death penalty has been mentioned in several ancient texts of India, including the Manusmriti, Arthashastra, and the Mahabharata. These texts prescribed the death penalty for various offenses, such as murder, treason, and rape.

During the Mauryan dynasty (322 BCE – 185 BCE), Emperor Ashoka, who is known for his

advocacy of non-violence and compassion, abolished the death penalty for all crimes except for the most heinous offenses, such as treason and terrorism.

B. MEDIEVAL INDIA

During the medieval period, Islamic rulers introduced Sharia law, which included the death penalty for offenses such as murder, apostasy, and blasphemy. The Mughal emperor Akbar introduced the concept of jirga, or a council of elders, which had the power to impose the death penalty for serious offenses.

C. BRITISH INDIA

The British introduced their legal system in India in the 19th century. The first law that provided for the death penalty in India was the Indian Penal Code of 1860. This law prescribed the death penalty for offenses such as murder, dacoity (robbery by a group of people), and waging war against the state.

During the British colonial period, the death penalty was used extensively to suppress political dissent and suppress nationalist movements. Several prominent Indian leaders, including Bhagat Singh, Rajguru, and Sukhdev, were executed by the British for their involvement in the Indian independence movement.

D. POST-INDEPENDENCE INDIA

After India gained independence in 1947, the death penalty remained a part of the legal system. The Constitution of India allows for the death penalty for certain offenses, such as murder, terrorism, and treason.

However, the use of the death penalty has been subject to much debate and controversy in post-independence India. Many argue that the death penalty is a cruel and inhuman punishment and that it has no place in a modern and civilized society. They point to the risk of wrongful convictions, the possibility of executing innocent people, and the fact that the death penalty does not deter crime.

Others argue that the death penalty is necessary for maintaining law and order and for deterring heinous crimes. They point to the principle of "an eye for an eye" and argue that the death penalty is a just punishment for the most serious offenses.

In recent years, there has been a growing movement against the death penalty in India. Several high-profile cases, such as the execution of Yakub Memon in 2015, have sparked protests and debates about the use of the death penalty. The Supreme Court of India has also been reviewing several cases in which the death penalty was imposed, and in some cases, it has commuted the death sentences to life imprisonment.

IV. INDIAN LEGISLATION AND DEATH PENALTY

There are several branches of law in existence in the world but the one which concerns itself to the man and its life is one i.e., criminal law. As the name suggests, criminal law is the law which deals with crime. Though the word crime is not defined in criminal law and thus it fails to identify what act or omission amounts to crime. The Indian legislature has provisions for the death penalty in certain cases, although the use of this punishment is highly controversial. This essay will explore the Indian legislature's stance on the death penalty, the reasons behind its use, and the arguments for and against it.

The death penalty is prescribed for certain offenses under the Indian Penal Code, such as murder, terrorism-related offenses, and certain cases of treason. The rationale behind the use of the death penalty is often to serve as a deterrent to potential offenders and to provide a sense of justice for victims and their families.

However, there are many arguments against the use of the death penalty. Some argue that it is not an effective deterrent and that there is no conclusive evidence that it reduces crime. Others argue that the death penalty is inherently cruel and inhumane, and that it violates fundamental human rights. There are

also concerns that the death penalty is often applied disproportionately to marginalized communities, who may not have access to legal representation or who may be subject to bias in the judicial system.

Despite these concerns, the Indian government has not yet abolished the death penalty, although it has taken steps to limit its application. For example, in 2018, the Supreme Court of India upheld the constitutionality of the death penalty but also emphasized the need for its careful and judicious application. The Court ruled that the death penalty should only be awarded in the "rarest of rare cases," where the alternative option of life imprisonment would be inadequate.

Moreover, there have been efforts to reduce the number of offenses for which the death penalty can be imposed. In 2013, for example, the Indian government enacted a law that removed the death penalty as a mandatory punishment for certain offenses, such as drug trafficking and certain cases of murder. This was seen as a step towards greater judicial discretion in determining the appropriate punishment for different crimes.

In conclusion, the Indian legislature has provisions for the death penalty in certain cases, but its use remains a contentious issue. While there are arguments for its use as a deterrent and a means of justice, there are also concerns about its effectiveness, its potential for abuse, and its inherent cruelty. The Indian government has taken steps to limit the application of the death penalty and to increase judicial discretion in determining punishments, but there is ongoing debate about whether the death penalty should be abolished altogether.

A. DEATH PENALTY UNDER HINDU LAW

Hindu law, also known as Dharma, is a complex and ancient system of religious and social rules that governs the conduct of Hindus. While the death penalty is not explicitly mentioned in

Hindu law, there are certain principles and practices that relate to the taking of life.

In Hinduism, the concept of ahimsa or non-violence is highly valued, and taking a life is generally seen as a grave sin. However, there are exceptions to this principle, such as in cases of self-defense or in the case of a ruler who must take life to maintain order and protect his people.

In ancient Hindu society, the death penalty was occasionally used as a punishment for certain crimes, such as murder or treason. However, the application of the death penalty was often subject to strict rules and procedures, and the punishment was not imposed lightly.

The ancient Hindu text, the Manusmriti, which is considered one of the most important sources of Hindu law, describes a detailed system of punishments for various crimes, including the death penalty. However, the text also emphasizes the importance of mitigating factors, such as the offender's age, mental state, and motivation, in determining the appropriate punishment.

Moreover, Hindu law also emphasizes the importance of rehabilitation and reform, and punishment is seen not only as a means of retribution but also as a way to promote moral and ethical behavior.

In contemporary India, the death penalty remains a legal punishment, although its use is highly controversial. While there are no specific provisions in Hindu law regarding the death penalty, many Hindu activists and scholars argue that the principles of ahimsa and rehabilitation should guide the application of punishment in modern society.

In conclusion, while Hindu law does not explicitly address the death penalty, it offers principles and practices that can inform discussions about the taking of life and the appropriate use of punishment. As with many issues in Hinduism, there is a strong emphasis on individual responsibility and the importance of ethical

conduct, both of which are central to discussions about the death penalty.

B. DEATH PENALTY UNDER MUSLIM LAW

In Islamic law, the death penalty, or capital punishment, is recognized as a punishment for certain crimes. The Islamic legal system, known as Sharia law, provides for the death penalty in cases of murder, apostasy, adultery, and other serious offenses.

The application of the death penalty under Muslim law is subject to strict rules and procedures, and the burden of proof is very high. For example, in cases of murder, the evidence required to impose the death penalty must be very strong, such as the testimony of four witnesses who observed the crime directly.

In addition, the death penalty is seen as a last resort in Islamic law, and alternatives such as forgiveness or compensation are preferred wherever possible. The use of the death penalty is also subject to the discretion of the judge, who must consider a wide range of factors, including the severity of the crime, the circumstances of the offender, and the interests of society.

In Muslim countries where Sharia law is applied, such as Saudi Arabia and Iran, the death penalty is still used for a wide range of offenses. However, there is ongoing debate about the appropriateness and fairness of the death penalty under Muslim law, and many Islamic scholars and human rights organizations have called for its abolition.

In conclusion, the death penalty is recognized as a punishment under Muslim law for certain crimes, but its application is subject to strict rules and procedures, and the burden of proof is very high. The use of the death penalty is also subject to the discretion of the judge, and alternatives such as forgiveness or compensation are preferred wherever possible. While the death penalty is still used in some Muslim countries, there is ongoing debate about its appropriateness and fairness, and calls for its abolition are growing.

C. DEATH PENALTY UNDER EARLIER BRITISH RULE

The death penalty has a long history in India, dating back to ancient times. However, during the period of British rule in India, the death penalty was used extensively as a means of maintaining law and order and as a deterrent against crime.

Under British rule, a wide range of crimes were punishable by death, including murder, treason, and certain economic offenses. The death penalty was often imposed in a summary manner, without due process or fair trial, particularly in cases involving political dissidents or those perceived as threats to British rule.

The British also introduced a number of legal reforms aimed at modernizing the Indian legal system and bringing it in line with European legal principles. These reforms included the Indian Penal Code of 1860, which established a standardized set of criminal laws for India and introduced the death penalty as a punishment for a wide range of crimes.

However, the application of the death penalty was often criticized for its arbitrariness and lack of due process. Many Indians were executed without a fair trial, and the death penalty was often used as a means of suppressing political dissent and maintaining British control.

In response to these concerns, there were calls for reform of the Indian legal system and for the abolition of the death penalty. However, these calls were largely ignored by the British authorities, who saw the death penalty as a necessary tool for maintaining order and suppressing dissent.

In conclusion, the death penalty was used extensively under British rule in India and was often imposed in a summary manner, without due process or fair trial. While the British introduced legal reforms aimed at modernizing the Indian legal system, the use of the death penalty was often criticized for its arbitrariness and lack of due process, and there were calls

for its abolition. However, these calls were largely ignored by the British authorities, who saw the death penalty as a necessary tool for maintaining law and order in India.

D. PRESENT STATUS OF INDIAN LEGISLATION ON DEATH PENALTY

The death penalty remains a legal punishment in India, although its use is highly controversial. The Indian legislature has provisions for the death penalty in certain cases, such as murder, terrorism-related offenses, and certain cases of treason. However, the use of the death penalty is subject to strict rules and procedures, and it is only imposed in the "rarest of rare cases."

In recent years, there has been growing debate about the use of the death penalty in India, with many human rights organizations and individuals advocating for its abolition. In response to these concerns, the Indian government has taken steps to limit the application of the death penalty and to increase judicial discretion in determining the appropriate punishment for different crimes.

For example, in 2013, the Indian government enacted a law that removed the death penalty as a mandatory punishment for certain offenses, such as drug trafficking and certain cases of murder. This was seen as a step towards greater judicial discretion in determining the appropriate punishment for different crimes.

In addition, in 2015, the Law Commission of India issued a report recommending that the death penalty be abolished for all offenses except those related to terrorism and waging war against the state. The report cited concerns about the arbitrariness and inconsistency of the death penalty, as well as its potential for abuse.

However, the Indian government has not yet abolished the death penalty, and it remains a legal punishment in certain cases. The Supreme Court of India has upheld the constitutionality of the death penalty, but has emphasized the need for its careful and judicious application.

In conclusion, while the death penalty remains a legal punishment in India, there is ongoing debate about its use and calls for its abolition. The Indian government has taken steps to limit the application of the death penalty and to increase judicial discretion in determining punishments, but there is still much work to be done to ensure that the criminal justice system in India is fair, just, and consistent.

V. JUDICIAL OPINION

Judicial opinions on the death penalty have varied widely over time and across different jurisdictions. Some judges have argued that the death penalty is a necessary tool for maintaining law and order and protecting society from serious crimes, while others have raised concerns about its fairness, effectiveness, and morality.

In the context of India, the Supreme Court has issued several landmark judgments on the death penalty, laying down important principles and guidelines for its imposition. In the case of *Bachan Singh v. State of Punjab* (1980), the Supreme Court held that the death penalty could only be imposed in the "rarest of rare" cases, where the alternative sentence of life imprisonment would be inadequate.

Since then, the Supreme Court has refined and elaborated on the "rarest of rare" doctrine, laying down factors to be considered in determining whether a particular case qualifies for the death penalty. These factors include the nature and gravity of the crime, the manner in which it was committed, the background of the offender, and the interests of society.

In addition, the Supreme Court has also recognized the need for strict procedural safeguards to ensure that the death penalty is not imposed arbitrarily or in violation of the offender's rights. These safeguards include the right to a fair trial, the right to legal representation, and the right to appeal to higher courts.

Overall, judicial opinions on the death penalty have been shaped by a range of factors,

including legal, moral, social, and political considerations. While some judges have upheld the constitutionality and validity of the death penalty, others have raised important concerns about its fairness, effectiveness, and morality, leading to ongoing debates and discussions about its appropriateness and scope.

VI. DEATH SENTENCE AND ARTICLE 21

In *Jagmohan Singh v. Uttar Pradesh*¹, the petitioner challenged the validity of death sentence on the ground that it was violative of Articles 19 and 21 because it did not provide any procedure. The five-judge bench of the Supreme Court, by an unanimous verdict, upheld the constitutional validity of capital punishment, declaring that it is not violative of Art. 14, 19 and 21 of the Indian Constitution and the choice of awarding death sentence is done in accordance with the procedure established by law.

But in the case of *Rajendra Prasad v. State of Uttar Pradesh*,² overruled in *Bachchan Singh's* case, Krishna Iyer, J. stressed that the death penalty is violative of articles 14, 19 and 21; and held that giving discretion to the Judge to make choice between death sentence and life imprisonment on "special reasons" under section 354(3), Cr.P.C., would be violative of Article 14 which condemns arbitrariness.

In *Bachchan Singh v. State of Punjab*,³ the Supreme Court by 4:1 majority overruled *Rajendra Prasad's* decision and held that the provision of death penalty under section 302, IPC, as an alternative punishment for murder is not violative of Article 21.

In *Deena v. Union of India*,⁴ the court held that Section (5) of the Cr.P.C. is within the meaning of Art. 21 and hence is constitutional.

In *Attorney General of India v. Lachma Devi*,⁵ it has been held that the execution of death sentence by public hanging is barbaric and violative of Art. 21 of the Constitution.

In *Triveniben v. State of Gujarat*,⁶ it has been held that a person sentenced to death is also entitled to procedural fairness till his breath of life.

In *Madhu Mehta v. Union of India*,⁷ the Court directed the death sentence to be commuted to life imprisonment as there were no sufficient reasons to justify such a long delay in disposal of the convict's mercy petition.

VII. CONSTITUTIONALITY OF DEATH PENALTY

The constitutionality of the death penalty has been a topic of debate in many countries, including India. In India, the death penalty is authorized under certain circumstances, such as in cases of murder, terrorism, and certain other serious crimes.

The Indian Constitution provides for the protection of the right to life and personal liberty under Article 21, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." However, the Supreme Court of India has held that the death penalty does not violate this provision as long as it is imposed in accordance with due process and fair trial.

The constitutionality of the death penalty has been challenged in the Indian courts on various grounds, including its arbitrary and discriminatory application, its failure to serve as an effective deterrent, and its violation of human rights. However, the Supreme Court has consistently upheld the constitutionality of the death penalty, while also recognizing the need for strict safeguards and procedural safeguards to prevent its abuse.

In recent years, there has been a growing debate about the constitutionality of the death penalty in India, with some arguing that it violates the principles of human dignity and human rights. However, the Indian government has maintained that the death penalty is necessary to maintain law and order and to protect society from serious crimes.

In conclusion, while the constitutionality of the death penalty has been challenged in India on

¹ AIR 1973 SC 947.

² AIR 1979 SC 916.

³ AIR 1980 SC 898.

⁴ (1983) 4 SCC 645.

⁵ AIR 1986 SC 467.

⁶ AIR 1989 SC 142.

⁷ (1989) 4 SCC 62.

various grounds, the Supreme Court has upheld its constitutionality as long as it is imposed in accordance with due process and fair trial. However, the debate about the appropriateness and fairness of the death penalty continues in India and around the world.

CONCLUSION

Death penalty is a legal process in which a person is put to death by the state for commission of a crime as a punishment. India hasn't adopted any stand towards the abolition capital punishment (Death penalty), a global trend. If once a man is executed for a crime can never be brought back to life. So, if there is any error in, while deciding on a matter, this error cannot be later rectified. This punishment can be traced back to 1750 B.C., in the Code of Hammurabi. The Bible also sets death as punishment for crimes such as Blasphemy, adultery, homosexuality, bestiality, incest, rape, etc. During the Middle Ages, the death penalty was characterized by brutality. Grotius, Thomas Hobbes and John Locke were the supporters of this form of punishment. The trials by fire, water, etc., followed in the 1600's is a form of capital punishment.

The arguments for and against the Death Sentence is influenced by the varied opinion and existing ideas about crime and punishment. On the one hand, there are people of the view that extreme penalty of death has no place in modern world and consider it a necessary evil and the sooner they are get rid of it, the better it would be.

On the other hand, there are the persons who hold the view that if the death penalty is made unconstitutional, world would become a hell and a criminal would not be afraid of anything because he is sure of that whatever he does, he is not going to die. Hence, it can be noticed that there is bifurcation of the opinion and idea on the view of capital punishment, one who supports the capital punishment and another who are against it or in support of the abolition of capital punishment.

Hon'ble Justice Dr. M. Hidayatullah (Former Chief Justice of India) requested for upholding the death sentence. He said that he was never afraid of giving death sentence as he had come across many cases where death was the only answer. However, he cautioned that the benefit of doubt should be given to the accused; The judge must at the outset establish his guilt absolutely and there must be no mitigating circumstances. He criticized the Supreme Court's directive to award the death penalty only in the "rarest of rare cases". How did one decide which case was rarer than the other and which was the rarest? He said that such loose definition only confused the judges, especially in the subordinate courts. He said that it was not for the judges to remove the death penalty by not recognizing the punishment in their judgments. "As long as the law exists, it is the job of the judge to enforce it", and only the legislator to remove it.

Prof. Shibban Lal Saksena, while debating in Constituent Assembly has advocated abolition of death sentence and presented in his own way by stating that "I have seen many cases where people were condemned to death. I had the misfortune during the 1942 movement to live in a condemned cell for about twenty-six months and about thirty-seven men were hanged in my presence. Out of the thirty-seven men, seven were acquitted, ten had their sentences reduced to transportation for life and the rest twenty were hanged. I am sure Sir that many who were acquitted were real murderers, many who were sentenced to transportation for life, were real murderers and many who were hanged were innocent. At least I was convinced in the case of seven persons that they were perfectly innocent. Still they were hanged. I do not say that the Supreme Court will always know by some divine inspiration what is true. That is why I stand for the abolition of capital punishment altogether. But so long as we do not abolish the death penalty, I feel that the man who is condemned to death must have the right of appeal to the highest Tribunal. This



must be an inherent right and not limited by any conditions.”⁸

Hon’ble Justice Mr. VR Krishna Iyer, a leading jurist has pleaded for the abolition of death sentence. He said that death sentence is not required in the present time but as the Indian Law has laid down to award death sentence in certain cases, he cannot change the law.⁹ So, he has suggested that the death sentence may be awarded in “rarest of the rare” cases. He also quoted Gandhiji by stating that Gandhiji mentioned in Harijan that “the God alone can take life because he alone gives it”.¹⁰

Thus, the death penalty has been a part of India’s legal system for thousands of years. Its use and application have evolved over time, and it remains a controversial and divisive issue in modern-day India. While some argue that the death penalty is necessary for maintaining law and order, others believe that it is a cruel and inhuman punishment that has no place in a civilized society. The debate over the death penalty is likely to continue in India, as it has in other countries around the world.

⁸ “Debates on Constituent Assembly of India”- Vol. VIII

⁹ Rajendra Prasad v. State of U.P., AIR 1979 SC 916.

¹⁰ Mahatma Gandhi, Harijan, 22nd July, 1946.