

***Law Audience Journal, Volume 5 & Issue 4, 8th March 2024,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published
at <https://www.lawaudience.com/volume-5-issue-4/>, Pages: 29 to 41,***

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***



Cite this article as:

MS. SHREEJI SARAF, "Is Death Penalty Justified?", Vol.5 & Issue 4, Law Audience Journal (e-ISSN: 2581-6705), Pages 29 to 41 (8th March 2024), available at <https://www.lawaudience.com/is-death-penalty-justified/>.

***Law Audience Journal, Volume 5 & Issue 4, 8th March 2024,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published
at <https://www.lawaudience.com/volume-5-issue-4/>, Pages: 29 to 41,***

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

| Copyright © 2024 By Law Audience Journal |

(E-ISSN: 2581-6705)

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Law Audience Journal), an irrevocable, non-exclusive, royalty-free, and transferable license to publish, reproduce, store, transmit, display, and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email must be "Permission Required" at the email addresses given below.

*Email(s): lawjournal@lawaudience.com, info@lawaudience.com,
lawaudience@gmail.com.*

Phone (No(s)): +91-8351033361 or +91-7018537723,

Website: www.lawaudience.com.

Facebook: www.facebook.com/lawaudience.

Instagram: www.instagram.com/lawaudienceofficial.

Contact Timings: 10:00 AM to 8:00 PM.

Law Audience Journal, Volume 5 & Issue 4, 8th March 2024,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published
at <https://www.lawaudience.com/volume-5-issue-4/>, Pages: 29 to 41,

Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.

Disclaimer:

Law Audience Journal (e-ISSN: 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in Volume 5 & Issue 4 are the original work of the authors.

Views or Opinions or Suggestions (if any), expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.

All disputes are subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

Submit your article(s) for Publications at lawaudience@gmail.com, or
lawjournal@lawaudience.com, with subject as "Submission of Paper(s)
for Publication in Law Audience Journal".

***Law Audience Journal, Volume 5 & Issue 4, 8th March 2024,
e-ISSN: 2581-6705, Indexed Journal, Impact Factor 5.611, Published
at <https://www.lawaudience.com/volume-5-issue-4/>, Pages: 29 to 41,***

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

Publisher Details:

Law Audience Journal (e-ISSN: 2581-6705),
Sole Proprietorship of Mr. Varun Kumar, S/o Shri. Lehri Singh
Jaswal, S/o Late Shri. Parmeshwari Dass.

Ward No.5, Village & Post-Office Gagret, Sub-Tehsil
Gagret at Kaloh, District. Una, Himachal Pradesh, India,
Pincode: 177201.

Phone No(s): +91-8351033361 (WhatsApp) or +91-7018537723,

Email ID(s): lawjournal@lawaudience.com,
info@lawaudience.com or lawaudience@gmail.com.

Website: www.lawaudience.com.

Contact Timings: 10:00 AM to 8:00 PM.

Editor(s):

- *Dr. Amit Yadav, Editor-In-Chief at Law Audience Journal, Assistant Professor at School of Law, Manipal University Jaipur.*
- *Adv. Varun Kumar, Founder-CEO-Owner-Publisher-Publishing Editor at Law Audience Journal.*

Editorial Board Members Details Are Available At:

<https://www.lawaudience.com/editorial-board-members/>

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

I. INTRODUCTION:

India has been a developing country and so are the crime increasing at a high rate. There are a plenty of laws to prevent the happening of the crimes. In spite the existence of these laws the crimes have increased, and the punishments are not enough for these crimes. There are many forms of punishment followed or practiced in India, but capital punishment or death penalty is one of them. Capital punishment or death penalty is one of the highest forms of punishment that can be awarded to any criminal or offender in any society to maintain the law and order. This punishment has been a prevalent punishment since ages. One country should focus on eliminating the crime and not the criminals. God has given this life to us, and no one has the right to take it. In this regard rather than taking someone's life a different approach could be adopted like reformatory approach. Killing someone in the name of justice is not the only solution?¹

II. WHAT IS DEATH PENALTY?

Death penalty is also referred to as capital punishment or death sentence. It is a legal process in which an individual is put to death as a form of punishment by state for commission of a heinous crime committed by him and which is prohibited by law. The actual process of carrying out the punishment of killing the person is called execution. In Indian Penal Code 1860 (IPC)², the term death penalty has been defined under punishments. The term capital has been derived from a Latin origin from the word *Capitalism* which means *head*. IPC provides for death sentence usually for robbery with murder, committing murder, terrorism related crimes, etc. The power to suspend and pardon death sentence has been vested with the President and Governor. There are various techniques followed for the execution of capital punishment around the globe and some of them include hanging shooting inflicting lethal injection, but in India hanging is considered as the primary method or procedure for execution under Section 354(5) of the Criminal Code of Procedure. There has been a total of 720 executions since the

¹ CAPITAL PUNISHMENT: A COMPARATIVE STUDY, 3fc0Article-XII (Page 88-92).pdf (amity.edu) (last visited on January, 11, 2024)

² INDIAN PENAL CODE, aA1860-45.pdf (indiacode.nic.in), (last visited on January 11, 2024)

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

time of independence including the 4 convicts of Nirbhaya case as the official government statistics claim.

III. INDIA'S ATTEMPT IN REMOVING DEATH PENALTY:

In India there has been few tries to remove or abolish death penalty, but it has failed continuously. Private bill had been introduced in the Legislative Assembly in 1931 before independence to abolish death sentence punishment for criminal offenders but had been dismissed by British Home Secretary.

IV. CAPITAL OFFENCES IN INDIAN PENAL CODE 1860 (IPC)³:

| Section number | Description |
|-----------------------|---|
| Section 121 | Attempting or abetting or waging a war against the government of India: whoever attempts or abets or is successful in waging a war shall be punishable with death |
| Section 132` | Abetment by mutiny: anyone who abets in the commission of mutiny by an officer or soldier in the Army or Navy or Air force or if mutiny is the committed in the consequence of abetment shall be punishable with death. |
| Section 194 | Giving or fabricating false evidence resulting in the death or conviction of an innocent person: Perjury committed by any person with the intention to cause conviction of an |

³ CAPITAL PUNISHMENT IN India, CAPITAL_PUNISHMENT_IN_INDIA.pdf (loksabhadocs.nic.in), (last visited on January, 12, 2024)

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

| | |
|-----------------|--|
| | offence which is capital can face death penalty. |
| Section 195 (A) | Threatening or inducing any person giving or fabricating false evidence resulting in the death or conviction of an innocent person: the person who threatens or induces any person for committing perjury resulting in the conviction or death of any person can face death penalty. |
| Section 302 | Murder: any individual who commits murder shall be imposed with the punishment of death penalty |
| Section 305 | Aiding or giving assistance to a suicide by a minor, insane person or intoxicated person: any person below the age of majority, insane person or a person who is intoxicated commits suicide and any person who has aided in the above-mentioned act shall be punishable with death penalty. |
| Section 364 (A) | Kidnapping for ransom: any person who kidnaps an individual and threatens to cause death & harm to the abducted person can face death penalty. |
| Section 376 (A) | Rape that causes death or results in persistent vegetative state of victim: any person who commits rape and in the commission of such offense inflicts an injury which causes death or results in persistent vegetative state of the |

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

| | |
|-----------------|---|
| | victim shall be imposed with the punishment of death penalty. |
| Section 376 (E) | Certain repeat rape offenders: any person who has previously already committed the offence of rape and later again has committed the same offence shall be punishable with death. |
| Section 396 | Dacoity with murder: persons committing dacoity and in the commission of the same commits murder shall be punishable with death penalty. |

V. CAPITAL OFFENCES IN OTHER LAWS:

| Section number | Description |
|---|--|
| Section 3 (2)(i) | The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 |
| Sections 10 (b)(i) & 16(1)(a) | The Unlawful Activities Prevention Act, 1967 |
| Sections 34, 37 and 38(1) | The Air Force Act, 1950 |
| Section 31A (1) | The Narcotics Drugs and Psychotropic Substances Act, 1985 |
| Section 4(1) | The Commission of Sati (Prevention) Act, 1987 |
| Section 5 | The Defence of India Act, 1971 |
| Section 3 | The Geneva Conventions Act, 1960 |
| Sections 34, 35, 36, 37, 38, 39, 43, 44, 49(2)(a), 56(2) and 59 | The Navy Act, 1957 |

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

Sections 14, 17, 18(1)(a) and 46

The Border Security Force Act, 1968)

VI. CRIMINAL OFFENDERS DISCHARGED FROM THE PUNISHMENT OF DEATH PENALTY⁴:

- When any person who is still a minor has committed a crime cannot be put to death under the Indian laws. Minor is person who has not attained the age of majority i.e. below 18 years of age. There is separate law governing the crimes committed by a minor and is called Juvenile Justice Act (2015). Minors has been excluded because since they have not reached the age of adulthood there is a chance of improvement and which in turn is beneficial.
- Pregnant women are those persons who on the commission of crime cannot be put to death under the Indian laws. It was reasoned that when a pregnant woman is been executed through the process of hanging it kills both the pregnant women and the child she is bearing. The unborn child has not done any wrong and therefore cannot be punished even.

VII. CRITERIA FOR RAREST OF RARE:

The introduction of the principles as what would constitute the doctrine of rarest of rare was pointed out by the supreme court or laid down in the landmark judgement of *Baachan Singh V State of Punjab*⁵. The supreme court mentioned that death penalty should be awarded to the offenders as a mode of punishment for their wrongdoing in the rarest of rare cases. This was suggested by the concerned court to reduce the used of capital punishment or death sentence. The application of the principle of rule of law by Supreme Court in this case ended up in formulating certain illustrative guidelines and stated that death penalty is constitutional only when the option of awarding life imprisonment is unquestionably foreclosed and when death

⁴ A Study on Execution of Death Penalty, A_Study_on_Execution_of_Death_Penalty_ijarjie14218.pdf, (last visited on January, 12, 2024)

⁵ [(1980) 2 SCC 684]

Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf (B.A.LL.B (Hons)), Amity University, Kolkata, Email Id: sreejisaraf93@gmail.com.

penalty acts as an alternative to the punishment of life imprisonment. This doctrine does not have any particular legal definition, but it mentions that this punishment should only be granted when there is a danger to the society from the life of the accused. It was completely left on courts discretion to reach to the conclusion. This doctrine got more clarification in the case of *Macchi Singh V State of Punjab*⁶. The apex also laid down the principles or aspects of crime that needs to be taken into consideration when applying this doctrine and some of the aspects are as follows: crime, what is the nature of the crime and what is degree or measure of the crime.

VIII. CASE LAWS REGARDING CAPITAL PUNISHMENT⁷:

*Ediga Anamma vs. The State Of Andhra Pradesh (AIR 1980 SCC 684)*⁸, In this case the Supreme Court held that life imprisonment for the offence of murder shall be considered a rule and death penalty should be considered as an exception to the above stated rule. It even laid down that a particular reason should be given if the concerned court decides to award death penalty to the accused.

*Manoj & Others vs. State Of Madhya Pradesh*⁹, In the mentioned case the Supreme Court laid down certain guidelines and provisions related to death penalty. One of them is the collecting of alleviating circumstances of the offender or accused at the initiation of the trial stage. The concerned court must obtain information from the accused and the state. For the offence carrying death sentence or capital punishment the state must produce all the material relating to its which has been collected earlier before the sessions disclosing the psychological evaluation of the accused.

*Maachi Singh vs. State of Punjab*¹⁰, Seventeen lives were taken because of quarrel between the families. The Supreme Court in the mentioned case described the alleviating or provoking

⁶ 1983 AIR 957

⁷ Primelegal, <https://primelegal.in/2023/05/15/capital-punishment-in-india-with-case-laws/>, (last visited on January 12, 2024)

⁸ (AIR 1980 SCC 684)

⁹ Criminal Appeal No. 1030/2023

¹⁰ [(1980) 2 SCC 684]

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

factors and also mentioned the circumstances in reference to the application or enforcement of the death sentence as the punishment. There are two circumstances under which capital punishment can be imposed. One of which is when the crime is very rare and when there is no scope or alternative remedy other than to award death sentence to the accused and the latter one is when the crime causes disturbance or shocks the collective morals of a society. There are certain categories in which capital punishment can be imposed:

- When the offence is committed in such a manner which is cruel, revolting, deformed or drastic manner which is likely to increase the community's intense indignation.
- Murder that incites social resentment (for example, dowry death)
- When the murder is committed in relation to the victim's situation which is that of an innocent child, person is in the position of dominance, a helpless woman, when it is rather for political reasons and not for personal reasons, murder of a recognised person and so on.
- Murder of a family or a big group of people from a particular caste.

Shabnam vs. Union of India, in this case the court gave capital punishment to a woman. This was for the first time in the history Indian Criminal Justice system that a woman was imposed with death penalty as a punishment and hanged. Shabnam with her lover had killed the members of her family simply because her family members weren't allowing her to marry the person she loved. This incident took place in the year 2008. She had planned a brutal murder of her family which amounted to the alleviating factor. She even submitted a mercy to the president, but it was rejected.

Vinay Sharma vs. Union of India¹¹, this was one such case which had caused or brought about a serious shock and disturbance in the society. This case is popularly known as the Nirbhaya gang rape case. This incident occurred in a bus of Delhi. The victim that is the girl was brutally raped and tortured by six accused which in result led to the death of the girl. An iron rod was inserted in her private parts and after that she was thrown naked on the road from a moving

¹¹ WRIT PETITION (CRL.) NO.65 OF 2020

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

bus. The girl even faced or suffered severe mental and physical torture which resulted to her death. One of the accused had already committed suicide in jail and in the remaining five accused one was a juvenile when the case was brought before the court. The accused who was a juvenile was not sentenced top death. The remaining four accused were awarded with the punishment of death sentence, and they were also hanged in the year 2020. The court considered aggravating factors. Life imprisonment in this case seemed inadequate to the concerned after keeping in mind the relevant the circumstances of the court and amount of inhuman torture committed on the girl which resulted in her death.

Hyderabad Veterinarian Case, In the mentioned case the four accused were monitoring the female doctor who was all alone while she parked her scooted in the Shamdabad Plaza and from there she took a taxi. In her absence the four accused punctured her scooter. When she returned from her work, she noticed that her scooter was punctured. During this time, it was when the accused came and started forcing and raping her and burning her body.

Bachan Singh vs. State of Punjab, this could be considered as one of the landmark judgements with respect to death penalty. As it was in this case that rarest of rare doctrine was introduced and the court had upheld the constitutionality of death penalty. The rarest of rare doctrine states that death penalty as a punishment could only be implied in the rarest of rare cases when the alternative option is unquestionably foreclosed. The supreme court mentioned the particular reasons that needs to be taken into account while imposing death penalty must include both the offence and the offender. Both the aggravating and mitigating factors should be given relevant weightage before the particular reasons are stated. The latter could consist of offenders mental state, age or the fact that were committing the offence under the directions of any superior. The court in this case gave discretion to the judges rather than establishing categories for applying their prudent mind in giving justiciable reasons for passing the order of death penalty.

Shankar Kisanrao Khade vs. State of Maharashtra, In the mentioned case the apex court proposed a triple test i.e., Crime test, criminal test and rarest of rare cases. Crime test should be 100% when the murder is done in a brutal manner. In the case of criminal test, the alleviating factors like the young age of the offender, there was a lack of intention to commit the crime, no past record of criminal activities and a possible chance of reformation, then these should be

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

taken into consideration. The doctrine of rarest of rare case should apply in the application of death penalty.

Jagmohan vs. state of U.P.¹², In this case the legality of death penalty was put in question. And further it was asserted that it violated the person's entitlement to life Article 21. The mentioned article plays a very significant role in the fundamental rights which are mentioned in the Indian constitution. However, court dismissed all the contentions regarding the death penalty and said that it does not infringe the fundamental right of any individual. The court was in favour or supported the constitutionality of the capital punishment.

Maneka Gandhi vs. Union of India¹³, In the mentioned case it came to an observation that the wrong doer would have several rights, and this would rely upon natural and procedural laws. The stated punishment is exceptional and should be granted in exceptional cases only, the offender should have the right of legal representation, right to appeal for pardon or reduction, before president or governor under article 72 and article 161 of constitution. The accused should even be given the chance of proper hearing; the court must not act in a way which is biased. It should rather act in a way which is just, fair and reasonable. It even held that the execution of death penalty should be reasonable rather than arbitrary.

IX. SHOULD DEATH PENALTY CONTINUE IN INDIA?¹⁴

Whether or not death penalty should continue in India is that question which has been debatable since time immemorial in India. India had even made an attempt to remove death penalty as the mode of punishment, but it was not successful. Some say that or rather regard death penalty as a crime against both society and humanity and further mentions that God has gifted this life and no authority or law, or any individual has the right to take it away. They even state that such mode of punishment should be declared unconstitutional and is against human rights. Article 21 of the Indian constitution states that no person shall be deprived of their life and

¹² (AIR 1973SC 947)

¹³ (AIR 1978 SC 597)

¹⁴ A Study on Execution of Death Penalty, A_Study_on_Execution_of_Death_Penalty_ijarii14218.pdf, (last visited on January, 13, 2024)

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

personal liberty. This should be further protected. Well, there are both negative and positive aspects in relation to the question whether death penalty should continue or not? Or rather death penalty is justified.

Taking into consideration the positive aspects they can be stated as follows:

- *Punishment of death penalty is not only justified in a country like India, but it also found intact in other countries all over the world. In serious offences like murder and rape death penalty can be considered as justified. For example, in the very popular case Nirbhaya gang rape case, the 4 victims were awarded with death penalty. It was justified in this case because the punishment of death penalty served as a form of justice to the victim who had undergone severe mental and physical torture, and which resulted in her death. The accused have committed a very heinous crime, and they did not have the right to live.*
- *There are several important principles that are laid in the retribution theory. Few of them that can be taken into account are any individual who has committed any wrong needs to be punished. The person who is only guilty deserves punishment. The wrongdoer or offender should be punished in accordance with seriousness of the crime committed by that person. Any individual who has done any wrong should suffer in order to provide justice to the aggrieved person or the victim. Suffering should be in a manner proportionate to the offence committed by him. Each criminal should deserve punishment for the offence committed by him.*
- *People who have committed murder by taking the life of someone else they themselves don't deserve the right to life. Capital punishment is the justiciable form of punishment for them as it serves justice to the relatives of the victim and also to the moral indignation of all law-abiding persons.*
- *For serious offenders of crime life imprisonment is insufficient and therefore capital punishment the perfect or adequate punishment for them.*
- *Indian criminal justice system has designed or formulated laws and procedure in such a way that it ensures that the only deserving offenders of death are executed or hanged. Many offenders oppose death penalty and want life imprisonment as their form of*

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

punishment. But it should be accounted that these criminals have a very slight or no chance at all to reform.

- *Abolishing death penalty can only increase the rate of crime in society and encourage the criminals. Executing a criminal of a serious offence will set an example for other offenders that this will be consequence of committing a serious crime which is against the society.*
- *One another positive aspect of imposing death penalty is that it ensures public safety. Hanging or executing threatening criminals removes them from society and makes it a safer society to live in for other human beings. This should be particularly done in case of those individuals who have committed atrocious crimes and there is no chance of reformation in this case.*

Considering the negative aspects it can be stated as follows:

- *It has been discovered that the Indian criminal justice system is faulty in the aspect that often the innocents are killed. It mentions the innocent person guilty when the one party has presented false evidence, and it has led to the execution of the innocent person. Only the wrong doer should be punished and the innocent ones.*
- *In few cases it has been observed that the evidence is flawed by the active participation or on the role of police and other officials. For example, the supreme court had executed 60 people between January 2000 and June 2015. Later on, it came to the knowledge that the respected court had made mistake in the execution of 15 of them.*
- *Punishment is essential for the criminals or offenders of the crime, but it is necessary that it should done in an equal or same manner in the way the victim was killed which is more violent.*
- *When the offender is being executed it is not just a punishment but an act of killing someone in the name of justice. Opposing death penalty does not imply that individual is in support of the offender. Imposing death penalty reduces or eliminates the chance of reformation or betterment that could have improved the life of the offender.*

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

- *Capital punishment is that one system which requires a considerable number of resources to administer. This might include the cost of trials, appeals and the actual execution process.*
- *Studies have shown that imposing death penalty as a form of punishment has not really served the purposed in lowering crimes in the society. There is no proper evidence that the crime rates have decreased, and society has become a safe place to live in.*

Imposing death penalty cannot be the only last resort of punishment many justices' system have started looking into reformative approach rather than deterrent theory. Sometimes the criminals could be given a second chance to correct their wrongdoing. This would include community work or some other work that includes the scope of improvement in the mindset of the offender. Capital punishment is although a very controversial and debatable topic. This topic has been in controversy since a long period, but it has both supporters and opposers. Supporters argue that it is beneficial for the public safety and deterrence but the opposers lays down that it can lead to execution of innocent people or wrongful convictions and same even violates human rights. One one hand it being argued that death penalty should be abolished while the proposed new law or act that has been passed which Nyaya Sanhita Bill 2023 has increased the number of crimes that could attract death penalty from 11 to 15. Although death penalty is considered as violation of human rights, but it is beneficial for the society.

X. CONCLUSION AND SUGGESTIONS:

Death penalty should be fair, and its execution of sentence is properly achieved, not only in paper but also in real life. It should even be checked that no innocent person is falsely convicted. Death penalty or capital punishment should only be given or imposed when the judge is absolutely satisfied that the crime that has been committed that is very gruesome and the accused is guilty, and it serves as justice to the victim. The punishment should be proportionate to wrongdoing and the gravity of the crime. While imposing such punishment both the mitigating and alleviating factors should be considered; all the relevant circumstances should be taken into mind by the lawmaker. It should not be such that it leads to execution of

***Title: Is Death Penalty Justified?, Authored By: Ms. Shreeji Saraf
(B.A.LL.B (Hons)), Amity University, Kolkata,
Email Id: sreejisaraf93@gmail.com.***

an innocent person or individual. Death penalty as a form of punishment was established to punish the wrong doers. So, it needs to be ensured by the justice system that no innocent person is being executed. However, taking someone's life in the name of justice is considered a moral wrong. It was left on the judge's discretion to decide upon the imposing of death penalty in a certain case of crime. But it should be left on the society at large or a proper law established committee involving eminent persons having specialised knowledge to decide whether there is a need to impose death penalty or not in a particular case. The punishment has been imposed in rarest of rare case, but this doctrine has always been in controversy. A separate criteria or factors should be listed in determining whether the crime falls in the doctrine of rarest of rare cases. Even though death penalty has been imposed still there has been an increase in the number of heinous crimes and it has not been helpful in eliminating the crime rates. While judiciary is exercising its power in relation to death penalty it should consider in eliminating the crime and not the criminal. Death penalty is a very sensitive topic, and it should be considered for review. There should be organisation of various conferences on both international and national level. This has been abolished in many countries and that countries have started considering the reformist approach.

References:

- <https://legalvidhiya.com/capital-punishment-pros-and-cons-when-can-it-be-justified/#:~:text=In%20addition%2C%20proponents%20argue%20that,risk%20of%20executing%20innocent%20people>.
- <https://www.dw.com/en/india-refuses-to-abolish-death-penalty/a-64934705>
- https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/CAPITAL_PUNISHMENT_IN_INDIA.pdf
- <https://www.indiacode.nic.in/bitstream/123456789/2263/1/aA1860-45.pdf>
- https://ijariie.com/AdminUploadPdf/A_Study_on_Execution_of_Death_Penalty_ijariie14218.pdf
- <https://www.indianbarassociation.org/constitutionality-of-death-penalty/>
- [https://amity.edu/UserFiles/aibs/3fc0Article-XII%20\(Page%2088-92\).pdf](https://amity.edu/UserFiles/aibs/3fc0Article-XII%20(Page%2088-92).pdf)