

CAPITAL PUNISHMENT ON RAREST OF RARE CASE :
IS IT JUST AND FAIR?

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DECLARATION

This Research is a presentation of my original work. Wherever contributions of others are involved, every effort is made to indicate this clearly, with due reference to the literature and acknowledgement of collaborative research and discussions¹.

The work was done under 'Online off Campus Winter Internship Program' under 'Prof.Ranbir Singh Legal Research Centre, Shajapur (M.P)', with the guidance of the CEO of this Centre Adv.Sonal Gupta.

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CERTIFICATE OF APPROVAL

I certify that that this research is from the intern own work and effort, and all other sources used have been acknowledged. This research has been submitted with my approval.

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¹ Gupta, S. (2013). Male Victims of Intimate Partner Violence in some rural part of India – An Empirical Study. Unpublished LL.M. research project report. National Law University, Delhi. The idea of Research making has been taken.

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CAPITAL PUNISHMENT ON RAREST OF RARE CASE- IS IT JUST AND FAIR?

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"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."

- Additional Sessions Judge Yogesh Khanna in the infamous Delhi gang-rape case²

² Delhi gang-rape case. (2013). Death sentence for all four convicts. Times of India Sep 13, 2013. Retrieved January 15, 2013 from http://articles.timesofindia.indiatimes.com/2013-09-13/india/42039872_1_advocate-v-k-anand-four-convicts-delhi-high-court.

ABBREVIATIONS

Abbreviations	Full Forms
A.I.R	All India Report
Cr.PC	Code of Criminal Procedure
Cr.LJ	Criminal Law Journal
ECOSOC	Economic and Social Council
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights
IPC	Indian Penal Code
SC	Supreme Court
ST	Schedule Tribes
SCC	Supreme Court Cases
UNECOSOC	United Nation Social Economic Council
UN	United Nation
UNHR	United Nation Human Rights
US	United States

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ABSTRACT

Death penalty is one of the most debated, ancient forms of punishment in almost every society. Awarding capital punishment on rarest of rare cases includes a lot of controversies in different judgements. The intent of study is to find out that awarding such type of punishment in rarest of rare case is just and fair? also have to identify on what basis our judiciary use to term a particular criminal act in rarest of rare case. The study for the research adapted is qualitative based on the decisions of different cases related to brutal acts. In the 1st two chapters are intended to provide introduction, history, reasons and present study to capital punishment on rarest of rare cases in India and in different countries of the world. The succeeding two chapters deal with the review of literature, indications of awarding capital punishment. Last but not the least the main body or the heart of this research which were based on the Doctrine of rarest of rare case deal with number of cases so that we may find out the object of the study. The study tested that all the decisions taken by the jury in the heinous crimes were pronounced keeping in mind the public at large which conclude that yes awarding capital punishment on rarest of rare case is just and fair. The study marks that though the judiciary has the discretionary power to award capital punishment but by following the public demand so that one may live safely without fear.

CHAPTER – 1

PRELIMINARY

“No, no, we are not satisfied, and we will not be satisfied until justice rolls down like water and righteousness like a mighty stream”³

CONTENTS:

1.1 Poem on Justice

1.2 Introduction

1.3 Present Researcher Interest

1.4 Domain of Capital Punishment

1.5 Present Study

1.1 Poem

Introducing the research on Capital punishment on Rarest of Rare Case is just and fair? With a poem by Farhan Akhtar based on Current Brutal Delhi Gang Rape Case topic Justice:

“What is this country that I live in?
With no equality
And the quality of life
Differs from husband to wife
Boy to girl, brother to sister
Hey Mister, are you the same?
Contributing to the national shame
Replacing your mothers
With the bent ideology of another's
perception that women have a particular role in society
Fills my heart with anxiety
Where is all of this going?
What will emerge from these seeds that we're sowing?
It makes my head spin
But I'm not giving in
Will keep asking the question
What is this country that I live in?”

³ Luther, M. (1967): About quotes on Justice: American Baptist Minister and Civil Rights Leader (1929 – 1968). Retrieved January 12, 2014 from <http://www.thinkeist.inx>

What is this country that I live in?
That takes away her right to love
Brutalises her with an iron glove
Rapes her without fear
of there being justice for her tear
We've demeaned our goddesses
Gone back on all our promises
Become a gender distorted nation
Given our conscience a permanent vacation
what do I tell my daughter?
That she's growing up to be lamb for the slaughter
we've got to make a change
Reboot, reformat, rearrange,
and never give in
no matter how much our head may spin
Just keep asking the question
What is this country that I live in?
Here to help" (Akhtar, 2012)⁴

1.2 Introduction:

India being a democratic country which guarantees Human Rights to its citizens, the debate on capital punishment gathered much heat in present time. While the awarder of death sentence in *Bacchan Singh v. State of Punjab*⁵ Supreme Court (SC) held that capital punishment must be sentenced in brutal murder case or in most heinous crimes where doctrine of rarest of rare case apply, but in a country which use to advocate human rights how can it award capital punishment as it is violation of basic human rights. To support or abolish capital punishment many debates were happening over the world between jurist, lawyers, administrators, social activist, law commission and legal reformers (Ahmed, 2002)⁶. In India death penalty used as an effective weapon to end heinous crimes against society. According to deterrent affect of capital punishment the fear of being awarded with death punishment which keeps an offender away from criminality.

In International Scenario of United Nation (UN) Assembly stated that there is a need of fair justice in capital punishment all over the world. Procedure which must be followed should be fair, just and reasonable (UN Charter, 1948)⁷. For example United Nation Economic and

⁴ Akhtar, F. (2012). Poem 'Justice' on current brutal Delhi Gang Rape. A published poem on NDTV news. Retrieved January 06, 2014 from <http://www.moviesndtv.in>

⁵ *Bacchan Singh v. State of Punjab* AIR 1980 SC 653. Retrieved December 31, 2013 from <http://www.indiankanoon.org>.

⁶ Ahmed, I.G. (2002). Death Sentence and Criminal Justice in Human Right Perspective. Published in University of Calcutta. pp. 1-4. Retrived December 28, 2013

⁷ International Scenario of United Nation Charter. (1948). Retrieved December 28, 2013 from <http://www.un.org/en/documents/udhr/>

Social Council (UNESCO) in its resolution no. 15 of 1996 encouraged its member to abolish capital punishment and recommend those countries that use to provide capital punishment had a speedy and fair trial to accuse (UNESCO, 1996)⁸. Article 5 of Universal Declaration of Human Rights, 1948 provides that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 21 of Indian Constitution provides right to life and personal liberty to the citizen of India also stated that every citizen of the country has right to live and not to die. Article 7 of the International Covenant on Civil and Political Rights, 1966⁹ provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. India is a member of the United Nations. On the basis of the appeal made by the United Nations, 120 countries have abolished this punishment and a few of them stopped the practice of continuing the execution, but we are in the company of a minority. There are 73 countries in the world which are still continuing capital punishment in the statute book and India is also one among them, though it does not provide death penalty only in rarest of rare cases.

The concept of capital punishment is an ancient one which uses to found in almost all cultures of society. Capital punishment in ancient time use to be providing on normal mistakes against society. In the beginning of human civilization human being fought with each other for food, sex etc because of which they provide harm to humanity through eye for an eye, tooth for a tooth or blood for blood was the common practice which is very ancient understanding of law. Gradually, the world changed with the thinking and customs of the society. In England death sentence awarded to a servant if he or she stolen a petty thing. There was so harsh attitude in those days (Agrawal A. , 2000)¹⁰.

In today's world crime is on the heights especially in India. In ratio of crime India exist in top ten countries of the world. Legislature has enacted many laws also number of types of punishment so that from the fear of punishment one does not commit crime. The most savour punishment use to award is Capital Punishment. After many judgments India does not abolish death penalty but the jurist brought a slight change in the concept of death penalty, they use to award death sentence in a case where doctrine of rarest of rare exist. The researcher in its research is trying to focus on the nature of death penalty. By this project researcher will try to elaborate the matters decided by the Honourable Constitutional Courts of India related to the title of study. In this research, the researcher will try to find out whether the capital punishment given on rarest of rare case is just and fair also why capital punishment uses to be given and in what manner a crime term to be as most heinous or rarest of rare as on the one hand our Constitution guarantees Human Rights under Fundamental Rights.

⁸ United Nations Economic and Social Council. (1996). Retrieved December 28, 2013 from <http://www.un.org/esa/.../ecosocmainres.htm>

⁹ International Convention on Civil and Political Rights. (1966) Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966. Retrieved December 28, 2013 from <http://www.ohchr.org>

¹⁰ Agrawal, A. (2000). Abolition or retention of death penalty in India - A critical Appraisal. Published in Gujrat National Law University, Gandhinagar (India). pp. 2- 4. Retrieved December 29, 2013

1.3 Researcher's Interest:

In Modern era where almost all the countries talking for Human Rights, the important debate that occurs is on capital punishment in which where some arguments were based on either moral principle or some on social issues. The concept of capital punishment is highly controversial. Certain countries like India where the awarding of capital punishment is deliberate on rarest of rare cases or on most brutal and heinous crime. Being a member of United Declaration on Human Rights which says “No one shall be subject to torture or cruel inhuman or degrading treatment or punishment” what actually condition occur that India does not abolished Capital Punishment. Although it doesn't provide death penalty in all cases of section – 303 of Indian Penal Code, 1860 or on the crimes which punishes for death penalty but it award death penalty on rarest of rare case. Researcher had gone through many cases of capital punishment found in history through news, novels, interacting with friends and family. She founds that in ancient era the punishment was extremely brutal in simple offences but in modern era many countries abolish death penalty. Many reforms and revolutions were done in numerous countries like in Australia through its citizens for abolishing death penalty. Mahatma Gandhi who uses to believe and follow the principle of “Ahimsa” said that an eye for an eye one day will make whole world blind (Krishnan and More, 1978)¹¹. But the question arises in a country where many people follow the non violence theory why our judiciary is violent with the criminals of our country?, why the guardians of our constitution use to provide capital punishment on rarest of rare case and if they were providing it then is it just and fair?. Because of all these questions arising in between today's youth, researcher got highly interested to find the logic behind awarding on rarest of rare case so that she may conclude that is it fair and just with the prisoners?. Researcher is a law student perusing B.A.LL.B (Hons.) from School of Law, Indore and in her winter vacation she got selected for “Online off campus research intern program”, under “Prof.Ranbir Singh Legal research Centre”. Her research on “Capital Punishment on rarest of rare case is it just and fair?” is going on under the guidance of Adv.Sonal Gupta, the pioneer in the field of research and gold medallist from National Law University, Delhi in 1st convocation of LLM and the CEO of Prof.Ranbir Singh Legal Research Centre, Shajapur.

Capital Punishment is a serious concern which not only ends the life but also effect the Human Right. Students who choose the field of capital punishment either they are in support of death penalty or they want to abolish it but yet no one thought that the condition on which our constitutional courts awarding capital punishment is fair and just. As being a member of United Declaration on human Rights India award capital punishment on rarest of rare cases. This requires some extensive research by focusing on cases where constitution court awarded capital punishment.

1.4 Domain of Capital Punishment:

Researcher is working on broad domain of rarest of rare cases and focusing on capital punishment, it is suitable to know what the focus of discipline ‘Capital Punishment’ is:

¹¹ Krishnan, R. and Moore. (1978): A Source Book in Indian Philosophy - A commentary on Laws of Manu. Central Law Publication, Delhi. pp 648 – 660

According to Oxford Dictionary, Capital Punishment is the legally authorized killing of someone as punishment for a crime ¹²(Kindersley, 2011).

Capital Punishment is the death sentence awarded for capital offences like crimes involving planned murder, multiple murders, repeated crimes; rape and murder etc where in the criminal provision consider such person as a gross danger to the existence of the society and provide death punishment¹³. Capital Punishment or the death penalty is a legal process whereby a person is put to death by the state as a punishment for a crime.

Capital Punishment use to impose on the person found guilty of crime.

Crimes are wrong whose approve is disciplinary and is no way remissible by any private person but only by crown, if remissible at all (Bhattacharya, 2013)¹⁴.

According to Blackstone crime is done against violation of public law through committing any act or omitted (Bhattacharya, 2013)¹⁵.

1.5 Present study:

In the present research, the focus is on the different Constitutional cases and the logic behind it that on what circumstances these courts awarded death sentence to the accused. Although in our country the capital punishment used to be penalized on rarest of rare cases. From the study researcher through its own observation and from the different literature, cases and research papers will going to understand the interpretation of rarest of rare cases. Hence the present research will have a study on the topic weather the capital punishment on rarest of rare case is just and fair?

¹² Kindersley, D. (2011). DK Illustrated Oxford Dictionary. Dorling Kindersley Limited and Oxford University Press. ISBN 978-0-1434-1621-0.

¹³ Retrieved December 29, 2013 from : <http://www.legal-explanations.in/definitions/capital-punishment.html>

¹⁴ Bhattacharya, T. (2013). The Indian Penal Code (ed. VII). Central Law Agency, Allahbad: pp – 8 – 10

¹⁵ Ibid.

CHAPTER – 2

RESEARCH METHODOLOGY

2.1 Statement of Problem

2.2 Terminologies

2.3 Object of the Research

2.4 Research Method

2.5 Data Collection

2.6 Coverage and Scope

2.7 Hypothesis

2.1 Statement of Problem:

Under certain condition of Indian penal Code provide imprisonment for life or death penalty as alternative punishment. Section – 303 of Indian Penal Code does not provide any guidelines as when should the guardians of constitutional courts impose capital punishment or award life imprisonment or lesser than that. The judicature is allowed to exercise its discretionary power and reasoning but by following the guidelines of rarest of rare case provided in *Macchi Singh v. State of Punjab*¹⁶. The researcher is trying to analyze the cases regarding important issue on capital punishment is it justifiable with law and instead of death penalty can jury penalize accuse with another form of punishment which is as severe as death penalty, Who all accused should be penalized, does the criminal does not remain human after crime as to those judiciary giving such a tough punishment?

2.2 Terminologies:

Definitions regarding some important terminologies supporting the topic are:-

- a) **Crime:** Kenny in his book ‘Outline of criminal law’ feels that to define crime is a task which so far has not being satisfactory accomplished by any writer. In fact criminal offences are basically the creation of criminal policy and obtained from time to time by that section of the community who are powerful or clever person enough to safeguard their own security and comfort by causing sovereign power in the state to repress conduct which they feel may endanger their position. At another occasion Kenny again says that crimes are wrongs sanction is plenitude and is in no way remissible by crown alone if remissible by crown alone if remissible at all (Kenny, 2010)¹⁷.

¹⁶ *Macchi Singh v. State of Punjab* AIR 1983 SC 957. Retrieved December 31,2013 from <http://www.indiankanoon.org> pp 958

¹⁷ Kenny. (2010). *Outlines of criminal law* (19th ed.). (J. C. Turner, Ed.) New delhi: Cambridge University Press, U.K.

- b) **Punishment:** Any fine, penalty or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court for some crime or offence committed by him or for his omission of a duty enjoined by law (Black, 2009)¹⁸.
- c) **Capital Punishment:** It is a punishment executed for a person proved guilty of committing a crime or a legal cause of death as a penalty for violating criminal law (Iveren, 2011)¹⁹
- d) **Death Qualified:** In USA jurist who are not opposed to death penalty religiously and ideological manner (KLein, 2006)²⁰.
- e) **Reprieve:** It refers to cancelation or to take back or postpone of capital punishment (Law Commission of India on Code of Criminal Procedure, 1969)²¹
- f) **Respite:** Instead of death penalty it award lesser sentence or we may say rest of relief in death sentence (Law Commission of India on Code of Criminal Procedure, 1969)²²
- g) **Remission:** It refers to pardon of sin or forgiveness of offence. It reduce quantum of sentence without changing character (Law Commission of India on Code of Criminal Procedure, 1969)²³. Example – Rigorous imprisonment for 5 year change to 2 year.
- h) **Commutation:** Change into lighter penalty (Law Commission of India on Code of Criminal Procedure, 1969)²⁴. Example – Death into life imprisonment.
- i) **Pardon:** It is an order that clear a person's death penalty into other punishment (Law Commission of India on Code of Criminal Procedure, 1969)²⁵.

2.3 Object of the Research:

Many debates and research has been done by different jurist, researchers, administration and legislation but no one properly conclude to favour capital punishment or abolish it. According to the Indian Law capital punishment use to be given on rarest of rare case but this logic creating a matrix for today's generation as today many people advocates the human rights. The objects of research are:

1. To study the meaning, extent and principles of rarest of rare crimes in India.
2. To identify that Capital Punishment is the only reason to create fear in mind of public, so that they stop doing heinous crimes.
3. To find that does death penalty should be abolished in India also according to Human Rights.

¹⁸ Black. (2009). Law Dictionary (8th ed.). Retrieved December 31, 2013 from <http://www.blacklawdictionary.org>

¹⁹ Iveren, O. (2011). Justification for and the Abolition of Capital Punishment under Human Right Law. University of Ilorin, Ilorin, Nigeria. pp 28 – 45.

²⁰ Klein and Richard. (2006). An Analysis of Death Penalty Decisions from The Supreme Court Team. US Supreme Court. Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

²¹ Law Commission of India. (1969). Report on Code of Criminal Procedure. 41st Report. Ministry of Law. Retrieved December 31, 2013 from <http://www.lawcommissionofindia.nic.in/>

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

The researcher started this project to find out through analysis that weather the capital punishment which uses to lay down on rarest of rare case basis is it just, fair, and reasonable for public at large and to humanity.

2.4 Research Methodology:

The research method that has been adapted is qualitative, in which the comparison of different judiciary decisions and analytical methods are used for the research project.

Comparisons are done with respect to the various landmark cases and their judgments and analytical method will come with an outcome of result done after research. As it will going to be the 1st research of researcher hence, the idea for making this research has been taken from researcher's mentor research on Male Victimization by Intimate Partner Violence²⁶(Gupta, 2013).

2.5 Data Collection:

All the data collected for study are secondary and are analyzed. The review and the study occurred from the various books from School of Law library and Central Library of DAVV also e-books and various cases from e-data source that is from Indian Kanoon and various research papers also from e-data.

2.6 Coverage and Scope:

The various cases studies or mentioned for the research are mostly landmark cases of India and foreign countries which establishes history in the title of just and fairness of rarest of rare cases. Many old and latest judgments were also included in project. Analysis of topic based mostly on comparison of death penalty laws in different countries.

2.7 Hypothesis:

1. The principle on which Supreme Court of India award Capital Punishment i.e. Rarest of rare case does not violate the constitutionality of Article – 21 of the Constitution of India.
2. Though Capital Punishment to accused violates Human Rights in India but it is beneficial to the society.
3. Judiciary in India while awarding death penalty use their discretionary power keeping in mind the welfare of public at large.

²⁶ Gupta, S. (2013). Male Victims of Intimate Partner Violence in some rural part of India – An Empirical Study. Unpublished LL.M. research project report. National Law University, Delhi.

CHAPTER – 3

HISTORY OF CAPITAL PUNISHMENT

CONTENTS:

3.1 Primitive Period

3.2 Ancient period

3.3 Ancient Egyptians

3.4 Pre Columbian people

3.5 Greeks

3.6 Roman

3.7 United States

3.8 Morden Era

3.9 Types of Capital Punishment in Ancient Civilization

Capital punishment was term to be oldest trend to punish for a crime arrived from ancient time, the only difference is in modern era death penalty use to be given on rarest of rare case and in ancient period it use to be given on petty offences.

3.1 Primitive Period:

Law at the time of primitive people was oral, there were no written codes. The punishment at that time was awarded in arbitrary manner by king. Death penalty was usually found in primitive period for murder, theft, trespass and misuse of valuable things (Death Penalty when generates death legally, 2006).²⁷

Death Penalty was also found in 14th century B.C. in Draconian Code of Athens, they made crime only to be punished through death penalty. Same as in 5th century B.C. Roman law of twelfth tablets (Death Penalty when generates death legally, 2006)²⁸.

3.2 Ancient Period:

The root of death penalty laws was traced as for back in Babylon law. Hammurabi who was first metropolis, the king of Babylon issued a set of law to his people called Hammurabi Code. Babylon civilization started in XIX Century B.C. till VI Century B.C. Hammurabi was

²⁷Michigan State University and Department of Information Centre. (2006). Death Penalty When Generates Death Legally. Michigan State University Press. Retrieved December 29, 2013 from <http://www.deathpenaltyinfo.org>

²⁸ Ibid.

the first written code (Agrawal, 2011)²⁹. Hammurabi Code provide harsh standard by which Babylon could order their lives and treat one another. The establishment of death penalty were initiated through Hammurabi Code of Babylon in 18th Century ³⁰(Death penalty when life generate death legally, 2006). In Hammurabi Code crime against high class people having a large amount of money considered more serious then poor people (Death Penalty when generates death legally, 2006)³¹.

In Hammurabi arbitrariness has been erase due to written law but the punishment of death was normal in crimes like murder, wrong at work, trespass etc.

3.3 Ancient Egyptians:

North African people who were now resided in Egypt come under ancient Egyptians. Their civilization indicated in IV Century B.C. and ended in IV A.D. Death penalty in Egyptians awarded to those who break universal law. The universal law in Egypt include crime such as theft, misuse if precious things, pharaoh³² and spying. The law applied to all, absence of arbitrariness through king (Death Penalty when generates death legally, 2006)³³

3.4 Pre Columbian People:

These people originated from Central America. Now they use to originate in Mexico, Belize, and Salvador. They ruled for XVI Century B.C. till XVII A.C. and defeated by Spanish. Adultery, murder made punishable with death in pre Columbian period. Husband in adultery use to kill by means of throwing big stone on his head (Death penalty when life generate death legally, 2006)³⁴

3.4 Roman:

Jesus Christ was awarded with death penalty by roman through crucifixion between VI Century B.C. and IV Century A.D. Romans accepted the deterrent value of death penalty (Dr. DP and Dr. MP, 2012)³⁵.

3.5 Death Penalty in United States:

European Settler introduces death penalty in America. The 1st execution was by Captain Kendal in the Jamestown colony of Virginia in 1608. In 1612 Virginia Governor Sir Thomas Dale rises to award death penalty on less serious offence. Death penalty for offence as

²⁹ Agrawal, H.O. (2011). A book on Human Rights. (ed. XIII). Central Law Publication. pp 62 – 68.

³⁰Michigan State University and Department of Information Centre. (2006). Death Penalty When Generates Death Legally. Michigan State University Press. Retrieved December 29, 2013 from <http://www.deathpenaltyinfo.org>

³¹ Ibid.

³² Guardian of Law

³³ Michigan State University and Department of Information Centre. (2006). Death Penalty When Generates Death Legally. Michigan University Press. Retrieved December 29, 2013 from <http://www.deathpenaltyinfo.org>

³⁴ Ibid.

³⁵ Sapre, DP and Karmarkar, M.D (2012). Capital Punishment. Journal of Sapre forensic, medica karmarkar, science and law. Volume 21, Number 2. pp – 28 -36

striking father and mother or damaging true God was to be punished with death (Randa, 1997)³⁶

First state to abolish death penalty was Michigan except treason in 1846. Rhode Island and Wisconsin later abolish death penalty for all crimes. By the end of 18th century Venezuela, Portugal, Netherland, Costa, Rica, Brazil follows for abolition of death penalty (Bohm, 1999 and Schabas, 1997)³⁷.

3.6 Modern era

In Mugal period power of pardon use to be granted to accused. In proper cases it exercised as an act of grace and humanity. In early year of East India the mercy petition use to be granted by British king emperor. Power of mercy granted to governor general in council of fort William general and the governor in council of Bombay and Madras presidencies. (jain, 2005)³⁸

After establishment of Sardar Nizamat Adalat the governor general in council gets the power to pardon (jain, 2005)³⁹

Further in 1860 – 1861 the clemency power to provide in IPC⁴⁰ and Cr.PC⁴¹ (Bhattacharya, 2013)⁴².

Capital punishment was the very hardest punishment in the world, about 250 people were sentenced to death in row and 35 were executed in between 1976 – 1955, 314 people pushed to death in US⁴³, 179 effected through lethal injection, 123 through electrocution, 9 through gas chamber and one through firing⁴⁴ (Iveren, 2011). The reason to abolish death penalty in US is that it was cruel and unusual punishment (Iveren, 2011)⁴⁵.

In China Tang the common form of death penalty was through strangulation⁴⁶ (Iveren, 2011). Chinese people prefer this method as they feel that body is gift from parents and to kill one's body is disrespect towards them also this method of execution were done in front of public, so that they may get warned⁴⁷ (Iveren, 2011).

³⁶ Randa, L. (1997). Society final solution: A History and Discussion of Death Penalty. University Press America. pp 235 - 239

³⁷ Bohm, R. (1999). Death quest : An Introduction to the theory and practice of Capital Punishment in the US'. Anderson Publishing.

Schabas, W. (1999). Cambridge University Press. 'The abolishing of death penalty in International Law'. (ed. II).

³⁸ Jain, M.P. (2005). Outlines of Legal History. (ed.V). Wadhwa and Wadhwa Co. Publisher, Nagpur. pp 80 - 108

³⁹ Ibid.

⁴⁰ Indian Penal Code, 1980.

⁴¹ Code of Criminal Procedure, 1973.

⁴² Bhattacharya, T. (2013). The Indian Penal Code. (VII ed.). Central Law Agency, Allahbad. pp – 8 – 10.

⁴³ United States

⁴⁴ Iveren, O. (2011). Justification for and the Abolition of Capital Punishment under Human Right Law. University of Ilorin, Ilorin, Nigeria. pp 28 - 45

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

Many unsuccessful attempts were made by India to abolish Capital Punishment Bill which was introduced in Lok Sabha in 1956 for abolishing death penalty but it was rejected by house. In 1958 and 1962 many efforts made in Rajya Sabha which was unsuccessful. Under chairmanship of Justice J.L Kapur law commission of India in its 35th report, 1967 support continuing of death penalty for serious offence (Agrawal A. , 2000)⁴⁸.

3.7 Types of Death Penalty in Ancient Civilisation:

The execution of death penalty punishment was differing from one civilisation to another. A brief explanation of these executions is:

- Death by boiling: - In 15th century the legal method of execution of death penalty was boiling of accused in England. The accused was dropped in boiling water, oil or tar until dead⁴⁹ (Ghatate, 2000)
- Crucifixion: - This was the most common and painful practice practiced in 6th century B.C till 4th century A.D. which was usually found among Seleucids, Carthaginians, Persians and Romans. In this person was tied on cross and hanged till death. This practice of death penalty was done with Jesus Christ also⁵⁰ (Ghatate, 2000).
- Flaying: - This method was practiced in middle age. In this accused tortured by removing skin from body. This practice was commonly found in Middle East⁵¹ (Ghatate, 2000).
- Disembowelment: - This was practiced mostly in England, Netherland, Belgium and in Japan against the prisoner held guilty in adultery. Under this method the accused vital organ uses to be removed⁵² (Ghatate, 2000)
- Breaking Wheel: - This practice of punishment found in ancient Greece. In this a wooden wheel use to stretch accused and one use to hit on limb so they may break their bone also hits use to did on stomach and chest (Iveren, 2011)⁵³
- Crushing: - In roman civilisation the accused used to be crushed through elephant (Ghatate, 2000)⁵⁴
- Slow Slicing: - This was usually practice around 900 A.D. In this the prisoner was awarded with numerous cuts till death. The idea behind is to humiliate prisoner with slow and painful execution. The cut was done through knife (Ghatate, 2000)⁵⁵.

⁴⁸ Agrawal, A. (2000). Abolition or retention of death penalty in India - A critical Appraisal. Published in Gujrat National Law University, Gandhinagar. pp. 2- 4.

⁴⁹ Ghatate, N.M. (2000). Consultation paper on mode of execution of death sentence and incidental matter. Law Commiision of India, Ministry of Law. pp 5 – 13.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Iveren, O. (2011). Justification for and the Abolition of Capital Punishment under Human Right Law. University of Ilorin, Ilorin, Nigeria. pp 28 – 45.

⁵⁴ Ghatate, N.M. (2000). Consultation paper on mode of execution of death sentence and incidental matter. Law Commission of India, Ministry of Law. pp 5 – 13

⁵⁵ Ibid.

CHAPTER – 4

REVIEW OF LITERATURE

There are lots and lots of books and write ups on capital punishment. The review has been aimed to analyze what has been done by other scholars and to know who has been undone so that being researcher I may contribute my ideas and findings.

In (ICCPR, 1979)⁵⁶, the concept of most serious crime rose during drafting of Article – 6 of ICCPR which provide right to life it has vast interpretation and says that capital punishment should be provided only on most serious crimes but only minority of states abolished capital punishment till 1954.

(ECOSOC, 1984), According to safeguard guaranteeing protection of right of those facing execution of death penalty of 1984⁵⁷ the death penalty should not go beyond international crimes with lethal or another extreme consequences. United Nation Secretary General in 6th report says that offence should be life endangering in the sense that it is likely consequence of action⁵⁸, 46 countries abolish death penalty in 1986 for ordinary crimes (Amnesty International Report, 1987)⁵⁹. After 16 year the rate almost double.⁶⁰

(Mahapatro, 2013) Roscoe Pound gave the theory of social engineering based on doctrine of rarest of rare cases. The aim of this theory is to want of maximum satisfaction toward society as possible also proving justice to build as efficient structure of society. It says to balance the interest of society as well as individual and public at large⁶¹.

(International commission against death penalty, 2010)⁶² Capital Punishment in US was suspended between 1972 to 1976 after the SC decision in number of cases of death penalty and declared capital punishment as unconstitutional. In April 2013, 18 states repealed death penalty.

In *Rooper v. Simmons* Court held that cruel and unusual punishment were prohibited by the US government⁶³.

⁵⁶ International Covenant on Civil and Political Rights Charter. (1979). Article – 6. Comment 6 of ICCPR states India has steadfastly refuses to alter its sentencing policy. Retrieved December 30, 2013 from <http://www.ohchr.org>

⁵⁷ UN Economic and Social Council Charter. (1984). Resolution 1984/50. Retrieved December 30, 2013 from <http://www.unodc.org>

⁵⁸ Capital Punishment and implementation of safe guards guaranteeing protection of right of those facing death penalty. Retrieved December 30, 2013 from : <http://www.uncjin.org/documents>

⁵⁹ Amnesty International Report. (1987). The death penalty. United States of America. pp - 228 (appendix 12).

⁶⁰ Ibid.

⁶¹ Mahapatro, S. (2013). Rarest of Rare doctrine and Concept of Social Engineering. A global society for Multidisciplinary research. Journal of international academic research for multidisciplinary. Volume – 1. Issue 5. ISSN: 2320 – 5083.

⁶² International commission against death penalty. (2010). How state abolish death penalty. United States Publication.

⁶³ *Rooper v. Simmons*, 543 US 551, 2005. Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

(Agrawal A. , 2000)⁶⁴When we talk about the Capital punishment there exist two types of opinion one group argue to support capital punishment while another argues to abolish capital punishment.

(International Commission against Death Penalty, 2010) says that Argentina execution of abolishing death penalty was started in 1916 and under mitre government in 1970. It abolishes capital punishment for law and ordinary crime in 2008. In 1994 death penalty prohibited for political crimes also. On the other hand Cambodia along with Philippines, this is one of two associations of South Asia abolishes Capital Punishment. It had the longest period of abolitions. Death Penalty in these countries prohibited in 1989 through amendment for all crimes. In France, death penalty for all crimes abolish in 1981 thus joining hand with the thirteen other European countries that already abolished death penalty. With 2006 amendment to constitution Kyrgyzstan abolish death penalty for all crimes. Mexico abolishes capital punishment in 2005 for all crime in law. Capital punishment in US were suspended between 1972 and 1976 after the SC decision in number of cases of death penalty and declared capital punishment as unconstitutional. In USA on April, 2013 eighteen states repealed death punishment⁶⁵.

(Maharashtra Prisons Rule, 1971) There are different methods of execution of death penalty. In India hanging is the most practiced method for capital punishment. 'Convict' means a person awarded death penalty. On admission of convict in prison regarding date of his execution and entry in prison he will inform to state government and will take solicit order from state government for execution convict person should be kept in especially trail after the mercy petition has been rejected state government will choose the date of execution of death penalty and will inform to his family member⁶⁶.

Bentham Utility theory says "greatest pleasure to greatest number", by removing minor number of culprits by capital punishment, affords security and pleasure to entire society.

Garofalo, and his teacher, Lombroso, sociologist, strongly supports the capital punishment.

Darwin opposed the Doctrine of "struggle for existence". This theory says society can be preserved only if they can fight with anti social elements.

Mahatma Gandhi was the foremost proposer to abolish the capital punishment in India. He preached Ahimsa. He pleaded "hate sin but not sinner" (Krishnan and Moore, 1978)⁶⁷

From the theories of punishment Deterrent punishment says that severe punishments, intended to prevent the offender from again committing crime. The theory of deterrent punishment hopes that by imposing the severe punishments, the person will fear and thus

⁶⁴ Agrawal, A. (2000). Abolition or retention of death penalty in India - A critical Appraisal. Published in Gujrat National Law University, Gandhinagar. pp. 2- 4.

⁶⁵ Sapre, DP. and Karmarkar, MD (2012). Capital Punishment. Journal of Sapre forensic, Medica Karmarkar, Science and Law. Volume 2, Number 2. pp – 28 -36

⁶⁶ Ibid.

⁶⁷ Krishnan, R and Moore. (1978): A Source Book in Indian Philosophy - A commentary on Ahimsa. Central Law Publication. pp – 500 - 550

abstain from criminal behaviour. Thus the criminal rate and behave are decreased and the peace shall prevail in the society

Retributive theory states that “a tooth for a tooth and an eye for an eye”

(WGHR, 2013) After fast track court award death penalty to the accused of the brutal Delhi gang rape case December 16, 2012 which was opposed by Working Group on Human Right (WGHR) they think that the death penalty in retributive form is as violent as offence committed. WGHR commented on Justice Verma committee on amendment law relating to rape and sexual assault that there is no scientific basis to claim capital punishment that there is no scientific basis to claim capital punishment as deterrent affect, studies shows that punishment become stricter. The awarding of death penalty will increase impunity and reduce convict. According to ministry of home affair it was stated that death penalty is not deterrent to murder. SC in *Bacchan Singh v. State of Punjab*⁶⁸ pronounce that death penalty will award on rarest of rare case and that too will decide on given principles. During 2nd inter governmental review of Indian Human Right known as universal periodic review, 2012, UN Human Right made 169 recommendations in which 18 were related to abolish of death penalty in India but not of these were accepted by Government of India⁶⁹.

⁶⁸ *Bacchan Singh v. State of Punjab* 1980 SC 898. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

⁶⁹WGHR. (2013). Capital Punishment not a deterrent: WGHR demands Abolishment of Death Penalty. Working Group on Human Right in India and US. Retrieved December 30, 2013 from <http://www.wghr.org>

CHAPTER – 5

APPROCHES AND INDICATIONS

5.1 Religious Approach

5.2 Indications

Approaches regarding capital punishment are as follows:

5.1 Religious Approach:

According to Holy Bible it is said that “one who killed another shall be put to death” and eye for an eye, tooth for a tooth principle applies here. Further it says that “Whoever sheds the blood of man, by man shall his blood be shed” mean who ever strike any one and kill him he shall also be killed by God (Bahati, 2005)⁷⁰.

According to Hindu Teachings a criminal should be punished if it became harm to the society and that to will depend on the king (Bahati, 2005)⁷¹.

5.2 Indications:

There are many factors which supports death penalty and some indications regarding abolishing death penalty those are:

- **Appropriate Punishment Needed:** - In Mahesh v. State of M.P⁷² court held that giving lesser punishment to accused in such a brutal case will make to be beaten citizen’s faith in courts and justice and law is liable to provide justice to society⁷³.
- **Fair Justice:** - As per the retributive theory of punishment all guilty deserved to be punished and they deserved to be punished in proportion of their crime.
Example – If guilty person commit murder he must be punished with highest degree i.e. capital punishment⁷⁴.
- In Dhananjay Chatterjee Alias Dhanan v. State of West Bengal⁷⁵ Justice A.S Ananand and N.P Singh SC of India said that the measure of punishment depend upon the gravity of crime, so that the victim must be provided with fair justice.⁷⁶

⁷⁰ Bahati and Honorable Justice Anthony. (2005). The death penalty debate. Amnesty International Report. Retrived December 30, 2013 from <http://www.amnestyinternational.org>

⁷¹ Ibid.

⁷² Mahesh v. State of M.P AIR 1987 SC 1346 (1987) 3 SCC 80. Retrieved December 31, 2013 from <http://www.indian kanoon.org>

⁷³ Ibid.

⁷⁴ BBC Ethical guide. (2010). Argument in favour of death penalty. Retrieved December 31,2013 from <http://www.bbc.co.uk>

⁷⁵ Dhananjay Chatterjee Alias Dhanan v. State of West Bengal (2004)9 SCC 751. Retrieved December 29. 2013 from <http://www.indiankanoon.org>

⁷⁶ Ibid.

- Eye for Eye is simple for our society. Our system doesn't allow torturing the guilty, or raping the rapist. Awarding of death penalty to criminal is an improper punishment (Death Penalty When Generates Death Legally, 2006)⁷⁷.
- Death Penalty is a means of retributive justice which says to balance crime with punishment. Many use to state that death penalty will teach society the seriousness of crime, but by following retribution principle we cannot teach society to end violence by violence it result more violence (Bishops, 1999)⁷⁸

⁷⁷ Michigan State University and Department of Information Centre. (2006). Death Penalty When Generates Death Legally. Michigan State University Press. Retrieved December 29, 2013 from <http://www.deathpenaltyinfo.org>

⁷⁸ Bishops. (1999). To end death penalty. A report of national jewish/ catholic consultation. Retrieved on December 30, 2013.

CHAPTER – 6

STATUTES REGARDING CAPITAL PUNISHMENT

6.1 International Statute

6.2 Indian statute

The statutes under which death penalty has been awarded are:

6.1 International statute:

1. ECOSOC, 1996⁷⁹ in its 15th resolution of encourage the countries who are their members to abolish Capital Punishment also recommend that they provide speedy and fair trials to defendants.
2. UDHR, 1947⁸⁰ in its Article 5 says that “ No one shall be subjected to torture and cruel inhuman and degrading treatment and punishment”
3. ICCPR, 1966⁸¹ says that “No one Shall be subjected to torture, cruel , inhuman and degrading treatment and punishment”
4. UNECOSOC, 1948⁸² says that :-
 - The member countries that had not abolished capital punishment may impose it only on most heinous crimes.
 - Death Punishment should not be awarded to pregnant women or insane.
 - Minor below 16 year of age should not be awarded with capital punishment
 - According to Article 14 of ICCPR capital punishment only awarded after fair procedure.
 - There shall not be retrospective effect of capital punishment.
 - One must get the right to appeal in upper courts.
 - Capital Punishment shall not be executed in appeal or pardon.

6.2 Indian Statute:

1. Under Indian Penal Code (IPC), 1860 the sections under which death penalty use to be awarded are:
 - Section 120- B – Punishment for Criminal Conspiracy
 - Section 121 –Waging or attempting to wage war or abetting waging of war against the Government of India.

⁷⁹ United Nation Economic and Social Council [ECOSOC]. (1996). Resolution No. 15. Retrieved December 31,2013 from <http://www.un.org>

⁸⁰ United Declaration of Human Rights. (1947). Article 5. Retrieved December 29,2013 from <http://www.un.org/en/documents/udhr/>

⁸¹ International Covenant of Civil and Political Right. (1966) Retrieved 31,2013 from <http://www.ohchr.org>

⁸² United Nation Economic and Social Council [ECOSOC] (1996). Resolution No.50. Retrieved December 31,2013 from <http://www.un.org>

- Section 132 – Abetment of mutiny
- Section 194 – Giving or Fabricating false evidence with intent to produce conviction of capital offence
- Section 195A – Threatening any person to give false evidence
- Section 302 – Punishment for Murder
- Section 303 – Punishment for murder for life convict. It proves unconstitutional and held its a violation of Article 14 and 21 of Constitution of India⁸³
- Section 305 – Abetment of suicide of child or insane person
- Section 364 A – Kidnapping for ransom
- Section 396 – Dacoity with murder.

2. Other legislation in Indian Law related to armed force:

- Air Force Act, 1950
- Army Act, 1950
- Navy Act, 1950
- Indo Taliban Border Police Force Act, 1992
- Schedule Caste and Schedule Tribe (Prevention of Auto cities) Act 1989
- Prevention of Terrorism Act, 1987
- Defence of India Act, 1971
- Explosive Substance Act, 1908
- Arms Act, 1959
- Unlawful Activities Prevention Act, 1967 (amended 2004)

3. Section 366 of Code of Criminal Procedure says “Sentence of death to be submitted by Court of Session for confirmation”

⁸³ Mithu Singh v. State of Punjab, (1983)2 SCC 277. Retrieved December 31,2013 from <http://www.indiankanoon.org>

CHAPTER – 7

DOCTRINE OF RAREST OF RARE CASE

To understand the principle of rarest of rare case is the main body of this research which only will conclude the objective of research. To understand this doctrine researcher had gone through many cases those are as:

In *Rooper v. Simmons* case⁸⁴ Supreme Court prohibited the awarding of death penalty less than 18 year of age and sets minimum age of death penalty.

In *Uttecht v. Brown* case⁸⁵ US⁸⁶ Supreme court judgement was proved an exception regarding death penalty. Supreme Court in his judgement ordered for the formation of trial in two phases for death penalty. In its 1st trial the jurist will find whether or not the accused is guilty of crime of murder and in the another trial the jurist will decide whether to penalize guilty with death penalty is appropriate or not only if the accused proved guilty in 1st trial⁸⁷. As to award penalty Supreme Court requires to jury consider aggravating factors and that through the evidence presented in case which include aggravating and mitigating circumstances⁸⁸. It was also held that death penalty must be awarded in ‘the worst of worst murder case’ and not routinely⁸⁹ and that to will be judged on criminals violent past acts, if accused had long violent and criminal record or several people killed at the time of accused committed murder or murders⁹⁰. But if an accused is guilty of mitigating factor which are those in which the accused had never been convicted for any crimes in the past and the act that was done by him might not been significant, then he must not be punished with death penalty.

Under *Lockhart v. Mccree*⁹¹, Supreme Court judgment uphold the constitutionality of state procedure regarding the jurist of death qualified and it was held that the jurist who will sit in any part case related to capital punishment for the determination of guilt or innocence as well as to determine whether death penalty should be awarded or not must not be ideologically or religiously oppose to death penalty and these jurist will find the aggravating and migrating factor in that case and on that basis only death penalty should be awarded⁹².

⁸⁴ *Roopers v. Simmons* 543 US 551, 578 app. 579 – 580 (2005). Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

⁸⁵ *Uttecht v. Brown* 127 S.Ct. 2218 (2007). Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

⁸⁶ United State

⁸⁷ *Gregg v. Georgia*, 428 U.S 153, 163 (1976). Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

⁸⁸ *Proffitt*, 428 U.S at 248. Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

⁸⁹ *Kansas v. Marsh*, 126 S.Ct 2516, 2543 (2006). Retrieved December 31,2013 from <http://www.supremecourt.gov/>

⁹⁰ *Gregg v. Georgia* 428, U.S . Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

⁹¹ *Lockhart v. Mccree*476, US 162, 164, 173 (1986). Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

⁹² *Gregg v. Georgia* 428, U.S. Retrieved December 31, 2013 from <http://www.supremecourt.gov/>

In landmark judgement on Texas Case of US in which Supreme Court restores the death penalty in 1976, through which 388 accused who had received the death penalty have been executed (Death Penalty When generate Death legally, 2007)⁹³.

The Above cases were of United States but when we will have a look on Indian Cases we will find that:

Section – 302 of Indian Penal Code, 1860 prescribe death penalty or life imprisonment as penalty for murder. It is not possible to hold that the provision of death penalty as an alternative punishment for murder is unreasonable and not in public interest. The deprivation of freedom consequence upon an order of conviction and sentence is not a direct and inevitable consequences of law but is merely incidental to the order of conviction and sentence is not a direct and inevitable consequences of the penal law but is merely incidental to the order of conviction and sentence which may or may not come into play, that is to say, which may or may be passed. Thus section – 302 of Indian Penal Code does not have to stand the test of Article – 19(1) of Constitution of India, 1950⁹⁴.

Supreme Court from Bacchan Singh V. State of Punjab⁹⁵ improve the statue by the ruling that death penalty will be awarded only on rarest of rare crimes, where other remedy is unquestionable⁹⁶. Till 1970 constitutional court require to mention the reason behind awarding imprisonment for life rather than death sentence in capital offence⁹⁷.

In Jagmohan Singh v. State of Uttar Pradesh⁹⁸ Supreme Court by supporting constitutionality of death penalty held it does not only prevent the crime but also it prevent the society. Honourable court also held that India could not take risk by experimenting with the abolition of death penalty but court clear a standard that death penalty will going to be an exception and not the rule in sentence. The circumstances of case will decide the awarding of capital punishment which is only to protect state security, public order and interest⁹⁹.

Therefore when we have a look on bare reading of Section 235 of Code of Criminal Procedure (Cr.PC) and Section 354 of Cr.PC it gave a right to accused for hearing of pre sentence under section 235(2) and compel the court to specify special reason for awarding death penalty rather for awarding death penalty rather than the alternative imprisonment for life section 354(3)¹⁰⁰.

⁹³ Michigan State University and Department of Information Centre. (2007). Death Penalty When Generates Death Legally. Michigan State University Press. Retrieved December 29, 2013
<http://www.deathpenalty.info.org/article.php?aid=477&scid>

⁹⁴ Bacchan Singh v State of Punjab, 1980 Cr.LJ at pp. 653- 657 (SC). Retrieved December 31, 2013 from
<http://www.indiankanoon.org>

⁹⁵ Bacchan Singh v. State of Punjab AIR 1980 Sc 898. Retrieved December 31, 2013 from
<http://www.indiankanoon.org>

⁹⁶ Ibid.

⁹⁷ Bacchan Singh v. State of Punjab AIR 2012 SC 1357. Retrieved December 31, 2013 from
<http://www.indiankanoon.org>

⁹⁸ Jagmohan Singh v. State of U.P AIR 1973 SC 947. Retrieved December 31, 2013 from
<http://www.indiankanoon.org>

⁹⁹ Ibid.

¹⁰⁰ Ibid.

In 1980 again the constitutionality of death penalty came as a question before court in *Bacchan Singh v. State of Punjab*¹⁰¹ Supreme Court emphasized on two question to be considered that:-

- Was there any uncommon about the crime?
- Circumstances of crime show its brutality to such an extent that accused must be penalized with death penalty¹⁰².

After this emphasis court describes the doctrine of rarest of rare cases which require uncommon crime and brutal circumstances of crime. Also while interpretation of section 354(3) of Cr.PC¹⁰³, under special reason requirement court came on conclusion that:-

“A real and abiding concern for the human life dignity postulates resistance to taking a life through laws instrumentality. That ought not to be done save in rarest of rare case when the alternative option is unquestionably foreclosed”¹⁰⁴.

Honourable court more clarify the Doctrine of rarest of rare case from the landmark judgement in *Macchi Singh and ors v. State of Punjab*¹⁰⁵, this case reflects the brutality of crime. It is a case of extraordinary brutality where due to family dispute Macchi Singh along with 11 other, killed 17 people in a single night through raid a number of homes for no reason. The court itself in the position of supporting public at large whose response is so shocked that they want the award of death penalty against the accused through the power holder of judiciary irrespective of their personal opinion¹⁰⁶. Also court in this judgment mention the condition to be fulfilled for awarding of death penalty along with illustration those are¹⁰⁷:-

- a) When the murder was extremely brutal in nature which arouse intense and extreme indication of the community.
- b) When the murder is committed for a motive which evinces total depravity and meanness.
- c) Dowry deaths or killing due to infatuation with another woman, of a member of a scheduled tribe or scheduled caste on grounds of his caste/tribe; offences to terrorize people to give up property and other benefits in order to reverse past injustices and to restore the social balance.
- d) In cases of multiple murders of a members of a particular family, caste, community or locality.
- e) Where the victim is an innocent child, helpless woman, aged or infirm person, a public figure whose murder is committed other than for personal reasons.

¹⁰¹ *Bacchan Singh v. State of Punjab* AIR 1980 SC 898. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁰² *Ibid.*

¹⁰³ Code of Criminal Procedure. (1973). Easter Book Company. Bare Act

¹⁰⁴ *Bacchan Singh v. State of Punjab* AIR 1980 SC 898. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁰⁵ *Macchi Singh and ors v. State of Punjab* AIR 1983 SC 957. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

According to court the five category of murder through which the doctrine of rarest of rare case shall be considered are¹⁰⁸ :

- a) Motive
- b) Manner of commission
- c) The extent of crime
- d) Anti social or repugnant nature of crime
- e) Personality of victim

On the above provided guideline court will decide the punishment¹⁰⁹.

In Ramnares and ors v. State of Chhattisgarh¹¹⁰ Supreme Court asked to award death penalty to accused for his brutal act done by gang rape and then murder. The victim has been raped by brother in law and his drunken friends and while gang rape she was been strangulated to death. The court while discussion imposed the principle of rarest of rare case for awarding capital punishment. Supreme Court while awarding death penalty focuses on the nature of (Mahapatro, 2013) offence, its circumstances, extent of brutality, motive concluded that it is essential for the court to examine the cases on their facts in light of announced principles. But apparently when we reflect these principles it says merely because a crime is heinous it may not be a sufficient reason to award capital punishment as the fact of both cases are different. The term rarest of rare focuses to be imposed on exceptional case with special reason. This principle has been divided into 2 parts i.e.¹¹¹:-

- Aggravating Circumstances
- Mitigating Circumstances

The above term means¹¹² (Mahapatro, 2013):

Aggravating Circumstances¹¹³: - A court may impose death penalty under his discretion only

-

- If the murder has been committed after pre planning and involve brutality.
- Murder involve exceptional immorality
- Murder is of member of armed force of union or of police or of any public servant committed which such member was on duty.
- Any consequence done by public servant in discharge of lawful discharge duty under section – 43 of Cr.PC, 1973.

¹⁰⁸ Macchi Singh and ors v. State of Punjab AIR 1983 SC 957. Retrieved December 31, 2013 from <http://www.indiankanoon.org>.

¹⁰⁹ Ibid.

¹¹⁰ Ramnares and ors v. State of Chhattisgarh AIR 2012 SC 1357. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹¹¹ Ibid.

¹¹² Mahapatro, S. (2013). Rarest of Rare doctrine and Concept of Social Engineering. Journal of international academic research for multidisciplinary - A global society for Multidisciplinary research. Volume – 1. Issue 5. ISSN: 2320 – 5083.

¹¹³ Ibid.

Mitigating Circumstances (Mahapatro, 2013)¹¹⁴: - Court shall take following circumstances –

- Offence committed under mental or emotional disturbance.
- Young age accused shall not be penalized with capital punishment.
- Probability that accused would not commit crime against society
- Through fact and circumstance it was believe that the accused was morally justified while committing offence.
- Act was done under duress.
- Condition of accuse prove that he was mentally weak.

Supreme Court clarify that in mitigating circumstances the bench shall not provide death penalty under rarest of rarest case.

After balancing both aggravate and mitigating circumstances and by following the principle court came on conclusion that the guilt must be provided life imprisonment. This decision was based on 3 important reasons¹¹⁵: -

- Accused were young
- Death caused by strangulation
- Victim was not a lawful married wife but having extra marital affair with accused i.e brother in law

While correlating the two landmark judgment of Bacchan singh v. State of Punjab¹¹⁶ and Jagmohon Singh v. State of U.P¹¹⁷ where capital punishment applied on principle of rarest of rare case was to protect the power from arbitrariness. In Jagmohan singh v state of U.P¹¹⁸ the purpose of death penalty should be established on the principles also mention that exercise of discretion on the principle is the safest possible safeguard for accused. In Bacchan Singh v State of Punjab¹¹⁹ it was held that in section – 354(3) of Cr.PC the special reason is very loose and hence needed an odd and random interpretation. But according to court establishing a standard is a policy matter to be done by legislation. Earlier in Jagmohan Singh v State of Uttar Pradesh¹²⁰ it was held that the awarding of death penalty will be court discretion by following the recognized principles.

¹¹⁴ Mahapatro, S. (2013). Rarest of Rare doctrine and Concept of Social Engineering. Journal of international academic research for multidisciplinary - A global society for Multidisciplinary research. Volume – 1. Issue 5. ISSN: 2320 – 5083.

¹¹⁵ Ramnares and ors v. State of Chhattisgarh AIR 2012 SC 1357. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹¹⁶ Bacchan Singh v. State of Punjab AIR 1980Cr.LJ 653 SC. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹¹⁷ Jagmohan Singh v. State of U.P AIR 1973 SC 947. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹¹⁸ Ibid.

¹¹⁹ Bacchan Singh v. State of Punjab AIR 1980Cr.LJ 653 SC. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹²⁰ Jagmohan Singh v. State of U.P AIR 1973 SC 947 .Retrieved December 31, 2013 from <http://www.indiankanoon.org>

The critics on death penalty by the court were found in *Bacchan Singh v. State of Punjab*¹²¹ case by justice Bhagwati gave a strong prudence on the doctrine given by justice that it may led to rise of greater amount of prejudice in decision making and a person life use to be dependent on the decision of bench which was violation of Article 14 and Article 21 of Constitution of India. Honourable justice raised an essential point by the term brutal , cool blooded etc describing the crime are not clearly specified categories it only express the intensity of judicial reaction to the crime which may not be uniform for all judges. Thus the decision of death penalty by one justice may not be considered by other¹²².

Another case in *Alok Nath Dutt v. State of West Bengal*¹²³ victim while sleeping was being murdered by his brother through strike on the head with harder substance over a property dispute. Abundant of cases were cited in which Supreme Court awarded either death penalty for imprisonment for life in similar situation. After a large discussion court finally awarded death penalty to accused specifying the reason that the nature of offence was cruel but the method applied will not be termed as cruel and the act of murder was committed due to bad habit which arises greed of money and the accused though that there was no other option to kill his brother¹²⁴. The decision of death penalty was based on circumstances evidence and not on precedent¹²⁵.

In *Macchi Singh v. State of Punjab*¹²⁶ court while pronouncing the principle of rarest of rare case also mention some illustration which include crime against women . Women and children considered to be the weakest section of society and crime against women are very shameful toward society. In this case the illustration given also include bride burning commit in demand of dowry cold blooded murder where one can trust on murderers where murder is occurred by cruelty , torture or inhuman acts awarded with death penalty. Crime against helpless women and innocent child against women felt in rarest of rare doctrine example rape etc¹²⁷.

In *State of U.P v. Satish*¹²⁸, court awarded death penalty to accused who raped a 6 year old girl. Court in conclusion after considering *Bacchan Singh v. State of Punjab*¹²⁹ and *Macchi Singh v. State of Punjab*¹³⁰ held that rape become abnormal and inhuman when it was done with an innocent child where the child does not even know that what is happening even known that what is happening with him/ her and which requires to the lowest level of

¹²¹ *Bacchan Singh v. State of Punjab*. AIR 1980Cr.LJ 653 SC/. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹²² *Ibid*.

¹²³ *Alok Nath Dutt v. State of West Bengal* 2006 S.C.A.L.E 467. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹²⁴ *Ibid*.

¹²⁵ *Ibid*.

¹²⁶ *Macchi Singh v. State of Punjab* AIR 1983 SC 957. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹²⁷ *Ibid*.

¹²⁸ *U.P v. Satish* AIR(2005)3 SCC 114. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹²⁹ *Bacchan Singh v. State of Punjab* AIR 1980 SC 898. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³⁰ *Macchi Singh v. State of Punjab* AIR 1983 SC 957. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

humanity when followed by heinous murder. Then act it become sinful or cruel when done with child.

On other hand Surrender Pal Shiv Balakal v. State of Gujrat¹³¹ in which another bench refuse death penalty where a teenage girl were raped and then murdered. The circumstantial evidence clearly providing accused did not had previous criminal record and he was a migrant labour from U.P and nothing establish that he will going to become a trouble for society in future and hence it's not fall under Doctrine of rarest of rare case.

In Absar Alam v. State of Bihar¹³² where the accused killed his mother by chopping her head. High Court considers it as an inhuman nature of crime and awarded death penalty but Supreme Court set aside the HC¹³³ decision and held that accused was a cultivator residing in village that is illiterate and had no control over his emotions and situations.

In State of U.P v. M.K Anthony¹³⁴ where accused killed his wife and both children as he was not able to afford the expenses of his wife's treatment, court held deceased must be awarded with life imprisonment as the accused commit crime due to poverty.

In Azmal Kasab Case who was caught in 26/11 Mumbai terror attack case where the accused was awarded death penalty by Supreme Court by observing that the whole crime was planned in Pakistan. To deal with this case court applied the guideline which was established in Bacchan singh v. State of Punjab¹³⁵ and Macchi singh v State of Punjab¹³⁶

¹³¹ Shiv Balakal v. State of Gujrat (2005)3 SCC 127. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³² Absar Alam v. State of Bihar AIR 2012 SC 968. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³³ High court

¹³⁴ State of U.P v. M.K Annthony AIR 1985 SC48. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³⁵ Bacchan Singh v. State of Punjab AIR 1980 Cr.LJ 653 . Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³⁶ Macchi singh v. State of Punjab AIR 1983 SC 957. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

CHAPTER – 8

VERIFICATION OF HYPOTHESIS

Hypothesis No. 01 – “The principle on which Supreme Court of India award Capital Punishment i.e. Rarest of rare case does not violate the constitutionality of Article – 21 of the Constitution of India”

In *Jagmohan singh v State of U.P*¹³⁷ the constitutional validity of capital punishment was challenged in SC. It was argued that right to life is basic fundamental right and capital punishment violates Article 21 of Constitution of India but court rejected the arguments and held capital punishment could not be said as violation of Article 21

In *Deena v. Union of India*¹³⁸ the execution of death penalty was brought before court and it was held that hanging is not a cruel method of executing sentence and thus not violate article 21

In *Mithu Singh v. State of Punjab*¹³⁹ SC declared Section 303 of IPC is unconstitutional because it is in contradiction to Article 14 and 21 of Constitution of India but capital punishment still remain in force in rarest of rare case. Article 21 of Constitution of India guarantee right to life to live and personal liberty includes right to live with human dignity. Further it says that no person shall be deprived of his right except according to procedure established by law. It states that state may have right to take away life in name of law and public at large.

In *Menka Gandhi v. UOI*¹⁴⁰, SC states that awarding death penalty of taking away of life must be just fair and reasonable. Every accused has right to be fair trial and hence depend on Natural and Procedural law states as:

- Death penalty should be awarded only in special case
- Death Penalty shall be treated as exceptional punishment which will only be imposed on special reason
- Accused has right of hearing
- Individualisation of sentence must be present considering individual circumstances.
- Death Penalty must be properly conferred by HC
- Right to appeal
- Accused has right to pray for pardon under article 72 and 161 of Constitution of India before president and governor
- Accused must not be tortured

¹³⁷ *Jagmohan v. State of U.P* AIR 1973 SC 947 Cr.LJ 3301973 SCC162 Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³⁸ *Deena v. UOI* AIR 1983 SC 1155. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹³⁹ *Mitthu Singh v. State of Punjab* (1983)2 SCC 277. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁴⁰ *Menka Gandhi v. UOI* AIR 1978 SC 597. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

- Accused has freedom to speech and expression in trial custody
- Accused has right to appoint qualified lawyer.

In *Rajendra Prasad v State*¹⁴¹ of U.P Justice Iyer was favour in abolishing [of capital punishment and retention must only for white collar crimes.

But in *Bacchan Singh Case SC* by majority overruled judgement of *Rajendra Prasad*¹⁴² held that death penalty under section 302 of IPC doesn't violate Article 21. India is a member of international convention civil and political rights in 1979 but it does not abolish death penalty but award only in reasonable manner and not arbitrary.

In *T.V Vantheswaran v State of Tamil Nadu*¹⁴³ the question arises whether delay in execution of death penalty sentence is violation of article 21 and on that condition whether death penalty should e replace with life imprisonment. Court held death penalty execution must be delayed in reasonable manner.

In *Triveni bai v. State of Gujarat*¹⁴⁴ court held that there must be a procedural fairness in trial and delay in death sentence till last breath of accused.

Thus, it can be concluded that above hypothesis is accepted.

Hypothesis No. 02 - “Though Capital Punishment to accused violates Human Rights in India but it is beneficial to the society”

Article 5 of UDHR, 1948 says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment¹⁴⁵.

The United Nation General Assembly documented in death penalty that there is a need for high standard of fair trial which use to be followed by every country and the procedures to be followed must be just, fair and reasonable.

European convention for the protection of Human Rights and Fundamental Freedoms in their 13th protocol which was open for signature of member states provides for the total abolition of death penalty in all circumstances. Capital Punishment has been recognised as cruel, degrading and inhuman punishment which infringes upon the basic human rights of the accused as expressed in article 3 of the European Convention on Human Rights. Article 3 of

¹⁴¹ *Rajendra Prasad v. State* AIR 1979 SC 916. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁴² *Ibid.*

¹⁴³ *T.V Vantheswaran v State of Tamil Nadu* (1983)2 SCC 68. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁴⁴ *Triveni bai v. State of Gujarat* AIR 1989 SC 142. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁴⁵ United Declaration of Human Rights. (1947). Article 5. Retrieved December 29,2013 from <http://www.un.org/en/documents/udhr/>

the UDHR also provides for right to life, liberty and security of human beings¹⁴⁶ (Ahmed, 2002).

There are several theories of punishment such as deterrent theory, preventive theory, retributive theory, reformatory theory and rehabilitative theory. Deterrent theory of punishment emphasises more on protection of society from offenders by eliminating offenders from society. According to this theory there are certain objectives of punishment that criminals should be deterred from breaking the Law. The deterrent punishment such as death penalty should be an example to society and persons who have tendency to commit similar crime and that if any one commits such a crime, he will be punished in the same manner. In this way it prevents people from breaking the law and it reduces crime rate in the society by elimination of criminals. Therefore, this theory has four justifications (1) Prevention, (2) Isolation, (3) Elimination and (4) Exemplary threat to potential criminals in the society¹⁴⁷ (Bhattacharya, 2013).

In International glance Article – 5 of United Declaration of Human Rights provided that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”¹⁴⁸.

Whereas United Nation and Economic and Social Council provide the guidelines regarding awarding of Capital Punishment those are¹⁴⁹:-

- The member countries that had not abolished capital punishment may impose it only on heinous crimes. And in India capital punishment use to awarded on rarest of rare case as we were following the guidelines of UNECOSOC.
- Death Penalty should not be awarded to pregnant women or insane.
- Minor below 16 year of age should not be awarded with capital punishment.
- According to Article – 14 of ICCPR capital punishment only awarded after fair procedure.
- There shall not be retrospective effect of capital punishment.
- One must get the right to appeal in upper court.
- Capital punishment shall not be executed in appeal or pardon.

As per the guidelines provided under UNECOSOC Indian judiciary uses to award death penalty only on rarest of rare case as it affect public at large and this rule does not violate the UNECOSOC guidelines.

Article 21 of the Constitution of India provides Right to personal life and liberty also it says that no person shall be deprived of his right except according to procedure establish by the

¹⁴⁶ Ahmed, I.G. (2002). Death Sentence and Criminal Justice in Human Right Perspective. Published in University of Calcutta

¹⁴⁷ Bhattacharya, T. (2013). The Indian Penal Code (ed. VII). Central Law Agency, Allahbad

¹⁴⁸ United Declaration of Human Rights. (1947). Article 5. Retrieved December 29,2013 from <http://www.un.org/en/documents/udhr/>

¹⁴⁹ United Nation Economic and Social Council [ECOSOC] (1996). Retrieved December 31,2013 from <http://www.un.org>

law. It means that if a person has been punished by the law even for the death penalty, it will term to be as just and fair¹⁵⁰.

Though on International vision taking one's life is violation of human rights but it neither violate the constitutionality of Article 21 of Constitution of India nor it term to be unfair according to Indian Constitution as in India public at large prevails which only says that if any person effect public at large again and again by his criminal nature his life should be taken off only if it seems good to the guardians of constitution because here not only the accused human rights has been violated but we have to also think from the victims point of view. If victims realise that the state is unenthusiastic to punish the offenders in the name of reform and correction, they may take the Law in their own hands and they themselves may try to punish their offenders and that will lead to mayhem. Therefore, to avoid this situation, there is a great need for prescribed and proportional punishment following Bentham's theory of penal objectives that pain of offender should be higher than pleasure he enjoys by commission of the crime ¹⁵¹(Ahmed, 2002).

Thus, it can be concluded that the above hypothesis is accepted.

Hypothesis No. 03 – “Judiciary in India while awarding death penalty use their discretionary power keeping in mind the welfare of public at large”

In chapter 8 of rarest of rare case above it was already discussed how the capital punishment takes place by the guardians of constitution. In Macchi Singh and ors. V. State of Punjab¹⁵² where the court itself in the position of public at large whose response is so shocked that they want to award death penalty to the accused as they affect public at large . Also court in his judgement mentions the condition to be fulfilled for awarding of death penalty along with illustration. According to court the 5 category of murder though which the doctrine of rarest of rare case shall be considered are motive, manner of commission, extent of crime, anti social or repugnant nature of crime , and personality of victim. Jury has discretionary power to award death penalty by keeping in mind these principles which support the public welfare and security.

Hence, it was concluded that hypothesis No. 03 has been proved.

¹⁵⁰ The Constitution of India. (1950). Eastern Book Company, Lucknow.

¹⁵¹ Ahmed, I.G. (2002). Death Sentence and Criminal Justice in Human Right Perspective. Published in University of Calcutta .

¹⁵² Macchi singh and ors v. State of Punjab AIR 1983 SC 957. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

Chapter – 9

CONCLUSION AND RECOMMEDATIONS

Preamble of India which says ‘**We the people of India**’ directly indicate it as a democratic country where public at large prevails. Laws are made for human beings so that one may live their life with dignity without affecting others right. When any crime committed by accused he must be punished by the state through law as it effect public or the innocent victims. Capital Punishment is the most severe punishment of the society. As being a member of Universal Declaration of Human Right, our country did not abolish capital punishment but they limit its scope by awarding capital punishment on rarest of rare cases. As per the topic of research that capital Punishment in rarest of rare case is just and fair? Answer is yes it is fair on the basis as -

Capital punishment which is seen as a cruel and inhuman in some jurisdictions is constitutional in India and some other countries, and the right to life and human dignity as provided by the Indian Constitution does not prevent an offender from being executed if found guilty of certain crimes by a Court of competent Jurisdiction. In other words the same constitution that has provided for these rights has also provided death as a penalty for certain criminal offences. In India the issue of death sentence is hotly debated and has attracted the attention of general public as well as government and non-governmental organisations. Though India is an active member of the United Nations and has signed and ratified most of the International Instruments on human rights, capital punishment still remains in our statute book. According to our judiciary it must be imposed in exceptional cases i.e. in rarest of rare cases with special reasons.

India is a nation of different culture, different types of people having their different way of thinking and living. The acts of crimes are not the trend of modern area but it has taken place from ancient period. Though in ancient period death punishment use to award on small offences but the only logic behind it to save the public at large and create horror in their minds so they stop doing crime from the fear of capital punishment. As the time changes many countries abolishes the death penalty. Our country did not abolish death penalty; the only reason is public at large.

Death penalty in rarest of rare case does not affect the human rights principles. As per the guidelines provided in ICCPR for those countries which does not want to abolish it says that one may award capital punishment but have to follow certain conditions.

According to the time the mentality of human beings also gets changed. As Mahatma Gandhi use to say that violence may harm the public also he use to say that ‘eye for an eye makes everyone blind’ but that time the conditions and circumstances of crime were not as brutal as now in modern area. Delhi Gang rape which was termed to be as the most brutal case in history, where because of this country gathered together and demanding justice for the girl Damini also demanding to save the future of nation. This revolution opened the eyes of judiciary and they amended the criminal law.

As per the deterrent theory imposing the harsh punishment will create fear and desist from criminal behaviour which will help to decrease the crime rates. In India deterrence theory has its existence. The scene of rarest of rare case to award death penalty in India came from the *Macchi Singh v. State of Punjab*¹⁵³ case where on the demand of public at large the accused was awarded with death penalty and SC laid down some principles to judge whether the act comes under rarest of rare case or not. The judiciary has discretionary power to decide that one must be sentenced with the death penalty or not but by following the guidelines provided in *Macchi Singh Case*¹⁵⁴. Thereafter in *Bacchan Singh Case*¹⁵⁵ the SC laid down two questions to judge the gravity of case which says how uncommon the crime is and does the circumstances of crime showing the brutality of the case to award with death punishment.

Here researcher deal with many cases above in the part 'Rarest of rare case' there are many cases which are brutal but they were not awarded with the death penalty as the only reason given by the judiciary that the accused will not going to harm public at large. Therefore instead of capital punishment they were awarded with life imprisonment. In case *Shiv Balakal v. State of Gujarat*¹⁵⁶ where accused was held guilty of committing rape of a teenager girl where court considered it as inhuman but does not provided capital punishment as it stated that the accused was a labour and the facts or circumstances nothing established that it will going to be a trouble maker for the society. Same as in *Absar Ahmad Case*¹⁵⁷ where accused chopped his mother head where court held that as this act was committed due to poverty and he is not trouble for society so should be award with life imprisonment. There are many cases discussed above which were favouring public at large.

From the overall study hence, it was proved that awarding capital punishment on rarest of rare case is just and fair as it were laid for the welfare of public at large which prevails in India.

So, the one who is doing an act which is so brutal and will going to affect public at large such accused should be awarded with capital punishment as by eradication the waste only one can keep the place clean.

RECOMMEDATION:-

After the study, the researcher humbly submitting some recommendation regarding death penalty before the law commission which was found lacking in judiciary. These are:

1. **Proper law should be laid down:** Many statues provide awarding of Capital Punishment. As it was found that there were many laws present for awarding death penalty but no one use

¹⁵³ *Macchi Singh v. State of Punjab* AIR 1983 SC 957. Retrieved December 31, 2013 from: <http://www.indiankanoon.org>.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Bacchan Singh v. State of Punjab* AIR 1980 SC 653. Retrieved December 31, 2013 from: <http://www.indiankanoon.org>.

¹⁵⁶ *Shiv Balakal v. State of Gujarat* AIR 1985 SC 48. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

¹⁵⁷ *Absar Ahmed v. State of Bihar* AIR 1985 SC 48. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

to provide the grounds under which such punishment should be penalized in rarest of rare case, which in result creates a lot of confusion in the mind of jurist that on what ground the same punishment should be awarded to the accused.

2. Decision must be taken with due care: India is a democratic country where public at large decision prevails. The guardians of constitution has discretionary power to award the death penalty by following the precedent decisions of constitutional court, but it was recommended that while awarding the capital punishment the Jurist should keep in mind that although the accused has committed brutal act but if there are some percent conditions indicating that the accused will not going to harm the society, on this ground he must not be awarded with death penalty and this will be decided by his past behaviour in the society before committing crime.

3. Death Penalty should not be delayed after its pronouncement: In *Triveni Bai v. State of Gujarat*¹⁵⁸ SC held that death penalty execution should be delayed on reasonable grounds, so that the accused may get fair trial. But here the researcher recommend that the jury shall not delay the death penalty after its pronouncement and this method should be abolished by imposing the duty on the constitutional guardians to properly analyze the act relating to the offence so that the accused may have fair trial and after analyzing only the Jurist must pronounce the death penalty which should not be delayed. Here the researcher does not mean that the accused should not get the right to appeal but that right must be provided for a specified period.

4. No age limit must be prescribed for awarding of death penalty: In our country no law permit to award death penalty to the juvenile but if any juvenile commits heinous crime like rape, murder etc which falls under the category of rarest of rare case it means that while committing the offence he has sufficient amount of understanding for the act he was committing and on this ground he must be awarded with capital punishment.

5. No pardon power for terrorist: Our Constitution grant pardon power to the President and Governor but if the accused found terrorist who affected public at large, then he must not get the right to appeal for the pardon.

6. Death Penalty must not be providing in haste: The constitutional courts before awarding death penalty should properly analyze each and every aspect of act by a panel of Jurist and shall not provide death penalty in haste.

7. Punishment should be according to the act: Judicial hanging is the only procedure in our country for executing death penalty. In India death penalty does not awarded on petty offences but it use to be pronounce only on rarest of rare case. The execution of death penalty must be according to the gravity of act committed by the accused which will create a fear in mind of criminals so that they may not commit such type of offence and harm the public.

¹⁵⁸ *Triveni Bai v. State of Gujrat* (1983)2 SCC 68. Retrieved December 31, 2013 from <http://www.indiankanoon.org>

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