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Death Penalty in India

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ABSTRACT

India is a developing country and second most populated country in the world so it's very natural that the crime rates in India are increasing significantly. There are a number of legislations present in India to stop and control crimes, and most of them believe that severe punishment should be able to reduce the increasing crime rates. All punishments have a strong foundation which says that all the wrongdoers/offenders shall be awarded penalties. There are different types of punishments in India such as simple imprisonment, imprisonment with fine, life imprisonment, the death penalty, etc. The death penalty is also known as Capital Punishment which is the most severe form of punishment that could be awarded to an offender. There are various methods by which the death penalty is carried out in the world. In India Hanging and Shooting are two execution methods.

I. INTRODUCTION

Death Penalty also called Capital Punishment is the most severe form of punishment that can be awarded to any accused based on the crimes which he/she has committed, now such crimes should be most heinous, grievous, and hateful in nature.

Some other definitions of death penalty/ capital punishment are:

- Capital punishment, also called the death penalty, execution of an offender sentenced to death after conviction by a court of law for a criminal offense.²
- The term "Capital Punishment" stands for the most severe form of punishment. It is the punishment that is to be awarded for the most heinous, grievous, and detestable crimes against humanity. While the definition and extent of such crimes vary from country to country, state to state, the age to age, the implication of capital punishment has always been the death sentence. By common usage in jurisprudence, criminology, and penology, the capital sentence means a sentence of death.³

There are several modes of execution of the Death Penalty that are used by different countries

¹ Author is a student at Bennett University, Greater Noida, India.

² Roger Hood, Capital Punishment, Encyclopædia Britannica, (Oct. 19, 2020), <https://www.britannica.com/topic/capital-punishment>.

³ Dr. Subhash C. Gupta, Capital Punishment in India, 1, (2000)

across the globe, such mode of executions are:

(A) Shooting:

In this type of method there are two options:

- **Execution by a Single Executioner:** In this type of execution method the executioner is standing behind the accused within one arm's distance and shoots the accused directly in his/her brain with his weapon (usually a handgun) which results in the immediate death of the accused.
- **Execution by a Firing Squad:** In this type of execution method, the accused is usually seated, stood against a wall, or tied to a pole in a vertical position. The firing squad usually consists of five executioners armed with a rifle and one of the executioners is given blank rounds. When the order is given they freely fire on the accused. In most of the cases, the accused dies immediately due to the bullet hitting a vital organ (i.e. heart) but if not then the accused dies slowly bleeds out.⁴

(B) Hanging:

This is one of the most widely used methods of execution in the world. There are four types of hanging execution methods:

- **The "Short Drop" Method:** In this method, the accused is dropped and the distance between his feet and the is surface is just a few inches sufficient enough for the accused to not touch the surface. The body weight in this method plays a vital role as the suspended bodyweight tends to tighten up the noose and the accused dies due to strangulation.
- **The Suspension Hanging Method:** In this method, the accused is lifted into the air using a crane or other hydraulic machine. The cause of death is somewhat similar to the Short drop method, i.e. Strangulation.
- **The Standard Hanging Method:** In this method, the accused is dropped between four to six feet, which is not sufficient to break the neck but is enough to make the accused unconscious within the first seconds of the drop due to the force of the drop and with time the accused dies slowly due to lack of oxygen.
- **The "Long Drop" or Measured drop Method:** In this method, the authorities calculate the distance that the person falls for based on his/her weight and height which is accurate

⁴Death Penalty Curricula for High School, Michigan State University Comm Tech Lab and Death Penalty Information Center, (Nov. 1, 2001), <https://deathpenaltycurriculum.org/student/c/about/methods/firingsquad.htm>

enough to break the neck of the accused and the death of the accused occurs within seconds of the drop.⁵

(C) Gas chamber:

- In this method, the accused is strapped into a chair with a vessel of sulfuric acid below the chair in an airtight chamber. Once everyone leaves the chamber Sodium Cyanide crystals are released into the vessel. This results in a chemical reaction which releases Hydrogen Cyanide gas which is highly poisonous in nature and when the gas fills the chamber the accused is told to inhale deeply to speed up the process.
- The Hydrogen Cyanide gas when inhaled cuts off the oxygen supply to the brain which results in unconsciousness and shortly the other vital organs are also affected which results in the death of the accused.⁶

(D)Electrocution:

- In this method, the accused is usually shaved and strapped into a chair with belts that cross-chest arms and legs and electrodes are attached to his head and legs. When the chamber has emptied a jolt of between 500 to 2000 volts is applied for a duration of 30 seconds. If the accused is still breathing after the jolt then another jolt is administered.
- The Jolt results in the burning of internal organ causing respiratory paralysis and cardiac arrest.

(E)Lethal injection:

- In this method, the accused is strapped to a stretcher and two needles are inserted in the accused's body. The needles are inserted in the usable veins of the accused. In this method firstly harmless saline is injected in the body of the accused followed by Sodium Thiopental- an anesthetic, resulting in the accused falling into a deep sleep. Afterward, Pancuronium bromide is injected to stop breathing. Afterward, the accused is injected with Potassium Chloride to stop the Heart.
- The entire process takes around 9-14 mins to finish. The accused usually dies in the early steps of the process due to anesthetic overdose and cardiac arrest while the accused is in deep sleep.⁷

⁵ Richard Clark, The processes of judicial hanging, Capital Punishment U.K., <http://www.capitalpunishmentuk.org/hanging2.html>.

⁶Death Penalty Curricula for High School, Michigan State University Comm Tech Lab and Death Penalty Information Center (Nov. 1, 2001), <https://deathpenaltycurriculum.org/student/c/about/methods/gaschamber.htm>

⁷ Death Penalty Curricula for High School, Michigan State University Comm Tech Lab and Death Penalty Information Center, (Nov. 1, 2001), <https://deathpenaltycurriculum.org/student/c/about/methods/lethalinjection>.

II. INTERNATIONAL PROVISIONS ON DEATH PENALTY

The death penalty is a highly debatable topic which is getting a lot of attention for quite some time now and keeping this in mind there are several International provisions which deal with the topic of death penalty such as the International Covenant on Civil and Political Rights ('ICCPR') 1966, Second Optional Protocol to the International Covenant on Civil and Political Rights (1989) and the Convention on the Rights of the Child.

The international covenant on civil and political rights, 1996:

- The International Covenant on Civil and Political Rights came into force in the year 1976 and is nearly signed by every country in the world. Article 6 of the ICCPR throws light on the topic of the death penalty. Article 6 of the ICCPR states that:
 - Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
 - In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the convention on the prevention and punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
 - When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
 - Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence of death may be granted in all cases.
 - Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
 - Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant⁸
- According to Article 6, every person has the right to life and no one shall be deprived of that right at any cost. The United Nations Human Rights Committee in 1982

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⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 6, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

discussed this Article in detail and concluded that as per this Article “Abolition of Death Penalty is not explicitly required yet abolishment is desirable”. The committee also said that any step taken towards the abolishment of Death Penalty will be considered as “Progress in the enjoyment of Right to Life”.⁹

- The committee further said that Death Penalty should be treated as an “exceptional measure” in other words if there is any other punishment mentioned in the law as an alternative to Death penalty then the honorable bench should firstly consider the alternative punishment instead of Death Penalty. In order to support this, the committee mentions Article 6 (2) of the ICCPR which not only acts a safeguard but also states that Death penalty can only be imposed in accordance with the law in force at the time at the time of the commission of the crime.¹⁰
 - According to the committee, The ICCPR also provides certain rights such as:
 - Presumption of Innocence.
 - Right to a Fair Trial.
 - The minimum guarantees for the defense.
 - Right to review by a higher tribunal.
 - The right to seek pardon or commutation of the sentence.¹¹
- Presently, 173 countries including India are parties to the ICCPR¹². The Human Rights Committee in 1997 reviewed the third periodic report of India and recommended India in the context of Article 6 of the Covenant by stating: “Abolish by law the imposition of the death penalty on minors and limit the number of offenses carrying the death penalty to the most serious crimes, with a view to its ultimate abolition”.¹³

⁹ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994), Para 6, <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm>.

¹⁰ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994), Para 7, <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm>.

¹¹ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994), Para 7, <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm>. Read with UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 14, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹²United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407 (procès-verbal of rectification of the authentic Spanish text); depositary notification C.N.782.2001.TREATIES-6 of 5 October 2001 [Proposal of correction to the original of the Covenant (Chinese authentic text)] and C.N.8.2002.TREATIES-1 of 3 January 2002 [Rectification of the original of the Covenant (Chinese authentic text)]. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en.

¹³ UN Human Rights Committee (HRC), Concluding observations of the Human Rights Committee: India, 04 August 1997, CCPR/C/79/Add.81., Para 20, <https://www.hrw.org/reports/1999/india/India994-21.htm>.

SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY, 1989:

- The second optional Protocol to the International Covenant on the Civil and Political Rights has only one aim and that is the abolishment of death penalty and this treaty strongly believes that abolition of death penalty should be considered as “Progress in the enjoyment of the right to life” which was also stated by The United Nations Human Rights Committee in 1982¹⁴. Keeping this in mind, this treaty is open to signatures from all the countries across the globe who has already signed the ICCPR¹⁵ and India has not signed this treaty.
- Article 6 of the ICCPR strongly influences the countries to sign this treaty because this article explicitly did not refer to the abolition of the death penalty yet, says that the abolition of the death penalty is desirable¹⁶. Keeping this mind The Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (1989) came into force in the year 1991 with 81 state parties and 3 signatories.¹⁷
- The start articles of this treaty are Article 1 and Article 2 (1) that are as follows:

ARTICLE 1:

- No one within the jurisdiction of a State Party to the present Protocol shall be executed.
- Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.¹⁸

ARTICLE 2 (1):

¹⁴ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994), Para 6, <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm>.

¹⁵UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, Article 7 (1), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

¹⁶ Human Rights Committee, General Comment 6, Article 6 (Sixteenth Session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994), Para 6, <http://hrlibrary.umn.edu/peace/docs/hrcom6.htm>.

¹⁷ UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4.

¹⁸ UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, Article 1, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.¹⁹

Article 1 talks about the complete abolishment of the death penalty in the country who has signed the treaty and this article ensure that each state takes all measures to abolish the death penalty within its jurisdiction.²⁰

On the other hand, Article 2 (1) is the only provided exception to the death penalty abolishment rule in the whole treaty, just to be crystal clear the exception provided in the Article is only to be exercised during wartime and only for unspeakably serious crimes which were committed during such dark times.

THE CONVENTION ON THE RIGHTS OF THE CHILD,1989:

- Similar to Article 6 (5) of the ICCPR²¹, Article 37 (a) of the Convention on the Rights of the Child also protects the rights of a minor and explicitly states that any person below the age of eighteen years at the time of the commission of a crime will not be awarded death penalty irrespective of their age at the time of trial. Article 37 (a) states that:
 - No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offenses committed by persons below eighteen years of age.²²
- The committee on the Right of the Child in 2007 in its report reminded the states that every accused under the age of eighteen years of age at the time of the commission of the crime is to be dealt with rules of juvenile justice.²³

¹⁹UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, Article 2 (1), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

²⁰ UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 15 December 1989, A/RES/44/128, Article 1 (2), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

²¹ “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”

UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 6 (5), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, Article 37 (a), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

²³UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10, Para 37, <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

SAFEGUARDS REGARDING DEATH PENALTY IN INTERNATIONAL LAW:

- The United Nations Economic and Social Council (ECOSOC) in 1984 placed nine safeguards regarding the protection of the Rights of humans facing the death penalty. India is a signatory of ECOSOC²⁴. The nine safeguards laid down by ECOSOC are summarised below:
 - The death penalty may only be awarded for most serious crimes and their scope should not go beyond international crimes.
 - The death penalty is only to be awarded for the crimes for which the death penalty is prescribed by the law at the time of the commission of the crime.
 - The death penalty cannot be awarded to persons below the age of eighteen years at the time of the commission of the crime, pregnant women, and new mothers or on an insane person.
 - The death penalty may only be awarded after convincing evidence and the establishment of the guilt of the accused.
 - The death penalty may only be carried out pursuant to a final judgment rendered by a competent court after legal process which provides all possible safeguards to ensure a fair trial.
 - The accused on death row shall have the right to seek pardon or commutation of sentence.
 - The Death penalty shall not be carried out if any pardon or commutation regarding the appeal is pending.
 - Where capital punishment occurs, minimum possible pain should be inflicted.²⁵

III. INDIAN LEGISLATION AND DEATH PENALTY

India is one of the largest and most populated countries in the world with a rapidly developing economy, hence India is also a country that consists of both crime and criminals. In India, the measure of punishment in a given case must depend on the atrocity of the crime. The entire criminal law of India is mostly collectively stored in the Indian Penal Code and Criminal Procedure Code. The Indian Penal Code is Substantive law and on the other hand,

²⁴ Members | UNITED NATIONS ECONOMIC and SOCIAL COUNCIL, <https://www.un.org/ecosoc/en/content/members>

²⁵ Rights of those facing the death penalty - OHCHR. <https://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx>.

the Criminal Procedure Code is Procedural law.²⁶

According to Section 53 of the Indian Penal Code, there are different types of punishments that are awarded in India:

- Death Penalty.
- Life Imprisonment
- Imprisonment:
 - Rigorous Imprisonment.
 - Simple Imprisonment.
- Forfeiture of property
- Fine

In India the death penalty is executed by two-mode one is Hanging and the other is Shooting. In most of the cases which are dealt in Civilian courts, the mode of execution is hanging. But according to section 166 of the Army Act, 1950, both hanging and shooting are listed as official modes of execution in the military court-martial system.²⁷

In India, the Death penalty is awarded under various sections of the Indian Penal Code, 1860 such as:

- **Section 121:** Waging, or attempting to wage war or abetting of war, against Government Of India.²⁸
- **Section 132:** Abetment of Mutiny.²⁹
- **Section 194:** If an innocent person is convicted and executed in consequence of such false evidence to procure conviction of capital offence.³⁰
- **Section 302:** Murder.³¹
- **Section 303:** Murder by life Convict.³²
- **Section 305:** Abetment of suicide of child or insane person.³³
- **Section 364 A:** Kidnapping for ransom.³⁴

²⁶ Ratanlal & Dhirajlal, The Indian Penal Code 4-5 (Dr. Versha Vahini, ed.Ist, Lexis Nexis, Haryana,2014)

²⁷ The Army Act,1950, Section 166.

²⁸ The Indian Penal Code, 1860, Section 121.

²⁹ The Indian Penal Code, 1860, Section 132.

³⁰ The Indian Penal Code, 1860, Section 194.

³¹ The Indian Penal Code, 1860, Section 302.

³² The Indian Penal Code, 1860, Section 303. (Repealed in case of Mithu vs. State of Punjab, AIR 1983 SC473)

³³ The Indian Penal Code, 1860, Section 305.

- **Section 376 A:** rape that leads to death or leaves the victim in a persistent vegetative state.³⁵
- **Section 396:** Dacoity with murder.³⁶

There are several other important legislations that have provisions for the death penalty such as:

- **Section 3 (2) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:** If an innocent member of a Scheduled Caste or a Scheduled Tribe is convicted and executed in consequence of such false or fabricated evidence.³⁷
- **Section 31A of NDPS Act:** Offers a mandatory death penalty for a second offense of large scale narcotics trafficking.³⁸
- **Section 4(1) of part-II of the Commission of Sati (Prevention) Act, 1987:** Offers the death penalty for abetment of the commission of sati.³⁹

According to the Law Commission of India, report no. 262 on the Death Penalty, there are various other laws that award the death penalty but not many cases are registered under these laws:

S. No.	SECTION NO.	ACTS
1.	Section 34, 37, and 38(1)	The Air Force Act, 1950
2.	Section 3(1) (i)	The Andhra Pradesh Control of Organised Crime Act, 2001
3.	Section 27(3)	The Arms Act, 1959 (repealed)
4.	Section 34, 37, and 38 (1)	The Army Act, 1950
5.	Section 21, 24, 25(1)(a), and 55	The Assam Rifles Act, 2006
6.	Section 65A(2)	The Bombay Prohibition (Gujarat Amendment) Act, 2009

³⁴ The Indian Penal Code, 1860, Section 364 A.

³⁵ The Indian Penal Code, 1860, Section 376 A.

³⁶ The Indian Penal Code, 1860, Section 396.

³⁷ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3 (2) (i)

³⁸ The NDPS Act, 1985, Section 31A.

³⁹ The Commission of Sati (Prevention) Act, 1987, Part-II, Section 4 (1).

7.	Section 14, 17, 18(1)(a), and 46	The Border Security Force Act, 1968
8.	Section 17 and 49	The Coast Guard Act, 1978
9.	Section 4(1)	The Commission of Sati (Prevention) Act, 1987
10.	Section 5	The Defence of India Act, 1971
11.	Section 3	The Geneva Conventions Act, 1960
12.	Section 3 (b)	The Explosive Substances Act, 1908
13.	Section 16, 19, 20(1)(a), and 49	The Indo-Tibetan Border Police Force Act, 1992
14.	Section 3 (1) (i)	The Karnataka Control of Organised Crime Act, 2000
15.	Section 3 (1) (i)	The Maharashtra Control of Organised Crime Act, 1999
16.	Section 31A (1)	The Narcotics Drugs and Psychotropic Substances Act, 1985
17.	Section 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2), and 59	The Navy Act, 1957
18.	Section 15(4)	The Petroleum and Minerals Pipelines (Acquisition of rights of user in Land) Act, 1962
19.	Section 16, 19, 20 (1) (a), and 49	The Sashastra Seema Bal Act, 2007
20.	Section 3 (2) (i)	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
21.	Section 3 (1) (i)	The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental

		Shelf Act, 2002;
22.	Section 10(b)(i) and Section 16(1)(a)	The Unlawful Activities Prevention Act, 1967

SOURCE: Law Commission of India, report no. 262 on Death Penalty, Page no. 32 ⁴⁰

The important provision mentioned in the Criminal Procedure Code, 1973 regarding the death penalty:

- **Section 354 (3):** whenever an accused is awarded death sentence or life imprisonment then the judgment shall state the reason behind such sentence awarded, and special reason in case of a death sentence.⁴¹

- The death penalty is awarded in very special cases only. In the landmark case of Bachan Singh vs. the State of Punjab, 1980 the honorable Supreme Court with regard to Section 354 (3) observed:

" A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."⁴²

Procedure after imposing death penalty:

- **CONFIRMATION BY THE HIGH COURT:**

- The honorable Session's court after passing the sentence shall submit the proceedings of the case to the honorable High court of the respective state for confirmation of the sentence.
- The sentence is not to be executed till it is confirmed by the High court and during that time the convicted person is to be transferred by the sentence passing court to the jail custody under a warrant.⁴³

- **ENQUIRY AND FURTHER EVIDENCE:**

- The honorable High court has the power to order a further enquiry into the matter or additional evidence taken upon at any point bearing upon the innocence or guilt of the convicted person.⁴⁴

⁴⁰ Law Commission of India, report no. 262 on Death Penalty, Page no. 32, <http://lawcommissionofindia.nic.in/reports/Report262.pdf>.

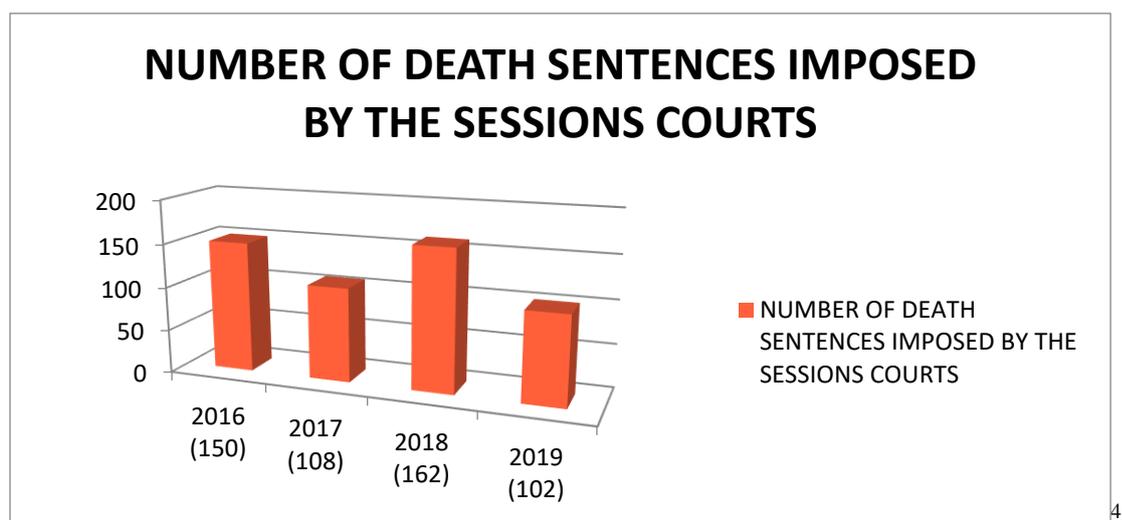
⁴¹ The Criminal Procedure Code, 1973, Section 354 (3).

⁴² Bachan Singh Vs State of Punjab, 1980, 2 SCC 684, 207, <https://indiankanoon.org/doc/307021/>.

⁴³ The Criminal Procedure Code, 1973, Section 366.

- **POWER OF HIGH COURT TO CONFIRM SENTENCE OR ANNUL CONVICTION:**
 - The honorable High court has the power to confirm sentence or pass any other sentence which deems fit by the court or the court can all together amend the charges and order a new trial.
 - The court under no circumstance can confirm the sentence until the period allowed for preferring an appeal has expired.⁴⁵
- **CONFIRMATION OF THE NEW SENTENCE:**
 - In every case submitted to the high court for confirmation of the sentence be it a new sentence or an order passed by the High Court then such order or sentence has to be passed and signed by at least two judges.⁴⁶
- **DELIVERY OF COPY OF ORDER TO COURT OF SESSION:**
 - When the sentence is confirmed by the court or any other order is passed by the honorable High court then without any delay, the confirmation or other order is to be sent to the Court of Session under the seal of High Court and attested with the Official Signature of the High Court Official.⁴⁷

STATISTICS:



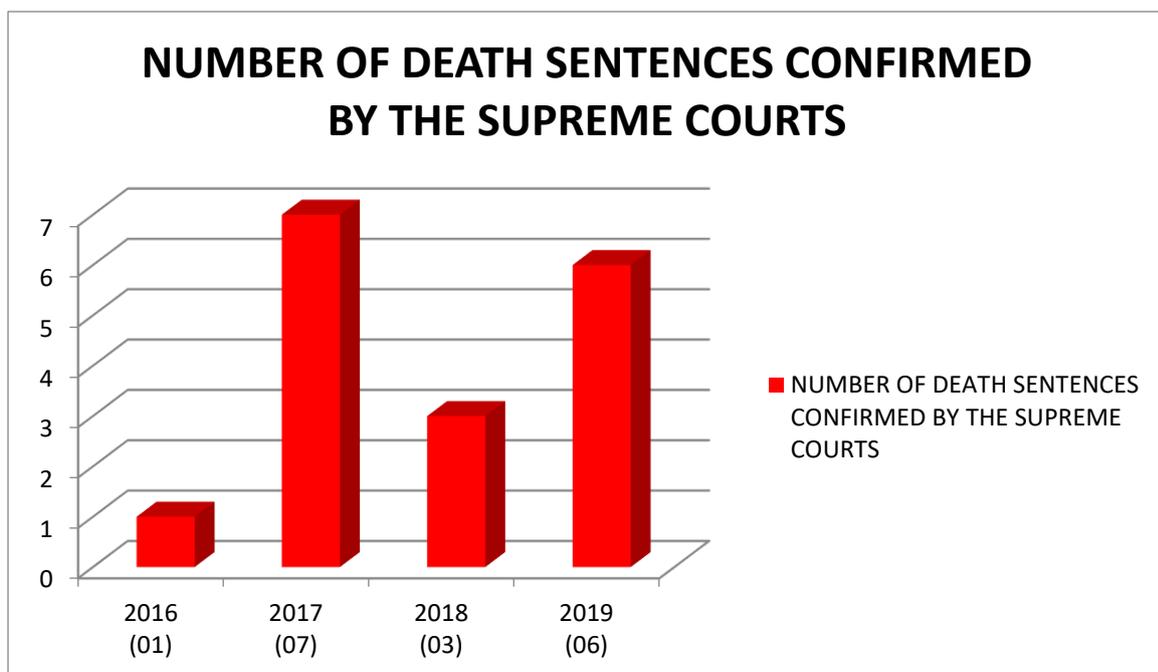
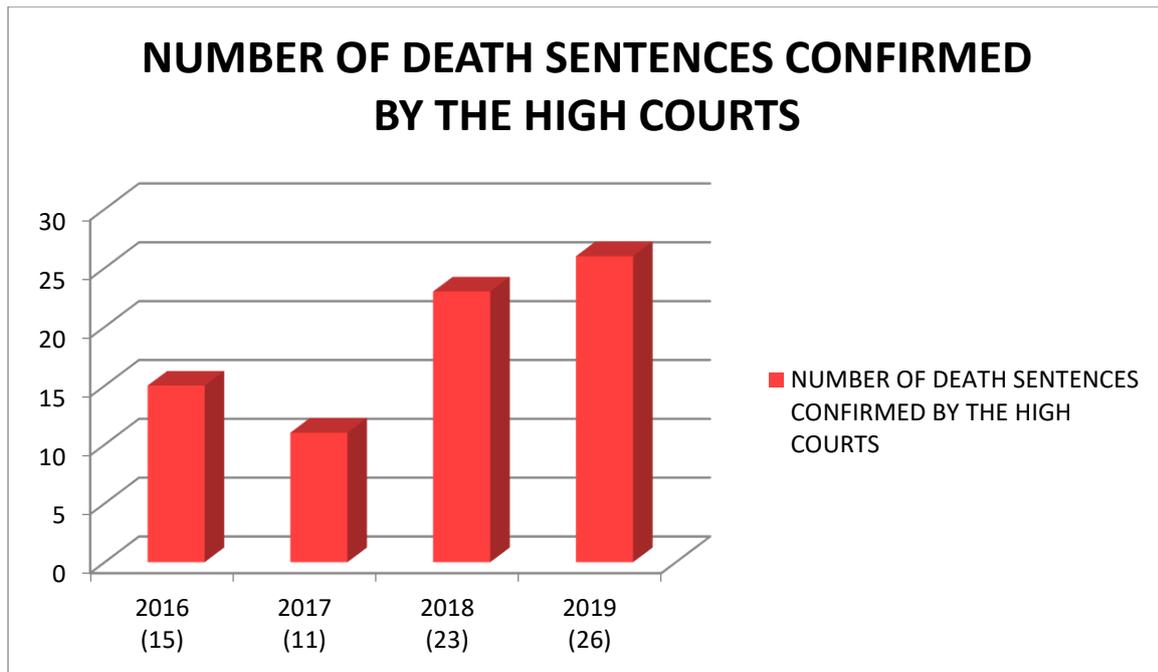
⁴⁴ The Criminal Procedure Code, 1973, Section 367.

⁴⁵ The Criminal Procedure Code, 1973, Section 368.

⁴⁶ The Criminal Procedure Code, 1973, Section 369.

⁴⁷ The Criminal Procedure Code, 1973, Section 371.

⁴⁸ Annual Statistics Report, 2019, Project 39 A, Page No. 11, <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e25a02b5dfafe47d399d2ad/1579524149035/Project+39A+Annual-Statistics-04-PG-Web.pdf>.



According to statistics, 76% of the prisoners sentenced to death in India are from backward classes and religious minorities. And as per the national figures, 74.1% of the prisoners sentenced to death are economically vulnerable based on their occupation and landholding. 30.2% of the prisoners belonged to religious minorities and had not completed their

⁴⁹ Annual Statistics Report, 2019, Project 39 A, Page No. 17, <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e25a02b5dfafe47d399d2ad/1579524149035/Project+39A+Annual-Statistics-04-PG-Web.pdf>.

⁵⁰ Annual Statistics Report, 2019, Project 39 A, Page No. 29, <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e25a02b5dfafe47d399d2ad/1579524149035/Project+39A+Annual-Statistics-04-PG-Web.pdf>.

secondary education and fall under the economically vulnerable category.⁵¹

IV. CONSTITUTIONAL ASPECT OF DEATH PENALTY

The Constitution of India is a combination of numerous other Constitutions belonging to various powerful democracies and monarchies of the world. i.e. USA, UK, France, etc. The Indian Constitution guarantees the right to life and liberty to everyone to be it, Indian Citizens or foreign citizens, Article 21 covers everyone.⁵² Article 21 states no person shall be deprived of his right to life and liberty except in accordance with the procedure established by law⁵³. Hence without any inconvenience, many abolitionists contend that the death penalty certainly violates the right to life. Yet, as per the Indian Constitution, there is no single shred of evidence that might even suggest that the Death penalty is unconstitutional, and that remains an indisputable fact till date.

The Constitutional Validity of the death penalty is in question from time to time and numerous cases are filed pertaining to the constitutional validity of the death penalty, some of the landmark cases are as follows:

- **JAGMOHAN SINGH VS. STATE OF UTTAR PRADESH**⁵⁴:
 - In this case, the constitutional validity of the Death penalty was challenged on the grounds that it violates Article 14⁵⁵, Article 19⁵⁶ and Article 21 of the Indian constitution and that no procedure was provided. Later in the case it was contended that the procedure established in the CRPC is only in regard to finding of guilt and not to award the death penalty.
 - The Honorable Supreme Court in its judgment upheld the constitutional Validity of the Death penalty and stated that the choice of death sentence is done in accordance with the procedure established by law. The court further observed that the Honorable Bench that awards the death penalty has to make a choice between the death penalty and life imprisonment on the basis of facts, circumstances, and nature of the crime committed by the accused brought on record during the course of the trial.⁵⁷

⁵¹ Project 39A — Death Penalty India Report, <https://www.project39a.com/dpir>.

⁵² NHRC Vs. State Of Arunachal Pradesh, 1996, 1 SCC 742

⁵³ INDIA CONST. art. 21.

⁵⁴ JAGMOHAN SINGH VS. STATE OF UTTAR PRADESH, 1973, AIR 947, SCR (2) 541.

⁵⁵ INDIA CONST. art. 14.

⁵⁶ INDIA CONST. art. 19.

⁵⁷ Tatheer Fatima, Constitutionality of Death Penalty, Indian National Bar Association, <https://www.indianbarassociation.org/constitutionality-of-death-penalty/>.

- **RAJENDRA PRASAD VS. STATE OF UTTAR PRADESH⁵⁸:**

- The Honorable Bench in this case laid down two conditions in regard to the imposition of the death penalty:
 - The special reason should be given for imposing the death penalty.
 - The death penalty is to be imposed in extraordinary circumstances only.

- **BACHAN SINGH VS. STATE OF PUNJAB⁵⁹:**

- In this case, a Supreme Courts' five-judge bench overruled the Rajendra Prasad judgment and stated that the Death penalty in case of murder is not an unreasonable alternative and hence not violates Article 14, Article 19 and Article 21 and upheld the constitutional validity of the death penalty.
- Further, the honorable Bench also laid down a principle called “Rarest of the rare”, according to which death penalty can only be awarded in rarest of the rarest.
- The court also stated that aggravating and mitigating circumstances are to be taken into account.

- **MACHHI SINGH VS. STATE OF PUNJAB⁶⁰:**

- This landmark case is not only considered as a continuation of another landmark case of Bachan Singh VS. The state of Punjab, but this case also provides a framework for the “Rarest of the rare” case principal by mentioning five categories of cases which may deserve extreme sentence. Those five categories are⁶¹:

- **MANNER OF COMMISSION OF MURDER:**

- Murder committed in an unspeakably brutal manner so as to arouse intense and extreme indignation in the community. For instance:

- Burning the victim's house along with the victim resulting in burning the victim alive.

⁵⁸RAJENDRA PRASAD VS. STATE OF UTTAR PRADESH, 1979, AIR 916, SCR (3) 78.

⁵⁹ Bachan Singh Vs State of Punjab, 1980, 2 SCC 684

⁶⁰ MACHHI SINGH VS. STATE OF PUNJAB, AIR 1983, SC 957.

⁶¹ MACHHI SINGH VS. STATE OF PUNJAB, AIR 1983, SC 957, Para no. 13

- Victim is subject to inhumane torture or cruelty.
- **MOTIVE FOR COMMISSION OF MURDER:**
 - Murder committed for a motive that demonstrates total depravity and meanness. For instance:
 - Murder for the purpose of inheriting property.
 - Hired assassin commits murder for the sake of money.
 - Murder committed to the course of betrayal to the motherland, i.e. India.
- **ANTI SOCIAL OR SOCIALLY ABHORRENT NATURE OF THE CRIME:**
 - Murder of a person belonging to scheduled caste or minority groups committed for the purpose of dowry (bride burning) or remarriage.
- **MAGNITUDE OF THE CRIME:**
 - When the crime is enormous in proposition. For instance, Multiple murders of all the members of a family or of people belonging to a particular caste and community.
- **PERSONALITY OF VICTIM OF MURDER:**
 - The personality of the victim is also to be taken into account.

Under the Constitution of India, there are certain provisions that deal with the topic of the death penalty such as:

- **ARTICLE 134:** According to this article a person who has been awarded death sentence by the High Court has the right to appeal to the Supreme Court.⁶²
- **ARTICLE 72:** The President has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit, or commute the sentence of any person who is awarded the death penalty.⁶³
- **ARTICLE 161:** The Governor has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit, or commute the sentence of any person who is awarded the death penalty. But the Governor can only exercise this

⁶² INDIA CONST. art. 134.

⁶³ INDIA CONST. art. 72.

power in context to offenses against any law relating to a matter to which the executive power of the state extends.⁶⁴

Almost every year mercy petitions are brought in front of the President and the president while exercising the power under Article 72, has to go into the merits of the case finally decided by the courts and can take a different view.⁶⁵

Given below is the table of mercy petitions decided by the Presidents of India:

S. NO.	NAME OF THE PRESIDENT	TENURE	NUMBER OF MERCY PETITIONS ACCEPTED	NUMBER OF MERCY PETITIONS REJECTED	TOTAL
1.	Dr. Rajendra Prasad	26.1.1950– 3.5.1962	180	1	181
2.	Dr. Sarvapalli Radhakrishnan	13.5.1962- 13.5.1967	57	0	57
3.	Dr. Zakir Hussain	13.5.1967– 3.5.1969	22	0	22
4.	Shri V.V. Giri	3.5.1969 – 20.7.1969; 24.8.1969– 24.8.1974	3	0	3
5.	Dr. Fakrudhin Ali Ahmed	24.8.1974– 11.2.1977	N/A	N/A	0
6.	Shri N Sanjeeva Reddy	25.7.1977– 5.7.1982	N/A	N/A	0
7.	Giani Zail Singh	25.7.1982– 25.7.1987	2	30	32

⁶⁴INDIA CONST. art. 161.

⁶⁵ KEHAR SINGH VS. UNION OF INDIA, 1989 1 SCC 204

8.	Shri R. Venkatraman	25.7.1987– 25.7.1992	5	45	50
9.	Dr. Shankar Dayal Sharma	25.7.1992– 25.7.1997	0	18	18
10.	Shri K.R. Narayanan	25.7.1997– 25.7.2002	0	0	0
11.	Dr. A.P.J. Abul Kalam	25.7.2002- 25.7.2007	1	1	2
12.	Smt. Pratibha Devisingh Patil	25.7.2007– 25.7.2012	34	5	39
13.	Shri Pranab Mukherjee	25.7.2012--	2	31	33
	TOTAL		306	131	437

SOURCE: Law Commission of India, report no. 262 on Death Penalty, Page no. 188-189

⁶⁶

According to recent statistics, Supreme Court confirmed 6 death sentences in the year 2019⁶⁷ and President Ram Nath Kovind received 4 mercy petitions in the year 2020 and all of the four petitions were rejected by the President.⁶⁸

V. CONCLUSION

In simple terms, the Death penalty is the highest form of punishment that a countries judicial system can impose. In the present world, every country is going through an internal war between the jurists, lawyers, Judges, etc. on the topic of the abolishment of the Death penalty some of them are in favor of the death penalty and some of them are in opposition of the same. There are certain arguments given by both the sides let's take a look at them:

- **Arguments in favor of death penalty:**
 - It discourages others from committing heinous crimes.

⁶⁶ Law Commission of India, report no. 262 on Death Penalty, Page no. 188-189, <http://lawcommissionofindia.nic.in/reports/Report262.pdf>.

⁶⁷ Annual Statistics Report, 2019, Project 39 A, Page No. 29. (<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e25a02b5dfafe47d399d2ad/1579524149035/Project+39A+Annual-Statistics-04-PG-Web.pdf>).

⁶⁸ https://rashtrapatisachivalaya.gov.in/sites/default/files/mercy_petition/MPS13032020.pdf.

- A convict by his own acts has forfeited his right to life and shown his moral incapability to be rehabilitated and reformed.
- The imposition of the sentence is done after the accused is provided with numerous legal safeguards.
- The death penalty is not imposed for small or big offenses. It is only imposed in rarest of the rare cases.
- It is a method to eliminate dangerous and habitual criminals and keeps society safe.
- **Arguments against death penalty:**
 - It is cruel and inhumane.
 - It deprives the convict of a chance of rehabilitation and reformation.
 - The state has no right to deprive a person of his life, only God is the giver of life and only he can take it.
 - A slight possibility of error is always present in sentencing a person to death.

Presently there are 409 prisoners on death row and in my personal opinion death penalty should be abolished in India even though India is a developing country with a rapidly growing economy. In a country like India where problems like corruption are always in play and corruption has its roots so deep in the Indian government that it is nearly impossible to remove corruption from the system. With such a corrupt system how hard can it be to bribe police officials or any official for that matter? In a country like India highly rich and influential people can commit any criminal act and most of the time can safely escape from the prosecution by the means of buying off witnesses, opposite counsels, etc. If the witness is not changing his/her testimony then they are painting a target on the backs of their family members and loved ones because in India political influence and goons can be easily bought and the court of law can only protect the witness but not the whole family. With such a corrupt system any person can come to a conclusion and ask what if that person who is currently on the death row innocent? What if he/she was framed for a crime that he/she did not commit? Even the judicial system of the country will decide on the basis of evidence produced before it, in many cases the judges presiding the cases themselves disagree with the judgment that they have given, but even the hands of the judiciary are tied and they cannot decide the cases on the basis of their feelings towards the case but they have to decide the case on the basis of evidence and facts. The death penalty is no doubt constitutionally valid

but is it correct to say that the judicial system is knowingly painting its hands in the blood of an innocent person? I agree that not all death row convicts are innocent but what about those who are still shouting that they are innocent, but the system is so corrupt that the evidence that could prove the convicts innocence has been erased, made disappeared and the actual culprit is breathing fresh air and enjoying his/her life. No matter how vigilant the judicial system of the country is but when influential and rich people enter the room, people standing against them tend to bend as per the will of whoever is powerful and influential. Keeping this in mind I strongly suggest that at least mandatory death penalty should be abolished and all the provision wherever the death penalty is prescribed it must be associated with imprisonment for life with an “or” in-between both the prescribed punishments so that the judge has an option to overlook the evidence produced before him/her and can award imprisonment for life in those cases where the judge is himself/herself not convinced beyond the reasonable doubt.

*Deena vs. Union of India*⁶⁹ threw light upon certain requirement's that are to be looked into during the execution of a death sentence⁷⁰:

- It should be as quick and as simple as possible.
- The act of execution should produce immediate unconsciousness passing quickly into death.
- It should be decent.
- It should not involve mutilation.

Now, the Law Commission of India, 187th report recommended that the Lethal Injection mode of execution should be introduced in Section 354 (5) alongside hanging.⁷¹ In my opinion, this new mode is very quick and very effective and it is not only easy it is the highly recommended and most used mode in the world currently.

⁶⁹ *Deena Vs. Union of India*, 1983 AIR 1155, 1984 SCR (1) 1.

⁷⁰ Hiremath Vijay, Law commission report proposes lethal injection for the death penalty, 11 IJME, 93.

⁷¹ Law Commission of India, 187th Report, 2003, page no.3, <http://lawcommissionofindia.nic.in/reports/187th%20report.pdf>.

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