

"RETAINING DEATH: A CRITICAL ANALYSIS OF CAPITAL PUNISHMENT IN INDIA'S EVOLVING LEGAL FRAMEWORK"

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ABBREVIATIONS

IPC	Indian Penal Code
CRPC	Criminal Procedure Code
BNS	Bharatiya Nyaya Sanhita
BNSS	Bharatiya Nagarik Suraksha Sanhita
POCSO	Protection of Children from Sexual Offences Act
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations
SC	Supreme Court
SCC	Supreme Court Cases
DPIC	Death Penalty Information Centre
NLU	National Law University

LIST OF LEGISLATIONS

- 1) The Constitution of India, 1950.
- 2) The Indian Penal Code, 1860.
- 3) The Bharatiya Nyaya Sanhita, 2023.
- 4) The Bharatiya Nagarik Suraksha Sanhita, 2023.
- 5) International Covenant on Civil and Political Rights, 1966.
- 6) The Juvenile Justice Care and Protection Act, 2015.
- 7) The Protection of Children from Sexual Offences Act, 2018.
- 8) The Air Force Act, 1950.
- 9) The Andhra Pradesh Control of Organised Crime Act, 2001.
- 10) The Arms Act, 1959 (Repealed).
- 11) The Arms Act, 1950.
- 12) The Assam Rifles Act, 2006.
- 13) The Bombay Prohibition (Gujarat Amendment) Act, 2009.
- 14) The Border Security Force Act, 1968.
- 15) The Coast Guard Act, 1978.
- 16) The Commission of Sati (Prevention) Act, 1987.
- 17) The Defence of India Act, 1971.

- 18) The Geneva Conventions Act, 1960.
- 19) The Explosive Substances Act, 1908.
- 20) The Indo-Tibetan Border Police Force Act, 1992.
- 21) The Karnataka Control of Organised Crime Act, 2000.
- 22) The Maharashtra Control of Organised Crime Act, 1999.
- 23) The Narcotics Drugs and Psychotropic Substances Act, 1985.
- 24) The Navy Act, 1957.
- 25) The Petroleum and Minerals Pipelines (Acquisition of rights of user in land) Act, 1962.
- 26) The Sashtra Seema Bal Act, 2007.
- 27) The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- 28) The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002.
- 29) The Unlawful Activities Prevention Act, 1967.
- 30) The Islamic Penal Code, 2012.
- 31) UP Jail Manual, 1956.

LIST OF CASE LAWS REFERRED

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2. Sohan Lal @ Sonu v. State (2015).
3. Begari Ravi Kumar vs the State of Telangana (Criminal Appeal No. 88 of 2024).
4. Dileep, s/o. Devarajan v State of Kerala (CrI.MC No. 3789 of 2024) P5.
5. Vijay s/o Manoharrao Jawanjil v State of Maharashtra (Criminal Appeal No. 185 of 2021) P11,24.
6. Furman v. Georgia, 408 U.S. 238 (1972).
7. Gregg v. Georgia, 428 U.S. 153 (1976).
8. McCleskey v. Kemp 481 U.S. 279 (1987).
9. Roper v. Simmons 543 U.S. 551 (2005).
10. S v Makwanyane 1995 (3) SA 391 (CC).
11. Bachan Singh v. State of Punjab, AIR 1980 SC 898.
12. Machhi Singh v. State of Punjab, 1983 AIR 957.
13. Jagmohan v. The State of U.P., 1973 AIR 947.
14. Rajendra Prasad v. State of Uttar Pradesh, 1979 3 SCC 646.
15. Dalbir Singh v. State of Punjab, (1937).
16. Dalbir Singh and Ors v. State of Punjab, (1979) 3 SCC 745.
17. Nandhini Satpathy v. P.L. Dani & Anr 1 (1978) 2 SCC 424.
18. DK Basu v. State of West Bengal (1997) 1 SCC 416, paragraphs 18 and 35.
19. Shabnam v. State of UP, 2015 para 29.
20. Ediga Anamma v. State of Andra Pradesh (1974) 4 SCC 443.
21. Nalini v. State of Tamil Nadu (1999) 5 SCC 253.
22. Renuga Shinde & Anr v. State of Maharashtra Criminal Appeal No: 722 of 2015.
23. State of Himachal Pradesh v. Nirmala Devi, Cr. M.P. No. 1153 of 2018.

ABSTRACT

The replacement of the Indian Penal Code (1860) and the Code of Criminal Procedure (1973) with the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 marks a major shift in India's criminal justice framework. A key change is the expansion of offences punishable by the death penalty from 12 to 16, raising serious concerns about the increased risk of

wrongful executions. This concern is amplified by the 2019 amendment to the POCSO Act, which introduced harsher punishments for child sexual offences without adequately addressing the potential for tutored testimony from child witnesses.

These developments come amid systemic issues in the Indian Criminal Justice System, including procedural delays, lack of pre-trial safeguards, inadequate legal representation, and socio-economic disparities that disproportionately impact poor and marginalized individuals. Notably, people from disadvantaged backgrounds face higher sentencing rates and often lack access to effective legal remedies, making the death penalty a tool of class-based discrimination.

This study critically examines whether recent legal changes heighten the risk of unjustified executions and explores the influence of socio-economic status in capital sentencing. It also compares India's stance with countries that have abolished or retained the death penalty, analysing differences in legal reasoning and safeguards. In light of the global trend toward abolition 112 countries by 2023 India's retention of capital punishment calls for urgent re-evaluation. This research argues for a reconsideration of the death penalty in India through the lens of fairness, proportionality, and human rights.

CHAPTER – I

1.1 Introduction and Background

Capital punishment is the highest form of punishment in our Indian legal system. Our history has witnessed so many death penalty verdicts from the apex courts to lower courts. Still, whether the need of death penalty as a form of punishment in our legal system is required or not this question has been a long debate for a period of years, However, there are so many elements are play a pivotal role in giving the death sentence, like the discretion of judges, socio-economic status of the convict, gender of the perpetrator, and evolution of laws.

The death penalty used to be accepted as necessary and inevitable by the rulers. For centuries, no one has questioned its ability to reduce crime or its impact on society in general. Especially the people involved in the process. But today, a question is rising among people about the death penalty and whether this form of punishment is discriminatory. Nowadays, people are more concerned about human dignity, liberty, and equality. Capital punishment is often used as a means of suppressing political dissent. This punishment is arbitrarily and capriciously imposed on the poor and minorities. Article 21 of the Indian Constitution provides that, "The state shall not deprive a

person's right to life and personal liberty except by the procedure established by law".⁴⁷⁰

Usually, four theories of punishment prevail in criminal jurisprudence they are: 1. Deterrent theory, 2. Retributive theory 3. Preventive theory 4. Reformatory theory, the Death penalty comes or falls under both the deterrent and retributive theory. The concept of retributive theory is built on the bedrock of revenge.⁴⁷¹ In this form of punishment, the offender must be responsible for the act for which they are held liable. This theory allows defences of insanity and intellectual disability. **Mens rea**, or guilty conscience, is considered the deciding factor for all crimes, not only death penalty offences. If an insane or lunatic person possesses criminal intent, how can they be exempted from punishment? These are reasons why its supporters believe that this theory is rooted in fairness and justice. However, its critics call it barbaric due to their moral objections to the concept of revenge.⁴⁷²

The deterrent theory relies on making the criminals aware that the crime is not worthwhile in proportion to the punishment.⁴⁷³ While giving

⁴⁷⁰ The Constitution of India, 1950, Art. 21.

⁴⁷¹ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P307-310).

⁴⁷² Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P307-310).

⁴⁷³ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P307-310).

the punishment, its effects on the general public are considered. One of the major problems with this theory is that if the punishment is too lenient, it does nothing to prevent crime. On the other hand, if the punishment is excessively harsh, it will only gather the public's sympathy.⁴⁷⁴ It can be observed that even a death sentence has failed to deter the most heinous crimes. On the other hand, the preventive theory strongly relies on the fact that society could be improved if the criminal is unable to commit the crime. Deterrence can be achieved through various methods, including giving the offenders jail time and reforming them. However, incarceration is the most popular and practised form of preventative punishment.

Reformative theory aims to transform criminals into law-abiding citizens. This theory is centred around individualism. The idea of reformative justice can be observed in the Juvenile Justice Care and Protection Act of 2015. Probation, parole, and indeterminate sentences are all critical aspects of the reformative theory of punishment. The Indian Penal Code 1860 also allows for the commutation of sentences based on certain requirements. In the case of habitual criminals, this theory is not applicable. Most victims consider this approach unfair since it is very offender-centric. People believe that, in many cases, this theory of punishment fails to deliver justice.⁴⁷⁵

In 2016, the National Law University of Delhi published a detailed report on the death penalty, this report elaborately discussed about "Administration of death penalty in India" and what kind of difficulties had been undergone by the convicted death penalty prisoners in the pre-trial stage and after the final verdict, and this report comprehensively discussed about how the socio-economic status of the perpetrators plays a crucial role in the criminal trial proceedings, and what kind of legal

assistance they got from the legal services authority and privately recruited advocates, apart from that this report furtherly gave detailed statistical data of the death convicts throughout the country but some states didn't give permission for their research except those states they included all states in their data, that data helps to scrutinize the proportionality of the capital punishment in India, Furthermore, this report discussed about the alienation between the perpetrators and Criminal Justice System how they treated by the investigation agencies in the pre-trial investigation stage etc.⁴⁷⁶

To replace the Protection of Children from Sexual Offences Act, of 2012 the parliament introduced the Protection of Children from sexual offences Act (Amendment Bill), 2019 the primary objective of this act is to enhance the punishments for child-oriented sexual offences and this bill imposed higher and harsher punishments on the perpetrators who are indulging in the sexual offences or harassments compare to the previous act. As per this amendment, the punishment for penetrative sexual assault increased to 10 years from 7 years if anyone commits a penetrative sexual assault with a child below the age of 16 years, they would be punished by imprisonment, which shall not be less than 20 years, it may extend up to life.⁴⁷⁷ under the POCSO Act, the maximum punishment for Aggravated penetrative sexual assault is death, so whoever indulges in the aggravated penetrative sexual assault with a child will be punished by up to 20 years of Imprisonment or Death.⁴⁷⁸ Furtherly, to curb child pornography, this amendment bill provides that those who use a child for pornographic purposes should be punished with imprisonment for up to five years and a fine and this amendment introduced some provisions in the aspect of victim-centric then this amendment act expanded the scope of

⁴⁷⁴ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P307-310).

⁴⁷⁵ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P307-310).

⁴⁷⁶ Death Penalty in India Report, 2016 of National Law University Delhi, 2016.

⁴⁷⁷ The Protection of Children from Sexual Offences (Amendment) Act, 2019.

⁴⁷⁸ The Protection of Children from Sexual Offences Act, 2012.

some provisions for the broader approach of the child based offences⁴⁷⁹ and the notable factor is that in the recent times, the concern over the “possibility of tutored evidence” has arisen due to the frequent acquittals of the high courts in India based on the tutored depositions of the child so this possibility of tutored evidence turned as a problematic zone to examine because this enhanced provisions of this POCSO amendment act creates an apprehension whether the tutored evidence of the children leads to unfair convictions or unfair capital punishments? because the tutored evidence of the child plays a prominent role in the POCSO trials.

1.1.1 Retributive Effect of Death Penalty

Death sentences have been used as an effective weapon of retributive justice for centuries. The justification advanced is that it is lawful to forfeit the life of a person who takes away another’s life. A person who kills another must be eliminated from society, and therefore, his execution is justified. The motive for the death penalty may include vengeance, which is a compensatory and reparatory satisfaction for an injured party, group or society. When regulated and controlled by law, vengeance is also socially useful. Legal vengeance solidifies social solidarity against law-breakers and probably is the only alternative to the disruptive private revenge of those who feel harmed. Commenting on the effectiveness of the death penalty, Thorsten Sellin observed that it has failed as a measure of social protection, and also as an instrument of retributive justice. Citing illustrations from the United States to support this contention, he argued that the number of executions is far less than the number of murders committed annually, which indicates that the death sentence is no longer looked at with favour and is falling into disuse rapidly. Another argument that needs attention regarding the declining effect of the death penalty is that even after the award of this

sentence, in most cases, it is either commuted or pardoned as a last resort and its final execution is seldom carried out.⁴⁸⁰

1.1.2 Global Perspective of Death Sentence

An international survey was carried out way back in 1962 by the United Nations.⁴⁸¹ However, confirmed that neither suspension nor abolition of the death penalty had any immediate effect in increasing the incidence of crimes punishable with a sentence of death. The countries that had abolished capital punishment, notably Germany, Austria, Scandinavia, the Netherlands, Denmark and some Latin American States, reported no ill-effects of abolition.⁴⁸²

It is significant to note that with the abandonment of the torturous and barbarous methods of inflicting the death penalty, the meaning of the term 'capital punishment' now extends only to a death sentence for murder or homicides. Particularly, in Western countries rape is no longer a serious crime for two main reasons. Firstly, with general laxity in morality, the gravity of this offence is fast declining. In the second place, scientists have established rape as a mere passive surrender by the victim because in their opinion it is practically impossible to commit rape unless the victim is made unconscious. Likewise, treason being exclusively a war-time offence, it is futile to enlist it as a peacetime offence and to provide the death penalty for it.

In the modern reformatory era, the retributive theory of “tit for tat” does not serve any useful purpose. Retribution can only do more harm than good to the criminals and can never be an effective measure of reducing the crimes. Retaliation and retribution, apart from being outdated are also against the accepted norms of modern criminal justice. Beccaria was perhaps the first criminologist who raised a

⁴⁷⁹ The Protection of Children from Sexual Offences (Amendment) Act, 2019.

⁴⁸⁰ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P357).

⁴⁸¹ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P363).

⁴⁸² Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P363).

crusade against capital punishment in 1764. He strongly protested against the use of cruel and barbarous modes of punishing offenders and emphasised the need for individualised treatment. He expressed a view that death as a sentence symbolises man's cruelty and the insignificance of human life. Over time, mens rea became the guiding principle for determining the guilt and punishment of the offender, though it is true that in certain cases it is difficult to determine mens rea of the offender.

Yet another reason for discarding retribution as a principle of criminal justice is to be found in the fact that putting a person to death virtually amounts to killing him deliberately. That apart, experience has shown that more than eighty per cent of the persons committing murder are not murderers but are persons who have fallen prey to this heinous crime due to circumstances such as passion, provocation, jealousy, sexual impulsiveness, poverty or intoxication. The death sentence is hardly an appropriate punishment for such offenders. Prof. Scot has expressed doubts about the adequacy of capital punishment as it involves the risk of an innocent person being sent to the guillotine. In several cases, bona fide errors of judgment as to the guilt of the accused are known to have occurred. If an innocent person is hanged due to a miscarriage of justice, his life is lost forever and the loss is irredeemable. Perhaps it is for this reason that small doubt about the guilt of the accused entitles him to an acquittal on the plea of 'benefit of doubt' under the criminal law of most countries including India.

The abolitionists strongly argue that since the death penalty is irrevocable, it should not be awarded. But the elaborate safeguards provided in the procedural law indicate that though the sentence of death is irrevocable, it is awarded only after thorough scrutiny at every stage of the case and therefore, chances of human error or judgment are not only minimised but reduced to almost nil. The slightest doubt about the guilt of the accused who is to be sentenced to death is sufficient to

entail the benefit of the doubt. As such, the abolition of the death penalty on the grounds of irrevocability hardly seems to be justified.⁴⁸³

On the worldwide stage, the movement for the abolition of capital punishment is gaining traction. Human rights activists and organisations are calling for the death penalty to be abolished. But the saddest thing is that our legal system is still keeping silent on the abolishment of the death penalty, and there is criticism of capital punishment both in developed and developing countries because it is seen as a uniquely cruel, inhuman, and degrading punishment. The approach of the Indian judiciary regarding capital punishment is unclear. Judicial decisions on capital punishment in India clearly show a division of opinion among judges. However, the death penalty has declined dramatically around the world in recent years since 1976; more than 85 nations have abolished the death penalty for all crimes, while others have abolished it for ordinary crimes. hereby, it is noteworthy to mention the countries that have abolished capital punishment:

⁴⁸³ Prof. N.V. Paranjape Criminology & Penology (including Victimology) 18th Edition, (P363).

TABLE 1: Countries that have abolished Capital Punishment.⁴⁸⁴

Year	Countries	Description of Abolition
1976	PORTUGAL abolished the death penalty.	For all crimes.
1978	DENMARK abolished the death penalty.	For all crimes.
1979	LUXEMBOURG, NICARAGUA, and NORWAY abolished the death penalty. BRAZIL, FIJI, and PERU abolished the death penalty.	For all crimes. For ordinary crimes.
1981	FRANCE and CAPE VERDE abolished the death penalty.	For all crimes.
1982	The NETHERLANDS abolished the death penalty.	For all crimes.
1983	CYPRUS and EL SALVADOR abolished the death penalty.	For ordinary crimes.
1984	ARGENTINA abolished the death penalty.	For ordinary crimes.
1985	AUSTRALIA abolished the death penalty.	For all crimes.
1987	HAITI, LIECHTENSTEIN, and the GERMAN DEMOCRATIC REPUBLIC abolished the death penalty.	For all crimes.
1989	CAMBODIA, NEW ZEALAND, ROMANIA, and SLOVENIA abolished the death penalty.	For all crimes.
1990	ANDORRA, CROATIA, the CZECH AND SLOVAK FEDERAL REPUBLIC, HUNGARY, IRELAND, MOZAMBIQUE, NAMIBIA, and SAO TOMÉ AND PRÍNCIPE abolished the death penalty.	For all crimes.
1992	ANGOLA, PARAGUAY, and SWITZERLAND abolished the death penalty.	For all crimes.

⁴⁸⁴ <http://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976>.

1993	GUINEA-BISSAU, HONG KONG, and SEYCHELLES abolished the death penalty. GREECE abolished the death penalty.	For all crimes. For ordinary crimes.
1994	ITALY abolished the death penalty.	For all crimes.
1995	DJIBOUTI, MAURITIUS, MOLDOVA, and SPAIN abolished the death penalty.	For all crimes.
1996	BELGIUM abolished the death penalty.	For all crimes.
1997	GEORGIA, NEPAL, POLAND, and SOUTH AFRICA abolished the death penalty. BOLIVIA and BOSNIA-HERZEGOVINA abolished the death penalty.	For all crimes. For ordinary crimes.
1998	AZERBAIJAN, BULGARIA, CANADA, ESTONIA, LITHUANIA, and the UNITED KINGDOM abolished the death penalty.	For all crimes.
1999	EAST TIMOR, TURKMENISTAN, and UKRAINE abolished the death penalty. LATVIA abolished the death penalty.	For all crimes. For ordinary crimes.
2000	COTE D'IVOIRE and MALTA abolished the death penalty. ALBANIA abolished the death penalty.	For all crimes. For ordinary crimes.
2001	BOSNIA-HEZEGOVINA abolished the death penalty. CHILE abolished the death penalty.	For all crimes. For ordinary crimes.
2002	TURKEY abolished the death penalty. The FEDERAL REPUBLIC OF YUGOSLAVIA, SERBIA, MONTENEGRO, and CYPRUS abolished the death penalty.	For ordinary crimes. For all crimes.

2003	ARMENIA abolished the death penalty.	For ordinary crimes.
2004	BHUTAN, SAMOA, SENEGAL, and TURKEY abolished the death penalty.	For all crimes.
2005	LIBERIA and MEXICO abolished the death penalty.	For all crimes.
2006	The PHILIPPINES abolished the death penalty.	For all crimes.
2007	ALBANIA and RWANDA abolished the death penalty. KYRGYZSTAN abolished the death penalty.	For all crimes. For ordinary crimes.
2008	UZBEKISTAN, CHILE, and ARGENTINA abolished the death penalty.	For all crimes.
2009	BURUNDI and TOGO abolished the death penalty.	For all crimes.
2010	GABON removed the death penalty from its legislation.	
2012	LATVIA abolished the death penalty.	For all crimes.
2013	BOLIVIA abolished the death penalty.	For all crimes.
2015	CONGO (Republic), FIJI, MADAGASCAR, and SURINAME abolished the death penalty.	For all crimes.
2016	BENIN and NAURU abolished the death penalty. GUINEA abolished the death penalty.	For all crimes. For ordinary crimes.
2017	GUINEA abolished the death penalty. KENYA abolished the mandatory death penalty.	For all crimes. For murder only.
2018	BURKINA FASO abolished the death penalty.	For all crimes.
2020	CHAD abolished the death penalty.	For all crimes.
2021	KAZAKHSTAN and SIERRA LEONE abolished the death penalty.	For all crimes.
2022	PAPUA NEW GUINEA, the CENTRAL AFRICAN REPUBLIC, EQUATORIAL GUI NEA, and ZAMBIA abolished the death penalty.	For all crimes.

“These data show that so many countries have contradictory thoughts over the concept of capital punishment they believe that the death penalty is not used to reduce crime in a civilized society and the amount of crimes isn’t getting lower even the capital punishment is a form of punishment in their legal system”.

Article 6 of the International Covenant on Civil and Political Rights guarantees that every human being has the right to life. This right will be protected by law. No one shall arbitrarily deprive him of his life. “The Human Rights Commission established under the International Covenant on Civil Rights and Political Rights recognises that “the right to life, as articulated in Article 6 of the covenant, is no derogation shall be made even in the event of a public emergency endangered national life the right to life should not be taken lightly; because although this covenant is made up of human beings, the different countries have different laws governing what can constitute a capital crime.⁴⁸⁵

In light of these aforesaid issues, the purpose of the study is to assess the relevance of capital punishment in light of changing socio-economic situations and the importance of repealing capital punishment in the Indian legal system and scrutinize the proportionality of the death penalty among men and women in the post-independence era and how the capital punishment has been executing in India.

1.2 Review of Literature

1. **Death Penalty Information Center Special Report (The Innocence Epidemic):⁴⁸⁶**

This Report analyses 185 death-row exonerations in the U.S. since 1973, exposing wrongful convictions driven by police and prosecutorial misconduct, false testimony, and racial disparities, particularly affecting Black defendants. It identifies problematic counties and questions the reliability of capital punishment. A key research gap is the lack of a

comprehensive study on all death sentences since the Furman v. Georgia decision, limiting understanding of systemic flaws. The report calls for deeper research into wrongful convictions, racial bias, and the long-term impact of exonerations. Addressing these gaps is crucial for reforming the justice system and ensuring fairness in capital punishment cases.

2. **Reconsidering the Death Penalty Cost and Effectiveness 2009 by Richard C. Dieter, (Executive Director of DPIC):⁴⁸⁷ The 2009 DPIC report** by Richard C. Dieter argues that the death penalty is costly and ineffective in reducing crime. It cites national polls where police chiefs prioritize other crime prevention strategies. State studies reveal execution costs reaching tens of millions of dollars. The report suggests abolishing capital punishment to redirect funds toward hiring police and improving forensic labs. However, it lacks a detailed analysis of potential cost savings and specific fund allocation plans. There is also no concrete evidence on the effectiveness of these alternative investments. These gaps weaken its fiscal and public safety arguments. Addressing them could strengthen the case for abolition as a practical policy change.

3. **“The Death Penalty”. Constitutional Rights of Prisoners, 2021, pp. 251-266. Web:⁴⁸⁸**

This article covers the legal arguments against the validity of the death sentence and its history in the United States, and the author contends that the death penalty is a contentious topic that raises fundamental concerns regarding the state’s law enforcement function. Apart from that this article also addresses the challenges faced in executions, including the possibility of killing innocent people and the racial inequities in their execution, this article is helpful since it gives a thorough summary of the subject; however, it just gives a basic overview and does not go into great detail on any particular problems with the death sentence.

⁴⁸⁵ The International Covenant on Civil and Political Rights, 1966, Art. 6.

⁴⁸⁶ Death Penalty Information Center, “DPIC Special Report: The Innocence Epidemic.”

⁴⁸⁷ Dieter and Death Penalty Information Center, “Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis.”

⁴⁸⁸ “The Death Penalty”. Constitutional Rights of Prisoners, 2021, pp. 251-266. Web.

4. **“The Death of the American Death Penalty” (States Still Leading The Way) Published in 2012 by Larry W. Koch, Colin Wark, And John F. Galliher:**⁴⁸⁹ In this book, the authors examine the impact of factors such as economic conditions, public sentiment, the roles of elites, the media, and population diversity on the death penalty debate, and this book highlights the recent abolition decisions in New York, New Jersey, New Mexico, and Illinois, and the surprising decline of the death penalty even in the deep south. James R. Acker, distinguished teaching professor in criminal justice at the University at Albany, said, “Support for Capital Punishment in this Country, as measured by the laws authorising it, prosecutors’ enthusiasm for seeking it, jury verdicts that dispatch it, and executioners’ final deliverance, has eroded rapidly in recent years. However, this book heavily focuses on specific states and their role in reducing the death penalty; the state-level approach can sometimes feel fragmented and may not provide a comprehensive national or global perspective.

5. **Death Penalty: Relevancy and Necessity (Research Journal of Humanities and Social Sciences) 13 (4): October – December 2022:**⁴⁹⁰ The research article examines the death penalty’s relevance in India, analysing deterrence, retribution, prevention, and reformation theories. It discusses international human rights treaties, the Indian Supreme Court’s stance, and the Law Commission’s recommendations. The author argues for retaining capital punishment, citing societal attitudes and public trust in the justice system. The article concludes that abolishing it would not align with India’s current needs. However, a key research gap is the lack of empirical data supporting these claims, as the author provides no statistical evidence on deterrence or public opinion. Heavy reliance on

anecdotal evidence and legal expert opinions weakens the argument’s validity.

6. **“Hang Them Now, Hang Them Not: India’s Travails with the Death Penalty,” (40th law journal of Indian Law Institute published in 1998):**⁴⁹¹ Analyses India’s application of capital punishment, examining its constitutional validity, the “rarest of rare” test, and procedural irregularities. The author critiques the arbitrariness of its application, highlighting concerns about executing innocent individuals and the lack of a consistent appeals process. Furthermore, the paper examines the death penalty’s cruelty in light of international human rights law and jurisprudence from other countries, such as South Africa, advocating for a reformatory approach to punishment and reconciliation. The author notes that very little information is publicly available on these topics, making it difficult to analyse how often the death penalty is used and in what instances. This lack of transparency makes it difficult to assess the fairness and consistency of the death penalty in India.

7. **Ahmed Shaheed & Faraz Sanei, Outlier: Iran and its Use of the Death Penalty, in Death Penalty and the Victims 181 (Ivan Simonovic ed., 2016):**⁴⁹² Ahmed Shaheed and Faraz Sanei’s chapter, Outlier: “Iran and its Use of the Death Penalty”, explores Iran’s high use of the death penalty, especially for drug crimes and juveniles. It highlights the lack of transparency in execution data and differences between official and human rights group reports. The authors analyse Iran’s laws supporting capital punishment and how they violate international standards, while also focusing on the harm to vulnerable groups. However, a key research gap is the lack of detailed information about the individuals executed for drug offences, such as their personal stories and backgrounds. While human rights groups provide overall trends, specific case studies are missing. Filling this gap

⁴⁸⁹ “The Death of the American Death Penalty” (States Still Leading The Way) Published in 2012 by Larry W. Koch, Colin Wark, And John F. Galliher.

⁴⁹⁰ Death Penalty: Relevancy and Necessity (Research Journal of Humanities and Social Sciences) 13 (4): October - December 2022.

⁴⁹¹ “Hang Them Now, Hang Them Not: India’s Travails with the Death Penalty,” (40th law journal of Indian Law Institute published in 1998).

⁴⁹² Ahmed Shaheed & Faraz Sanei, Outlier: Iran and its Use of the Death Penalty, in Death Penalty and the Victims 181 (Ivan Simonovic ed., 2016).

would help better understand the human rights issues and unfairness in Iran's death penalty system.

8. **A Reflection on Contemporary Issues Regarding the Death Penalty by Taila Roitberg Harmon, David Taylor and Chelsea Henning 2023:**⁴⁹³

This Article reviews contemporary arguments surrounding capital punishment in the United States, noting a significant shift towards abolition. The authors examine six key areas of the debate incapacitation, deterrence, racial bias, retribution, wrongful convictions, and cost updating, earlier research. A decline in executions and death sentences, coupled with decreasing public support and increasing awareness of wrongful convictions, is highlighted. The paper also considers emerging frames impacting the debate, such as the effects on victims' and offenders' families. Ultimately, the authors conclude that current scholarship strengthens the movement towards abolishing the death penalty. Additionally, this article points out that while there are many anecdotal and journalistic accounts of the negative impact of the death penalty on individuals associated with an execution, in this article a significant research gap exists in the lack of systematic exploration of the death penalty's psychological and social effects on individuals connected to executions.

9. **Efforts towards the abolition of the Death Penalty: Challenges and prospects DPRU Research Paper No.1 Dec 2023:**⁴⁹⁴

This Article examines the progress of global death penalty abolition, highlighting the influence of international human rights treaties and the challenges posed by national sovereignty. It analyses the effectiveness of treaties in progressively restricting capital punishment, focusing on legal challenges to mandatory death sentences and the "death row phenomenon." The paper further explores diverse motivations for abolition, including shifts in political regimes, religious influences, and

evolving societal views, while also addressing resistance to abolition based on religious and political factors. Finally, it concludes by emphasizing the importance of political will alongside international legal frameworks in achieving universal abolition. The research gap identified in this article is how the death penalty is entrenched in Asia and the Middle East, where there is a lack of regard for due process, suggesting that the human rights project has some way to go.

10. **Legislative Expansion and Judicial Confusion: The Death Penalty in India (International Journal for Crime, Justice, and Social Democracy Volume 11 (3) 2022:**⁴⁹⁵

This academic paper analyses the death penalty in India, exploring the interplay between legislative expansion and judicial responses over the past decade. The authors highlight a significant increase in death sentences, primarily for sexual offences, driven by public outrage and political pressure. Simultaneously, the Supreme Court has expanded procedural safeguards for death row prisoners, leading to fewer death sentences being upheld on appeal. Despite this judicial restraint, the paper argues that the death penalty remains firmly entrenched due to a lack of principled opposition and a continued reliance on it as a solution to crime. The study uses statistical data and case law to support its analysis of this complex issue. Further, this source is a disconnect between the Supreme Court's expansion of safeguards for death row prisoners and its inconsistent application of these safeguards, particularly in high-profile cases and as a research gap this paper does not thoroughly examine how public perception and support for the death penalty influence legislative and judicial decisions.

11. **Lethal Lottery: The Death Penalty in India A study of Supreme Court judgments in death penalty cases 1950-2006:**⁴⁹⁶

This report, a collaboration between Amnesty International

⁴⁹³ A Reflection on Contemporary Issues Regarding the Death Penalty by Taila Roitberg Harmon, David Taylor and Chelsea Henning 2023.

⁴⁹⁴ Efforts towards the abolition of the Death Penalty: Challenges and prospects DPRU Research Paper No.1 Dec 2023.

⁴⁹⁵ Legislative Expansion and Judicial Confusion: The Death Penalty in India (International Journal for Crime, Justice, and Social Democracy Volume 11 (3) 2022.

⁴⁹⁶ Lethal Lottery: The Death Penalty in India *A study of Supreme Court judgments in death penalty cases 1950-2006*.

and PUCL, examines the death penalty in India. It analyses Supreme Court cases, revealing inconsistencies in sentencing and highlighting the arbitrary nature of the "rarest of rare" criterion for capital punishment. The report documents flaws in the judicial process, including issues with evidence, legal representation, and judicial review. It also addresses concerns about Police Misconduct, Executive Clemency, and the lack of transparency, arguing that the death penalty disproportionately affects the poor and marginalised. The author ultimately recommends the abolition of capital punishment in India. The study is limited in that it relies on reported judgments of the Supreme Court. Some judgments may never have been reported or may have been marked as "not to be reported". Additionally, not all cases involving the death penalty are granted leave to appeal by the Supreme Court, so the records of these petitions have not been included and as a research gap in this report the judgments often do not include detailed facts of the case, and they avoid references to factors like caste, community, religion, and socio-economic factors unless they are of direct relevance to the case.

12. **International Law and Abolition of the Death Penalty: Recent Development by William A. Shabas (1998):**⁴⁹⁷ This article by William Schabas examines the evolving international legal landscape surrounding the death penalty. It traces the historical shift in international opinion, from widespread acceptance of capital punishment to growing pressure for abolition. The author analyses the roles of international organisations like the UN and the Council of Europe, highlighting their resolutions and treaties promoting abolition. Furthermore, the article explores the impact of the death penalty on extradition cases, particularly focusing on legal challenges in Europe and Canada concerning extradition to the US. Finally, the text concludes by discussing

the US's complex relationship with international death penalty norms and its implications for global human rights efforts. However, as a research gap this study do not delve deeply into how these international pressures translate into actual policy changes in the US. This gap in research leaves unanswered questions about the effectiveness of international pressure on US death penalty policy.

13. **UN Report Moratoriums on Executions 2007:**⁴⁹⁸ This report by the UN Secretary-General examines the global use of the death penalty, analysing statistics and trends indicating a worldwide movement towards abolition. It details the arguments for and against capital punishment, highlighting concerns about human rights violations and the risk of executing innocent individuals. The report also explores the various minimum standards for the application of the death penalty, when it is legally permissible, and emphasises the importance of a moratorium as a step toward abolition. Finally, it suggests further work on specific restrictions to protect the rights of those facing the death penalty. This report acknowledges the lack of reliable data on the application of the death penalty as a significant research gap. Many retentionist states do not provide relevant statistics, making it difficult to obtain accurate figures on the number of executions carried out.

14. **Amnesty International Addendum Report 1979:**⁴⁹⁹ This report provides a global overview of capital punishment, documenting the high number of executions and death sentences worldwide. It examines laws and practices across various countries, revealing widespread human rights violations, arbitrary application of the death penalty for political and economic crimes, and disproportionate targeting of racial minorities. The report underscores Amnesty International's call for a global moratorium on executions and its opposition to capital punishment, supported by

⁴⁹⁷ International Law and Abolition of the Death Penalty: Recent Development by William A. Shabas (1998).

⁴⁹⁸ UN Report Moratoriums on Executions 2007.

⁴⁹⁹ Amnesty International Addendum Report 1979.

regional surveys and legal analyses. However, a key research gap lies in the lack of detailed, country-specific data on the socio-economic and political contexts driving the use of the death penalty. Additionally, the report does not systematically analyse the long-term impact of executions on affected communities or the effectiveness of international advocacy efforts in reducing capital punishment.

15. **Amnesty International Report 1989:**⁵⁰⁰

This Report examines India's death penalty, highlighting its disproportionate impact on the poor and illiterate. The report criticizes the arbitrary application of the death penalty due to judicial discretion and inconsistent rulings on delays in execution. Furthermore, it questions the fairness of trials, especially in politically motivated cases, and expresses concerns about the possibility of executing innocent individuals. Amnesty International advocates for abolition, but pending that, urges the government to improve legal safeguards, restrict capital offenses, and increase transparency regarding executions. The report also details the cruelty of hanging as a method of execution and the psychological toll of prolonged death row sentences. The report identifies a lack of comprehensive research and data on wrongful capital sentencing in India, which is a significant research gap. While the report acknowledges the possibility of miscarriages of justice leading to the execution of innocent individuals¹²³, it does not provide any data or studies specific to the Indian context. The report highlights that: "Amnesty International does not know of studies undertaken in India to investigate wrongful capital sentencing".

16. **Amnesty International Report 2020 on Death Penalty:**⁵⁰¹

This report highlights a global decline in death penalty use, though countries like Egypt and the USA saw increases. It exposes secrecy in executions across China, Iran, North Korea, and Vietnam, with China remaining a

major research gap. Positive developments include Chad and Kazakhstan moving toward abolition and some US states halting executions. The report documents violations of international law, such as extrajudicial killings and discriminatory applications. A lack of transparency from many governments, including China and Vietnam, skews official figures. Laos and North Korea also restrict data access, and gender-based execution breakdowns remain unclear. The report urges China to disclose execution statistics for better global accountability.

17. **The Death Penalty Information Center's 2021 Year-End Report:**⁵⁰²

Details a continued decline in the use of capital punishment in the United States. Key events include Virginia's abolition of the death penalty, the lowest number of executions in decades, and a federal moratorium on executions under the Biden administration. The report also highlights systemic issues, such as racial bias, wrongful convictions, and problematic execution methods. Public opinion shows declining support for the death penalty, reaching a half-century low. Finally, the report critiques the Supreme Court's actions, suggesting a bias against death row inmates' appeals. However, this report heavily emphasises death row exonerations, highlighting the flaws in the justice system. While this is an important aspect of the debate, excessive focus on exonerations might overshadow other crucial considerations, such as the perspectives of victims' families, the role of the death penalty as a deterrent, and the arguments in favour of capital punishment for certain heinous crimes.

18. **The Death Penalty Information Center's (DPIC) 2023 year-end report:**⁵⁰³

The Death Penalty Information Center's (DPIC) 2023 year-end report analyzes trends in capital punishment in the U.S., noting record lows in executions and death sentences, with most states pausing or abolishing the death penalty. It highlights growing public concerns about

⁵⁰⁰ Amnesty International Report 1989.

⁵⁰¹ Amnesty International Report 2020 on Death Penalty.

⁵⁰² The Death Penalty Information Center's 2021 Year-End Report.

⁵⁰³ The Death Penalty Information Center's (DPIC) 2023 year-end report.

unfair application, high-profile innocence cases, and the Supreme Court's reluctance to intervene in death penalty matters. The report also examines state-level developments, such as changes in execution methods, including Alabama's controversial plan to use untested nitrogen gas and Florida's ongoing litigation over lethal injection drugs. However, a key research gap lies in the lack of comprehensive studies on the safety, effectiveness, and ethical implications of new execution methods like nitrogen gas. Additionally, there is limited systematic research on the long-term impact of procedural flaws and public perceptions of fairness on the death penalty's future. Addressing these gaps could provide deeper insights into the evolving landscape of capital punishment in the U.S.

19. **The Death Penalty in 2024 Year-End Report By DPIC:**⁵⁰⁴ The **DPIC 2024 Year-End Report** examines capital punishment trends in the US and globally, highlighting a continued decline in death sentences, executions, and public support. It discusses legal challenges, including innocence claims and procedural fairness, particularly the Supreme Court's role. The report also covers legislative actions on abolition, application, and execution methods across US states. Comparatively, it notes an increase in global executions despite growing international condemnation. However, a key research gap is the lack of data on death sentences overturned on appeal. It does not specify why prisoners lose appeals, how many sentences are overturned, or at what stage. This omission limits a full understanding of the appellate process's impact on capital punishment.

20. **Iran/Death Penalty Report by International Federation of Human Rights:**⁵⁰⁵

This report by FIDH details Iran's extensive use of the death penalty, exceeding international human rights standards. This report examines the legal framework, including the Islamic Penal Code, which prescribes capital punishment for

a wide array of offences. It highlights the high number of executions, particularly targeting juvenile offenders and religious and ethnic minorities. Significant attention is given to the lack of fair trials, the use of torture, and inhumane execution methods like stoning. Finally, the report includes recommendations for the Iranian government and the international community to address these human rights violations. The research gap is the lack of publicly available statistics on the number of death sentences pronounced and executions implemented in Iran. This prevents any informed public debate on these practices.

21. **Iran's Death Penalty Report 2023:**⁵⁰⁶ This report by Iran Human Rights (IHRNGO) and ECPM details Iran's extensive use of the death penalty in 2023, documenting at least 834 executions—a significant increase from the previous year. The report highlights the lack of transparency surrounding executions, with 85% unannounced by authorities. Various charges, including drug-related offences, political dissent, and murder, lead to capital punishment, often following unfair trials involving torture and forced confessions. The report also examines the roles of Iran's different branches of government in upholding capital punishment and calls for international action to improve human rights and abolish the death penalty. The report concludes with recommendations for sustained domestic campaigning and international pressure to curtail capital punishment. As a research gap, this report acknowledges several areas where further research is needed due to the lack of transparency and access to information within the Iranian judicial system.

22. **Death Penalty Annual Report 2018 by National Law University Delhi:**⁵⁰⁷

This report from Project 39A at National Law University, Delhi, presents the 2018 annual statistics on the death penalty in India. The report details the high number of death sentences imposed by

⁵⁰⁴ The Death Penalty in 2024 Year-End Report By DPIC.

⁵⁰⁵ Iran/Death Penalty Report by International Federation of Human Rights.

⁵⁰⁶ Iran's Death Penalty Report 2023.

⁵⁰⁷ Death Penalty Annual Report 2018 by National Law University Delhi.

trial courts, contrasting this with the Supreme Court's commutation of many such sentences. Significant challenges in data collection due to inconsistencies in state institutions' record-keeping are highlighted. Legislative developments expanding the death penalty for certain crimes are also discussed, alongside judicial opinions critical of its use. Finally, the report includes corrections to previously published data. As a research gap, this report indicates that the lack of reliable, accessible official data on death penalty cases in India is a significant obstacle to conducting research in this area but this report failed to understand the reasons for this poor data collection and how it can be improved.

23. **Death Penalty in India Report (2016) by National Law University Delhi:**⁵⁰⁸ This report examines capital punishment, exposing socio-economic disparities, prolonged legal delays, and systemic flaws such as the use of illegal evidence and inadequate legal representation. It also highlights the severe psychological toll on death row prisoners and their families. However, the report has notable research gaps, including the absence of empirical data on the deterrent effect of the death penalty and judicial biases in sentencing. Additionally, it does not address the perspectives of victims in capital punishment cases or the lack of victim-centric support schemes. Furthermore, the report fails to explore alternative sentencing mechanisms, such as life imprisonment without parole, and their effectiveness in the Indian context as potential substitutes for capital punishment.

24. **Apala Vatsa's 2019 article:**⁵⁰⁹ This article examines the complex history and ongoing debate surrounding the death penalty in India. The author explores the puzzle of its continuation in a liberal democracy despite international human rights commitments and initial inclinations towards abolition during the

Constituent Assembly Debates. The paper traces the evolution of legal and philosophical perspectives on capital punishment from the pre-independence era through landmark Supreme Court judgments, highlighting persistent concerns about arbitrariness, potential for error, and discriminatory application. It further notes various attempts at abolition in post-independence India and the shift towards the "rarest of rare" doctrine, while also pointing out the limited understanding of the actual administration of the death penalty in India and furtherly, as a research gap the researcher found that this article suggests a concern that "only the poor and the marginalized face the ultimate punishment", A specific research gap would be to conduct empirical studies analyzing the socio-economic status, caste, religion, education, and other relevant demographic factors of those sentenced to death. This would help to ascertain if there is a disproportionate impact of the death penalty on certain sections of society.

25. **A case against the death penalty for child sexual abuse by Kannan Jhunjunwala (2022):**⁵¹⁰ This article critiques the introduction of the death penalty for child rape under recent amendments to the IPC and POCSO Act, arguing it conflicts with the child-friendly nature of POCSO. It raises concerns about the constitutionality, arbitrariness, and disproportionality of such sentencing. The author questions its compatibility with reformatory justice and emphasizes that it undermines rehabilitation goals. The article also challenges the assumption that the death penalty deters crime. It warns that harsher punishments may discourage victims from reporting, especially in familial cases. Ultimately, it advocates for reconsideration or judicial invalidation of these provisions in favour of more effective legal responses. However, a potential gap in the article lies in the limited specific empirical data focusing on the

⁵⁰⁸ Death Penalty in India Report (2016) by National Law University Delhi.
⁵⁰⁹ Apala Vatsa's 2019 article.

⁵¹⁰ A case against the death penalty for child sexual abuse by Kannan Jhunjunwala (2022).

deterrent effect (or lack thereof) of the death penalty for child sexual abuse specifically within the Indian context.

1.3 Research Problem

The Researcher has researched the various fields of problems of executing the death penalty in the following aspects:

The replacement of the Indian Penal Code (IPC), 1860, the Code of Criminal Procedure, 1973 by the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023 marks a significant shift in India's criminal justice system, particularly with the expansion of offences punishable by the death penalty from 12 to 16. This legislative change, coupled with the 2019 amendment to the Protection of Children from Sexual Offences (POCSO) Act, 2012, without considering the role of tutored evidence of the children in the POCSO Trials, which introduced harsher punishments for child sexual offences, raises critical concerns about the potential for increased unjustified executions. These developments happened within a criminal justice system already grappling with systemic issues or practical complexities such as procedural delays, Lack of Pre-trial prisoners' rights, inadequate legal representation, and socio-economic disparities in the administration of capital punishment. Furthermore, the global trend towards the abolition of the death penalty, as evidenced by the rise in the number of countries abolishing it from 16 in 1977 to 112 by 2023,⁵¹¹ highlights a growing international consensus on the incompatibility of capital punishment with human rights principles moreover without considering the global trend India still retains the capital punishment and the retention or execution or doling out of the death penalty in India is only based on factors instead of its effectiveness as a deterrent. In India, the disproportionate application of the death penalty, particularly against individuals from lower socio-economic backgrounds and the

absence of executions of women despite gender-neutral laws is a big problematic area of our Indian criminal justice system and the socio-economic status of perpetrators significantly influences the death penalty cases, and the notable factor is that individuals from downtrodden backgrounds facing disproportionately higher sentencing rates. On World Day Against the Death Penalty (10th October 2017), the UN Human Rights Office highlighted that poverty often leads to inadequate legal representation, limited access to evidence, and an inability to afford bail or appeals.⁵¹² This systemic bias transforms the death penalty into a class-based form of discrimination, effectively rendering it an arbitrary and unjustified practice. Poor defendants are thus more vulnerable to unfair trials and harsher sentences, perpetuating inequality in the justice system, so this area underscores the need for a critical examination of the fairness, proportionality, and socioeconomic dimensions of capital punishment.

1.4 Research Objectives

1. To analyse whether the recent enhancements in provisions punishable by the death penalty under new criminal laws have led to an increase in unjustified executions.
2. To compare the application of the death penalty in India with countries that have abolished or retained capital punishment, assessing differences in legal frameworks, execution rates, and judicial reasoning.
3. To identify and examine the key factors influencing the retention of capital punishment in India, including legal, political, social, and cultural considerations.
4. To evaluate the impact of socio-economic status on death penalty cases, exploring disparities in legal representation, sentencing patterns, and judicial outcomes.

⁵¹¹ Amnesty International. 2024. "Death Penalty." Amnesty International. 2024. <https://www.amnesty.org/en/what-we-do/death-penalty/>.

⁵¹² United Nations. "Death Penalty Disproportionately Affects the Poor, UN Rights Experts Warn". OHCHR, 6 Oct. 2017, www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn.

1.5 Research Questions

1. Does enhancing death penalty provisions increase the risk of wrongful executions?
2. How does the application of the death penalty in India compare to other countries that have abolished or retained capital punishment?
3. What factors play into the retention of capital punishment in India?
4. How does the Socio-Economic status of the perpetrator play a vital role in the cases of the Death Penalty?

1.6 Hypothesis

In India, capital punishment is disproportionately imposed on persons from poorer & backward socio-economic backgrounds, and therefore, it must be abolished. The Researcher is going to test this aspect in this research.

1.7 Research Methodology

This study is primarily based on the Doctrinal method the researcher arrived to this decision after evaluating the possibility of the RTI because the National Law University Delhi got very poor responses while conducting their research regarding the capital punishment for Death Penalty India Report (2016) this is the major reason behind the selection of doctrinal method and this research primarily involves the content analysis of Statutory, Judicial decisions, Reports, Articles etc. It uses a method of interpretation with critical analysis and evaluation of judicial decisions and laws. During the analysis, sources such as the judgments of the Apex Court of India and abroad are examined along with the statements of various high-powered committees. Secondary sources, such as judicial writings, are also consulted.

1.8 Scope of this Study

This study critically explores the evolving landscape of capital punishment in India following the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik

Suraksha Sanhita (BNSS), 2023, which have replaced the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973. The study particularly focuses on the expansion of capital offences and its implications within a criminal justice system already fraught with structural and procedural challenges. The scope includes a detailed analysis of the recent legislative amendments, including the 2019 amendment of the Protection of Children from Sexual Offences (POCSO) Act, and assesses their impact on sentencing trends, judicial reasoning, and the likelihood of unjustified executions. It covers the period from 2010 to 2025 to capture both the pre- and post-enactment implications of these legal reforms.

The study also includes a comparative analysis of India's capital punishment framework with select abolitionist and retentionist jurisdictions, examining legal safeguards, execution rates, and the rationale behind retaining or abolishing the death penalty. Furthermore, the research investigates the intersection of socio-economic status and the application of the death penalty, highlighting disparities in legal representation, access to justice, and outcomes based on class. The focus remains on adult male offenders, as no executions of women have taken place despite gender-neutral statutes. This study is doctrinal and socio-legal in nature, relying on case law analysis, statutory interpretation, and secondary data to examine the fairness, effectiveness, and equity of capital punishment in contemporary India.

1.9 Limitations of this study

This study has certain limitations. It primarily uses a doctrinal and socio-legal approach, without empirical fieldwork such as interviews or direct engagement with affected individuals, limiting firsthand perspectives. The research also faces challenges due to the lack of comprehensive government data on death penalty cases, especially concerning socio-economic variables like caste, income, and legal representation. The comparative analysis is selective and not globally exhaustive. While

gender disparities such as the absence of female executions are acknowledged, the main focus remains on socio-economic issues, and a detailed gender-based study is beyond the scope. Additionally, as the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) were enacted only in 2023, their long-term impact is not yet fully observable.

1.10 Tentative Chapters

1. Introduction and Background
2. Indian Criminal Justice System and Its Overhaul in the Aspect of Death Penalty
3. Historical Background and Various Methods of Death Penalty in the aspect of International Law and Why India Retains Death Penalty
4. Impact of Socio-Economic Status of the Perpetrators in the Cases of Death Penalty
5. Conclusion and Recommendations

CHAPTER – 2

INDIAN CRIMINAL JUSTICE SYSTEM AND ITS OVERHAUL IN THE ASPECT OF DEATH PENALTY

2.1 Provisions of IPC which are punishable by the Death Penalty

The Drafted Penal Code was first prepared and submitted by the First Indian Law Commission presided over by Lord Macaulay in the year 1837. Capital Punishment was prescribed for various offences such as waging war against the state, providing false evidence for a capital offence, murder, perjury, etc. Further, the revised edition was circulated among judges for suggestions and corrections to be made on 30th May 1851. After receiving comments from the Judges for suggestions, necessary modifications were made, and on 6th October 1860, the draft code received the assent of the Governor-General. At present, the Indian Penal Code, 1860 provides Capital Punishments for the following offences:

a. S. 120B of the IPC provides for capital punishment in the offence of waging, or attempting to wage war, or abetting the waging of war, against the Government of India.⁵¹³

b. S. 121 of the IPC provides capital punishment for the offence of waging or attempting to wage war. Or abetting the waging of war against the Government of India.⁵¹⁴

c. S. 132 of the IPC provides capital punishment in case of abetting a mutiny in the armed forces, engaging in mutiny (if mutiny is committed in consequence thereof).⁵¹⁵

d. S. 194 of the IPC provides capital punishment for giving or fabricating false evidence with the intent to procure a conviction of a capital offence upon which an innocent person suffers death.⁵¹⁶

e. S. 302 of the IPC provides capital punishment for offences of culpable homicide amounting to murder.⁵¹⁷

f. S. 305 of the IPC provides capital punishment for the offence of abetting the suicide of a minor, mentally ill person, or intoxicated person.⁵¹⁸

g. S. 307 of the IPC provides capital punishment for an attempt to murder by a person under a sentence of imprisonment for life if hurt is caused.⁵¹⁹

h. S. 364A of the IPC provides capital punishment in cases of kidnapping, in the course of which the victim was held for ransom or other coercive purposes.⁵²⁰

i. S. 376A of the IPC provides capital punishment for causing death or resulting in a persistent vegetative state of the victim.⁵²¹

j. S. 376AB of the IPC provides capital punishment for rape on a woman or girl under twelve years of age.⁵²²

k. S. 376DB of the IPC provides capital punishment for gang rape on a woman or girl under twelve years of age.⁵²³

l. S. 376E of the IPC provides capital punishment for the repeat offender of rape.⁵²⁴

⁵¹⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s. 121.

⁵¹⁵ The Indian Penal Code, 1860 (Act 45 of 1860), s. 132.

⁵¹⁶ The Indian Penal Code, 1860 (Act 45 of 1860), s. 194.

⁵¹⁷ The Indian Penal Code, 1860 (Act 45 of 1860), s. 302.

⁵¹⁸ The Indian Penal Code, 1860 (Act 45 of 1860), s. 305.

⁵¹⁹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 307.

⁵²⁰ The Indian Penal Code, 1860 (Act 45 of 1860), s. 364.

⁵²¹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 376 A.

⁵²² The Indian Penal Code, 1860 (Act 45 of 1860), s. 376 AB.

⁵²³ The Indian Penal Code, 1860 (Act 45 of 1860), s. 376 DB.

⁵²⁴ The Indian Penal Code, 1860 (Act 45 of 1860), s. 376 E.

⁵¹³ The Indian Penal Code, 1860 (Act 45 of 1860), s. 120B.

m. S. 396 of the IPC provides capital punishment for dacoity with murder in cases where a group of five or more individuals commit dacoity and one of the murderers in the course of that crime; all members of the group are liable for the death penalty.⁵²⁵

2.2 Provisions of Other Legislation Pertaining to Capital Punishment.

Table 2: Capital Offences in Other Laws⁵²⁶

S. No	Sections	Act
1.	Sections 34: Offences in relation to the enemy and punishable with death, 37: Punishment for Mutiny, and 38(1): Punishment for desertion and aiding desertion on active service.	The Air Force Act, 1950
2.	Section 3(1)(i): Punishment for organised crime.	The Andhra Pradesh Control of Organised Crime Act, 2001
3.	Section 27(3): Punishment for causing death by using prohibited arms or ammunition.	The Arms Act, 1959 (Repealed)
4.	Sections 34: Offences in relation to the enemy and punishable with death, 37: Punishment for Mutiny, and 38(1): Punishment for	The Army Act, 1950

	desertion and aiding desertion on active service.	
5.	Sections 21: Offences in relation to the enemy and punishable with death, 24: Punishment for Mutiny, 25(1)(a): Punishment for desertion and aiding desertion on active service, and 55: Punishment for civil offences committed in or beyond India which are triable under this Act.	The Assam Rifles Act, 2006
6.	Section 65A (2): If any death occurs by consumption of laththa the person who has manufactured, kept, sold or arrange to make it drink or distributed shall be punished with death or imprisonment for life.	The Bombay Prohibition (Gujarat Amendment) Act, 2009
7.	Sections 14: Offences in relation to the enemy and punishable with death, 17: Punishment for Mutiny, 18(1)(a): Punishment for desertion and aiding desertion on active duty, and 46: Punishment for civil	The Border Security Force Act, 1968

⁵²⁵ The Indian Penal Code, 1860 (Act 45 of 1860), s. 396.

⁵²⁶ 262nd Law Commission Report on Death Penalty (August, 2015) P32.

	offences committed in or beyond India, which deemed to be guilty of an offence against this act or shall be liable to be tried by a Security Force Court.			life or serious injury to property or person by a special category explosive substance.	
8.	Sections 17: Punishment for Mutiny, and 49: Punishment for civil offences committed in or beyond India, which deemed to be guilty of an offence against this act or shall be liable to be tried by a Coast Guard Court.	The Coast Guard Act, 1978		13. Sections 16: Punishment for offences in relation to the enemy or terrorist, 19: Punishment for Mutiny, 20(1)(a): Punishment for desertion and aiding desertion on active duty, and 49: Punishment for civil offences committed in or beyond India, which deemed to be guilty of an offence against this act or shall be liable to be tried by a Force Court.	The Indo-Tibetan Border Police Force Act, 1992
9.	Section 4(1): Punishment for commission or abetment of Sati.	The Commission of Sati (Prevention) Act, 1987		14. Section 3(1)(i): Punishment for organised crimes.	The Karnataka Control of Organised Crime Act, 2000
10.	Section 5: Punishment for waging war against India or assisting any country committing external aggression against India.	The Defence of India Act, 1971		15. Section 3(1)(i): Punishment for organised crimes.	The Maharashtra Control of Organised Crime Act, 1999
11.	Section 3 (a): Grave breaches of conventions resulting in wilful killing of a person protected by any of the conventions.	The Geneva Conventions Act, 1960		16. Section 31A (1): Death for certain offences after previous convictions.	The Narcotics Drugs and Psychotropic Substances Act, 1985
12.	Section 3 (b): Punishment for causing endanger to	The Explosive Substances Act, 1908			

<p>17.</p>	<p>Sections 34: Punishment for misconduct by officers or persons in command, 35: Punishment for misconduct by persons other than those in command, 36: Delaying or discouraging action or service commanded, 37: Punishment for Navy officer if desert his post or sleeps upon his watch or fails to perform his duty or wilfull concealment of any words, practice, 38: Punishment for spying, 39: Punishment for traitorously hold correspondence with the enemy or gives intelligence to the enemy, 43: Punishment for Mutiny, 44: Punishment for seducing the naval personnel from allegiance, 49(2)(a): Punishment for desertion on his duty, 56(2): Punishment for offences by officers in charge of convoy, and 59: Punishment for Arson.</p>	<p>The Navy Act, 1957</p>		<p>creating the probability of causing death by creating damage to the petroleum pipelines.</p>	<p>Pipelines (Acquisition of rights of user in land) Act, 1962</p>
			<p>19.</p>	<p>Sections 16: Offences in relation to the enemy and punishable with death, 19: Punishment for Mutiny, 20(1)(a): Punishment for desertion on active duty, and 49: Punishment for civil offences committed in or beyond India, which deemed to be guilty of an offence against this act or shall be liable to be tried by a Force Court.</p>	<p>The Sashtra Seema Bal Act, 2007</p>
			<p>20.</p>	<p>Section 3(2)(i): Punishment for giving false evidence by the non-scheduled caste or tribe.</p>	<p>The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989</p>
<p>18.</p>	<p>Section 15(4): Punishment for</p>	<p>The Petroleum and Minerals</p>	<p>21.</p>	<p>Section 3(1)(i): Punishment for offences against a ship resulting in death.</p>	<p>The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002</p>

22.	Sections 10(b)(i): Punishment for the Act of a person who belongs to an unlawful association resulting in death, and Section 16(1)(a): Punishment for terrorist act.	The Unlawful Activities Prevention Act, 1967
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	punishable with death, 24: Punishment for Mutiny, 25(1)(a): Punishment for desertion and aiding desertion on active service.	
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Table 3: Non-Homicide Capital Offences⁵²⁷

S. No	Sections	Act
1.	Section 34: Offences in relation to the enemy and punishable with death, 37: Punishment for Mutiny, and 38(1): Punishment for desertion and aiding desertion on active service.	The Air Force Act, 1950
2.	Sections 34: Offences in relation to the enemy and punishable with death, 37: Punishment for Mutiny, and 38(1): Punishment for desertion and aiding desertion on active service.	The Army Act, 1950
3.	Sections 21: Offences in relation to the enemy and	The Assam Rifles Act, 2006

4.	Sections 14: Offences in relation to the enemy and punishable with death, 17: Punishment for Mutiny, 18(1)(a): Punishment for desertion and aiding desertion on active duty.	The Border Security Force Act, 1968
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5.	Sections 17: Punishment for Mutiny, and 49: Punishment for civil offences committed in or beyond India, which deemed to be guilty of an offence against this act or shall be liable to be tried by a Coast Guard Court.	The Coast Guard Act, 1978
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6.	Section 3 (b): Punishment for causing endanger to life or serious injury to property or person by a special category explosive substance.	The Explosive Substances Act, 1908
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7.	Section 120B: Punishment for criminal conspiracy,	The Indian Penal Code, 1860
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⁵²⁷ 262nd Law Commission Report on Death Penalty (August, 2015), P34.

	<p>121: Punishment for waging war against the Government of India,</p> <p>132: Punishment for abetment of mutiny,</p> <p>194: Punishment for giving false evidence in the capital offences cases, 195A: Punishment for threatening any person to give false evidence, 364A: Punishment for kidnapping for ransom, (added by Criminal Law (Amendment) Act, 1993, 376E: Punishment for repeated rape offenders (added by Criminal Law (Amendment) Act, 2013).</p>				
8.	<p>Sections 16: Punishment for offences in relation to the enemy or terrorist,</p> <p>19: Punishment for Mutiny,</p> <p>20(1)(a): Punishment for desertion and aiding desertion on active duty.</p>	Indo-Tibetan Border Police Force Act, 1992			
9.	Section 31: Enhanced punishment for offences after previous conviction.	The Narcotic Drugs and Psychotropic Substances Act, 1985			
10.	<p>Section 34: Punishment for misconduct by officers or persons in command,</p> <p>35: Punishment for misconduct by persons other than those in command,</p> <p>37: Punishment for Navy officer if desert his post or sleeps upon his watch or fails to perform his duty or wilfull concealment of any words, practice,</p> <p>38: Punishment for spying,</p> <p>39: Punishment for traitorously hold correspondence with the enemy or gives intelligence to the enemy,</p> <p>43: Punishment for Mutiny,</p> <p>44: Punishment for seducing the naval personnel from allegiance,</p> <p>49: Punishment for desertion on his duty,</p> <p>56: Punishment for offences by officers in charge of convoy,</p> <p>59: Punishment for Arson.</p>				The Navy Act, 1957
11.	Section 15: Punishment for creating the probability of causing death by creating damage to the petroleum pipelines.				The Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962

12.	Section 16: Offences in relation to the enemy and punishable with death, Section 19: Punishment for Mutiny and Section 20: Punishment for desertion on active duty.	The Sashastra Seema Bal Act, 2007
13.	Section 3: Punishment for the atrocities on the scheduled caste or tribes.	The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2.3 Provisions of Bharatiya Nyaya Sanhita, 2023 On Death Penalty

Recently, steps have been taken to update and modernise the IPC to better reflect contemporary needs. This led to the drafting of the Bharatiya Nyaya Sanhita (BNS), which aims to replace the IPC. The BNS came into effect on July 1st, 2024, after being passed by Parliament in December 2023.

2.3.1 Drafting History of the Bharatiya Nyaya Sanhita, 2023

On 11th August 2023, the Home Affairs Minister introduced the BNS Bill 2023 in the Lok Sabha. Subsequently, on 12th December 2023, this bill was withdrawn and reintroduced as the Bharatiya Nyaya Sanhita (Second) Bill 2023. On 20 December 2023, this Bill was passed in the Lok Sabha, and then the President of India assented to it on 25th December 2023. After that, this bill came into force on 1 July 2024. The Bharatiya Nyaya Sanhita, 2023, contains 358 sections, 20 chapters.

➤ 246th Report of Parliamentary Standing Committee on BNS 2023

1. This Committee made its recommendations in the aspect of the Death Penalty on BNS, 2023 in this Report particularly in

(Para 1.19) this committee made its recommendation on the Death Penalty it mentioned that **“The Committee after considering the submissions regarding the death penalty has understood that the reason for a passionate argument against the death penalty is that the judicial system can be fallible and to prevent an innocent person from being wrongly sentenced to death. In this regard, the Committee recommends that the matter may be left for the Government to consider”**.⁵²⁸

2. So, it is clear that the Parliamentary Standing Committee left this matter to the government to consider regarding the Death Penalty and also the committee recognised that the primary reason behind the passionate argument against the death penalty is to prevent an innocent person from being wrongly sentenced to death.

2.3.2 Stand of Bharatiya Nyaya Sanhita On Death Penalty

The Bharatiya Nyaya Sanhita, 2023 Introduces four new offences which is punishable by the Death Penalty by this implementation the total number of offences punishable by death has risen from 12 to 16, whereas Sec 103 (2) of the BNS impose the death penalty as a punishment for Mob-Lynching,⁵²⁹ Sec 70 (2) of BNS impose Death Penalty as a punishment for Gang rape of a woman under the age of 18 years,⁵³⁰ Sec 111 (2) impose the death penalty as a punishment for Organised Crime that results in Death,⁵³¹ Sec 113 (2) of the BNS impose the death penalty for the terrorist act.⁵³²

So, it is evident that the offences punishable by capital punishment have increased because of the implementation of new criminal laws in India. The stance of India on the Death Penalty has not been changed; rather, by this enhancement, the Indian legal system believes that Capital Punishment is an effective solution

⁵²⁸ 246th Report on Bharatiya Nyaya Sanhita, 2023 by Parliamentary Standing Committee (Para 1.19).

⁵²⁹ The Bharatiya Nyaya Sanhita, 2023, s. 103 (2).

⁵³⁰ The Bharatiya Nyaya Sanhita, 2023, s. 70 (2).

⁵³¹ The Bharatiya Nyaya Sanhita, 2023, s. 111 (2).

⁵³² The Bharatiya Nyaya Sanhita, 2023, s. 111 (3).

to curtail the heinous crimes in society. To substantiate the stand of India on the death penalty, India voted against the moratorium of death penalty in UN General Assembly 2022 as per the data of Annual Statistics Report 2022 by National Law University Delhi, 125 countries voted in favour of a moratorium on the death penalty at the United Nations General Assembly on 15th December 2022, with India as One of the 37 countries that voted against the resolution.⁵³³ Hence, without considering the prevailing challenges in the administration of capital punishment, India implemented new criminal laws with increased death penalty offences. This sudden enhancement leads to a question of whether these new criminal laws sort out the existing challenges and uphold equality in capital punishment cases. The answer to this question is based on the future performance and implementation of these new criminal laws.

2.4 Comparative analysis of the Criminal Procedure Code, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 in the aspect of Rights of the Pre-Trial prisoners.

To safeguard the pre-trial and convicted prisoners from human rights violations, the Constitution of India, and the Criminal Procedure Code, of 1973 gave so many rights to protect their constitutional rights and the apex court often upholds the rights of the accused persons by its verdicts, however many of the pre-trial and convicted persons have been facing so many tortures, refusal of effective legal aid, human rights violations and practical complexities even though the major criminal laws contain the provisions pertaining to the rights of the accused persons. The quality of legal representation available to prisoners sentenced to death is an important parameter to evaluate the fairness of the administration of the death penalty in India. As per the report of the National Law University of Delhi's Death Penalty India Report 2016 Volume 1, Out of the 191 inmates who shared information regarding

access to an advocate at the time of interrogation, 185 (97%) said they did not have a lawyer, of these 185 prisoners, 155 spoke about their experience of custodial tortures, out of which 128 prisoners (82.6%) said they were tortured in police custody.⁵³⁴ While the researcher read this death penalty India report of the National Law University of Delhi to collect data for this research, the researcher read an opinion of U.S Supreme Court Justice Ruth Bader Ginsburg, who shared this opinion at a lecture at the University of District of Columbia (2001),

"I HAVE YET TO SEE A DEATH CASE AMONG THE DOZEN COMING TO THE SUPREME COURT ON EVE-OF-EXECUTION STAY APPLICATIONS IN WHICH THE DEFENDANT WAS WELL REPRESENTED AT TRIAL, PEOPLE WHO ARE WELL REPRESENTED AT TRIAL DO NOT GET THE DEATH PENALTY."⁵³⁵

So, it is evident that the basic legal rights of an accused played a crucial role in the cases of the death penalty but the sorrowful thing is that the refusal of the basic legal rights of an accused frequently happens in reality, and the practical complexities and difficulties which have been facing by the death penalty prisoners is numerous and recently in India the Code of Criminal Procedure, 1973 replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 with some new provisions but the main questionable area is that what is the stand of Bharatiya Nagarik Suraksha Sanhita, 2023 in the aspect of rights of an arrested persons those who are arrested by the investigation agencies to scrutinise about this the need of comparative analysis is essential between the CRPC and the BNSS. So hereafter, the researcher comparatively analyse the provisions of the Criminal Procedure Code, 1973 and the Bharatiya Nagarik Suraksha Sanhita, 2023 in the aspect of the rights of accused persons, while looking on to both legislations Sec 41D of the Criminal Procedure Code, 1973 provides the right to an accused person to meet an advocate of his choice during interrogation as

⁵³³ United Nations General Assembly, "Moratorium on the use of the death penalty," Resolution A/RES/77/222, adopted on 15 December 2022.

⁵³⁴ Death Penalty in India Report, by NLU Delhi Vol 1, (P132).

⁵³⁵ Death Penalty in India Report, by NLU Delhi Vol 1, (P137).

per this section: **“When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation though not throughout interrogation.”**⁵³⁶ In the Bharatiya Nagarik Suraksha Sanhita, 2023, this right is given under Section 38, and it also repeats the same words and phrases without any changes.

Likewise, Section 50 of the Criminal Procedure Code, 1973 provides a right to an arrested person to know the grounds of arrest and of right to bail, as per Clause (1) of this section: **“Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.”**⁵³⁷ And clause (2) of this section states that: **Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.**⁵³⁸ These rights were placed in **Section 47** of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the same words and phrases. Further, Section 50 (a) of the Code of Criminal Procedure, 1973 imposed an obligation on the person who is making the arrest to inform about the arrest to a nominated person as per clause (1) of this section: **Every police officer or other person making any arrest under this code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.**⁵³⁹ This section is placed in the Bharatiya Nagarik Suraksha Sanhita, 2023 in Section 48 (1) and as a change, it additionally mandates that a **person who is making the arrest shall inform to the designated police officer in the district.**⁵⁴⁰

Section 54 of the Criminal Procedure Code, 1973 mandates that an arrested person to be examined by a registered medical practitioner, as per this provision the medical practitioner shall prepare the record of such examination, documenting any injuries or marks of violence upon the arrested person and the approximate time when they may have been inflicted.⁵⁴¹ However, this section did not have any provision for an additional medical examination of an arrested person by the medical practitioner according to his suggestion but section 53 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provided that if the medical officer or the registered medical practitioner is of the opinion that one more examination of such person is necessary, he may do so.⁵⁴²

Further, Sec 55A of the CRPC ensures the Health and Safety of the arrested person, it states that: **“It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused”.**⁵⁴³ In the Bharatiya Nagarik Suraksha Sanhita, 2023, the health and safety of the arrested person are dealt under Sec 56 and the notable thing is that this new criminal procedure code again contains the same words and phrases in this section. Likewise, section 56 of the Criminal Procedure Code, 1973 mandates that the arrested person should be taken to before the magistrate or officer in charge of the police station without any unnecessary delay as per this section: **A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.**⁵⁴⁴ and the notable thing is that Section 57 of the Bharatiya Nagarik Suraksha Sanhita, 2023 doesn't have any changes in the words and phrases it again just placed in Section 57 rather than the old place. Further, sec 57 of the CRPC states that the

⁵³⁶ The Code of Criminal Procedure, 1973 (Act No.2 of 1974), S. 41 D.

⁵³⁷ The Code of Criminal Procedure, 1973 (Act No.2 of 1974), S. 50 (1).

⁵³⁸ The Code of Criminal Procedure, 1973 (Act No.2 of 1974), S. 50 (2).

⁵³⁹ The Code of Criminal Procedure, 1973 (Act No.2 of 1974), S. 50 (A) (1).

⁵⁴⁰ Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No.46 of 2023), S. 48 (1).

⁵⁴¹ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), S. 54.

⁵⁴² Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), S. 53.

⁵⁴³ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), S. 55 A.

⁵⁴⁴ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), S. 56.

arrested person should not be detained more than 24 hours as per this section: **“No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.”**⁵⁴⁵

In the Bharatiya Nagarik Suraksha, 2023 this abovesaid right of an accused person dealt under Sec 58 and the notable thing is that this section also repeats the same words and phrases of section 57 of CRPC except the section number of Sec 167 of CRPC this provision placed in the section 187 of BNSS and it brought some changes in the period of remand. As per the section 167 (2) of the CRPC : **“The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a magistrate having such jurisdiction.”**⁵⁴⁶

But the section 187 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 states that: “The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of

sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a magistrate having such jurisdiction.”⁵⁴⁷ So the BNSS retains the 15-day as a limit of police custody, but it introduces a crucial change in its wording that allows the investigating agencies to seek this period “in the whole or in part over 60 or 40 days”. So it is clear that the lack of clear guidelines in BNSS regarding the circumstances under which police custody can be sought beyond the initial 15 days has amplified concerns over this provision. By this comparative analysis, the researcher could understand that the new criminal procedure code, which is known as the Bharatiya Nagarik Suraksha Sanhita, 2023, mostly repeats the provisions of the Criminal Procedure Code, 1973, with some minor changes in the aspect of rights of the arrested persons but the questionable factor is that:

2.4.1 Whether all the arrested persons really enjoyed these rights during the period of the Old Criminal Procedure Code?

Section 50 of the Criminal Procedure Code, 1973 provides the right to know the grounds of arrest but the practical reality in the period of old CRPC is that the majority of the arrested prisoners were not informed on the grounds of arrest to substantiate this factor as per the data of the Death Penalty in India Report 2016 of NLU Delhi 136 out of 219 prisoners said that they were not informed about the grounds of arrested and the common practice included asking individuals to accompany the police officials for false and often vague reasons such as “answering a few questions or signing some documents”.⁵⁴⁸

Section 50 A of the Criminal Procedure Code, 1973 imposed an obligation on the person who is making the arrest must immediately inform the family, friends or nominated persons about

⁵⁴⁵ The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), S. 57.

⁵⁴⁶ The Code of Criminal Procedure, 1973 (Act No.2 of 1974), S. 167 (2).

⁵⁴⁷ Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No.46 of 2023), S. 187 (2).

⁵⁴⁸ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P12).

the arrest but the practical reality in the period of Old Criminal Procedure Code is that the police did not inform the families about the arrest in the majority cases to substantiate this factor as per the data of the Death Penalty in India report 2016 by NLU Delhi out of the 195 families that spoke about the arrest or surrender of the prisoners, Only in 20 cases did the families state that the police had informed them about the arrest. Apart from this, in 86 cases, the families noted that the arrest/surrender took place in front of them. However, it was common for the police to not inform the families about the grounds for arrest, or tell them that the prisoner was being taken for questioning, and would be brought back in a short while.⁵⁴⁹

Section 57 of the Criminal Procedure Code, 1973 mandates that a police officer shall not detain in custody a person arrested without a warrant for a period exceeding 24 hours, produced before the nearest magistrate within a period of 24 hours but the practical reality is that the police officials not effectively follow this requirement to substantiate this factor as per the date of the Death Penalty In India Report, 2016 of NLU Delhi out of the 258 prisoners who spoke about production before a magistrate, 166 said that they were not produced before the magistrate within 24 hours. Narratives of police custody for periods up to seven days, which sometimes even extended to several weeks or months, were documented.⁵⁵⁰

Section 41 D of the Criminal Procedure Code, 1973 ensures that any person arrested by the police shall be allowed to meet a lawyer of her choice during interrogation, though not throughout the interrogation. It may be noted that the obligation of the state to provide legal aid has not been extended to police interrogation prior to production before the magistrate but in reality majority of the arrested persons refused by the police officials to meet their lawyers during the time of interrogation to

substantiate this factor as per the data of the Death Penalty in India report, 2016 of NLU Delhi out of the 189 prisoners who spoke about whether they were represented at the time of first production before the magistrate, 169 (89.4%) did not have a lawyer.⁵⁵¹

Section 54 of the Criminal Procedure Code, 1973 mandates that an arrested person to be examined by a registered medical practitioner, as per this provision the medical practitioner shall prepare the record of such examination, documenting any injuries or marks of violence upon the arrested person and the approximate time when they may have been inflicted. But the practical reality is that many of the accused persons faced custodial tortures in the operation period of the old CRPC to substantiate this factor as per the data of the Death Penalty in India Report, 2016 of NLU Delhi 232 prisoners who spoke about medical examination, 126 said that no medical examination had been conducted upon arrest. Of these, 83 prisoners also said that they faced torture while they were in police custody.⁵⁵²

2.4.2 Custodial Tortures

a) As per the data of the **Death Penalty in India Report, 2016 of NLU Delhi** 270 prisoners who spoke about their experience in police custody, 216 (80%) admitted to have suffered custodial violence. Further, amongst the states with 10 or more prisoners, Haryana has the highest proportion of prisoners (100%) who were tortured in police custody, followed by Gujarat (94.7%) and Kerala (91.7%).⁵⁵³

b) So, it is clear that the arrested persons had been faced so many difficulties and practical complexities to get or enjoy the rights that are given under the Old Criminal Procedure Code, 1973 and the notable thing is that the new criminal procedure code which is also known as the Bharatiya Nagarik Suraksha Sanhita, 2023 also majorly repeats the same rights which conferred by the old Criminal Procedure Code

⁵⁴⁹ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P14).

⁵⁵⁰ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P16).

⁵⁵¹ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P18).

⁵⁵² Death Penalty in India Report, 2016 of NLU Delhi Vol II (P19).

⁵⁵³ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P20).

however, the similar feature of these both legislations is that both the legislations silence about what is the solution for the effective implementation of these rights to the arrested or detained persons because the initial rights of the pre-trial prisoners play a vital role in the Capital Punishment cases. Hence, to arrive a conclusion on whether this new criminal procedure code has the ability to sort out the existing practical complexities in our Indian Criminal Justice System is based on the future effective implementation of this Act because, this new criminal procedure code again repeats the same rights for arrested persons and pre-trial prisoners so, to witness improvement in the future effective implementation or progressive amendments is necessary.

2.5 Implementation of Capital Punishment for Child Sexual Offences and Its Challenges.

2.5.1 Child Sexual Abuse

Child sexual abuse involves engaging a child in sexual activities that they are too young to understand or consent to. This very definition highlights the deeply exploitative nature of such abuse. It often involves an adult or sometimes even an older child who holds a position of trust, power, or responsibility in the child's life, such as a family member, relative, or caregiver.⁵⁵⁴ What makes this form of abuse especially insidious is that it rarely relies on physical force. Instead, the abuser often uses manipulation, taking advantage of the child's innocence, trust, and limited understanding of the world. Because children are still developing mentally and emotionally, they are particularly vulnerable.⁵⁵⁵ In many cases, they might not even realise that what's happening to them is abuse or that something wrong is being done to them. The close relationship between the child and the abuser, combined with the child's limited ability to understand or articulate their experience,

makes it incredibly difficult for them to seek help. Often, such abuse is not a one-time occurrence. It can continue for years,⁵⁵⁶ hidden behind the silence, fear, and confusion the child carries.

The impact of such trauma can be long-lasting, shaping the survivor's mental health well into adulthood. Studies have consistently shown a strong link between child sexual abuse and psychological challenges both in the short and long term. Survivors often face conditions like Post-Traumatic Stress Disorder, anxiety, and depression. They may struggle with deep-seated feelings of self-blame, helplessness, low self-worth, and difficulty in trusting others. Some even resort to extreme coping mechanisms, including suicidal thoughts or behaviours. Given the serious and unique impact of child sexual abuse, it is crucial that legal protections are thoughtfully designed. These safeguards must not only hold perpetrators accountable but also be sensitive to the needs of survivors, providing them with the support, validation, and healing space they truly deserve.⁵⁵⁷

2.5.2 Indian Legal Frameworks on Child Sexual Offences

After realising the gravity of the offences relating to sexual abuse of children, the central government has brought a comprehensive legislation called 'The Commission for Protection of Child Rights Act, 2006 which came into force on 20th January, 2006. The Act provides for the constitution of a National Commission and State Commissions for the protection of child rights and Children's Courts for providing a speedy trial for offences against children or violation of child rights and for matters connected therewith or incidental thereto. Section 13 (1) (d) of this Act casts a duty upon the commission to examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, sex abuse,

⁵⁵⁴ NCRB statistics of 2019 show that 94.1% of all cases registered under sections 4 and 6 of the POCSO were people known to the survivors, such as immediate family, relatives, neighbours, employers/co-workers, or other known persons. National Crime Records Bureau, Government of India, Crime in India 2019, accessed 31 May 2021; World Health Organization, Guidelines for medico-legal care for victims of child sexual abuse (2003) 7.

⁵⁵⁵ ML Paine and DJ Hansen, 'Factors Influencing Children to Self-disclose Sexual Abuse' (2002) 22 Clinical Psychology Review 290.

⁵⁵⁶ WHO, 'Guidelines for Medico-legal Care' (n 18) 30.

⁵⁵⁷ A case against the death penalty for child sexual abuse by Kannan Jhunjhunwala, Indian Law Review 2022, Vol. 6, No. 1, P1-16.

trafficking, maltreatment, torture and exploitation, pornography, prostitution etc and recommend appropriate remedial measures.⁵⁵⁸

Moreover, the Commission shall have the power to inquire into such cases and forward them to the magistrate having jurisdiction to try the same. For the purpose of providing speedy trial of offences against children or violation of child rights, the state government, with the concurrence of the Chief Justice of the High Court, may specify at least one Court of Session to be a Children's Court to try such offences. The Act further provides for the appointment of special public prosecutors for the Children's Court. It would be seen that the Child's Right Act of 2006, as the title itself suggests, the focus is on the constitution of National Commission and State Commissions for the protection of rights of children in general, and the right of the child against sexual abuse is only one of such rights. But the Goa Children's Act, 2003, exclusively deals with sexual abuse of children and a wide range of related activities that an offender may commit. It not only recommends punishment against children's sexual abuse but also attempts to involve different sections of society to play an active role in protecting children and preventing their sexual abuse. It is in this sense that the Goa Children's Act may be treated as comprehensive as compared with the Central Act of 2006.⁵⁵⁹

Although the Goa Children's Act, 2003, contains provisions relating to the prevention of sexual abuse of children in general and tourism-related paedophilia in particular, a national law on grave sexual offences was lacking in the context of children, sexual assault may be classified as grave sexual assault, sexual assault, and incest. 'Grave sexual assault' covers all forms of sexual intercourse including oral sex and anus sex as well as offences such as making children pose for pornographic films, making children to have sex with each other

and deliberately causing injury to sex organs of a child. The 'sexual assault' includes showing children pornographic pictures and exhibitionism.⁵⁶⁰

Afterwards, in India, to prevent child sexual offences in a full-fledged manner, the Protection of Children from Sexual Offences (POCSO) Act was enacted and came into force in 2012 after long and careful discussions involving various stakeholders. It was designed with a clear goal: to build a justice system that is sensitive and responsive to the needs of children. The law outlines strict punishments and clear procedures for handling cases of child sexual abuse, including rape. It aimed to expand on the offences already covered under the Indian Penal Code (IPC), introducing mandatory minimum sentences and covering acts like penetrative assault, sexual harassment, and child pornography. One of the defining features of POCSO is its gender-neutral stance, it applies equally regardless of the gender of the child or the accused.⁵⁶¹

Furthermore, in recent years, India has seen significant changes in its criminal laws concerning sexual violence, especially against children. These changes came in the wake of national outrage over two particularly horrific incidents one in Kathua, Jammu and Kashmir, where an eight-year-old girl was abducted, gang-raped, and murdered; and another in Unnao, Uttar Pradesh, where a sitting MLA raped a seventeen-year-old-girl, and her father was killed after he refused to withdraw the complaint. These cases sparked widespread protests and public demands for justice, pushing the government to respond with stricter laws. As a result, the Criminal Law (Amendment) Act of 2018 introduced harsher punishments for rape under the Indian Penal Code (IPC). Following that, in July 2019, the Protection of Children from Sexual Offences (POCSO) Act was also amended to increase the punishment for aggravated penetrative sexual

⁵⁵⁸ Prof.N.V.Paranjape Criminology & Penology (including Victimology) 18th Edition, (P258, 259).

⁵⁵⁹ Prof.N.V.Paranjape Criminology & Penology (including Victimology) 18th Edition, (P258, 259).

⁵⁶⁰ The Goa Children's Act, 2003, Sec 8 (2).

⁵⁶¹ A case against the death penalty for child sexual abuse by Kannan Jhunjhunwala, Indian Law Review 2022, Vol. 6, No. 1, P1-16.

assault of children, raising the maximum sentence from life imprisonment to the death penalty.⁵⁶²

Under these changes, the IPC now categorises punishments for rape based on the age of the female victim: under 12 years, between 12 and 16, and above 16 years. The most severe punishment, the death penalty, is now applicable in cases involving victims under the age of 12. Similarly, the 2019 POCSO amendment expanded this by allowing the death penalty for aggravated penetrative sexual assault of any minor under 18. Under this act, There are 3 broad categories of Sexual Offences are there they are: 1. Sexual Assault, 2. Sexual Harassment, and 3. Using a child for pornography. Further, under this act, the highest form of punishments are classified into: 1. Life Imprisonment till the remainder of a person's life. Under the POCSO Act, the person's life means when a person is given a punishment of imprisonment for life, usually, after 14 years in prison, the government may release the convict, saying he has completed his term of punishment. But in the POCSO cases where the law says that the punishment is for the natural life, then the person cannot be released after 14 years, and he will have to remain in prison till he dies. 2. Death Penalty for committing aggravated penetrative sexual assault on a child.⁵⁶³

Furtherly, this amended POCSO Act has introduced new offences such as its specifically defining "Child Pornography" as a visual depiction of some sexually explicit conduct that involves a child and this term has very widely defined, to include not just any video or photograph but also any computer-generated image of the child which represents and is not distinguishable from the child.⁵⁶⁴ Furtherly, this act widening the scope of "aggravated sexual assault" as if anyone entices, induces, coerces, persuades a child to get administered or

administers or direct anyone to administer or assist in getting administered any chemical substance, drug, hormone, to a child with the intent that such child attains early sexual maturity by this inclusion this act expands the scope of the term "aggravated sexual assault".⁵⁶⁵

Afterwards, this 2019 amendment act increased the punishment for the offence of penetrative sexual assault from 7 years to 10 years,⁵⁶⁶ if this same offence is committed on a child below 16 years of age the term of imprisonment would be a minimum of 20 years, and it may extend up to life imprisonment⁵⁶⁷ and the notable thing is that under this 2019 amendment Act imprisonment for life refers to imprisonment for the remaining natural life of such perpetrator.⁵⁶⁸ Furtherly, if any person commits the offence of aggravated penetrative sexual assault, he may be punished with rigorous imprisonment for a minimum term of 20 years, and it may extend up to imprisonment for life, or death.⁵⁶⁹ After that, this amendment also provides that the fine payable under sections 4(1) and 6(1) of the POCSO Act would be reasonable, and it emphasises paying the fine amount to the victim to meet the medical and rehabilitation expenses.⁵⁷⁰ However, the inclusion of these enhanced penal provisions of the POCSO Amendment Act, 2019, for child-based offences has raised significant questions in the aspect of whether this enhancement of the penal provisions for child-based sexual offences leads to unjustified convictions and executions because of the tutored evidence of children.

Furthermore, the inclusion of the harsher punishments and the death penalty for child sexual offences creates a question whether the

⁵⁶² A case against the death penalty for child sexual abuse by Kannan Jhunjhunwala, Indian Law Review 2022, Vol. 6, No. 1, P1-16.

⁵⁶³ The Protection of Children from Sexual Offences (Amendment) Act, 2019.

⁵⁶⁴ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 2 (di).

⁵⁶⁵ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 9.

⁵⁶⁶ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 4(1).

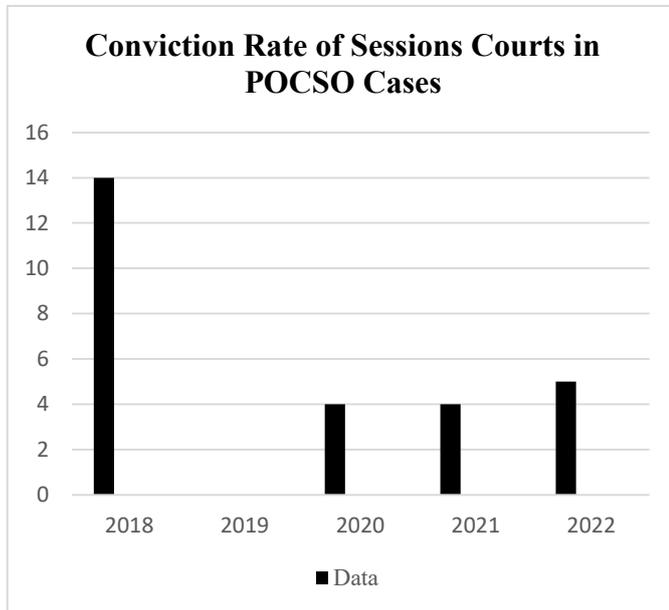
⁵⁶⁷ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 4(2).

⁵⁶⁸ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 4(2).

⁵⁶⁹ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 6.

⁵⁷⁰ The Protection of Children from Sexual Offences (Amendment) Act, 2019, Sec 4 (3), 6 (2).

Indian legislature failed to consider the role of a child’s tutored evidence in the POCSO trials. Because in recent times, the concern over the child tutored evidence has arisen among the



Indian Judiciary, and the courts have also slowly started to address this issue as a problematic zone while approaching the cases of child sexual offences, while discussing about the child sexual offences it is noteworthy to mention about the rate of convictions in the child sexual offences granting by the sessions courts collected from the National Law University Delhi’s Annual Statistics Report, 2022.⁵⁷¹

The above-mentioned data elucidates that in the year 2018, the rate of convictions by the sessions courts was higher compared to the rest of the years, as mentioned in the data, but these data clarify that the lower courts are granting the maximum punishments for the child-based sexual offences and without any doubt in all these cases the depositions of the children played as a crucial factor while sentencing the perpetrator but the notable factor is that how the court can identify the fake depositions of a children in the course of trial? In the normal cases the veracity of the depositions evaluated based on how the witness depose in the court in line with the facts and evidences of the cases, in simple term they should not depose contrary from the facts and evidences

of the cases this is the general evaluation method of the court in the normal cases but in the POCSO cases it is not happening like that because it impose some restrictions on the cross-examination of the defence counsel while crossing the child victim so within this limit the defence counsel have to cross the child victim this kind of restrictions creates so much burden on the defence counsel in the POCSO cases to contradict the case of prosecution.

2.5.3 Role of Tutored Depositions and Its Implications in POCSO Trials

In the context of POCSO (Protection of Children from Sexual Offences) Act trials in India, “tutored depositions” refer to witness testimonies, especially those of child victims that appear rehearsed, coached, or influenced by parents, guardians, police, or other adults before being given in court. These can raise serious concerns about the credibility and admissibility of the child’s statement.

Moreover, the unique feature of the POCSO Act, 2012 is that it follows the inquisitorial system, Generally, the Indian Legal system follows the Adversarial System rather than the inquisitorial system, but the POCSO Act is an exception from this system Because, under the POCSO Act, the accused shall be presumed as he did that crime alleged upon him until he proves the contradiction on the case of prosecution (**Sec 29 of POCSO Act, 2012**) and it is notable that whoever made any false accusation under the POCSO Act they are punishable under this Act, up to 6 months of Imprisonment,⁵⁷² but as per Sec 22 (2) of this Act if any child made any false accusation under this act there is no punishment for that child under this Act.⁵⁷³ This is the major questionable area in the POCSO Trial because in some POCSO cases, there is a possibility of tutored depositions of a child leading to unjustified convictions. To substantiate this, it is noteworthy to mention that the frequent occurrences of the tutored depositions in the POCSO cases help to

⁵⁷¹ Annual Statistics Report, 2022 by National Law University Delhi, P17.

⁵⁷² The Protection of Children from Sexual Offences Act, 2012, Sec 22 (1).

⁵⁷³ The Protection of Children from Sexual Offences Act, 2012, Sec 22 (2).

understand the seriousness of the child tutored evidence. In the case of **State of Rajasthan v. Om Prakash (2002)**,⁵⁷⁴ the Supreme Court observed that a child witness is not necessarily unreliable. The court should assess whether the child understands the duty to speak the truth and whether their testimony is free from external influence.

Furtherly, in the case of **Sohan Lal @ Sonu v. State (2015)**⁵⁷⁵ the Delhi High Court acquitted the accused and stated that “After perusal of the evidence of a child, it is well settled that the child’s witness is prone to tutoring and hence, the court should look for corroboration, particularly when the evidence betrays traces of tutoring. We, therefore, think that the appellant is entitled to the benefit of doubt. Thereafter, the Telangana High Court in the case of **Begari Ravi Kumar vs the state of Telangana (2024)**⁵⁷⁶ acquitted a man booked under the provisions of the POCSO Act, the court furtherly clarified that the evidence of the child witness can easily be influenced by the elders in the family, and “**Acceptance of the child witness evidence would be dangerous as the evidence appeared to be the result of tutoring.** So, the possibility of tutoring has been turned as a major concern in recent times.

On the other hand, the Kerala High Court in the case of **Dileep, s/o. Devarajan v State of Kerala (2024)**⁵⁷⁷ held that a witness cannot be recalled merely on the ground of being tutored, especially when the trial court found no significant contradictions in the evidence. Furtherly, the court reiterated that the power under Section 311 of the Criminal Procedure Code is discretionary and should be exercised judiciously, considering the necessity for a just decision. In another case, the Bombay High Court acquitted the accused on the basis of tutored evidence by the victim child, in the case of **Vijay s/o Manoharrao Jawanjel v State of**

Maharashtra (2024)⁵⁷⁸ the Bombay High Court reiterated that the presumption under section 29 of the POCSO Act is not an absolute presumption. The presumption would operate only upon the prosecution first proving foundational facts against the appellant beyond the reasonable doubt. the court further observed that after perusing the cross-examination, it would show that the victim completely demolished the evidence of her mother as well as her statement in examination in chief, the cross-examination of the victim would show that she was tutored to depose against the accused, so the possibility of tutored evidence is one of the major problematic zone in the POCSO cases.

On the perusal of the above-mentioned decisions it is evident that courts are frequently addressing the role of tutored evidence in the POCSO cases and shared its opinion about those kind of evidences, and the considerable factor is that this kind of tutored evidences of the children some time leads to imposition of harsher punishments on the accused unfairly because the nature of the POCSO Act is framed like that, and while framing the POCSO Act, 2012 the Ministry of Women and Child Development was never contemplated about the death penalty latterly, the death penalty included in the 2019 Amendment this inclusion of the death penalty for the non-homicidal child oriented sexual offences creates an apprehension in the aspect of whether this inclusion leads to unjustified convictions, because as the researcher mentioned earlier the evidence of the children can easily be manipulated by the family members, or any other trustable persons of the child for their personal vengeance on the accused persons and the notable factor is that POCSO Act doesn’t have any provisions to punish the child who are giving fake deposition in the court rather this act only punishing the persons who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7

⁵⁷⁴ State of Rajasthan v. Om Prakash 2002 (5) SCC 745.

⁵⁷⁵ Sohan Lal @ Sonu v. State (2015).

⁵⁷⁶ Begari Ravi Kumar vs the State of Telangana (Criminal Appeal No. 88 of 2024).

⁵⁷⁷ Dileep, s/o. Devarajan v State of Kerala (CrI.MC No. 3789 of 2024) P5.

⁵⁷⁸ Vijay s/o Manoharrao Jawanjel v State of Maharashtra (Criminal Appeal No. 185 of 2021) P11,24.

and section 9, solely with the intention to humiliate, extort or threaten or defame him by imprisonment for a term which may extend to six months or with fine or with both,⁵⁷⁹ the researcher consider this punishment is very lenient in nature and not enough to punish the false accusers.

Further, Section 22 (2) of the POCSO Act clearly states that "Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child."⁵⁸⁰ This section acts as an immune for the child to prevent them from the punishments and the notable factor is that this section also preventing the children who are giving fake or tutored depositions in the POCSO trials. The researcher is not going to say that they have to be punished severely for their fake depositions, at least this act has to impose severe monetary penalties on the children's family, for tutoring the child and this act should impose simple imprisonment on the children who are all comes under the age category of between 12 to 17 because this category of children have a good cognitive level to understand about the tutoring of their families or trustable persons and this category of children should punish for the initiation of false allegations hence, by this kind of inclusions so many unfair punishments and executions can be prevented in the future.

CHAPTER - 3

HISTORICAL BACKGROUND AND VARIOUS METHODS OF DEATH PENALTY IN THE ASPECT OF INTERNATIONAL LAW AND WHY INDIA RETAINS DEATH PENALTY

3.1 Global Origin of the Death Penalty as a Form of Punishment

The Global Origin of Capital Punishment was started in the Eighteenth Century BCE in the Code of King Hammurabi of Babylon, Which codified the death penalty for 25 different crimes, and the form of capital punishment was also a part of the fourteenth century BCE's

Draconian Code of Athens, which declare death is the only punishment for all crimes, and the Fifth century BCE's Roman Law of the Twelve Tablets. Death Sentences were carried out by such means as crucifixion, drowning, beating to death, burning alive, and impalement. In the Tenth Century CE, hanging became the usual method of execution in Britain.⁵⁸¹

In the following century, William the Conqueror would not allow persons to be hanged or otherwise executed for any crime, except in times of war, This trend would not last, for in the sixteenth century, under the reign of Henry VIII, as many as 72,000 people are estimated to have been executed. Some common methods of execution at that time were boiling, burning at the stake, hanging, beheading, and drawing and quartering. Executions were carried out for such capital offences as marrying a Jew, not confessing to a crime or treason, The number of capital crimes in Britain continued to rise throughout the next two centuries, by the 1700s, 222 crimes were punishable by death in Britain, including stealing, cutting down a tree, robbing a rabbit warren.⁵⁸²

Because of the severity of the punishment of death, many juries would not convict defendants if the offence was not serious. This led to reforms of Britain's death penalty. From 1823 to 1837, the death penalty was eliminated for over 100 of the 222 crimes punishable by death. So, these data shows the practice of capital punishment was started globally around the 18th century, and the countries that adopted the death penalty as a punishment believe that death penalty is the solution to curtail heinous offences in the society effectively, but the late Middle-ages to the nineteenth century also witnessed significant changes in the form of

⁵⁷⁹ The Protection of Children from Sexual Offences Act, 2012, Sec 22 (1).

⁵⁸⁰ The Protection of Children from Sexual Offences Act, 2012, Sec 22 (2).

⁵⁸¹ "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

⁵⁸² "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

executions and the punishment that were inflicted upon the criminal corpse.⁵⁸³

During the Middle Ages, public tortures and executions were common throughout the United Kingdom and regarded as a socially accepted form of punishment and different levels of pain and types of execution were inflicted on prisoners depending upon the nature and severity of their crime, torture was typically used as a way to extract evidence and information and public execution was often used as a warning to prevent others from committing crimes. And in the period of the Middle Ages, there were no laws or rights given to prisoners, allowing torture and executions to be widespread and completely unregulated. Despite the gruesome nature of all of this, executions were often public and attended by large crowds.⁵⁸⁴ These are some of the most common types of medieval executions: **a) Beheading b) Hung, strung and quartered c) Burning d) Crushing e) Boiling to death f) Impalement g) Hanging h) The Wheel i) Sawing j) Crucifixion.**

The above-mentioned execution methods ruled the medieval period and were often used upon the convicted perpetrators as a punishment for their intolerable crimes which affected the society's harmony and peace. Apart from the Middle Age era, some other facts played a huge role in the evolution of capital punishment particularly Britain influenced America's use of death penalty more than any other country, when the European settlers came to the new world, they brought the practice of capital punishment, however, the execution of the captain George Kendall recorded as a first execution the new colonies and the cause behind the execution of the George Kendall is that he was allegedly being a spy for Spain. Further, Virginia Governor Sir Thomas Dale enacted the Divine, Moral, and Martial Laws in 1612. These laws provided the death penalty as a

punishment for even minor offences such as stealing grapes, killing chickens, and trading with Indians. Generally, laws related to capital punishment varied from colony to colony; the New York Colony instituted the Duke's Laws of 1665. Under these laws, offences such as striking one's mother or father, or denying the "true god", were punishable by death.⁵⁸⁵

In the early and mid-twentieth century, particularly in the period of 1907 to 1917, six states completely outlawed the death penalty and three limited it to the rarely committed crimes of treason and first-degree murder of a law enforcement official. but this reform was short-lived, because thereafter the US citizens began to panic about the threat of revolution in the wake of the Russian Revolution, and the US had just entered World War 1 too, due to that there were intense class conflicts as socialists mounted the first serious challenge to capitalism. As a result, five of the six abolitionist states reinstated their death penalty by 1920.⁵⁸⁶

In the year of 1924, Nevada introduced the use of cyanide gas as an initiative to brought more humane way of executing its inmates, and Gee Jon was the first person executed by the use of lethal gas, for the purpose of executing Gee Jon the state tried to pump cyanide gas into cell of Jon while he slept, but this proved impossible, and the gas chamber was constructed. In the period of (1920s to 1940s) the writings of the criminologist played a pivotal role in the evolution of capital punishment because in this period the majority of criminologists emphasised that the death penalty is a necessary social measure, however, in the United States, Americans were suffering through prohibition and the great depression and the more important thing is that there were more executions in the 1930s than in any other decade in American history, with an average of

⁵⁸³ "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

⁵⁸⁴ Death Penalty Research Unit (DPRU) Research Papers, DPRU Research Paper No. 2 (December 2023).

⁵⁸⁵ "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

⁵⁸⁶ "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

167 per year.⁵⁸⁷ Furtherly, in the 1950s, public sentiment began to turn away from capital punishment, and many nations either abolished or limited the death penalty, because of that the ratio of executions had fallen. Whereas there were 1,289 executions in the 1940s, there were 715 in the 1950s, and the number fell even further, to only 191, from 1960 to 1976. In 1966, support for the death penalty was at only 42%.⁵⁸⁸

3.2 Different Approaches of Global States Towards Capital Punishment and the Impacts of International Initiatives on It

Despite the fact that so many countries have been practising the death penalty as a punishment, every countries approaches towards the execution according to its own method of practice however, that particular method of execution of a particular country has its own justification towards that execution method in this chapter the researcher is going to discuss about different approaches of countries towards the death penalty and its practices and justifications first and foremost I would like to explore the methods of execution in Iran, Iran is the country which imposing the death penalty on the perpetrators in a stringent manner and we can't ignore the administration of the death penalty of the Iran while study about the Capital Punishment as core subject matter moreover, the Islamic Penal Code of Iran prescribes several execution methods, including hanging, firing squads, crucifixion, and stoning. Hanging has been the main method of execution and the only method used between 2008 and 2020.⁵⁸⁹

In Iran, the majority of the executions are carried out within prisons, if the offence is related to murder the plaintiff must be present during the execution of the convict because as per the Iranian law Qisas as the right of the plaintiff, and

the family members of the murder victim are encouraged to carry out the actual execution themselves, and cranes are used to carry out the executions which upheld in the public in this method of execution the prisoners are either pulled up or the object they are standing on is removed from beneath their feet. In this procedure the convict die because of suffocation and strangulation and it often takes several minutes until death. After some time the Human Rights committee observed that the practice of executions in the public place is contrary to the provisions of the ICCPR apart from that this kind of execution practices failed to respect and violates the Article 6 of the ICCPR. And the noticeable factor is that there were no report of stoning punishment since 2010 because of the higher international pressure and this pressure reached its peak in the campaign to save Sakineh Mohammadi-Ashtiani in 2010.⁵⁹⁰

Iran ratified the following International Treaties those are pertaining to the death penalty, they are: The International Covenant On Civil and Political Rights (ICCPR) in 1975, The International Convention on the Rights of the Child (CRC) in 1994, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2009, Other applicable treaties that the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights in these treaties Iran neither signed nor ratified because these treaties are aiming to the Abolition of the death penalty and the notable thing is that Iran voted against the universal moratorium on the use of the capital punishment which was conducted by the United Nations General Assembly (UNGA) and the most important thing is that since the introduction of the resolution in 2007, the number of voters supporting the resolution has steadily increased to a new record high of 125 in 2022.⁵⁹¹ However,

⁵⁸⁷ "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

⁵⁸⁸ "DPIC." *Death Penalty Informative Center*, deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty.

⁵⁸⁹ The Islamic Penal Code, 2012.

⁵⁹⁰ Annual Report on the Death Penalty in Iran 2020, (P39).

⁵⁹¹ Annual Report on the Death Penalty in Iran 2023, (P22).

Iran has voted against the abolition of the death penalty in this resolution till now.

After some period, Iran reduced the executions for some offences due to sustained domestic campaigning and international pressure, In 2017 amendments impelled by International Pressure decreased drug-related executions, and notably, these sudden reductions in the executions led to the most significant reduction in the number of implemented death sentences in the Iran history. But these reductions in the executions only lasted for 3 years because in 2021 again the number of executions started to gradually increase and in the year 2023 Iran witnessed an eighteen-fold increase in executions. However, Iran arrested the human rights activist who is speaking against the death penalty for instance, In 2014 Golrokh Ebrahimi-Iraee (Human Rights Activist) was arrested and put behind the bars for speaking against capital punishment and she received additional punishment too, then in May 2022 she was released and again she had arrested On 26 September 2022 subsequently her trial was conducted in the Tehran Revolutionary Court and she was sentenced to six years imprisonment for the following offences “Assembly and Collusion against national security”, a year for “propaganda”, a two year ban on membership of groups and parties and the confiscation of her phone and in the appeal she got five-year imprisonment and additional punishments Despite serving her sentence she continuously speak out against the death penalty and being as a voice of voiceless prisoners.⁵⁹²

In Iran, it is routine to arrest all the persons without any mercy for expressing their opinion against the death penalty, Iran’s object behind this stringent arrests is to create an apprehension for the people who are having a thought to resist the Iran government for the arbitrary executions without considering the natural justice and In Iran the most unique and inhumane method of execution is stoning this

particular punishment imposed only on the perpetrators who did the offence of adultery and this punishment is imposed on both the men and women in the public and Article 225 of the Islamic Penal Code sets the punishment for the Adultery but the notable thing is that the punishment for the offence of the adultery can imposed in some other alternative ways with the permission of the Head of the Judiciary and as per the data of Annual Report 2023 of Iran at least 5 people are currently at risk of execution for the adultery charges.⁵⁹³

So far we have discussed the use of death penalty in Iran and how they are using the Death Penalty in a stringent manner upon the perpetrators but while discussing about the concept of capital punishment from an international perspective it is inevitable to discuss about the Saudi Arabia's death penalty usage because in Saudi Arabia individuals are targeted by the authorities for exercising their fundamental rights like, freedom of expression, freedom of association etc and more than that these kind of people were sentenced to lengthy prison terms or capital punishment along with the unfair trials likewise the human rights defenders also subjected to the arbitrary detentions or subject to travel bans and eventually they would be released in a conditional release from prison and the notable thing is that in Saudi Arabia not only citizens are subjected to the unfair executions, migrants also subjected to the serious human rights violations and subjected to the death penalty these all cases also includes the individuals who were children at the time of alleged crimes.

Saudi Arabia established Specialized Criminal Court (SCC) for the purpose of conducting the trials for the offences which those are pertaining to the terrorism-related crimes, and this court frequently convicts the individuals to lengthy prison terms following grossly unfair trials solely for exercising their rights like freedom of association and expression, include online on X (formerly Twitter). Furtherly, unfair trials

⁵⁹² Annual Report on the Death Penalty 2023 in Iran, (P104).

⁵⁹³ Annual Report on the Death Penalty 2023 in Iran, (P56).

frequently occurred in Saudi Arabia and Salma-al-Shehab, a PhD student at Leeds University was resented by SCC along with the 27-year travel ban thereafter the appeal chamber of the SCC referred her to 34-year prison term the SCC upheld her convictions for the terrorism-related offences, including destabilising security and the stability of the state, supporting those who are seeking to disrupt public order and posting tweets that “disturb public order”, The charges arose from posts she published on X in support of women’s rights.⁵⁹⁴

In the cases of death penalty Saudi Arabia imposed a wide range of crimes, including who were under the age of 18 at the time of crime, however, in the execution of the Hussein Abo al-Kheir he was refused to access the pre-trial legal assistance and refused to access the legal representation and tortured to make a “confession” and the reason for his conviction is “Drug Smuggling” then the notable thing is that his body was not returned to his family following the execution. Furtherly, One letter was sent by the Amnesty International to the Saudi Human Rights Commission then this commission confirmed that: “the application of the death penalty on juveniles for ta’zir crimes has been completely abolished”. Ta’zir crimes are those for which the death penalty is not mandated under the Islamic Law. But contrary to such assurances, at least seven child offenders remained at imminent risk of execution, including Abdullah al-Derazi and Jalal Labbad. The supreme court executed them in the year of 2023 without informing their families of lawyers.⁵⁹⁵

Furtherly, in July 54 year-old teacher “Mohammad bin Nasser Al-Ghamdi” was sentenced to death by the supreme court of Saudi Arabia for his social media activities especially he was convicted under Articles 30, 34, 43 and 44 for “supporting a terrorist ideology and a terrorist entity”, and the court decided

that he was seek to destabilise public order”. And the notable factor is that he was not accused of any violent crime.⁵⁹⁶ Globally, the following countries have the highest number of executions they are: China, Iran, Saudi Arabia, Somalia and the USA to substantiate this stand China is the world’s leading executioner as per the data of Amnesty International, According to that data at least 1,153 capital punishments were executed in the year of 2023 but, notably, there are no transparent data available in the public domain about the exact practice of the capital punishment in China and it is believed to be that apart from this numbers which already mentioned earlier there are thousands of executions have been carried out in China. Apart from China 89% of the executions were reported in two countries they are Iran and Saudi Arabia.⁵⁹⁷

The following provisions globally set a limit in the usage of the death penalty on the certain category of people they are Article 6(5) of the International Covenant on Civil and Political Rights emphasises that no person should be imposed to Capital Punishment if they are below the age of 18 and this safeguard of this article is also applicable to the pregnant woman. Furtherly, the UN Human Rights Committee has referred that the prohibition of executing pregnant women or minors under Article 6 of the International Covenant on Civil and Political Rights is set as a rule of customary international law. Likewise, Article 37(a) of the UN Convention on the Rights of the Child States emphasises that: “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”. Then the Article 4(5) of the American Convention on Human Rights states: prohibited the imposition of the death penalty on the persons those who are under the age of 18 at the time of committing the crime or those who are aged above 70 years and this article also

⁵⁹⁴ <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/saudi-arabia/report-saudi-arabia/>

⁵⁹⁵ <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/saudi-arabia/report-saudi-arabia/>

⁵⁹⁶ <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/saudi-arabia/report-saudi-arabia/>

⁵⁹⁷ <https://www.amnesty.org/en/what-we-do/death-penalty/>

applicable to the pregnant women too and Article 5(3) of the African Charter on the Rights and Welfare of the Child states: “The death sentence shall not be pronounced for crimes committed by children”. Article 2 of this treaty specifies that the term “Child” refers to anyone under the age of 18. Safeguard 3 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, also prohibited the imposition of the death penalty on minors and pregnant women.⁵⁹⁸

The UN Special Rapporteur on extrajudicial states that: all the government of the states should not be enacted the legislations which is impose capital punishment to the mentally retarded or insane persons then according to this rapporteur “International Law prohibits the capital punishment of mentally ill or insane persons more than that states must consider the adoption of special laws to protect the mentally ill people and this Special Rapporteur has also expressed the hope that the non-application of capital punishment would be extended to elderly persons.⁵⁹⁹ Apart from these data, America is also a country that frequently uses capital punishment to punish the perpetrators and the US has a vast history in the usage of the death penalty and Britain influenced America’s use of the death penalty more than any other country did⁶⁰⁰ then the legal executions took place as early as 1630, as like England was imposed the death penalty for many crimes, including minors in England the reason behind the execution of minors was stealing, pickpocket.

In the period of 1800s England had 270 crimes which are punishable by the death penalty and thousands of people attended the public hangings however in later periods England and America reduced the number of death penalty offences then around the 1800s many people

started to oppose the capital punishment in America and Europe and the notable thing is that the strong objections against the capital punishment were started after the World War II, furtherly in the US seventeen states mainly banned the Capital Punishment and New York banned the death penalty 30 years before and reinstated it in 1995, and the New York court of appeals struck down the legislation in 2004 then the state legislature has refused to pass new capital punishment laws and recently the following cities struck down the death penalty they are New Mexico (2009), Illinois (2011), New Jersey (2007), New Jersey (2007) and in 1972 the supreme court of America declared the capital punishment as unconstitutional in the case of *Furman v. Georgia*, furtherly the court said the death penalty was a violation of the eighth amendment prohibition against cruel and unusual punishment because of the inconsistency in who was given a death sentence and who was not. And court also added that the new legislation might be acceptable in the future and that new legislation must be enacted with clarity.⁶⁰¹

In the period of 1972 to 1976, 35 states wrote new death penalty legislation in order to comply with the Supreme Court’s suggestions and this law set criteria for the offences when the death penalty should be applied and these laws have the provisions regard the consideration of the mitigating circumstances according to this law the court could only sentence someone to death if the aggravating circumstances outweighed any mitigating circumstances. Furtherly in 1976, the Supreme Court in the case of *Gregg v. Georgia* in this case the SC held that the first type of law, based on the act of balancing mitigating and aggravating circumstances, was constitutional and furtherly the court struck down the second type and declared as unconstitutional.⁶⁰² Again, the executions were started in 1977 from this year to 1985, only 50 executions took place, and 2000 prisoners waited on death row. Furtherly the

⁵⁹⁸ International Standards on the Death Penalty, (P10, 11).

⁵⁹⁹ International Standards on the Death Penalty, (P11).

⁶⁰⁰ <https://deathpenaltyinfo.org/resources/high-school/about-the-death-penalty/history-of-the-death-penalty>

⁶⁰¹ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁶⁰² *Gregg v. Georgia*, 428 U.S. 153 (1976).

McCleskey v. Kemp (1987) case came as a test case this case did a careful study of how the death penalty had been applied in Georgia during the 1970s and this study revealed that “the blacks who had killed whites had been sentenced to die seven times more often than whites who had killed blacks”.⁶⁰³ Further, by this study, the court found that there are some racial discrimination that occurred in Georgia’s application of the death penalty. Afterwards, the Supreme Court of America decided many cases since McCleskey for instance in the case of Roper v. Simmons the Supreme Court ruled that the execution of murderers who are under the age of 18 is unconstitutional⁶⁰⁴ and the notable factor is that in the recent years, about 50 prisoners have been executed each year and as of now around 2,100 convicted prisoners wait on the death rows in prisons across America.⁶⁰⁵

Furthermore, in the case of China, it is estimated to be the world’s leading executioner, executing thousands each year, but statistics on the death penalty are classified as a state secret. However, China currently has 46 crimes for which the death penalty can be imposed, including non-violent crimes. The last reduction in the number of capital crimes was in 2015 (ninth amendment to the criminal law), The majority of capital crimes do not meet the criteria of “most serious crimes”. A death sentence in China is either approved with ‘immediate execution’ or with a ‘two-year suspension’ Increased use of the suspended death sentence has reduced executions but it is also associated with the higher risks of miscarriages of justice moreover China voted against the most recent Human Rights Council resolution, adopted at the 48th session in October 2021, calling for increased transparency and abolition of the death penalty.⁶⁰⁶ Furthermore, China continues to execute a huge number of people. Indeed, a recent decision to

promote lethal injection as a means of execution nationwide was reported in some quarters in China as a “cost-effective” and more efficient alternative to execution by bullet, possibly facilitating even higher rates of execution and mobile execution chambers are also being used extensively throughout China – converted buses in which convicts can be executed by lethal injection “immediately after sentence is passed”.⁶⁰⁷

3.3 Abolitionist Momentum and Its Impact on Capital Punishment Discourse

Over a period of time the thoughts of the global countries gradually tilted towards the abolition of the Death Penalty as a form of Punishment. In contrast, some countries have contradicting thoughts on the repeal of the death penalty and still those countries practising the death penalty. They also still believe that capital punishment is the only solution to curtail heinous crimes effectively and as the researcher mentioned earlier Iran, Saudi Arabia, the US, and China still stringently practising the death penalty even though they have faced so much pressure from the International Organizations, then the primary reason behind this shift towards the abolition of the capital punishment among the global countries is that they slowly started to adopt for the reformative system.

Moreover, the radical changes brought into criminal science and criminological thinking lead to a fresh approach to the problem of crimes and criminals, In contra to the retributive, deterrent, and preventive justice, the reformative approach to the chastisement seeks to bring changes in the conduct of the offender or the convicted perpetrators and the major reason and justification behind the reformist movement is to rehabilitate the convicted prisoners and change them as law-abiding citizens thereby they can change the society in a positive manner, and this reformist movement completely oppose the death

⁶⁰³ McCleskey v. Kemp 481 U.S. 279 (1987).

⁶⁰⁴ Roper v. Simmons 543 U.S. 551 (2005).

⁶⁰⁵ Death Row Overview (as of January 1, 2025), DPIC (Death Penalty Information Center).

⁶⁰⁶ UN Universal Periodic Review of China. (Mid-term Report), The Rights Practice (November 2021), P3,

⁶⁰⁷ “<https://www.amnesty.org/es/wp-content/uploads/2021/09/asa170072004en.pdf>,” n.d.

penalty and also condemns all form of corporal punishments furtherly the reformative view suggested that the chastisement is only justiciable and it only looks to the future and not to the past then this reformative concept falls in the period of Modern or New Penology and this era stringently opposing all old barbarous methods of punishment such as mutilation, branding, hanging, burning, stoning, flogging, amputation, starving the perpetrator to death etc.⁶⁰⁸

So, the reformative approach is one of the major reason behind this shift among the global countries to repeal or abolish capital punishment then this shift towards the abolition of capital punishment was started around colonial times especially this movement finds its roots in the European theorists' writings specifically from Voltaire, Montesquieu, and Bentham, and English Quakers John Bellers and John Howard then the essay of the Cesare Beccaria's 1767 made a strong impact globally on crimes and punishment in this essay Beccaria states that there was no justification for the state's taking of a life, furtherly this essay turned as an authoritative and renewed energy for the abolitionist and it leads to the abolition of the capital punishment in Austria and Tuscany and the American intellectuals also got influenced by the Beccaria, and the most important thing is in US first and foremost attempt to reform the capital punishment occurred from the bill that was introduced by the Thomas Jefferson this bill proposed that capital punishment be used only for the crimes of murder and treason but unfortunately this act was defeated by only one vote.⁶⁰⁹

Dr Benjamin Rush, a signer of the Declaration of Independence and founder of the Pennsylvania Prison Society also influenced and he challenged the belief that the capital punishment serves as a deterrent and the most

important thing is that in the earlier period rush was a believer of "Brutalization Effect". And he believes that the death penalty actually increased criminal conduct. However, the rush had the support of Philadelphia Attorney General Willam Bradford and Benjamin Franklin then the Bradford, who latterly become the U.S Attorney General, led Pennsylvania to become the first state to consider degrees of murder based on culpability. As an effect, Pennsylvania abolished capital punishment for all crimes except first-degree murder apart from this nineteenth century played a prominent role in the abolitionist movement because in the early to mid-nineteenth Century the movement of abolition first started in the north-east region and in the starting stage of this period many states reduced the number of death penalty crimes and built state penitentiaries, and the most important thing is that in the year of 1834, Pennsylvania became the first state to move executions away from the public eye and carrying them out in the correctional facilities.⁶¹⁰

Furtherly, Michigan became the first state to repeal capital punishment for all crimes except treason, and then Wisconsin and Rhode Island abolished the death penalty for all offences at the end of the century. Subsequently, the world witnessed the following countries' abolition Portugal, Netherlands, Venezuela, Costa Rica, Ecuador, and Brazil thereafter in the year of 1838 there were so many efforts taken by the abolitionists as an effect Alabama and Tennessee introduced the discretionary death penalty statutes and this enactment seen as a great reform, and this enactment of sentencing discretion in the capital process was acclaimed as a huge victory for abolitionists because, before these kinds of statutes, all states had the mandatory death penalty for the capital crime, regardless of circumstances and the notable thing is that all mandatory capital punishment laws had been abolished in the year of 1963 and in this same era particularly during the civil war

⁶⁰⁸ Prof.N.V.Paranjape Criminology & Penology (including Victimology) 18th Edition, (P310, 314).

⁶⁰⁹ "The Abolitionist Movement | Death Penalty Information Center." 2019. Death Penalty Information Center. April 5, 2019. <http://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/the-abolitionist-movement>.

⁶¹⁰ "The Abolitionist Movement | Death Penalty Information Center." 2019. Death Penalty Information Center. April 5, 2019. <http://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/the-abolitionist-movement>.

the voices against the capital punishment slightly faded and more attention was given to the anti-slavery movement, then the new methods and developments have emerged for instance New York introduced the first electric chair in the year of 1888, then William Kemmler executed in 1890, after that many countries adopted this method to execute the convicts.⁶¹¹

The early and Mid-Twentieth century also an important period in the aspect of Abolitionist movement because in that period some states repealed their capital punishment and the early part of this century was named as a “progressive period” of reform in the United States, then in the period of 1907 to 1917, six states completely repealed their death penalty and three states reduced the death penalty only to the rarely committed crimes of treason and first-degree murder but the notable thing is that this reform was short-lived afterwards the US was caught by the fear of Russian Revolution more than that US had just entered the world war I due to this US faced intense class conflicts as socialists mounted and the major challenge to the capitalism as an effect, five to six states reinstated their death penalty in the year 1920 subsequently Nevada sought for a more humane way of methods to execute the perpetrators for this purpose they constructed the gas chamber and introduced the use of cyanide gas to execute their inmates.⁶¹²

Thereafter, in the period of 1920s to 1940s, there was rejuvenation in the practice of capital punishment then due to the writings of criminologists, whose propaganda in favour of capital punishment and its emphasis that the death penalty is a necessary measure led to the larger amount executions in the American history at the same time Americans were suffering through the great depression and prohibition and the notable factor is that more

executions occurred in the 1930s and American history never witnessed these much executions before, then this period sets 167 as an average per year. After that in the 1950s slowly public sentiment began to turn away from the death penalty and many countries either repealed or limited capital punishment and the ratio of executions suddenly dropped dramatically and the notable thing is that 1,289 executions were recorded in the period of 1940s then 715 executions were recorded in the 1950s and these number fell again to 191, from 1960 to 1976, In 1966, support for the death penalty started to reduced and it was also recorded all-time low ratio in the history and the Gallup poll showed support for the capital punishment at only 42 percentage.⁶¹³

Further, while talking about the shift of the global countries towards abolition of death penalty we can't exclude the South Africa's abolition because the constitution of South Africa has some similarities with the India's constitution like both of the constitutions are considered as a supreme law in their countries and both of the countries are sovereign, democratic, and secular republics, then both constitutions provide for an independent judiciary and courts have the power of judicial review to strike down laws and executive's actions that violates the constitution.⁶¹⁴

South Africa abolished the capital punishment in 1995 due to the landmark constitutional court's verdict in the case of S v Makwanyane in this case the Court ruled that capital punishment violated the right to life and human dignity, deeming it cruel, inhuman, or degrading punishment furtherly, Justice Arthur Chaskalson stated that everyone, including the most heinous individuals, has a right to life, and that retribution did not outweigh the right to life and dignity.⁶¹⁵ However, in the case of South Africa's capital punishment, until the suspension of the

⁶¹¹ “The Abolitionist Movement | Death Penalty Information Center.” 2019. Death Penalty Information Center. April 5, 2019. <http://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/the-abolitionist-movement>.

⁶¹² “The Abolitionist Movement | Death Penalty Information Center.” 2019. Death Penalty Information Center. April 5, 2019. <http://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/the-abolitionist-movement>.

⁶¹³ “The Abolitionist Movement | Death Penalty Information Center.” 2019. Death Penalty Information Center. April 5, 2019. <http://deathpenaltyinfo.org/facts-and-research/background/history-of-the-death-penalty/the-abolitionist-movement>.

⁶¹⁴ The Constitution of India, 1950, The Constitution of South Africa, 1996.
⁶¹⁵ S v Makwanyane 1995 (3) SA 391 (CC).

death penalty, it recorded its highest rates of judicial executions in the world in February 1990,⁶¹⁶ but as the researcher mentioned earlier, in 1995 South Africa repealed the death penalty due to its violative nature. So, it is evident that the thoughts of the global countries on the abolition of capital punishment had been changed from time to time and by this perusal of all the historical data we could understand that the abolitionist movement did not gradually attain its goal rather it faced so many ups and downs and still seeks for the full reformation of the penal system.

3.4 Understanding India's Rationale for Retaining the Death Penalty

India is one of the country in the contemporary world that is using capital punishment as a form of punishment to punish the perpetrators who are committing heinous offences in society, despite many countries abolishing or repealing the death penalty, India is not in the thought to repeal or abolish the death penalty because by the implementation of New Criminal Laws India increased the offences which are punishable by the death penalty, this new enacted criminal laws raised the question that whether India approaching the capital punishment with a stubborn stand or India travelling contra to the contemporary global countries' stand because as the researcher stated in the chapter-I many countries abolished or repealed the death penalty and many countries are thinking about the abolition of the capital punishment whereas, India still practising the death penalty as the highest form of punishment hereafter the researcher is going to analyse what are all the reasons behind the India's retention of the death penalty.

Capital punishment has always been a debatable topic in India. Earlier, it was a rule and imprisonment for life was an exception; however, after 1947, India became a democratic country after that the death penalty had turned into an exception. But it is the highest degree of

punishment in India. India adopted the method of hanging by the neck from the Criminal Procedure Code, 1973, and section 354(5) of the Criminal Procedure Code states that **"When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead"**.⁶¹⁷ Further, the following provisions of the Criminal Procedure Code 1973 and the Indian Penal Code, 1890 deal with Capital Punishment they are: Section 53 of the IPC provides for a death sentence as the highest possible punishment.⁶¹⁸ Section 368 of the Code of Criminal Procedure provides powers to the high court to confirm death sentences,⁶¹⁹ then Section 354 (3) of the Criminal Procedure Code mandating Judges to provide special reasons for why they imposed the death penalty.⁶²⁰

In the case of *Bachan Singh v. State of Punjab* (1980), Justice P.N. Bhagawati shared his dissenting opinion on capital punishment as "Death Penalty to be unconstitutional and undermining human rights". This opinion created a great impact on Indian Legal History and in this case, the Supreme Court laid down the "Rarest of the Rare Case" principle which stated that the death sentence can only be given by the courts in the rarest of rare circumstances pertaining to the nature of the crime,⁶²¹ but after some period because of the lack of clarity on the 'Aggravating and Mitigating Circumstances' lead to so many problems in the adjudication of the Death Penalty Cases thereafter the following cases played a crucial role in the handling of the capital punishment particularly in the case of *Macchi Singh v. State of Punjab*, (1983) the supreme court set guidelines on how to formulate such circumstances by deciding it on the grounds of the commission of the act, motive, socially abhorrent nature of the crime, extent of the crime and personality of the

⁶¹⁶ Chris Jones, "Death Penalty: A Human Rights Issue for South Africa," in *IntechOpen eBooks*, 2021, <https://doi.org/10.5772/intechopen.96014>.

⁶¹⁷ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 354 (5).

⁶¹⁸ The Indian Penal Code, 1860 (Act 45 of 1860), s. 53.

⁶¹⁹ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 368.

⁶²⁰ The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 354 (3).

⁶²¹ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

victim⁶²² and for the first time the capital punishment was legally challenged in the case of *Jagmohan v. State of UP*, (1973) which contended that the capital punishment violates the Article 14, 19, and 21 of the Constitution of India but in end the SC held that capital punishment was not violative of Articles 14, 19 and 21 of Constitution.⁶²³

In the *Rajendra Prasad v. State of UP*, (1979) the Supreme Court held that the death penalty is violative of articles 14, 19, and 21 and it was made clear that a special reason should be recorded for imposing the death penalty and it must be imposed only in extraordinary circumstances⁶²⁴ apart from that in so many cases the apex court enhanced or modified the guidelines about the practice of death penalty these all efforts of the supreme court projects that the Indian Judiciary be clear on the capital punishment should not be imposed in an arbitrary manner and the 35th Report of the Law Commission of India which was published in the year of 1967 recommended that the capital punishment be retained in India and this report considered a range of factors, including the practice of capital punishment in other countries and argues against the abolition of the death penalty and also analysed the socio-economic conditions in India.⁶²⁵ In Vice versa the 262nd Report of the Law Commission of India recommends the abolition of capital punishment for all offences except those related to terrorism, marking a significant shift from previous stances by suggesting the retention of the death penalty only in cases affecting the national security and this report primarily focused on the issue of the death penalty and was met with some dissenting opinion from commission members furtherly this report examines the issue of death penalty in India, and proposing its abolition in most cases and the notable thing is that this commission strongly admits that the capital

punishment does not serve the goal of deterrence.⁶²⁶

So, it is clear that in a regular interval period, the death penalty is scrutinised in India for review and those efforts concluded sometimes in favour of the death penalty and sometimes in the un favour of death penalty however if we look into the recent approach of India on the capital punishment it voted against the abolition of the death penalty in the UN general assembly which was happened in the 2022 and the notable factor is that 125 countries had voted in favour of the abolition of the Capital Punishment and the National Law University Delhi conducted empirical research to evaluate the administration of death penalty in India as per that report 1,810 prisoners were sentenced to death by the trial court and 1,118 prisoners were sentenced to death by the apex court from the year of 2000 to 2014.⁶²⁷ The highest ratio of death sentences recorded in the year 2007 was 154 this highest conviction rate was recorded between 2000 to 2014⁶²⁸, and the notable factor is 1,039 prisoners sentenced for murder simpliciter by the trial courts⁶²⁹ Moreover, the outcome of death sentence cases in the Supreme Court in appeals from the different high courts from 2000 to 2015 was recorded as the total percentage of commutations is 59.8%, the total percentage of acquittals is 8.5%, the total number of prisoners sentenced to death is 60, the total percentage of convictions is 31.7%, and the total number of prisoners is 189.⁶³⁰ Further, in the outcome of death sentences from the year 2000 to 2014, the total number of acquittals was 17, the total number of commutations was 129, and the total number of confirmations was 66.⁶³¹

The total number of prisoners on death row by the end of the judicial ladder is 73 including murder simpliciter 32, dacoity with murder 7, kidnapping with murder 6, rape with murder 19,

⁶²² *Machhi Singh v. State of Punjab*, 1983 AIR 957.

⁶²³ *Jagmohan v. The State of U.P.*, 1973 AIR 947.

⁶²⁴ *Rajendra Prasad v. State of Uttar Pradesh*, 1979 3 SCC 646.

⁶²⁵ 35th Law Commission Report of India.

⁶²⁶ 262nd Law Commission Report of India.

⁶²⁷ *Death Penalty in India Report*, 2016 of NLU Delhi Vol II (P151).

⁶²⁸ *Death Penalty in India Report*, 2016 of NLU Delhi Vol II (P153).

⁶²⁹ *Death Penalty in India Report*, 2016 of NLU Delhi Vol II (P159).

⁶³⁰ *Death Penalty in India Report*, 2016 of NLU Delhi Vol II (P187).

⁶³¹ *Death Penalty in India Report*, 2016 of NLU Delhi Vol II (P185).

terror offences 9, and drug offences 0⁶³². So in India particularly in the period 2000 to 2015, the ratio of commutations is higher than the ratio of convictions and confirmations, but still, India refused to repeal capital punishment and still believes it is an appropriate punishment to curtail the heinous offences and it is noteworthy to mention that India acted reluctantly and it failed to conduct an effective or deeper consideration about the concern of the global community or the world trend on the arbitrariness and prisoners inhumanness of the death penalty, it is also failed to initiate an effective study to examine the concern of the Apex court Judges like Justice P.N Bhagwati especially his dissenting opinion on the capital punishment, on the other hand, the Indian Governments also preferred to hide figures on the practice of death penalty to substantiate this factor it is noteworthy to mention about the National Law University Delhi Report on Death Penalty in this report the research team shared their disappointment on collecting the data for their research they stated that: **“There is no official record maintained by any ministry/ agency of the total number of prisoners India has executed since independence. Our efforts to collect this information from all prisons with gallows did not lead us to exhaustive records”**.⁶³³ Then they also mentioned that some of the States did not permit them to conduct their research in their prisons, and they also refused to share the data of the death penalty prisoners who are serving their imprisonment period⁶³⁴ however, they completed their research and arrived at the results on the examinations of 373 death row prisoners across 20 states and one union territory.⁶³⁵

Apart from this institutions like the National Human Rights Commission, are either silent or ambivalent on this subject and certain groups of people know about India’s long history of Anti-Death Penalty sentiment stretching back to

the pre-independence era, especially in the year of 1937 Mahatma Gandhi Wrote, **“I do regard death sentence contrary to ahimsa”**,⁶³⁶ therefore a murderer would be sent to the penitentiary and there given a chance of reforming himself.⁶³⁷ However, it is noteworthy to mention the opinion of veteran fighter Jayaprakash Narayanan referred to the opinion of Justice P.N. Bhagwati in his dissenting judgement:

“To my mind, it is ultimately a question of respect for life and the human approach to commit grievous hurt to others. The death sentence is no remedy for such a crime. A more humane and constructive remedy is to remove the culprit concerned from the normal milieu and treat him as a mental case. I am sure a large problem of murderers could be weaned away from their path and their mental condition be sufficiently improved to become useful citizens In a minority of cases, this may not be possible. They may be kept in prison houses till they die of natural death. This may cast a heavier economic burden on society than hanging.”⁶³⁸

So, it is evident that the stubbornness of the official establishments to be open up and enter into an open dialogue on the need for retaining the death penalty has been complemented by the calculated “unconcern” exhibited by the political class, more than the political parties have taken the clear cut position on the retention of the capital punishment in the legislations and many others not inclined to draw into the larger debate, lesser percentage be seen to be espousing abolition, furtherly the urge of need to address the role of legislative was reiterated by the Justice J.Y.K Sabharwal just before he took office as the 36th Chief Justice of India of the supreme court of India 2005 and he stated that he was personally in the opposition to the implication of the capital punishment, but as a Judge I need to impose it based on the circumstances of the case, or

⁶³² Death Penalty in India Report, 2016 of NLU Delhi Vol II (P195).

⁶³³ Death Penalty in India Report, 2016 of NLU Delhi Vol I (P22).

⁶³⁴ Death Penalty in India Report, 2016 of NLU Delhi Vol I (P16).

⁶³⁵ Death Penalty in India Report, 2016 of NLU Delhi Vol I (P26).

⁶³⁶ Mahatma Gandhi.

⁶³⁷ Dalbir Singh v. State of Punjab, (1937).

⁶³⁸ Bachhan Singh v. State of Punjab, 1980 (Para 247).

where the law requires and the nuance focus on the legislature as the target for the abolition of the capital punishment this is also asserted by the Hon'ble Justice K.G Balakrishnan. While such an assertion has been previously made by the apex court, for instance in the case of Dalbir Singh and Ors v. State of Punjab, 1979, Justice J. Krishna Iyer observed that "the death sentence is a parliamentary function".⁶³⁹

The humanitarian ideal of the abolition of capital punishment in India was articulated by several members of the constituent assembly during the drafting or creation of the Indian Constitution between 1947 and 1949, some of the members of the drafting committee raised their concerns over the arbitrariness in retaining the capital punishment as a form of punishment particularly when it was left to the satisfaction of the individual Judge, irrespective of the level of the court hearing the cases.⁶⁴⁰ fascinatingly, many members referred to their experience as an advocate practising criminal law that whatever the nature of procedural safeguards, there could never be a fool-proof method to eradicate error. In a debate on 3rd June 1949 on the need of mandatory appeal to the Supreme Court, Thakur Das Bhargava had spoken of his experience as a legal practitioner, arguing that in much criminal prosecution, there was a real possibility of innocent being prosecuted and sentenced.⁶⁴¹ Another member, Frank Antony, experienced in handling many criminal murder case trials, argued that any person who has handled criminal cases, particularly murder cases, will be able to testify from his knowledge to serious miscarriage of justice on account of misinterpretation of facts, tremendous diversity of conflicts in a matter of legal interpretation. In India, in one of the High Courts, in the case where two people committed the murder in which one inflicts a fatal injury while the other holds the deceased, both of them might be sentenced to death, while in the other High Court, one might be

sentenced for murder while the other might only be held liable for having committed simple hurt. In these circumstances, the member argued in favour of an automatic mandatory appeal to the Supreme Court in all cases where the death sentence was handed down by the High Court.⁶⁴²

Furthermore, if we look at the history of India in the aspect of the death penalty many incidents happened and also those incidents triggered the debates on the abolition of capital punishment but unfortunately, those efforts did not create sufficient impact on the Indian Criminal Justice system for an overhaul to substantiate this contention it is noteworthy to mention about the enactment of three new criminal laws the recent criminal laws of India increased the offences those are punishable by the death penalty, as the researcher mentioned in the chapter- II **The Bharatiya Nyaya Sanhita, 2023** Introduces 4 new offences which is punishable by the Death Penalty by this implementation the total number of offences punishable by death has risen from 12 to 16, whereas Sec 103 (2) of the BNS impose the death penalty as a punishment for Mob-Lynching,⁶⁴³ Sec 70 (2) of BNS impose Death Penalty as a punishment for Gang rape of a woman under the age of 18 years,⁶⁴⁴ Sec 111 (2) impose the death penalty as a punishment for Organised Crime that results in Death,⁶⁴⁵ Sec 113 (2) of the BNS impose the death penalty for the terrorist act.⁶⁴⁶

Under the Bharatiya Nyaya Sanhita, 2023, India specifically defines the term "Terrorist Act" under Section 113 (1). According to this section, a terrorist act means **"Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or**

⁶³⁹ Dalbir Singh and Ors v. State of Punjab, (1979) 3 SCC 745.

⁶⁴⁰ K. Patra, History of Debates in Constituent Assembly 157 (Sangam Books Ltd., India, 1st Edition 1998).

⁶⁴¹ Constituent Assembly Debate On 3rd June, 1949.

⁶⁴² *Death Penalty in India: An Examination of the Historical Discourse* by, Vol. 80 (Indian History Congress, 2019).

⁶⁴³ The Bharatiya Nyaya Sanhita, 2023, s. 103 (2).

⁶⁴⁴ The Bharatiya Nyaya Sanhita, 2023, s. 70 (2).

⁶⁴⁵ The Bharatiya Nyaya Sanhita, 2023, s. 111 (2).

⁶⁴⁶ The Bharatiya Nyaya Sanhita, 2023, s. 113 (2).

in any foreign country. Then clause (a) of this same section defines the various methods of terrorist acts to be committed as per this clause: “Whoever by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause death, injury to any persons or loss to any property, disruption of supplies which essential to the life of the community in India etc. before this new criminal law these same definitions were given under the Unlawful Activities Prevention Act, 1967 but under this New criminal law India incorporated these definitions again and impose death penalty for the terrorist act under section 113 (2) (a) of BNS, 2023.⁶⁴⁷

This reincorporation of terrorist acts and their punishment under the new criminal law though India has a separate act expresses India’s stern concern over terrorism; moreover, while the researcher peruse India’s capital punishment history, the researcher witnessed that since the post-independence era, India has been facing terrorist attacks at regular intervals and the upcoming table shows the executions of perpetrators who are charged for committing terrorism in India:

Table 4: List of Executions in Terrorism Offences.

Convicts	Date of Executions	Offences
Yakub Memon	July 30, 2015	Executed for his role in the 1993 Mumbai Bomb Blast.⁶⁴⁸
Mohammad Afzal Guru	February 9, 2013	Executed for his role in the

		2001 Indian Parliament Attack.⁶⁴⁹
Ajmal Kasab	November 21, 2012	Executed for his role in the 2008 Mumbai attacks.⁶⁵⁰

Apart from this, India faced many terror attacks, like the Red Fort attack (2000), the Pulwama attack (2019), and the Pahalgam attack (2025), so it is evident that India has continuously been affected by the terror attacks, that’s why India still retaining the capital punishment though many countries are repealing it according to the current global trends and terrorism is one of the vital reason behind the retention of death penalty in India. So, it is evident that the offences punishable by the death penalty have increased because of this implementation of the new criminal laws in India and the stand of India on capital punishment has not been changed rather by this enhancement of penal provisions the Indian legal system still believes that the Capital Punishment is an effective solution to curtail the heinous crimes in the society and the primary reason behind India’s retention of the death penalty is that lack of focus or attention on the global countries approaches towards the capital punishment because the number of countries which repealing the death penalty is increasing gradually, then India Failed to effectively scrutinise the eminent judges’ opinions on the death penalty and Frequent terror attacks and its impacts also a major reason for its retention.

CHAPTER - 4

IMPACT OF SOCIO-ECONOMIC STATUS OF THE PERPETRATORS IN THE CASES OF DEATH PENALTY

A meaningful discussion on capital punishment is not possible until we answer the question, Who gets the death penalty in India? This is a

⁶⁴⁷ The Bharatiya Nyaya Sanhita, 2023, s. 113 (2) (a).

⁶⁴⁸ Execution of Yakub Memon cruel and inhuman by Amnesty International On 30th July 2015.

⁶⁴⁹ India: New execution points to worrying and regressive trend by Amnesty International On 9th February 2013.

⁶⁵⁰ Kasab execution represents Indian death penalty backslide by Amnesty International On 21st November 2012.

question that must be answered over a period of time moreover, as the researcher mentioned earlier on 10th October 2017 World Day against the Death Penalty held on this day in a joint statement United Nations Human Rights experts opined that **“If you are poor, the chances of being sentenced to death are immensely higher than if you are rich.** Further, they stated that there could be no greater indictment of the death penalty than the fact that, in practice, it is really a penalty reserved for people from lower socio-economic groups; this turns it into a class-based discrimination in most countries, thus making it the equivalent of an arbitrary killing.⁶⁵¹

People living in poverty are disproportionately affected by the capital punishment for many reasons and they are an easy target for the police, they cannot afford a lawyer, and the free legal assistance they might receive is of low quality, procuring expert evidence is beyond their means, tracing witnesses is too costly, and access to appeals often depends on being able to afford extra counsel. Many cannot afford bail and therefore remain in custody before their trials, further hindering their efforts to prepare an effective defence.⁶⁵²

Poverty makes life even harder for people who are already struggling with discrimination and inequality. In many countries, this is especially true for people of African descent, as well as those who face bias because of their gender, ethnicity, race, or migration status. Even on death row, poverty doesn't go away it follows prisoners and their families every step of the way. Harsh living conditions are made even worse by the struggle to access food, medical care, and basic services. For many, loved ones who are also living in poverty simply can't afford to offer financial support. Some inmates don't even have the means to stay connected with

their families and friends, leaving them even more isolated.⁶⁵³ This collective statement of UN Human Rights experts established the status of capital punishment in the international perspective, so hereafter the researcher is going to examine the role of socio-economic factors in the cases of capital punishment in India.

India is among the countries that still uphold the death penalty. In 2020, out of 77 people sentenced to death, four were actually executed. Over the past 20 years, the country has carried out a total of eight executions. According to Project 39A of the National Law University in Delhi, most of these sentences were for homicide or related crimes, except for the four individuals who were executed. After a four-year pause since 2015, India resumed carrying out executions. A 2016 study by the National Law University Delhi in Project 39A revealed that some Indian states, including Himachal Pradesh, Arunachal Pradesh, Goa, Sikkim, and several from the Northeast, had no recorded death sentences. However, by 2020, Tripura, Manipur, and Himachal Pradesh had sentenced individuals to death. The study also found that in most death sentences, 57.1% were handed down for murder alone, followed by sexual offences, with one case involving a drug-related offence. Looking at the socio-economic backgrounds of those on death row, the findings were stark over 74% of the prisoners interviewed came from economically vulnerable backgrounds, and many were the sole earners for their families, yet this reality seemed to carry little weight in sentencing decisions. The data also showed a disproportionate impact on marginalised communities, with more than 40 prisoners sentenced to death belonging to 'Other Backwards Classes' compared to those from the 'General' or 'Scheduled Caste/Scheduled Tribe' categories, and the lowest numbers recorded among religious minorities. Perhaps

⁶⁵¹ United Nations. “Death Penalty Disproportionately Affects the Poor, UN Rights Experts Warn”. OHCHR, 6 Oct, 2017, www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn.

⁶⁵² United Nations. “Death Penalty Disproportionately Affects the Poor, UN Rights Experts Warn”. OHCHR, 6 Oct, 2017, www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn.

⁶⁵³ United Nations. “Death Penalty Disproportionately Affects the Poor, UN Rights Experts Warn”. OHCHR, 6 Oct, 2017, www.ohchr.org/en/press-releases/2017/10/death-penalty-disproportionately-affects-poor-un-rights-experts-warn.

most disturbingly, of the 270 prisoners interviewed, 216 reported experiencing custodial torture at the hands of the police.⁶⁵⁴ However, in this chapter, the researcher is going to focus on the following factors to scrutinise the role of the socio-economic status of the perpetrators in the death penalty cases: 1. Accessibility of adequate Legal Assistance, 2. Role of Gender 3. Economic vulnerability and Education profile of the death row prisoners.

4.1 Accessibility of Adequate Legal Assistance in Death Penalty Cases

In India, particularly in the death penalty cases good legal representation is an essential factor in contesting that case effectively but unfortunately, the people who belong to the economically weaker section cannot afford this because of their poor economic conditions or some socio-economic factors apart from this the effective and accessibility of adequate legal representation for prisoners on death row is a key factor in assessing whether the administration of the death penalty in India is fair and just. For many of these individuals, access to competent legal support can mean the difference between life and death. Given that a large number of death row prisoners come from economically disadvantaged backgrounds, it becomes even more important to examine the kind of legal assistance they receive in the cases of the death penalty.⁶⁵⁵

In many cases, prisoners do not have the financial means to hire experienced lawyers and must rely on court-appointed defenders, who may be overburdened, underprepared, or lack the resources needed to build a strong defence. This raises serious concerns about whether these prisoners are getting the fair trial they are entitled to under the law.⁶⁵⁶ While legal proficiency cannot always be measured in numbers, the lived experiences of prisoners and their families provide critical insight. Their interactions with their lawyers, the level of

communication and guidance they receive, and their own opinions on the quality of legal help they had all play a role in understanding whether justice was truly served. For many families, navigating the legal system is overwhelming, and without adequate support, they are left feeling helpless and unheard. Ensuring that every individual, regardless of their socio-economic status, receives competent and dedicated legal representation is essential in upholding the principles of justice and fairness, especially when a person's life is at stake.⁶⁵⁷ So, to examine the accessibility of the adequate and effective legal assistance in the death penalty cases the researcher perused the report of the National Law University Delhi's Report 2016 on the Administration of the death penalty in this report itself they examined the accessibility of the adequate legal assistance by the direct interviews of the prisoners and their families so this report helps me to evaluate the role of socio-economic factors in the cases of death penalty.

During the pre-trial stage, many individuals from economically weaker backgrounds are unable to access legal assistance due to financial constraints. This issue is particularly concerning given the widespread prevalence of custodial violence and torture in India. While Article 22 of the Indian Constitution guarantees the right of an arrested person to seek legal counsel or be represented by a lawyer of their choice, it does not mandate the presence of legal representation during police custody or the investigative process.⁶⁵⁸ Instead, the provision ensures that individuals have the option to consult an advocate if they choose to do so. As a result, the State is not constitutionally obligated to provide legal counsel to every individual in custody, allowing instances of custodial violence and torture to persist. Recognising the severity of this issue, the Supreme Court has issued guidelines aimed at regulating arrest and detention procedures. As early as the late 1970s, the Court acknowledged

⁶⁵⁴ Project 39A of National Law University Delhi, 2016.

⁶⁵⁵ Death Penalty in India Report by National Law University Delhi, 2016.

⁶⁵⁶ Death Penalty in India Report by National Law University Delhi, 2016.

⁶⁵⁷ Death Penalty in India Report by National Law University Delhi, 2016.

⁶⁵⁸ The Constitution of India, 1950, Art. 22.

that custodial torture fundamentally violates constitutional rights and undermines the rule of law.

The significance of an individual's right to legal consultation during arrest or detention was underscored in **Nandini Satpathy v. P.L. Dani & Anr.**⁶⁵⁹ In this case, the Court emphasised that access to legal counsel serves as a crucial safeguard against self-incrimination. Although a lawyer cannot interfere during police interrogation, their presence is essential in preventing coercion and ensuring that any objections to improper questioning are properly recorded. The Court observed that legal representation helps reduce the intimidation associated with police custody. However, it did not mandate that law enforcement must provide a lawyer, cautioning that such a system could lead to misuse and corruption, potentially fostering what it termed a "police-station-lawyer system," which could give rise to further malpractices.

Even by the late 1990s, the reality of custodial tortures and deaths had not improved significantly. Concerned by the rising cases of abuse in police custody, the Supreme Court took action in **DK Basu v. State of West Bengal.**⁶⁶⁰ and laid down crucial guidelines to regulate arrests and detentions. These efforts eventually led to amendments in the Code of Criminal Procedure (CrPC) in 2008, introducing safeguards to protect individuals in custody. One important change was the addition of Section 41D, which grants arrested individuals the right to consult a lawyer of their choice during interrogation, though not for the entire duration.⁶⁶¹ However, the State still does not bear the responsibility of ensuring legal aid during police questioning, leaving detainees to navigate this critical stage on their own unless they can arrange legal representation themselves. After some period of time, the Supreme Court has affirmed that the State has a duty to provide free legal representation to an

accused person who lacks the financial means to hire a lawyer, starting from their first appearance before a Magistrate. As per Article 22(2) of the Constitution, any individual who is arrested or detained must be presented before a Magistrate within 24 hours. Detention beyond this period is only permissible with the explicit authorization of a Magistrate.⁶⁶² This stage is particularly significant, as the Magistrate decides whether the accused should be placed in judicial custody within a prison or returned to police custody for further investigation.

So, it is evident that before the appearance in front of the magistrate, there are no provisions to mandate free legal aid assistance during the interrogation period because of these lacunae, so many prisoners struggle to access adequate legal assistance in the pre-trial stage, and the economic vulnerability is also factor in the pre-trial stage. To substantiate this it is noteworthy to mention about the data which has obtained from the National Law University Delhi's report on the Death Penalty according to the data of this report out of the 191 prisoners who shared information regarding access to a lawyer at the time of interrogation, 185 (97%) said they did not have a lawyer. Of these 185 prisoners, 155 spoke about their experience of custodial violence, out of which 128 prisoners (82.6%) said they were tortured in police custody.⁶⁶³

Further, out of the 185 prisoners who did not have access to a lawyer during interrogation, 144 were economically vulnerable (80%).⁶⁶⁴ so it is evident that many prisoners struggled to get legal assistance in the pre-trial stage because of some socio-economic factors. Moreover, in the death penalty cases despite having poor economic conditions the prisoners and their families mostly prefer the private advocates and the notable factor is that to hire the private advocates the families of the prisoners struggled a lot in some cases many had borrowed money or sold their assets like land,

⁶⁵⁹ Nandhini Satpathy v. P.L. Dani & Anr 1 (1978) 2 SCC 424.

⁶⁶⁰ DK Basu v. State of West Bengal (1997) 1 SCC 416, paragraphs 18 and 35.

⁶⁶¹ The Code of Criminal Procedure, 1973, s. 41 D.

⁶⁶² The Constitution of India, 1950, Art. 22 (2).

⁶⁶³ Death Penalty in India Report by National Law University Delhi, 2016 P132.

⁶⁶⁴ Death Penalty in India Report by National Law University Delhi, 2016 P132.

house, Jewells, livestock or other belongings, to afford the private legal representation and the sorrowful factor is than those families which had borrowed money to hire the private legal representation were still in debt⁶⁶⁵ and the wondering factor in the death penalty cases is that a majority of the prisoners who are sentenced to death hire the private advocates rather than the legal aid lawyers, even though they are economically vulnerable.

To substantiate this state it is noteworthy to mention the data of the National Law University Delhi's Report on the death penalty this report was carried out by interviewing all the prisoners under the sentence of death in India between July 2013 to January 2015 and in this project, they accessed 373 prisoners to examine the various factors of the administration of death penalty out of a total of 385 of the 373 they were unable to interview 17 prisoners and their families of 85 prisoners due to various reasons, so according to the data of this report, a vast majority of prisoners sentenced to death had private advocates to represent them. At the trial court, 36.6% of prisoners had legal aid advocates or advocates who agreed to fight the case while the corresponding figure at the high court was 32.6% but in the Supreme Court the situation is inversed and in this report amongst the 77 prisoners sentenced to death who spoke about their lawyers at the Supreme Court, 55 (71.4%) had legal aid lawyers.⁶⁶⁶ and another notable factor is that in the trial courts, 70.6% of the prisoners had private lawyers, while this figure was 68.7% in the High Courts, but in the Supreme Court this figure dramatically fell to 29.9%. However, the prisoners represented by private advocates in the trial courts and High Courts, 70.6% were economically vulnerable.⁶⁶⁷

In the course of arranging the legal representation death row prisoners face many difficulties not only because of socio-economic

factors but also because the nature of the alleged crime plays a crucial role while seeking legal assistance or legal representation however, a significant hindrance in finding adequate legal assistance is the legal aid advocates were only provided at the instance of the court or arranged by the prison because of this most of the prisoners did not have access to a lawyer at the time of the incident and had to rely on various sources to find the private legal representation, In many cases the co-accused's lawyer was also hired by the prisoner, or they hired a lawyer by the reference of other prisoners in prison apart from this in some cases the fellow villagers of the inmates helped to arrange the legal assistance to the prisoners by an organization and the notable factor is that in some other cases the families of the prisoners had no financial resources to meet the prisoners or arrange the advocates to contest the case and there were various instances where lawyers collectively decided not to provide legal representation to the accused.⁶⁶⁸

Due to the economic vulnerability of the prisoners they face some kind of alienation from the lawyers because in the cases of death penalty majority of the prisoners belongs to the economically vulnerable cadre because of this poor financial condition they unable pay the fee of their private advocates as the researcher mentioned earlier in some cases the families of the prisoners or the fellow villagers helps to the prisoners who are in the death row to access the legal assistance but the bitter fact is it is not happening in all the cases even in some cases due to the worse financial condition the families of the prisoners left the cases to the prisoner's fate but the notable factor is that there were instances in some cases advocates still handling some prisoners cases as a sign of generosity without expecting anything however, in the death penalty case majority of the prisoners hires the private counsel to contest

⁶⁶⁵ Death Penalty in India Report by National Law University Delhi, 2016 P132.

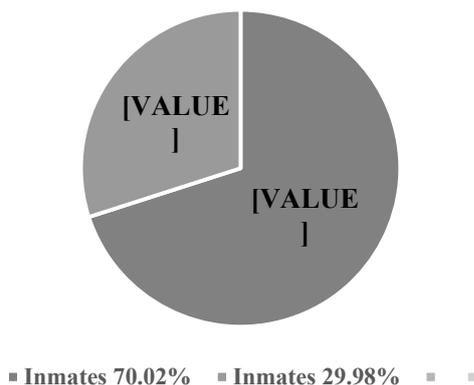
⁶⁶⁶ Death Penalty in India Report by National Law University Delhi, 2016 P133.

⁶⁶⁷ Death Penalty in India Report by National Law University Delhi, 2016 P133.

⁶⁶⁸ Death Penalty in India Report by National Law University Delhi, 2016, P134,135.

their case instead of legal aid counsels to substantiate my contention about the alienation between the advocates and clients it is noteworthy to mention the data which the researcher obtained from Death Penalty In India Report, 2016 by the National Law University Delhi as per the data of this report a large number of prisoners were accessing private lawyers at the trial court and High Court and the extreme low fees often translated into a complete lack of engagement with their trial court lawyers, and in this report they collected the opinion of 258 prisoners regard their interaction to their concern advocates the upcoming pie chart shows the percentages of their opinion:

NLU Delhi's Death Penalty Report 2016



The abovementioned responses obtained from 258 prisoners out of 181 (70.02%) said that their lawyers did not discuss case details with them.⁶⁶⁹

Furtherly, the following percentage of the prisoners shared their responses about the meeting with their advocates:⁶⁷⁰

⁶⁶⁹ Death Penalty in India Report by National Law University Delhi, 2016, P136.

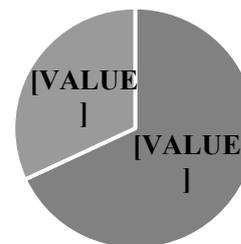
⁶⁷⁰ Death Penalty in India Report by National Law University Delhi, 2016, P136.

Death Penalty In India Report, 2016 By NLU Delhi



- 76.07% Inmates Said about the trial court advocates (They never met their advocates outside court and the interaction in court was perfunctory)

Death Penalty In India Report, 2016 By NLU Delhi



- 68.04% Inmates said about the High court advocates (They never interacted with or even met their high court lawyers)

So the abovementioned data substantiate that due to some socio-economic reasons, prisoners faced struggles or alienation to access the full-fledged legal assistance in the cases of capital punishment, and the worst fact is some of the prisoners did not know even the names of the advocates who were appearing in the Apex Court, here I would like to mention one thing that not only does such non-interaction with the advocates compromise the quality of defence but it also implies a greater level of alienation of the accused from the judicial process and on the examination of how the death row prisoners are struggling to achieve the adequate legal assistance these kind of data clarified that the socio economic factors plays a crucial role in the course of seeking the adequate legal assistance in the cases of death penalty.

4.2 Role of Gender in the Cases of Death Penalty

In India, all the penal laws are framed as gender-neutral laws, and the primary object of those laws is that crimes committed by male and female perpetrators are equally punished under the statutes without any gender biases, but the question is whether in India, the death penalty is proportionally imposed on male and female perpetrators? This is a question that is one of the debatable topic for a long period, particularly since independence. However, in this chapter, the researcher is going to examine the proportionality of the death penalty among male and female perpetrators in India. Before that examination, It is noteworthy to mention about the observation of the Hon'ble Supreme Court of India made in the case of **Shabnam v. State of UP (2015)** "Indian Legal System doesn't differentiate between a son and daughter" and then opined that in the modern era the daughter plays a "multifaceted and indispensable role in the family".⁶⁷¹ this observation of the Hon'ble Supreme Court of India shows that the apex court also tried to uphold the proportionality in the cases of the death penalty.

Capital punishment, commonly referred to as the death penalty, is the most severe form of punishment imposed for serious offences. It entails the judicial execution of an individual convicted of specific crimes. Criminologist Garofalo viewed the death penalty as the most effective means to eliminate criminals, while Sir James Fitz Stephen argued that no other form of punishment serves as a stronger deterrent against criminal activities than the fear of death.⁶⁷² However, judicial precedents have established that capital punishment should be reserved for the "rarest of rare" cases.

The Indian Penal Code (IPC) recognizes the death penalty as a form of punishment. Section 53 of the IPC outlines the types of punishments

applicable under the law, with the death penalty being one of these.⁶⁷³ Various methods of execution have been historically used worldwide, including the gas chamber, guillotine, electric chair, firing squad, and hanging. However, in India, the prescribed method of execution is death by hanging. Section 354(5) of the Code of Criminal Procedure (CrPC) explicitly states that when a person is sentenced to death, the order shall direct that the individual be hanged by the neck till he is dead.⁶⁷⁴ Another method of execution practiced in India is death by shooting. The firing squad is authorized to carry out executions for individuals sentenced to capital punishment, but this method is exclusively reserved for the armed forces, including the Army, Air Force, and Navy. According to the provisions of the Army Act, 1950, military law permits both hanging and shooting as recognised forms of execution within the framework of martial justice.

In India, the number of female offenders sentenced to death is significantly lower than that of male offenders. No woman has been executed since 1955. This highlights the influence of patriarchal biases in the judicial system. Women often receive more lenient treatment during sentencing. These biases also extend to the clemency process. Gender perceptions may play a role in mitigating punishments. Consequently, capital punishment for women remains rare. The ratio of women executions drastically falls in the post-independence era even though they had been committed serious crimes like male perpetrators to substantiate this contention, it is noteworthy to mention the data of the National Law University's Report on the death penalty in India, this report solely focuses on data from death row inmates between July 2013 to January 2015 according to the findings, only 4 percent of the individuals on death row during that period were women⁶⁷⁵ and it is important to

⁶⁷¹ Shabnam v. State of UP, 2015 para 29.

⁶⁷² M. Ponnian, Criminology & Penology, Allahabad Law Agency Publication, 3rd Edition.

⁶⁷³ The Indian Penal Code, 1860 Sec 53.

⁶⁷⁴ The Code of Criminal Procedure, 1973 Sec 354 (5).

⁶⁷⁵ Death Penalty in India Report by National Law University Delhi, 2016.

note that this percentage reflects the timeframe of the study and not the overall number of females convicted or executed since India gained independence.

As the researcher mentioned earlier, no woman has been executed since 1955, Rattan Bai Jain was the first woman to be executed in independent India. She was hanged on January 3, 1955, in Tihar Jail. Her conviction was for poisoning and killing three girls. As the manager of a sterility clinic, she took the lives of her employees, believing they were involved in relationships with her husband.⁶⁷⁶ Thereafter, no woman has been executed in this independent India, even though female perpetrators committed so many brutal crimes like male perpetrators. To substantiate this contention, it is noteworthy to mention the following data of the National Law University Delhi's Report 2016 on the Death Penalty in India:

Table 5: List of Female Death Row Offenders from 2000 to 2014.⁶⁷⁷

Female prisoners sentenced to death across states in India		
States	No. of Female prisoners sentenced to death by Trial courts	% of Female prisoners out of total female prisoners sentenced to death by Trial courts
DELHI	7	21.9%
MAHARASTRA	6	18.8%
PUNJAB	5	15.6%
UTTAR PRADESH	5	6.3%
ODISHA	2	3.1%

⁶⁷⁶ M.K Guru Prasath & T. Charumathi "A Critical Analysis on Death Penalty and Gender Bias", International Journal of Advanced Legal Research Volume 4 | Issue 2 November 2023.

⁶⁷⁷ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P157).

BIHAR	1	3.1%
GUJARAT	1	3.1%
HARYANA	1	3.1%
JHARKHAND	1	3.1%
KARNATAKA	1	3.1%
KERALA	1	3.1%
TAMIL NADU	1	3.1%
TOTAL NO. OF PRISONERS	32	

Table 6: Nature of Crimes Committed by Female Death Row Offenders from 2000 to 2014.⁶⁷⁸

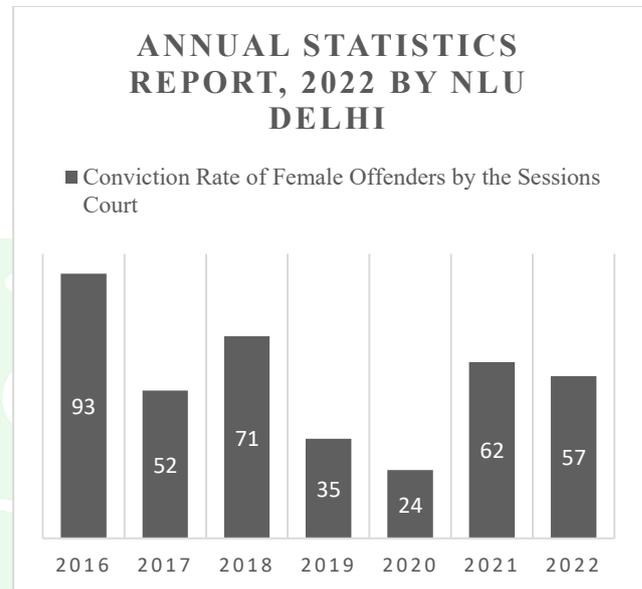
Nature of Crime Composition of Female Prisoners Sentenced to Death in India		
States	Nature of Crimes	No. of Female prisoners sentenced to death by trial courts
BIHAR	Kidnapping with murder	1
DELHI	Murder simpliciter kidnapping with murder	5 2
GUJARAT	Murder simpliciter	1
HARYANA	Murder simpliciter	1
JHARKHAND	Murder simpliciter	1

⁶⁷⁸ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P159).

KARNATAKA	Murder simpliciter	1
KERALA	Murder simpliciter	1
MAHARASHTRA	Murder simpliciter	1
	Kidnapping with murder	4
	Terror offenses	1
ODISHA	Murder simpliciter	1
	kidnapping with murder	1
PUNJAB	Murder simpliciter	3
	kidnapping with murder	2
TAMIL NADU	Murder simpliciter	1
UTTAR PRADESH	Murder simpliciter	5

As per the above-mentioned data from the year 2000 to 2015, 32 female offenders sentenced to death by the trial courts of various states and those female offenders majorly involved in the murder simpliciter, kidnapping with murder kind of offences, so it substantiates that female offenders also involve in the serious crimes, and amongst those sentenced to death for murder simpliciter, five female prisoners were from Delhi and Uttar Pradesh each, while the highest number of female prisoners sentenced to death for kidnapping with murder were from Maharashtra (four prisoners). Further, one female prisoner was sentenced to death for dacoity with murder and drug offences in the past 15 years.⁶⁷⁹ Hereafter, the upcoming graph shows the data pertaining to the nature of

offences committed by the female perpetrators from 2016 to 2022.⁶⁸⁰



Furthermore, in the case of **Ediga Anamma v. State of Andhra Pradesh, 1974**.⁶⁸¹ The appellant, a married woman, was involved in an extramarital relationship. Upon discovering that her partner had an intimate relationship with another woman, Anusuya, she acted in a fit of jealousy and rage, ultimately murdering both Anusuya and her infant child. The crime was particularly brutal, as she used a chisel to kill her rival, mutilated the victim's face, and concealed the infant's body beneath river sand. Following the trial, the court found her guilty of murder and imposed the death penalty, a decision later upheld by the High Court. However, upon appeal, Justice Krishna Iyer reconsidered the circumstances of the case. Taking into account the fact that the accused was a mother, the Supreme Court commuted her death sentence to life imprisonment, emphasising the importance of mitigating factors in capital punishment cases. This decision highlights the judiciary's inclination toward protectionism and paternalism, often resulting in a more lenient approach toward female offenders. The Supreme Court affirmed that favourable considerations for women are permissible under Article 15(1), provided they are not solely based on gender and do not constitute

⁶⁷⁹ Death Penalty in India Report, 2016 of NLU Delhi Vol II (P158).

⁶⁸⁰ Annual Statistics Report, 2022 by National Law University, Delhi, (P16).

⁶⁸¹ Ediga Anamma v. State of Andhra Pradesh (1974) 4 SCC 443.

discrimination. This reflects the broader tendency of the judicial system to extend sympathy toward female convicts, particularly in cases of serious offences like murder.

Furthermore, it is important to consider some death penalty cases of female offenders, which helps to clarify how the Indian Criminal Justice System approaches the death penalty cases of female offenders. In the case of **Nalini v. State of Tamil Nadu, 1999**.⁶⁸² The appellant was among the individuals convicted for their involvement in the 1991 assassination of former Prime Minister Rajiv Gandhi. She was accused of providing shelter to Dhanu, the suicide bomber, and accompanying her before the attack. Nalini, along with 25 co-accused, faced prosecution under multiple criminal charges, including offences related to terrorism and murder. Following the trial, the court found her guilty and initially sentenced her to capital punishment. However, she subsequently appealed to the Supreme Court of India, contesting the imposition of the death penalty. Upon reviewing the case, the Supreme Court acknowledged that Nalini had no prior criminal record and had exhibited good behaviour during her incarceration. Furthermore, the court considered her potential for rehabilitation. Taking these factors into account, the Supreme Court commuted her death sentence to life imprisonment. This Supreme Court's judgment was influenced by the perception of her as a powerless individual and the weaker sex. The court held that once the conspiracy was set in motion, she lacked the ability to withdraw from it. Additionally, her status as a mother was a key factor in the ruling. Since the child's father had already been sentenced to death, commuting her sentence ensured that the child would not be orphaned. These considerations prevented her case from being classified as the "rarest of rare," leading to the reduction of her death sentence to life imprisonment. In 2023, she was ultimately acquitted.

In the case of **Renuka Shinde & Anr. v. State of Maharashtra, 2015**.⁶⁸³ the accused, identified as Indian serial offenders, were convicted for the abduction of thirteen children and the murder of six of them between 1990 and 1996. These crimes were committed in collaboration with their mother, Anjanabai. The primary motive behind the kidnappings was to use the children as a means of facilitating theft in crowded areas. One member of the group would engage in pickpocketing, and in the event of being caught, the child would be used either to evoke sympathy or as a distraction by inflicting harm upon them. Ultimately, the abducted children were murdered. The Sessions Court in Kolhapur found the sisters guilty of these crimes, and their conviction was later upheld by the Bombay High Court in 2004. While they were initially sentenced to death, prolonged delays in deciding their mercy petitions led the Bombay High Court to commute their death penalty to life imprisonment, and the court found no mitigating factors in favour of the appellant apart from her gender. The brutal manner in which each child was abducted and murdered, along with the gravity of the crime, reflected the appellants' extreme ruthlessness. Their prolonged engagement in criminal activities persisted until they were ultimately apprehended by law enforcement. However, due to significant delays in processing their mercy petitions, the Bombay High Court later commuted their death sentence to life imprisonment.

In the case of **Shabnam v. Union of India, 2015**.⁶⁸⁴ the accused, in collaboration with her partner Saleem, orchestrated and executed the murder of her family on the night of April 15, 2008, in Amroha district, Uttar Pradesh. The victims included her father, mother, two brothers, sister, and nephew. According to the prosecution, Shabnam and Saleem conspired to eliminate her family members as they opposed their relationship. The motive behind

⁶⁸³ Renuka Shinde & Anr v. State of Maharashtra Criminal Appeal No: 722 of 2015.

⁶⁸⁴ Shabnam v. Union of India, 2015.

⁶⁸² Nalini v. State of Tamil Nadu (1999) 5 SCC 253.

the crime was not only to remove opposition to their union but also to secure the inheritance of family property. Following the investigation, both Shabnam and Saleem were arrested and charged under Section 302 of the Indian Penal Code for murder. In 2010, a district court convicted them and sentenced them to death. Their appeal for mercy was subsequently rejected by the President of India, and the Supreme Court upheld their death sentence, reaffirming the gravity of their crime.

While speaking about the Shabnam Ali case, Shabnam Ali is presumed as the first Muslim woman to be hanged in India after Independence, and the notable factor is that India has only one women execution place, which is located at Madhura District, Uttar Pradesh, and the fascinating thing about this execution room is that the only mention of this hanging room in India can be found in the UP Jail Manual, 1956, which lays out elaborate rules for the execution of women convicts on death row,⁶⁸⁵ and the another factor about that execution room is no one has been hanged till date so it was never used so the lack of women execution place is also a considerable factor while speak about the India's administration of death penalty.

Although many women are sentenced to death in India, the Indian Legal system hesitates to execute them only because of gender and gender is also considered as a mitigating factor in the cases of capital punishment and in India, women also engage in serious offences and criminal activities as like men while talking about the women criminal activities it is noteworthy to mention about the Otto Pollak, in his book *The Criminality of Women*,⁶⁸⁶ highlighted the significant presence of women in criminal activities. His theory, known as the chivalry hypothesis, suggests that the legal system often struggles to prosecute and punish female offenders as severely as their male counterparts for similar crimes. This perspective

gave rise to concepts such as paternalism and the "bad wife" hypothesis, which emphasize the societal expectations imposed on women. According to this theory, women are often judged based on traditional gender roles, and whether they conform to or deviate from these expectations influences the level of sympathy they receive. Pollak's argument implies that a woman who commits heinous crimes is perceived not only as a criminal but as someone who has defied societal norms of femininity. As a result, such women are sometimes subjected to harsher judgments, similar to men sentenced to death, because their actions place them outside the conventional parameters of womanhood.

Article 14 of the Indian Constitution provides that "The state shall not deny equality before law and equal protection of law within the territory of India".⁶⁸⁷ However, the state is unintentionally denying equality before the law on the grounds of gender while implementing the death sentence. However, addressing gender bias in sentencing is essential to ensure justice is served fairly. Courts should focus on the severity of the crime, the offender's level of culpability, and the impact on the victims, rather than allowing the gender of the accused or victim to influence decisions. In **State of Himachal Pradesh v. Nirmala Devi**,⁶⁸⁸ the Supreme Court deliberated on the appropriate punishment for a woman convicted of multiple offences, including robbery and murder. The accused, a 40-year-old mother of three minor children, sought leniency. However, Justice A.K. Sikri emphasised that gender should not automatically serve as a mitigating factor. To uphold true gender equality, female offenders must be held to the same legal standards as their male counterparts. The Supreme Court reaffirmed the district court's decision to grant a two-year amnesty sentence while acknowledging the responsibilities of the accused as a mother. However, it also stressed that gender considerations should be evaluated

⁶⁸⁵ UP Jail Manual, 1956.

⁶⁸⁶ *The Criminality of Women* by Otto Pollak.

⁶⁸⁷ The Constitution of India, 1950, Art. 14.

⁶⁸⁸ *State of Himachal Pradesh v. Nirmala Devi*, Cr. M.P. No. 1153 of 2018.

on a case-by-case basis rather than applied as a blanket rule. In cases where a woman is involved in terrorism or other grave crimes, leniency based solely on gender is unwarranted.

This perspective raises a broader concern, while it promotes fairness in sentencing, it also exposes the reality that post-independence India has never implemented the death penalty for a woman. This demonstrates a clear gender disparity in the treatment of male and female criminals. To ensure true equality before the law, a woman's gender should not be used as a reason to avoid the death penalty in cases where it would otherwise be warranted.

4.3 Role of Economic Vulnerability and Educational Profiles of the Perpetrators in the Cases of Capital Punishment in India

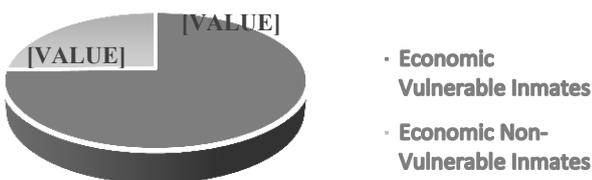
The death penalty is often framed as a punishment for the most heinous crimes, reserved for the most dangerous offenders, but in reality, it frequently punishes those who are the most vulnerable, not the most culpable. A closer look at capital cases reveals a pattern: those condemned to die are overwhelmingly poor and they cannot afford high-quality legal representation, struggle to secure expert witnesses, and often lack the resources to challenge wrongful convictions. Their fate is not

but by the weight of their economic disadvantage.

Moreover, for the wealthy, the criminal justice system offers options, protections, and a fighting chance, and the High-profile defence teams meticulously challenge evidence, call expert witnesses, and present compelling mitigation cases. These defendants often avoid the death penalty entirely, receiving reduced sentences or even acquittals. But for the poor, the system functions very differently. They are assigned court-appointed lawyers, but in this kind of case, the notable factor is that many of them are overworked, underpaid, and in some cases they are alarmingly inexperienced and the economic vulnerability factor plays a crucial role even beyond the courtroom, because the poor defendants are more likely to be pressured into false confessions, unable to post bail, and forced to rely on public defenders with limited time to build a case and the systematic bias against the poor is further entrenched by the geographical disparities. Studies, such as those conducted by the Death Penalty Research Project at the National Law University, Delhi, have revealed that death row prisoners are overwhelmingly from economically disadvantaged backgrounds.⁶⁸⁹

The role of Economic vulnerability of the perpetrators is one of the most important factors for the examination because, in India, the ratio of poor death row inmates is higher than that of richer inmates. To substantiate this contention about India's imposition of the death penalty, it is noteworthy to mention the data of the Death Penalty in India Report 2016 by the National Law University Delhi, as per the data of this report the national figures, 74.1% of the prisoners sentenced to death sentence in India are economically vulnerable according to their occupation and landholding. Amongst the states with 10 or more prisoners sentenced to death, Kerala had the highest proportion of economically vulnerable prisoners sentenced to death with 14 out of 15 prisoners (93%) falling in

NLU Delhi's Death Penalty In India Report



always determined by the severity of their crime

⁶⁸⁹ Death Penalty in India Report 2016, By National Law University Delhi.

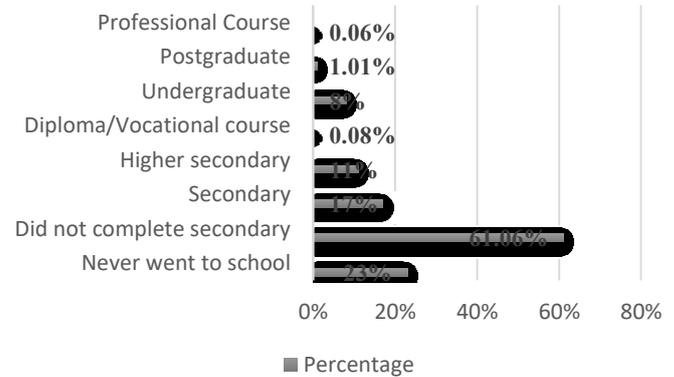
this category. Other states which had 75% or more prisoners sentenced to death belonging to the 'economically vulnerable' category were Bihar (75%), Chhattisgarh (75%), Delhi (80%), Gujarat (78.9%), Jharkhand (76.9%), Karnataka (75%) and Maharashtra (88.9%) and the following pie chart shows the overall percentage of the death row prisoner's economic status.⁶⁹⁰

The above-mentioned data of the death penalty in India report substantiate the contention that in India, the sentence of death penalty imposing ratio of the poor is higher than the rich, and the considerable factor about this report is that this report stated the data which was collected in the year from 2013 to 2015 furtherly in this report they accessed 373 prisoners sentenced to death out of a total of 385, of the 373 prisoners, they unable to interview 17 prisoners and families of 85 prisoners due to various reasons.⁶⁹¹

While considering the economic vulnerability of death-row prisoners, it is important to examine the educational profile of death-row prisoners because in India, the educational profile plays a pivotal role in the death penalty cases. After all, so many death-row inmates felt alienated from the Indian Criminal Justice System only because of their educational profile and educational status is an important marker of marginalisation and exclusion and is a strong indicator of disadvantage. In India, the perpetrators who were involved in heinous crimes punishable by capital punishment mostly belonged to the lower educational profile. Still, the notable factor is that not only the lower educational profile prisoners were involved in the death penalty offences, but the higher educational profile prisoners were also involved in the death penalty offences but the ratio is distinct. Hence, the upcoming graph

shows the data of the death-row prisoners and their educational profiles.⁶⁹²

Educational Profile of the death-row prisoners



The above-mentioned data was collected by the National Law University Delhi in order to examine the role of the educational profile of the perpetrators in the death penalty cases this data was obtained from more than 370 prisoners all over Indian prisons and further substantiates the contention that in India the lower educational profile people are majorly involving in the death penalty offences compare to the higher educational profile people the aforementioned data clarified that the lower educational profile prisoners are higher in the ratio in the cases of the death penalty.

Because of the educational profile of the death-row prisoners most of the time, they could not under the basic things happening around them and the alienation from the legal process meant that prisoners and their family members rarely had any meaningful knowledge of the evidence used in their cases to secure the conviction and the death sentence apart from this in India the death row prisoners only had very little knowledge of the evidence that was used against them and their legal representatives also not inclined to explain about that but surprisingly in some rare cases there were also prisoners who had tremendous

⁶⁹⁰ Death Penalty in India Report, 2016 by National Law University Delhi, Vol I (P104).

⁶⁹¹ Death Penalty in India Report, 2016 by National Law University Delhi, Vol I (P16).

⁶⁹² Death Penalty in India Report, 2016 by National Law University Delhi, Vol I (P110).

knowledge of the evidence in their cases and had studied their case papers in great detail.⁶⁹³ Furthermore, the economic vulnerability and the educational profile of the perpetrator correlate because both are considered as essential factors in the cases of the death penalty here I would like to mention the dissenting of Justice Bhagavati in the case of Bachan Singh v. State of Punjab, (1982) in this landmark case he stated that:

“There is also one other characteristic of death penalty that is revealed by a study of the decided cases and it is that death sentence has a certain class complexion or class bias in as much as it is largely the poor and the down-trodden who are the victims of this extreme penalty. We would hardly find a rich or affluent person going to the gallows.”⁶⁹⁴

This statement of Justice Bhagavati also establishes the bitter reality of the death penalty in India, and as the researcher mentioned earlier the educational profile and the economic vulnerability of the prisoners play a big role in the death penalty cases and the interesting factor is that both economic vulnerable and the non-economic vulnerable have a distinct educational profile in India to examine this area in detail I would like to refer the data of the Death penalty report of National Law University Delhi in this report they collected data more than 300 prisoners in order to analyse the educational profile as per economic vulnerability among the death-row prisoners in India the upcoming table contains the data about the educational profile as per the economic vulnerability:

TABLE 7: Educational Profiles & Economic Status of the Death Row Inmates.⁶⁹⁵

Educational profile analysis as per the economic vulnerability of prisoners sentenced to death		
Economic	Education profile	Number

Vulnerability		of prisoners
Economic Vulnerable	Did not complete secondary	200 (74.4%)
	Secondary	44 (16.4%)
	Higher Secondary	16 (6%)
	Diploma/Vocational Course	1(0.4%)
	Undergraduate	7 (2.6%)
	Postgraduate	1 (0.4%)
	Economically non - vulnerable	Did not complete secondary
Secondary		18 (19%)
Higher Secondary		24 (25.3%)
Diploma/Vocational Course		2 (2.1%)
Undergraduate		22 (23.2%)
Postgraduate		3 (3.2%)
Professional Course		2 (2.1%)

This data clarifies that the prisoners who belong to the both criteria economic vulnerable and non-economic-vulnerable were involved in the death penalty offences and the considerable factor is that in both criteria the prisoners who did not complete their secondary education is higher than other categories so it is evident that literacy plays a huge role in the capital punishment cases furtherly the upcoming table shows data of occupational status & economic vulnerability of female prisoners:

⁶⁹³ Death Penalty in India Report, 2016 by National Law University Delhi.
⁶⁹⁴ Bachan Singh v. State of Punjab, 1982.
⁶⁹⁵ Death Penalty in India Report, 2016 by National Law University Delhi, Vol I (P120).

TABLE 8: Occupation & Economic Status of the Female Death Row Inmates.⁶⁹⁶

Occupational status & economic vulnerability of female prisoners sentenced to death		
Occupation categories	Number of prisoners	Economic vulnerability
Unemployed	9	Economically vulnerable
Manual casual labourer-non-agricultural	1	Economically vulnerable
Salaried public employment	1	Economically non-vulnerable
Salaried private employment	1	Economically non-vulnerable

the female prisoner category also had a higher ratio of economically vulnerable status, so it is evident that economic vulnerability is considered as an important factor in cases of death, irrespective of gender. Hence, the education level of death row prisoners in India plays a significant role in determining their access to justice and the quality of their legal defence. A large number of individuals facing the death penalty come from marginalised backgrounds, with little to no formal education. This lack of education severely limits their understanding of the legal system, their rights, and the implications of their trial proceedings. Many of them are unable to comprehend complex legal jargon, making it difficult to defend themselves effectively or challenge wrongful convictions.

Education and economic vulnerability are deeply interconnected. Most death row prisoners come from low-income families who struggle to afford basic necessities, let alone competent legal representation. Due to financial constraints, they often rely on

overburdened, state-appointed legal aid lawyers who may not have the time or resources to build a strong defence. Unlike wealthier individuals who can afford top-tier legal experts, poor and uneducated prisoners face a significant disadvantage in the courtroom. This economic disparity creates an uneven playing field, where justice is often out of reach for the most vulnerable.

Furthermore, economic hardship forces many of these individuals into precarious jobs with little stability, often leading them to environments where they are more likely to be accused or wrongfully implicated in crimes. When arrested, their inability to pay hefty bail amounts leaves them trapped in the system. Their families, too, suffer immensely, as legal battles drain their already meager resources, pushing them further into poverty. Another challenge is the lack of awareness about legal rights. Due to low literacy levels, many prisoners do not even know that they are entitled to fair trials, proper legal representation, and appeals. In some cases, they unknowingly sign confessions under coercion, unaware of the consequences. The combination of poverty, limited education, and systemic neglect makes them easy targets for miscarriages of justice.

CHAPTER – 5

5.1 Conclusion

On the perusal of sources and data pertaining to the death penalty the researcher arrived at the following conclusions and suggestions that this dissertation focuses on the various aspects of capital punishment and its practice and furtherly examines India's death penalty usage and its complications and also tried to arrive a solution for the question that does Indian Criminal Justice System fairly imposing the capital punishment without any disparities? and does India need the death penalty as a form of punishment to curtail the heinous offences in this society apart from this, the role and impact of the socio-economic factor of the perpetrator were also discussed in this dissertation moreover, this dissertation has also done some

⁶⁹⁶ Death Penalty in India Report, 2016 by National Law University Delhi, Vol I (P120).

comparative analysis of the various laws and countries practices of death penalty for the better examination of the capital punishment in global aspects and by this examination the researcher tried to reach the justification of India why it retains the capital punishment even though there are so many practical complexities and disparities these all are the aspects which discussed in this dissertation.

After the researcher considered all the sources that taken for this dissertation about capital punishment the researcher can understand that India has not been inclined to abolish capital punishment rather the Indian Criminal Justice System tried to reduce the imposition of capital punishment by framing doctrines like the rarest of rare cases, considering mitigating circumstances of the perpetrator etc. but the real problem of our Indian Criminal Justice System is it has been struggling to impose the death penalty due to various reasons as discussed earlier in chapter 2 the old criminal laws of India has replaced by the New Criminal Laws but the considerable factor is before these new criminal laws India had so many practical complexities to solve but without resolving those practical complexities Indian Law making authorities implemented the New Criminal Laws here the researcher would like to clarify what is mean by practical complexities as mentioned earlier in the chapter 2 in the period of old criminal procedure code the arrested persons were faced so many agonies and tortures even though the old criminal procedure code gave several rights to the arrested persons and the researcher believe that the primary reason behind these practical complexities is that the old criminal procedure code gave some rights in order to prevent the arrested persons from the custodial tortures and etc but the old criminal procedure code failed to give the solutions to reduce or eradicates the practical complexities in the real field.

So latterly this old criminal procedure code was replaced by the new criminal procedure code that is called as Bharatiya Nagarik Suraksha Sanhita, 2023 with some new provisions but

what is the position of this new criminal procedure code in the aspect of the rights of the accused persons here the researcher would like to justify his research aspect that why the researcher specifically examined the rights of accused persons is that those rights plays a prominent role in the pre-trial stage of the death row prisoners this is the reason behind in this aspect so furtherly the researcher arrived the conclusion from this comparative analysis is that unfortunately the new criminal procedure code also repeats the same rights which had given in the old criminal procedure code and this new code stands silence on the question that what is the solution to eradicate the practical complexities which prevailing in our Indian Criminal Justice system moreover in chapter 2 the researcher also discussed about the what is the stand of new Indian Penal Code which is called as Bharatiya Nyaya Sanhita, 2023 this BNS increased the offences which punishable by the capital punishment in India as per the old IPC 12 offences were punished by the death penalty but as per the BNS it has increased as 16 with new 4 offences and the following offences are newly added in the BNS they are:

1. **Gang rape of a woman under 18:** Under this Act this offence is punishable with life imprisonment along with fine, or capital punishment.⁶⁹⁷
2. **Murder by a mob:** When murder is caused by five or more persons on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each participant in the said offence is punishable with death penalty or imprisonment for life along with fine.⁶⁹⁸
3. **Organised Crime:** If an organised crime results in the death of a person, the offender is punishable with death or life imprisonment along with a minimum fine of Rs 10 Lakhs.⁶⁹⁹
4. **Offence of a terrorist act:** If a terrorist act results in the death of a person, the offender is

⁶⁹⁷ The Bharatiya Nyaya Sanhita, 2023, s.70 (2).

⁶⁹⁸ The Bharatiya Nyaya Sanhita, 2023, s.103 (2).

⁶⁹⁹ The Bharatiya Nyaya Sanhita, 2023, s.111 (2) (a).

punishable with death or life imprisonment along with a fine.⁷⁰⁰

These all are the new offences added in the BNS but the notable factor is that India implemented this act even though our Indian Criminal Justice System contains so many practical difficulties, complexities and flaws moreover, this enhancement of the punishments that are punishable by the death penalty clarifies the stand of India on the capital punishment that by this enhancement the Indian legal system still believes that the capital punishment is an effective solution to curtail the heinous offences in the society and more importantly the Indian law-making authorities did not consider the recommendations of 262nd Law Commission Report, this report recommends the abolition of death penalty for all offences except those related to terrorism, this report marks a significant shift from its previous stance in the 35th report, which had recommended the retention of the death penalty Furtherly, this 262nd Law Commission Report extensively examines India's death penalty and analysing its constitutionality, application, and penological justifications moreover this report reviews the past law commission reports and supreme court cases, highlighting inconsistencies in the death penalty jurisprudence and concerns about arbitrariness and discrimination then this report addresses the issues of judicial error, clemency processes and impact of poverty and ineffective legal aid on death penalty cases and this report also criticises the lack of clarity in defining the "rarest of rare cases"⁷⁰¹ so without considering these kinds of sources and without solving the existing practical complexities in the legal system India implemented these new criminal laws, especially with the enhanced provisions of the offences punishable by capital punishment here the legal system of India should answer this question of whether these new criminal laws really an effective solution to solve these practical complexities? The answer to this

question depends on the future performance or functioning of the New criminal laws.

Furthermore, in Chapter 2, the researcher examined the role of Child tutored evidence in the POCSO trials because in the POCSO trials the deposition of a child plays a crucial role in the convictions, particularly the children beyond the age of 7 used by their relatives or natural guardians or guardians to retaliate the accused by fake allegations to grabbing money or tit for tat for the previous acts of vengeance and the hardest factor is that they trained the child to depose fake allegations in the trial this factor was addressed by the Bombay High Court in the case of Vijay s/o Manoharrao Jawanjil v. State of Maharashtra (2024), in this case, the court reiterated that **"The presumption under Section 29 of the POCSO Act is not absolute. It comes into effect only after the prosecution establishes the fundamental facts of the case beyond a reasonable doubt. The court further noted that, upon reviewing the cross-examination, the victim's testimony completely undermined both her mother's statement and her own statement made during the examination-in-chief"**.⁷⁰² The cross-examination revealed that the victim had been coached to testify against the accused. By this observation, the Bombay High Court ascertained the role of tutored evidence of a child in the POCSO trial on the other hand the parliament passed the POCSO Act Amendment Bill, 2019 with enhanced punishments but the problem is the law-making authorities did not consider the role of child tutored evidence in the POCSO cases without considering the tutored evidence factor they implemented this 2019 POCSO Amendment Bill however, the POCSO Act, 2012 does not have any provision to punish the children who are giving false depositions in the court, likewise, the POCSO amendment act also does not have any provision to punish the fake or tutored depositions of a child so the researcher consider this as a huge flaw if it continues in the future this act may be used as

⁷⁰⁰ The Bharatiya Nyaya Sanhita, 2023, s.113 (2) (a).

⁷⁰¹ 262nd Law Commission Report on the Death Penalty.

⁷⁰² Vijay s/o Manoharrao Jawanjil v. State of Maharashtra, (2024).

a tool to punish the accused arbitrarily with harsher punishments so to achieve fair trial in the POCSO cases the law making authorities should consider this kind of factor while making the special laws.

Furthermore, the researcher conducted the research in the following aspects, which is why India still retains the death penalty even though many countries have abolished capital punishment, and the researcher examined some global countries' practices that stringently follow the capital punishment and some countries that practice the capital punishment as like India for the better understanding on the practice of death penalty and it also helps the researcher to arrive a conclusion that why India retains the capital punishment even though so many International organisations recommends the abolition of capital punishment on the perusal of the data and sources India has a intend to retain the death penalty as a form of punishment rather India not using the death penalty frequently and it puts some fencing on the imposition of death penalty especially Indian judiciary plays a vital role in the creation of criteria or boundaries to impose the capital punishment it started particularly in the case of *Bachan Singh v. State of Punjab* (1980), this is a case which ignites the fire in the topic of death penalty in India because in the case Justice P.N Bhagawati shared his dissenting opinion on capital punishment as **“Death Penalty to be unconstitutional and undermining human rights”**.⁷⁰³ This opinion created a great impact on Indian legal history, and in this case, the Apex Court of India framed the **“Rarest of Rare Case”** principle to prevent the arbitrary imposition of the death penalty from this case the examination on the validity of capital punishment had started after this case from time to time, Indian Judiciary evaluates the capital punishment and interpret it for the better imposition.⁷⁰⁴

Further, on the perusal of the global countries that practice the death penalty stringently and frequently, like Iran, Saudi Arabia, America and China the researcher can understand that India is not using the death penalty that much frequently, except for terrorism offences, the approach of India towards the terrorism offences is very stringent and the Indian Criminal Justice System conclude the trial for the terrorism offences without modify or commute the punishment as a life imprisonment as like other offences and put them hang to substantiate this approach of India towards the terrorism offences on July 30, 2015 India executed Yakub Memon, who was convicted for his role in the 1993 Mumbai bombings and he was executed at Nagpur Central Jail after his appeals and mercy petitions were rejected thereafter in 2013 India executed Mohammad Afzal Guru for his role in the 2001 Indian Parliament Attack and his execution was carried out at Tihar Jail in Delhi then in 2012 India expeditiously executed Ajmal kasab for his role in the 2008 Mumbai attacks his execution was carried out at Yerwada Jail in Pune and the considerable factor is that this is one of the fastest execution of India in the legal history because Ajmal Kasab was convicted in 2010 and he was executed in 2012 so it is evident that India approaches the terrorism offences in a very strict manner more than that on 21st November 2012 Amnesty International Organisation criticised India for the execution of Abdul Kasab in its press release it stated that **“Today’s executions means India has taken a significant step backwards and joined that minority of countries that are still executing”**, furtherly in this press release it addressed that despite the 11 person’s mercy petitions are pending before the president for the disposal, kasab’s petition was disposed expeditiously and he was hanged more than that the Ajmal Kasab’s lawyer and family in Pakistan were not informed of the imminent execution, in violation

⁷⁰³ *Bachan Singh v. State of Punjab*, (1980).

⁷⁰⁴ *Bachan Singh v. State of Punjab*, (1980).

of the International standards on the use of the death penalty.⁷⁰⁵

Therefore, the researcher concludes that the primary reason behind the retention of capital punishment in India is terrorism, because India considers terrorism as one of the biggest threats to the sovereignty of India. That's why India still stringently approaches the terrorism offences, apart from this, as the researcher already discussed in chapter 3, recently India has increased the offences which are punishable by the death penalty from 12 to 16 by the implementation of three new criminal laws. This kind of legal activity of India reveals the stand of India on capital punishment that India still believes capital punishment is the only solution to curtail the brutal offences in the society and the another reason of India's retention of death penalty is that India needs to give more attention and focus on the global trends and global countries overhaul towards the capital punishment and it also needs to do an effective consideration of imminent judges' opinions on the capital punishment if India does this it may be get a different stand on the capital punishment in the future.

Furtherly, in chapter 4, the researcher researched the impact of the perpetrators' socio-economic status in the cases of the death penalty. Under this area, the researcher has taken three aspects: 1. Accessibility of adequate legal assistance, 2. Role of Gender 3. Economic vulnerability and education profile of the death row prisoners. A country like India has a higher amount of economically weaker section background people are there in this section, so many people are charged and convicted for the death penalty offences but the real questionable factor is did they received full-fledged legal assistance to contest their trial? The absolute answer is no, because from this research the researcher found that during the pre-trial stage itself, many individuals from

economically weaker backgrounds are unable to access adequate legal assistance due to their financial constraints and the major flaw is that the state only obligates to appoint a legal counsel for the accused after the commencement of the trial it means that the state does not need to arrange or appoint any legal counsel in the pre-trial stage but the Indian constitution and criminal procedure code gives the rights to the accused persons to access a legal practitioner during the interrogation but the thing is there is no mandates for a state to arrange for a legal practitioner in the course of investigation this legal stand is the big reason why economically weaker sections, are struggling to access an advocate in the pre-trial and interrogation stage and this is also a big reason for the custodial violences.

Moreover, the death row inmates or their families majorly prefer private advocates instead of legal aid counsels and to arrange the private counsels, they borrowed money, and eventually they got stuck in the financial problems throughout their life from this preference of their choice the researcher can understand about their level of trust on the legal aid counsels, then during the arrangement of the legal assistance the death row inmates are facing many problems and the notable factor is that they are not struggled only because of their socio-economic status they also struggled by their crimes which brutally did apart from that in this research in some cases the researcher found that in most cases the co-accused's lawyer was also hired by the prisoner in some cases the fellow villagers of the inmates were helped to arrange the legal assistance by an organizations etc apart from this in some cases the families of the prisoners struggled to meet the prisoners due to their poor economic conditions these outcomes helped the researcher to understand that the persons who are charged and arrested for the offences which pertaining to the capital punishment are struggling to access the adequate legal assistance especially in the pre-trial stage thus,

⁷⁰⁵ "Kasab Execution Represents Indian Death Penalty Backslide". Amnesty International, 21 Nov. 2012, www.amnesty.org/en/latest/press-release/2012/11/kasab-execution-represents-indian-death-penalty-backslide/.

it leads to alienation of the arrested persons from the judicial process hence, the data considered by the researcher proved and substantiate that the socio-economic status of the perpetrators plays a crucial role during the accessibility of adequate legal assistance in the capital punishment offences and it is also a big hindrance for the death row prisoners and their families.

Likewise, while evaluating the role of gender in the cases of capital punishment, it is evident that the proportionality between male and female perpetrators is drastically different, particularly in the post-independence era; the rate of women perpetrators hanged is nearly zero. Further, in this aspect the researcher found that in India despite all the criminal laws are operating as a gender-neutral laws. Still, it failed to treat the male and female perpetrators equally in front of the law; more than this, the gender of a woman is considered as a mitigating factor while deciding the death sentence. Still, in the cases of male perpetrators it is not like that so our Indian Criminal Justice system should change these kind of gender disparities while adjudging the capital punishment offences if this kind of gender disparities or biases would prevail in the future it leads to more arbitrary use of death penalty so, it is better to abolish the capital punishment in India instead of imposing it with these much gender biases.

Furthermore, while exploring the role of economic vulnerability of the death row prisoners, the researcher found that in India, majorly illiterate or economically weaker people are subjected to the death sentence, even though many rich people are committing crimes, and the educational background is also an important factor in the death penalty cases because the researcher could see that many perpetrators who are indulged in the death penalty offences are belonged to the poor educational background more over the poor economic background of the families also plays a huge role during the course of trial because they are struggling to meet the death row

inmates often only because of their poor economic condition and the notable factor is that in India none of the prisons have capacity to give an accommodation for the families of the prisoners who are all come from far distance to see the inmates and lack of literacy of the inmates leads to lack of understanding of this complex legal system, legal rights, and implications of their trial proceedings this leads to more wrongful convictions so as a conclusion for this aspect is that the data which the researcher perused for this aspect substantiate that the economic vulnerability and the poor educational background play as important factor in the cases of death penalty because of this poor literacy and economic condition often leads to miscarriage of justice and to make the society better the government should focus on the procurement of literacy in India, and the prisons has to build separate places for the families who are come to see the inmates because the crime which did by the perpetrator should not affect the families of the prisoners so the government should focus on these areas to improve the peace of the society.

5.2 Findings

By this research, the researcher found the following findings they are:

Does enhancing death penalty provisions increase the risk of wrongful executions?

For this research question, the researcher focused on how the Indian legislature increased the offences punishable by the death penalty from 12 to 16 without considering the prevailing practical complexities in the actual field. Further, the researcher focused on whether the New Criminal Procedure Code (BNSS) has any new provisions in the aspect of rights of the arrested persons or it again repeats the same rights which given under the old criminal procedure code particularly in this aspect the researcher tried to examine whether the three new criminal laws trying to sort out the prevailing practical complexities or not this is the researcher's major research area more than this the researcher also examined about the Protection of Children

from Sexual Offences (Amendment) Act, 2019 in the aspect of how the tutored evidence of a children plays an important role in the POCSO trial these all are the areas which the researcher put for an examination in the chapter 2 and by this examination the researcher found the following findings:

1. The Indian Legislature should not have implemented the three new criminal laws without considering the prevailing practical complexities, and furtherly, the researcher found that the effectiveness of these new criminal laws depends on how it will perform or be implemented in the future, hence, the examination of the three new criminal laws is very soon to study.

2. The Bharatiya Nagarik Suraksha Sanhita, 2023, again repeats the same rights for the arrested persons as like the old criminal procedure code and the researcher found that both of the legislations are keep silence on how to sort out the practical complexities and the BNSS has a crucial change in its wordings on the remand procedure that the police can be sought for a police custody of an accused person whenever they need after the initial 15 days but within 60 days if that offence is punishable below 10 years or within 90 days if that offence is punishable beyond 10 years this provision empowers the police to seek custody of an accused whenever they need within the 60 or 90 days as the case may be so the magistrate can extend the remand period beyond the initial 15 days this provision grants the arbitrary liberty for the police to investigate the accused persons this kind of liberty leads to more custodial violences and forced confession statements.

3. Furthermore, on the examination of the role of child tutored evidence in the POCSO trial, the researcher found that in recent times, the Indian Judiciary has addressed the role of tutored evidence of children in the POCSO trial, and that manipulated or coached depositions lead to unjustified convictions without considering this factor the Indian legislature

should not have amended the POCSO Act, 2019 because this amended act imposing harsher punishment for the child based sexual offences and a big lacunae for the both 2012 and 2019 POCSO Acts is that it doesn't have any provisions to punish the child or their guardians for giving fake or tutored depositions.

What factors play into the retention of capital punishment in India?

For this research question, the researcher focused on the following areas, which are the reasons behind the retention of capital punishment in India, even though many countries have abolished the death penalty as a form of punishment in this examination the researcher found that what are the primary reasons behind the India's retention of capital punishment is that:

1. Lack of consideration or focus on the global countries' approaches towards capital punishment.
2. Failed to effectively scrutinise the eminent Judges' opinions about the death penalty.
3. To prevent terrorist attacks.

How does the application of the death penalty in India compare to other countries that have abolished or retained capital punishment?

For this question, the researcher focused on the following areas, which are the comparative analysis of India's approach towards capital punishment with the global countries that are practising the death penalty stringently. In this examination, the researcher found that:

1. India does not frequently and stringently use the death penalty like Iran, Saudi Arabia, America, and China.
2. Furtherly, the researcher compared India's practice on capital punishment with Iran, Saudi Arabia, America, China, and South Africa to analyse India's approach towards the death penalty and found that India has stringently sentenced the perpetrators who are indulging

in the terrorism offences, Rape and Murder, and Murder simpliciter.

3. Then the researcher found that the approaches of global countries on the abolition of capital punishment had been changed from time to time, and the abolition movement did not gradually attain its objective without any hindrance, and also it faced so many ups and downs still it seeks for the complete reformation of the penal system.

How does the Socio-Economic status of the perpetrator play a vital role in the cases of the Death Penalty?

For this research question, the researcher focused on what is the role and impact of socio-economic status of the perpetrators in the cases of death penalty and how it creates an impact on their legal rights under this area the researcher particularly focused on the following areas they are: 1. How the socio-economic status of the perpetrators act as a barrier to access legal aid especially in the before the commencement of the trial 2. What is the role of gender in the cases of the death penalty? 3. What is the role of economic vulnerability and educational profile in the death penalty cases? On the perusal of data regarding these 3 aspects, the researcher found the following results they are:

1. None of the Laws in India has any provisions to arrange free legal assistance in the pre-trial stage, and as per the stand of Indian law, the state is not obligated to appoint a counsel before the commencement of the trial.

2. The Indian Criminal Justice System considers gender as an important mitigating factor in the death penalty cases.

3. The economic vulnerability and the educational profile of the perpetrator affect many legal rights of the perpetrator.

4. Indian prisons do not provide any accommodations for the families of the inmates who are all come to see their inmate,

and they are also suffering from the crimes which they did not commit.

5.3 Recommendations

The researcher would like to give the following recommendations for fair administration of the death penalty in India:

a) **Mandate Legal Representation at the Pre-Trial Stage**

The Indian Criminal Justice system should ensure state-appointed legal aid is available during the pre-trial and investigation stages, especially for economically disadvantaged accused, to prevent custodial torture and wrongful convictions.

b) **Amendments to resolve the practical complexities**

The Indian Legislative again incorporated the same rights in the Bharatiya Nagarik Suraksha Sanhita, 2023, for the arrested persons instead of addressing the existing practical complexities in the field so this repeated incorporation of the rights raises the need for an amendment in the New Criminal Procedure Code (BNSS).

c) **Establish a Review Mechanism for Socio-Economic Disparities**

A Judicial or Independent review board must be instituted to assess whether a death sentence was influenced by economic vulnerability, lack of education, or inadequate legal representation.

d) **Re-evaluate Gender Bias in Sentencing**

There is a need to review gender-based leniency in death penalty sentencing and ensure that all accused, regardless of gender, are treated equally under the law, based on the nature of the crime and mitigating factors, not identity or gender.

e) **Create specialised Legal Aid cells for Death Row Inmates**

Dedicated legal aid units with trained lawyers should be made available for all prisoners on

death row to assist with appeals, mercy petitions, and post-conviction legal strategies.

f) Integrate Prisoner Family Welfare Programs

The Indian prison system should include facilities and financial support for poor families travelling long distances to meet death row inmates, helping to uphold the dignity of the families and maintain humane treatment.

g) Introduce punishments for Fabricated or Tutored Testimonies in POCSO Cases

Amendments to the POCSO Act should address the issue of coached or false child testimonies by establishing appropriate safeguards for the aggrieved accused persons or impose consequences upon the malicious deponents like higher monetary penalties, while still protecting genuine victims.

h) Implement Periodic Judicial Training on Capital Sentencing

Regular training sessions should be held for judges on bias mitigation, socio-economic considerations, and international human rights norms to reduce arbitrariness in death penalty cases.

i) Reconsider the Expansion of Capital Offences in New Criminal Laws

The Government should critically assess the inclusion of new capital crimes in the Bharatiya Nyaya Sanhita, 2023, especially in light of the 262nd Law Commission Report's recommendations to limit the death penalty to terrorism-related cases only.

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