Death Penalty: An Overview Of Indian Cases

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Editor's Note: *Death Penalty is a process where a crime so grievous has been committed that the state condemns the act by sentencing the convicted to death. It is only applied in cases where the crime is of such nature that it cannot be vitiated without a penalty of death. It has existed since time immemorial, the first recorded instance being that of Hammurabi in the 18th Century B.C.*

In the recent past, however, many western cultures have abolished this practice, considering it grossly inconsistent with human rights requirements. The U.K. and France have both completely abolished the system, after various succeeding abolitionist movements. The US, however, due to a fragmented judiciary, has differing opinions on the issue, varying state-by-state. The Federal US government, however, does use the death penalty, although only in extraordinary cases.

In India, the Bachan Singh case laid down the "extraordinary circumstances" which define whether or not death sentence was required in the said case. The grievousness of the cause of murder in itself is not a sufficient grounds to pass capital punishment. The writer has gone into detail on the various technicalities and safeguards applied before awarding a death sentence.

Introduction

Death Penalty can be defined as the lawful infliction of death as a punishment for a wrongful act. In this paper, the scope and validity of the death penalty in the context of the Indian judiciary shall be discussed. Firstly we shall look at the advent of death as a punishment for crimes and how it has evolved in several other judicial systems all over the world.

In this context, the common arguments relating to death penalty put forwards by the abolitionists and retentionists shall be discussed. The importance has been given to the Indian context and the various statutes in India dealing with Capital Punishment. This shall be followed by a brief of some of the most famous and important cases relating to the subject matter decided by the Indian Courts. The aim of this paper is to give the readers a clear understanding of the position of the Indian courts in regard to the awarding of capital punishment.

What Is The Death Penalty?

The death penalty is a legal process whereby a person is put to death by the state as a punishment for a crime. The judicial decree that someone is punished in this manner is a death sentence, while the actual process of killing the person is an execution. There has been a global trend

towards the abolition of capital punishment; however, India has not adopted this position. What makes this form of punishment different from the others is the obvious element of irreversibility attached to it. A man once executed for a crime can never be brought back to life. So if any error has crept in while deciding on a matter, this error cannot be rectified at a later stage.

The death penalty has existed since antiquity. Anthropologists even claim that the drawings at Vallaloid by prehistoric cave dwellers show an execution. The death penalty may have its origins in human sacrifices. Capital punishment can be traced back as early as 1750 B.C, in the lex talionis of the Code of Hammurabi. The Bible too set death as punishment for crimes such as magic, violation of the Sabbath, blasphemy, adultery, homosexuality, bestiality, incest and rape. Plato too discussed the scope of the death penalty at length in his laws.

During the middle ages, the death penalty was characterized by particular brutality. Famous thinkers like Grotius, Thomas Hobbes, and John Locke were also supporters of this form of punishment. The trials by fire, water etc followed during the 1600s can be said to be a form of capital punishment.

The modern abolitionist movement started with the works[i] of great Italian criminologist, Cesare Beccaria which convinced many statesmen of the uselessness and inhumanity of capital punishment.[ii] During the discussions on adoption of the French Penal Code in 1791, there was a vigorous debate for the abolishment of the death penalty.

In the 19th century, the abolitionist movement grew with eminent jurists like Bentham and Romilly supporting such ideas. Michigan in 1846 became the first state to abolish capital punishment followed by Venezuela and Portugal in 1867. As a goal for civilized nations, abolition of the death penalty was promoted during the drafting of the Universal Declaration of Human Rights in 1948.

Capital Punishment is currently practiced in 58 countries, including the USA, Japan, Belarus, Cuba, and Singapore. As of 2012, there are 97 abolitionist states. According to Amnesty International, the worst offenders in 2012 were China (1000+ deaths), Iran (314+) and Iraq (129+). The organization confirmed 1, 722 death sentences and 682 executions (excluding China) in 2012. In Europe however, it is now a virtually extinct phenomenon with the exception of the Republic of Belarus. According to a study, about two-thirds of the countries have either abolished capital punishment outright or have not actually executed any death sentences in the last ten years.[iii]

Position In The United States

Capital punishment was suspended in the United States from 1972 through 1976 primarily as a result of the Supreme Court's decision in ***Furman* v.*Georgia[iv]***. In this case, the court found that the death penalty was being imposed in an unconstitutional manner, on the grounds of cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. The Supreme Court has never ruled the death penalty to be *per se* unconstitutional. In ***Furman v. Georgia***, however, Justice Stewart took the view that the death penalty serves a deterrent as well as retributive purpose.[v]

The Court in ***Gregg* v. *Georgia[vi]*** upheld a procedure in which the trial of capital crimes was bifurcated into guilt-innocence and sentencing phases. At the first proceeding, the jury decides the defendant's guilt; if the defendant is innocent or otherwise not convicted of first-degree murder, the death penalty will not be imposed. At the second hearing, the jury determines whether certain statutory aggravating factors exist and whether any mitigating factors exist, and, in many jurisdictions, weigh the aggravating and mitigating factors in assessing the ultimate penalty – either death or life in prison, either with or without parole.

Position In The United Kingdom

Around the 17th century, Death penalties were one of the most commonly meted out punishments in the UK. The common law in those days was called "Bloody Code"[vii] because at one point there were up to 220 offenses which were punishable by death, including "being in the company of Gypsies for one month", "strong evidence of malice in a child aged 7–14 years of age" and "blacking the face or using a disguise whilst committing a crime".

The Murder (Abolition of Death Penalty) Act 1965 suspended the death penalty in England, Wales and Scotland (but not in Northern Ireland) for murder for a period of five years, and substituted a mandatory sentence of life imprisonment. After this even though the death penalty still remained part of the legal framework it was implemented in a few exceptional cases only.

Finally, on 20th May 1998, the House of Commons voted to ratify the 6th Protocol of the European Convention on Human Rights prohibiting capital punishment except "in time of war or imminent threat of war." In October 2003 the UK prohibited capital punishment in all cases. The last execution in England was carried out in August 1964.[viii] Allen and Evans were both tried together at Manchester Crown Court in June 1964, for the capital murder of John West (murder in the course or furtherance of theft).

During the trial, the judge posed the question to the jury of whether it was Allen or Evans who committed the murder. The jury found both men guilty of murder, and they were both sentenced to death by hanging. After that, the country has not seen any case of execution though some people were awarded the death sentence they were all reprieved at a later stage[ix]. Thus, we see the transition in common law from aggressively handing out death sentences to completely abolishing capital punishment.

Position In India

In India Article 21 of the Constitution titled 'Protection of life and personal liberty' says:

No person shall be deprived of his life or personal liberty except as according to procedure established by law.

This article of the Constitution enshrines the Right to Life guaranteed to every individual in India. The constitutional validity of capital punishment has been called into question several times in the India judiciary and this paper shall try to examine those several occasions.

The Indian Penal Code, 1860 awards death sentence as a punishment for various offenses. Some of these capital offences under the IPC are punishment for criminal conspiracy (**Section 120B**), murder (**Section 302**), waging or attempting to wage war against the Government of India (**Section 121**), abetment of mutiny (**Section 132**), dacoity with murder (**Section 396**) and others. Apart from this, there are provisions for the death penalty in various legislations like the NDPS Act, anti-terrorism laws etc.

The Indian Constitution has provision for clemency of capital punishment by the President. Once the Sessions Court has awarded death sentence to a convict in a case, it must be confirmed by the High Court. Even after that, the convict may prefer an appeal to the Supreme Court. If this also fails the accused has the option of submitting a 'mercy petition' to the President of India and the Governor of the State. Detailed instructions regarding the procedure to be observed by the states for dealing with petitions for mercy from or on behalf of convicts under sentence of death and with appeals to the Supreme Court and applications for special leave to appeal to that court by such convicts are laid down by the Ministry of Home Affairs.

In this respect we may refer to **Article 72 of the Constitution of India** which says:

"Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases-

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence;

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death;

(2) Nothing in subclause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force."

Similarly, the pardoning powers of the Governor of a State are mentioned in **Article 161**. These provisions ensure that the accused is sentenced to death only after there is no room for error left. The culprit gets multiple avenues to appeal and now life imprisonment has become the rule while the death sentence is the exception.

Discussion Of Landmark Cases Dealing With The Death Penalty In India

In the case of ***Jagmohan Singh*** **v.** ***State of U.P[x]*** which was the first case dealing with the question of constitutional validity of capital punishment in India. The counsel for the appellant, in this case, put forward three arguments which invalidate section 302 of the IPC.

Firstly that execution takes away all the fundamental rights guaranteed under Clauses (a) to (g) of Sub-clause (1) of **Article 19** and, therefore the law with regard to capital sentence is unreasonable and not in the interest of the general public.

Secondly that the discretion invested in the Judges to impose capital punishment is not based on any standards or policy required by the Legislature for imposing capital punishment in preference to imprisonment for life.

Thirdly, he contended, the uncontrolled and unguided discretion in the Judges to impose capital punishment or imprisonment for life is hit by **Article 14** of the Constitution because two persons found guilty of murder on similar facts are liable to be treated differently one forfeiting his life and the other suffering merely a sentence of life imprisonment.

Lastly, it was contended that the provisions of the law do not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life. The trial under the Criminal Procedure Code is limited to the question of guilt. In the absence of any procedure established by law in the matter of sentence, the protection given by **Article 21** of the Constitution was violated and hence for that reason also the sentence of death is unconstitutional.

After looking into the arguments the five-judge bench upheld the constitutionality of the death penalty and held that deprivation of life is constitutionally permissible for being recognized as a permissible punishment by the drafters of our Constitution.

Law Commission Report –

No discussion on the validity of capital punishment in India can be complete without going through the fine details of the Law Commission Report, which was relied upon by the judges in the case of Jagmohan too. The Law Commission of India, after making an intensive and extensive study of the subject of death penalty in India, published and submitted its 36th Report in 1967 to the Government. After examining, a wealth of evidential material and considering the arguments for and against its retention, that high-powered body summed up its conclusions at page 354 of its Report, as follows:

The issue of abolition or retention has to be decided on a balancing of the various arguments for and against retention. No single argument for abolition or retention can decide the issue. In arriving at any conclusion on the subject, the need for protecting society in general and individual human beings must be borne in mind.

It is difficult to rule out the validity of the strength behind many of the arguments for abolition nor does the Commission treat lightly the argument based on the irrevocability of the sentence of death, the need for a modern approach, the severity of capital punishment and the strong feeling shown by certain sections of public opinion in stressing deeper questions of human values.

Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment.[xi]

In the case of ***Ediga Anamma* v. *State of Andhra Pradesh[xii]*** which followed Justice Krishna Iyer commuted the death sentence to life imprisonment by citing factors like age, gender, socio-economic background and psychic compulsions of the accused. It was laid out in this case that apart from looking into the details of the crime and deciding based on the extent of violence committed the judges should also look into the criminal and his condition or haplessness while committing the crime. Justice Krishna Iyer in support of life imprisonment over capital punishment said:

"*A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life*."[xiii]

These cases were followed by three important developments. Section 354 (3) was added to the Code of Criminal Procedure, 1973 which clearly laid down that in conviction for cases which are punishable either with death or life imprisonment, the judgment shall state the reasons for award of the punishment and in the event that it is death sentence mention the special reasons for that decision. This made the lesser punishment the rule and death penalty the exception as opposed to the previous situation. Also in 1979, India ratified the International Covenant on Civil and Political Rights (ICCPR).

Article 6(2) of the ICCPR says: "*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."*

Subsection 5 of the same Article says that no sentence of death shall be imposed on anyone under the age of 18 years and none can be carried out on pregnant women. Thus, India was now committed to progressive abolition of the death penalty. Another major development was the Maneka Gandhi case[xiv] which held that every law of punitive detention must pass the reasonability test obtained from the collective reading of the "Golden Triangle" i.e. **Articles 14, 19 and 21.**

Justice Krishna Iyer reiterated a similar opinion in the case of ***Rajendra Prasad* v. *State of Uttar Pradesh.[xv]*** However, Justice Sen in his dissenting judgment cited his concern over the wide scope for interpretation of **Section 302 of the IPC** and **Section 354 of the CrPC** left to the judiciary. He said in this case "*It is not necessary for this Court to attempt to analyze the substantive merits of the cases for and against the death penalty for murder. It is in my view, essentially, a question for the Parliament to resolve and not for this Court to decide."****[xvi]***

The case of ***Bachan Singh* v *State of Punjab[xvii]*** again brought up the question of the validity of capital punishment. This was the case that gave birth to the "rarest of the rare cases" doctrine and still remains one of the most important cases in this subject. The 5 judge bench said :

"*A real and abiding concern for the dignity of human life postulates resistance to taking a life through law instrumentality. That ought not to be done except in rarest of rare cases where the alternative opinion is unquestionably foreclosed*."[xviii]

In this case, not only the constitutional validity of death penalty but also the validity of **Section 354(3)** on the grounds that it gives unguided discretion to the Court and allows the death sentence to be arbitrarily awarded was questioned. The majority were of the view that neither **Article 19** nor **21** is violated by capital punishment. The fact that our Constitution makers were fully cognizant of the fact that death sentence may be given in certain extreme crimes is proven by the existence of provisions for appeal **(Article 134)** and Pardoning power of the President (**Article 72**).

It was also laid down that for ascertaining the existence or absence of "special reasons" in a case, the Court must pay due regard to both the criminal and the crime equally. The aggravating or mitigating factors need to be looked into. Things like age, mental condition, age of the accused and if the act was done under the command of a superior must be taken into consideration while deciding the punishment.

Justice Bhagwati alone dissented in this case but the issue was that his judgment came only 2 whole years after the verdict had been declared. So, some of the essential arguments that he made against the death penalty never came to the limelight.

According to him, "*Unfettered and uncharted discretion conferred on any authority, even if it be the judiciary, throws the door open for arbitrariness, for after all a judge does not cease to be a human being subject to human limitations when he puts on the judicial robe and the nature of the judicial process being what it is, it cannot be entirely free from judicial subjectivism*." [xix]

And this very principle he believed clearly violates Article 14 which guarantees equality before the law. Also, it violates Article 19 and 21 as there are no procedural as to when the state has the power to take away the life and personal liberties of a person in such cases. Justice Bhagwati not only talks about the brutality and indiscretion that accompanies death penalty but also with logic and statistical data shows us how capital punishment doesn't succeed in attaining any of the three penological goals(Reformation, retribution, and deterrence).

It is obviously impossible to reform a person who is dead and the retribution theory also does not hold ground according to him such a punishment is based purely on emotions of vengeance and revenge which should be curtailed in a civilized society. Last is the Deterrence theory, which most retentionists assume is the most crucial reason for not abolishing capital punishment. They believe that legally sanctioned death of the culprit would dissuade others from doing the same.

However, Justice Bhagwati cites various eminent criminologists and statistics of other countries which prove that there is no increase in the crime rate even when capital punishment is abolished and no decrease when the court awards death sentence for a crime.

Mithu* v. *State of Punjab[xx] was another case where the mandatory death sentence under Section 303 was declared unconstitutional and hence invalid. The section was based on the logic that any criminal who has been convicted for life and still can kill someone is too cold-blooded and beyond reformation, to be allowed to live. The judges in Mithu's case held that **Section 303** violated the Articles 14 and 21 of our Constitution and so it was deleted from the IPC.

In the subsequent cases of ***T.V Vatheeswaram* v. *State of Tamil Nadu[xxi]*** and ***Sher Singh* v. *State of Punjab[xxii]*** the Supreme Court was faced with the question of delay in execution of the death sentence and whether a prolonged delay was reason enough to commute the death sentence to life imprisonment. While the first case laid down that such a situation gave reason enough for the convict to invoke section 21 and get the lesser punishment, the majority in the latter case differed on this point.

In the case of ***Macchi Singh* v. *State of Punjab[xxiii]*** in order to further elucidate the "rarest of the rare rule", situations where the application of death sentence could be justified Justice M.P Thakkar gave the following illustrations:

I. Manner of Commission of Murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house. (ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death. (iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.[xxiv]

II. Motive for Commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (2) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, (c) a murder is committed in the course for betrayal of the motherland.[xxv]

III. Anti-Social or Socially abhorrent nature of the crime

(a) When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of or make them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another

woman on account of infatuation.[xxvi]

IV. Magnitude of Crime

When the crime is enormous in proportion. For instance, when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. The personality of the Victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.[xxvii]

In ***Allauddin* v. *State of Bihar[xxviii]***, Justice Ahmadi said that "Where a sentence of severity is imposed, it is imperative that the Judge should indicate the basis upon which he considers a sentence of that magnitude justified. Unless there are special reasons, special to the facts of the particular case, which can be cataloged as justifying a severe punishment the Judge would not award the death sentence. It may be stated that if a Judge finds that he is unable to explain with reasonable accuracy the basis for selecting the higher of the two sentences his choice should fall on the lower sentence."

Kehar Singh* v. *Union of India[xxix] is the famous case where the assassins of Indira Gandhi were sentenced to death. Kehar Singh was part of the conspirators who planned the murder and did not actually commit the act. The court held that even this was enough to fall in the rarest case criteria. This was a widely controversial decision. Later in ***State of Maharashtra* v. *Sukhdeo Singh[xxx]*** the judges awarded death sentence to the two persons accused of the murder of General Vaidya.

The death sentence was awarded to the accused in ***Laxman Naik* v. *State of Orissa[xxxi]*** accused of sexually assaulting his 7-year-old niece. The evidence recorded and the degree of injuries of the victim according to the judges were sufficient to prove the gross brutality with which the rape and murder had been committed and hence it was a case fit to fall under the category of the "rarest of rare" cases.

Panchhi and Ors.* v. *State of Uttar Pradesh[xxxii] later held that brutality in the act of murder is not the sole criterion while deciding if the crime falls under the "rarest of rare" doctrine as laid down by the case of Bachan Singh. In ***Swamy Shraddhananda @ Murali Manohar Mishra* v. *State of Karnataka[xxxiii]*** the court for the first time identified the dilemma judges face because the term for a life sentence after remission usually was cut down to 14 years.

This was in some cases considered to be grossly inadequate and so the Court held that in some such cases it can order that the convict shall not be released for the rest of his life. So it was held

that executive clemency doesn't mean that the Court cannot award imprisonment beyond 14 years.

One of the most recent cases which many abolitionists in India consider to be a major step towards the possible abolition of death penalties in India is that of *Santosh Kumar Bariyar* v. *State of Maharashtra**[xxxiv]***. The bench comprising Justices S.B. Sinha and Cyriac Joseph ruled that previous judgments of the Court, in which 13 death sentences were validated, were rendered *per incuriam*, or in other words, were rendered in ignorance of the law laid down in Bachan Singh's case.

In this case, the accused along with three others kidnapped a person and demanded a ransom of Rupees 10 lakhs. Eventually, they killed him and cut his body into pieces and disposed of them in different places. In spite of the brutal execution of the murder, the judges were convinced that the 'mitigating circumstances' in this case were sufficient to exclude it from the bracket of "rarest of rare" cases.

The Court observed that the accused were not professional criminals with a long past criminal record, that they did what they did with the sole motive of collecting money. So the Court held that there is a chance of reform and rehabilitation of the accused and for the sake of that possibility granted them the lesser sentence of life imprisonment.

These are in brief some of the landmark cases which grappled with the question of the death penalty and other issues stemming from it. India in recent years has seen a number of high profile cases with death penalties being carried. In 2012 Indian courts suffered from two noteworthy embarrassments. Fourteen retired Judges asked for thirteen cases of the death penalty to be commuted after admitting the original sentence was handed down per incuriam (out of error or ignorance).

In the same year, it was revealed that President Pratibha Patil had, during the course of her five-year term, commuted the sentence of a rapist who had died five years previously. Events like these are a severe jolt to the judiciary. It was after incidents like these that the protest against capital punishment gained more momentum. The taking away of someone's life due to the error of judgment of the judiciary is an injustice of the most grotesque kind.

An unofficial eight-year tussle came to an end last year when the first of two executions took place. Mohammad Ajmal Amir Kasab, convicted of involvement in the 2008 Mumbai gun attack was hung 21st November 2012. Then in February 2013, Muhammad Afzal – convicted of plotting the 2001 attack on India's Parliament was executed. The quick succession of the two executions, coupled with the Supreme Court's ruling in regards to capital punishment earlier this year, has raised the awareness of controversy surrounding India's penal system.

The verdict of the Delhi rape case was announced recently. The judges awarded death sentence to the four accused and 3-year imprisonment to the juvenile. This decision has reignited the debate on the death penalty. The Indian Government had passed an ordinance which applied the death penalty in cases of rape that leads to death or leaves the victim in a "persistent vegetative state" on 3 February 2013, in response to public outcry over the Delhi gang-rape. A lot of legal

scholars believe that hanging of the culprits, in this case, is not going to make the country any safer for women or reduce the number of sexual crimes on women.

Additional Sessions Judge Yogesh Khanna while delivering the judgment said that the incident had evoked nationwide rage and the brutality with which the offense was committed cannot be ignored. "There should be exemplary punishment in view of the unparalleled brutality with which the victim was gang-raped and murdered, as the case falls under the rarest of rare category. All be given death," the court said while reading out a portion of the order. On a rather dramatic note, the Defence counsel A P Singh said after the verdict was announced that he will move high court only "if no other rape takes place in next two months after this verdict".

"If the country wanted this case to be a deterrent, I will wait for two months to see the crime scene. If no rape takes place due to death being given in the instant case, I will give in writing that my clients be hanged," he said.

Indian courts sentenced 1,455 prisoners to death between 2001 and 2011, according to the National Crime Records Bureau. During the same period, sentences for 4,321 prisoners were commuted to life imprisonment.

There are 477 people on death row. Many have been there for years. Human rights groups have been alarmed, however, by the vigor with which President Pranab Mukherjee, who was sworn into office in July 2012, has acted in clearing the backlog of clemency pleas. He has rejected 11, confirming the death penalty for 17 people.[xxxv]

Conclusion

In view of the above discussions, we can see that India's thinking on capital punishment is still quite muddled up. It is not just a debate of legality and constitutionality of the death penalty but also the moral and social aspects that are related to this controversial topic that have to lead to extensive confusion in this respect.

Keeping away the question of law, the question of the death penalty has to take into considerations factors such as public sentiments on one hand and tussle with the moral issue of the "eye for an eye" principle on the other. Also, it is known to us that error in making judgments is only humane and sometimes giving someone a second chance is like giving them a bullet again because they missed you the first time.

In the end, I would like to end with two suitable quotes which would give the readers two divisive aspects of the death penalty to mull over. The first is one by **Bernard Shaw**, an Irish playwright and a co-founder of the London School of Economics:

"*Criminals do not die by the hands of the law. They die by the hands of other men. Assassination on the scaffold is the worst form of assassination because there it is invested with the approval of the society…..Murder and capital punishment are not opposites that cancel one another but similars that breed their kind."*

And the second one is by **Margaret Thatcher,** Prime Minister of the UK (1979 -1990) :

"*If we execute murderers and there is, in fact, no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and doing so would, in fact, have deterred other murders, we have allowed the killing of innocent victims. I would much rather risk the former. This, to me, is not a tough call…..All over the country news stories bemoan and hype the countdown to execution number 1000, but where are the stories regarding the ripple effect of the heinous crimes that these murderers were executed for committing?* "

Maybe there is no real right or wrong answer to the issue of capital punishment, or maybe if there is the society in our country need to develop to a level where the answer becomes clear to us. Until then what is required is a careful examination of facts and evidence by the judiciary in every such sensitive case to avoid any possibility of error. Also, India lacks an authentic statistical database of the number of convicts being sentenced to death and executed in relation with various other factors which would give us a clearer picture of what needs to be done ahead.

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[xxx] *State of Maharashtra* v. *Sukhdeo Singh* , 1992 AIR 2100, 1992 SCR (3) 480

[xxxi] *Laxman Naik* v. *State of Orissa* , AIR 1995 SC 1387, (1994) 3 SCC 381

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[xxxiii] AIR 2008 SC 3040

[xxxiv] *Santosh Kumar Bariyar* v. *State of Maharashtra* , JT2009(7)SC248

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