INTRODUCTION

Courts in India have the power to award a death penalty for certain heinous crimes listed in the Indian Penal Code, 1860 along with various other Statutes, and the procedure of awarding this punishment has been laid down in the Criminal Procedure Code, 1973. In Article 21 of the Indian Constitution, it has been stated that no person, except according to the procedure established by law, shall be deprived of his right to life and personal liberty. Thus, while meting out a death sentence the courts are bound to follow this due procedure. However, the death penalties awarded by the courts can be commuted or even remitted by the President (under Article 72(1) (c) of the Constitution) or by a Governor (under Article 161) by the exercise of their clemency powers. It is also pertinent to take note of Sections 432, 433 and 433A of the CrPC, 1973, which are related to bestowing powers on the “appropriate government” to suspend or remit sentences.

The extreme and irrevocable punishment of death penalty was introduced in the Statutes keeping in mind various theories which till date support the retention of this penalty. One of the major theories among these is the Deterrent Effect Theory which states that since punishment are introduced primarily for their deterrent effects, capital punishment will have the biggest deterrent effect and thus should be given for the most heinous crimes. It will prevent people from committing such grave offences by generating a fear of execution in their minds. Other theories which the

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1 2nd Year B.A. LL.B. Student, NALSAR University of Law, Hyderabad
5 THE CONSTITUTION OF INDIA, 1949, Article 72(1) (c).
6 THE CONSTITUTION OF INDIA, 1949, Article 161.
7 THE CODE OF CRIMINAL PROCEDURE, 1973, s. 432.
8 THE CODE OF CRIMINAL PROCEDURE, 1973, s. 433.
9 THE CODE OF CRIMINAL PROCEDURE, 1973, s. 433A.
Retentionists use to support their arguments include the economic theory and the certitude theory.\textsuperscript{10}

However, supporters of death penalty often face opposition on the grounds that not only does this punishment take away the valuable lives of some individuals and closes all doors for reformation, but it is also devoid of humane principles. The people who are in favour of abolition of this punishment take support from other countries which have done away with the penalty on humanitarian grounds and state that the deterrence effect cannot be determined with certainty. As mentioned in the 262\textsuperscript{nd} Report of the Law Commission of India, till date 140 countries have put an end to capital punishment either in law or in practice. Moreover, the number of countries who have retained this punishment has gone down from 51 in 2007 to 39 in 2014.\textsuperscript{11} The Abolitionists also state that since there are no clear cut rules which lay down the incidences when death penalty is to be given, the courts are left with high discretionary powers which often give rise to arbitrariness in the decisions.

The demands of abolition of death penalty on the basis of it being unconstitutional under Article 21, had been rejected by the Law Commission in its 35\textsuperscript{th} Report\textsuperscript{12} on the grounds that the country at that point of time was not ready for such an experiment. However, since the conditions in the country have changed greatly since the aforementioned report was published, there was a need to re-examine this punishment and this was done in the Law Commission’s 262\textsuperscript{nd} Report\textsuperscript{13}, published in August, 2015. This report accepted the various problems related to death penalty and took into account the discrepancies in the judgments regarding the same. It stated that even after extensive deliberations, no conclusive result has been achieved and the judicial system till date is in a state of uncertainty regarding the penalty.

\textsuperscript{12} LAW COMMISSION OF INDIA, Report No. 35.
\textsuperscript{13} Supra n. 10.
BACKGROUND

The question of when death penalty is to be given over the alternative of life imprisonment has been discussed at length by various committees and the position has changed a number of times according to the law existing at that time. Till 1955, the courts relied on Section 367(5) of the Criminal Procedure Code, 1898\(^{14}\) wherein it was stated that in case an offence is punishable by either death or life imprisonment, then the rule is to award a death sentence, and in case the courts choose to give life imprisonment over a death penalty, “special reasons” must be mentioned for doing so.\(^{15}\)

However, with the introduction of Section 66 of the CrPC (Amendment) Act, 1955\(^{16}\), which ruled out the earlier provision, life imprisonment was made the rule whereas death penalty was to be an exception, while awarding punishment. Between the years 1955 to 1973, there still existed some extent of judicial discretion and the judge had the power to decide as to where death penalty should be awarded over life imprisonment.\(^{17}\)

In 1973, when the revamped Code of Criminal Procedure was introduced, the principle of life imprisonment being a rule and death penalty an exception was incorporated in Section 354(3)\(^{18}\). From then onwards, whenever the courts decided to accord a death penalty over the alternative of life imprisonment, “special reasons” for giving the death sentence needed to be recorded. What constitutes as “special reasons” for awarding capital punishment was seen in Rajendra Prasad v. State of Uttar Pradesh\(^{19}\) where the court by a majority stated that the special reasons must relate not to the crime but to the criminal.

\(^{14}\) The Criminal Procedure Code, 1898, s. 367(5).
\(^{16}\) The Code of Criminal Procedure (Amendment) Act, 1955, s. 66.
\(^{17}\) Death Sentence: A Critical Analysis, Available at www.shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf.
\(^{18}\) The Code of Criminal Procedure, 1973, s. 354(3).
\(^{19}\) 1979 SCC (3) 646.
METHODOLOGY

For the purpose of looking at incidences and cases in which death penalty has been awarded instead of life imprisonment and vice versa, the author has gone through a total of forty eight cases, taken from the year 2014, in which the courts had the option of either upholding the capital punishment awarded by the lower court, or commuting it to life imprisonment. Through this process the author aims to look at the reasoning which the courts have put forth while meting out the final verdict. The primary goal is to identify the circumstances in which the courts prefer to give a death penalty and what conditions act as mitigating and aggravating factors while awarding the punishment. Two official websites, viz. Manupatra and Indiankanoon have collectively served as the primary source of case judgments for this article.

Further, the author has gone through the 262nd Report of the Law Commission, along with a number of other articles and relevant statistical data published by the National Crime Records Bureau. This has been done to analyse the sentencing trends and to see in how many cases the death sentence was commuted to life imprisonment and why.

LIMITATIONS

The author faced one major limitation while writing this article and while reviewing the sentencing trends. While analyzing the data published by NCRB, it was seen that the number of cases related to death penalty as per the Bureau, exceed the number of cases which have been analysed. All the cases in which capital punishment was awarded in the year 2014 could not be analysed, reason being that only a limited number of cases out of these have been published on the aforementioned websites. However, all the cases relating to the death penalty, which have been published on these two websites for the year 2014, have been read and examined thoroughly, and the analysis of a total of forty eight cases is deemed sufficient for the purpose of identifying the sentencing trend, and the rationales behind it.
FINDINGS OF THE EMPIRICAL STUDY

A. OVERVIEW

The IPC covers a total of 11 offences in which capital punishment can be given. These offences include treason, for waging war against the Government, abetment of mutiny actually committed, perjury resulting in the conviction and death of an innocent person threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person, murder, abetment of a suicide by a minor, insane person or intoxicated person, attempted murder by a serving life convict, kidnapping for ransom, rape and injury which causes death or leaves the woman in a persistent vegetative state, certain repeat offenders in the context of rape, and dacoity with murder. Death penalty may also be imposed if someone is found guilty of a criminal conspiracy to commit any of these offences. Except for these offences which have been covered in the IPC, a number of other offences listed in various statutes also warrant a death penalty.

While awarding punishment for any of the aforementioned offences, the judges exercise wide discretionary powers, which in some cases may lead to disproportionate results. To avoid such a situation, a set of guidelines have been developed through the course of judicial decisions and these guidelines act as decisive factors while deciding between death penalty and life imprisonment. The doctrine of awarding capital punishment only in the “rarest of rare” cases came about in the landmark case of Bachan Singh v. State of Punjab, when the constitutional validity of the punishment was challenged. The two primary questions which came up for consideration by the constitutional bench in this case were, firstly, whether capital punishment is violative of the

20 THE INDIAN PENAL CODE, 1860, s. 121.
21 THE INDIAN PENAL CODE, 1860, s. 132.
22 THE INDIAN PENAL CODE, 1860, s. 194.
23 THE INDIAN PENAL CODE, 1860, s. 195A.
24 THE INDIAN PENAL CODE, 1860, s. 302.
25 THE INDIAN PENAL CODE, 1860, s. 305.
26 THE INDIAN PENAL CODE, 1860, s. 307(2).
27 THE INDIAN PENAL CODE, 1860, s. 364A.
28 THE INDIAN PENAL CODE, 1860, s. 376A.
29 THE INDIAN PENAL CODE, 1860, s. 276E.
30 THE INDIAN PENAL CODE, 1860, s. 396.
31 THE INDIAN PENAL CODE, 1860, s. 120A and s. 120B.
32 Supra n. 11. Table 2.2, p. 32.
Constitutional provisions on the grounds that it deprives an individual of his life and liberty (Article 21) and also of his freedoms (Article 19); and secondly, whether Section 354(3) of the CrPC, 1973 is unconstitutional on the account of it leaving the judges with unguided discretionary powers.

The Supreme Court in this case rejected the first contention and stated that it cannot be said to be unconstitutional as under Article 21, the courts have the right to take a person’s life if “due procedure” is followed. Also, it is a rational and reasonable punishment for grave and unusual crimes. With regards to the second contention, the court answered concern by taking into account numerous judicial precedents and opinions. The judges, while taking reference from the *Jagmohan Singh v. State of Uttar Pradesh*34 ruled that it is not in any manner practical to lay down rigid and clear cut standards as to when to impose a death penalty and when to refrain from doing so, reason being that each case is widely different from the other and the court has to take a decision based on circumstantial evidence. If any rigid standard is imposed, it may lead to unjust judicial decisions and may result in the meting out of unfair punishment to the accused.35

However, the court did lay down certain guidelines which influenced the judicial decisions from then onwards. The court firstly said that it needs to be noted that while awarding punishment, life imprisonment is the rule. Death sentence may be imposed only in the “gravest cases of extreme culpability”36, and while doing this, all the circumstances of the offence as well as those of the offender have to be looked into. Further, capital punishment can be imposed only if the analysis of the aggravating and mitigating circumstances gives rise to “exceptional reasons” which support the imposition of such a punishment.37 These aggravating circumstances may include pre-planned and calculated crimes committed in cold-blood, crimes which are diabolically conceived and where the weapons used in carrying them out point towards the horrendous nature of crime, along with the helpless state of victim.38 Some of the mitigating circumstances which can be considered relevant while deciding are: if the offence was committed under extreme mental distress, if the accused is extremely young or old, the probability of reformation of the accused, accused not being

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34 AIR 1973 SC 947.
35 Supra n. 31.
36 Id.
37 Id.
38 Id.
a threat to the society, or that the accused was mentally impaired or felt he was morally justified in committing the crime.\textsuperscript{39} However, this cannot be treated as an exhaustive list.

According to the court a human life cannot be taken except for in the “rarest of rare cases” of exceptionally depraved and heinous character which constitute a source of grave danger to the society, and where the alternative option of sentencing the accused to life imprisonment is “unquestionably foreclosed”.\textsuperscript{40}

This landmark judgment has been followed in all subsequent cases with the exception of \textbf{Ravji v. State of Rajasthan}\textsuperscript{41} where the Supreme Court held that it was only the “nature and gravity of the offence had to be considered, and not circumstances of the criminal”. Based on this reasoning, two of the accused were sentenced to death and following a similar reasoning, in seven of the cases heard after this judgment, the judges sentenced thirteen convicts to death.\textsuperscript{42} However, in 2009 the court found that this reasoning had been in contravention with the law and was therefore unconstitutional.\textsuperscript{43}

The guidelines put forth in \textit{Bachan Singh} were relied upon and reiterated in \textbf{Machhi Singh v. State of Punjab}\textsuperscript{44} where the court considered the question of what can be identified as the “rarest of rare” cases and went on to state that a death sentence is justifiable only in the circumstances when life imprisonment appears to be a completely inadequate punishment considering the nature and manner in which the offence was committed. The court also said that a balance sheet of the aggravating and mitigating circumstances surrounding the crime and the criminal has to be drawn up and here the mitigating circumstances have to be given full relevance.\textsuperscript{45} In words of the court, there must be something so uncommon about the crime that it definitely calls for a death sentence; and the circumstances should be such that even after giving maximum relevance to the mitigating factors there is no alternative left except for a capital punishment.

\begin{itemize}
\item \textsuperscript{39} Supra n. 31.
\item \textsuperscript{40} Id.
\item \textsuperscript{41} 1996 SCC (2) 175.
\item \textsuperscript{42} Supra n. 13.
\item \textsuperscript{43} Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498.
\item \textsuperscript{44} 1983 SCR (3) 413.
\item \textsuperscript{45} Id.
\end{itemize}
These two cases primarily guide the decisions in death penalty cases till date, and the courts rely on the guidelines laid down in these to decide whether to uphold the death sentence given by the lower court or commute it to life imprisonment.

According to the NCRB Records, in India around 129 persons are sentenced to death every year, on an average basis.\textsuperscript{46} In the year 2014, a total of 207 people were originally given a death sentence, out of which sentences of 95 accused were upheld, whereas the death sentence of 112 convicts was commuted to that of life imprisonment, with no prisoner actually being executed.\textsuperscript{47} Both the maximum number of death sentences (17), along with those was commuted (21) was recorded in Bihar.\textsuperscript{48}

A detailed analysis of the sentences in which death penalty was upheld or commuted in the year 2014 has been done in the next part in order to identify the present trends and guidelines which the courts consider while passing judgments.

\textsuperscript{46} Supra n. 11.
B. ANALYSIS OF CURRENT TRENDS

The current trend while passing judicial decisions in matters related to death penalty can be seen from a study of the recent judgments. The courts after considering the mitigating and aggravating circumstances pertaining to the crime and the criminal, and after looking at the circumstantial evidence, decide whether the case falls into the rarest of rare category or not.

Under Section 366(i) of the CrPC 1973\(^{49}\), a death sentence awarded by any Sessions Court has to be submitted to the concerned High Court for confirmation and this sentence cannot be executed until there is a confirmation by the High Court. Therefore, the court has to re-evaluate all the circumstances and guidelines considered by the lower court while meting out the punishment and has to analyse whether such a judgment was passed in a proper manner or not. Sections 367 and 368 authorize the High Court to direct further inquiry into the evidence and to confirm or annul conviction.\(^{50}\) As seen in the cases analysed in this article, a majority of the death sentences passed by the Sessions Courts are commuted by the High Courts after considering additional circumstantial evidence or mitigating circumstances which the lower court might not have considered. The High Courts in some of cases where a heinous crime was committed ruled that the mitigating circumstances were such that it would not be justified to give a death sentence in those conditions and thus commuted it to one of life imprisonment.

a. Mitigating Circumstances Considered

While considering the circumstantial evidence, the courts look at all the mitigating factors in totality and no single mitigating factor can generally act as the ground for not giving a death sentence. In other words, the combination of numerous mitigating factors should outweigh the aggravating circumstances for the purpose of commutation of a death sentence. Some of the significant mitigating circumstances have been identified below:

1. Probability of reformation: One of the mitigating circumstances influencing the courts’ decisions was that of there being a probability that the criminal can be reformed and rehabilitated, and the ends of justice would be served if a life imprisonment is given instead of capital

\(^{49}\) THE CODE OF CRIMINAL PROCEDURE, 1973, s. 366(i).
\(^{50}\) THE CODE OF CRIMINAL PROCEDURE, 1973, s. 367 and s. 368.
punishment.\textsuperscript{51} The courts are of the view that if there is a possibility that the criminal would not repeat the act in future and would move towards a course of reformation, then imposing a death sentence would be too harsh of a punishment. Such a mitigating factor is looked at in consonance with other circumstances such as the accused having no criminal antecedents, or the accused showing a feeling of repentance etcetera. These factors are also considered because to some extent they too point towards the possibility of a reformation. Often the court finds no material evidence which can prove that there is no possibility of the accused being reformed and in such cases the court deems it justifiable to award only a life imprisonment.

2. No criminal antecedents of the accused: The second factor which is considered is if the accused has committed any crimes in the past, i.e. if the accused has any criminal antecedents. It is believed that in case it is the first time the accused is committing a crime, he may not have a criminal mindset and might have committed the crime in spur of the moment or under extreme mental distress.\textsuperscript{52} Thus that particular crime is accorded a solitary nature, deviating from the usual conduct of the accused. This factor acts as a mitigating circumstance because courts are of the view that a person cannot be given a death sentence based solely on the one heinous crime he has committed in his life, and the highest form of punishment justified in such cases should be that of life imprisonment.

3. Not a permanent threat to the society: The courts at times want the prosecution to show or give proof that if the accused is not given a death sentence, i.e. if he is not eliminated from the society altogether, then he will continue to be a menace to the society. In case the prosecution is not able to give reasonable proof supporting the same, the courts take it as a mitigating factor that it cannot be shown that the accused would continue to be a permanent threat to the society at large.\textsuperscript{53} Further,


the purpose of preventing the accused from being a threat to the society can be equally served if he is imprisoned for life.

4. Age of the accused: Another mitigating circumstance which the Bachan Singh case considered to be relevant was the age of the accused. If the accused is young, i.e. till he’s thirty, he is considered capable of reformation, and the courts consider it unjust to sentence such a young person to death. This factor has been taken into account by the courts in some of the cases selected for analysis. In *Harikirtan v. State of U.P.*, the court considered that since the accused was at a young age of 28 years, the possibility of his reformation cannot be ruled out, and hence took it as a mitigating factor. Further, if the accused is considerably old, then also his age will act as a mitigating circumstance and it has to be taken into consideration while deciding.

5. Not a premeditated and calculated crime: If the offence was not premeditated and calculated, and instead is only committed under extreme mental distress, then this will also be taken into relevance while deciding. In *Shaukat Saifi v. State of U.P.*, the Allahabad ruled that since the crime had been committed in an uncontrollable fit of anger, and the accused did not possess a premeditated intention to commit it, it can be taken as a mitigating factor. However, this factor can already be stated to be covered under the exception one to Section 300 of the IPC, i.e. the defence of grave and sudden provocation.

6. Inordinate delay in disposing of case: Commutation of a death sentence on account of delay in the judgment or delay in verdict has been discussed in a number of cases. The contention from the accused’s side in these cases is that an inordinate delay in the rejection of the Mercy Petition filed before the President or before the Governor is violative of Article 21 of the Constitution and

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55 *Bharat Singh v. State (NCT of Delhi), 2014 (4) RCR(Criminal) 890*


57 *2014 (85) ALLCC 16*

58 *THE INDIAN PENAL CODE, 1860, s.300 (Exception 1).*
entitles the accused to commutation of the sentence. The reasoning of the courts is that the prisoner has to face a “brooding horror”\textsuperscript{59} and “anguish of alternating hope and uncertainty”\textsuperscript{60} for years, due to no fault of his own. Looking at this, it was laid down in one of the cases\textsuperscript{61} that in case the delay exceeds two years, then it gives the accused a right to file for commutation. However, in a subsequent case\textsuperscript{62} it was held that the nature of the delay along with the circumstances which caused it has to be looked at. Further, no fixed period can be termed as being an “inordinate delay” entitling the accused to a commutation, and the courts have to decide according to circumstances surrounding the case.\textsuperscript{63}

The aforementioned principle was reiterated in \textit{Shatrughan Chauhan & Anr. v. Union of India and Ors.}\textsuperscript{64} it was finally established that no outer limit can be fixed regarding the time period in which the petition has to be disposed of. It is upon the concerned court to decide whether the delay was reasonable or unreasonable taking view of the circumstances surrounding the delay.

In the second case\textsuperscript{65}, the accused had submitted a mercy petition to the President, pleading for a revision of his death sentence. However, the petition was rejected after a long duration of 3 years and 10 months. The accused then appealed in the Supreme Court for commutation of his sentence on the basis of an inordinate delay in the rejection of his Mercy Petition. The court ruled that there was an inordinate delay in the disposal of his petition, and this delay was solely on the part of the functionaries and authorities, with no fault of the accused.\textsuperscript{66} The accused had been kept in solitary confinement for this whole duration and this also acted as a relevant factor. Thus, considering all of these, the court finally commuted the sentence to one of life imprisonment.

7. Accused’s behavior in custody: Along with other circumstances which may alleviate the punishment, the courts also observe the accused’s behavior while in custody.\textsuperscript{67} If the accused acts

\textsuperscript{59} Ediga Anamma v. State of Andhra Pradesh, 1974 SCR (3) 329.
\textsuperscript{60} T.V. Vatheeswaran v. State of Tamil Nadu, 1983 SCR (2) 348.
\textsuperscript{61} Id.
\textsuperscript{63} Id.
\textsuperscript{64} (2014) 3 SCC 1.
\textsuperscript{66} Supra n. 67.
in a well behaved manner, it supports the courts’ argument that the accused is capable of reformation, and does not indulge in criminal acts at all times. Further, it proves to some extent that he is not inherently of an aggressive or barbarous nature.

In High Court of Karnataka v. Izher Baig\(^68\) the court ruled that although the criminal conspiracy in which the accused entered was aimed at giving rise to riots, this aim was not fulfilled in the end and further, the bomb blast caused only minor damages to the building and no lives were lost. All these factors were considered as mitigating circumstances and thus the death penalty was reduced to life imprisonment.

Recently, Justices S.J. Mukopadaya and Kurian Joseph have affirmed that abject poverty and socioeconomic conditions of the accused may also be considered as mitigating factors while giving a death penalty\(^69\).

In Bachan Singh, it was held that a death sentence should only be awarded if the alternative of imposing life imprisonment is “unquestionably foreclosed”, and only if the lesser punishment would not serve as ends of justice.\(^70\) This guideline has been followed in some of the selected cases and the courts have stated that since the crime was not so grave that the only reasonable punishment is that of a death penalty, even a life imprisonment would be sufficient to serve the purpose.\(^71\) Thus the lesser alternative can still be considered and therefore the punishment was commuted.

Many a times, while commuting the sentences, the judges state that although the crime is one which is of a heinous or barbaric nature, after drawing a balance sheet of the aggravating and mitigating circumstances and after giving full weightage to the latter, it cannot be termed as one belonging to the “rarest of rare” category.\(^72\) As laid down in Machhi Singh\(^73\), it may be so that there is nothing uncommon about the crime or that the mitigating factors outweigh the aggravating

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\(^{68}\) MANU/KA/3185/2014.

\(^{69}\) Venkatesan J., Judicial commutation permissible in cases of murder driven by poverty: Supreme Court, The Hindu, (September 13, 2013).

\(^{70}\) Supra n. 31.


\(^{73}\) Supra n. 42.
ones, and thus it is justifiable only to give a life imprisonment at the most.\textsuperscript{74} However, considering the monstrous or brutal nature of the crime and manner of its commission, while giving a life imprisonment, the court may decide upon a minimum definite period of punishment without remission, no matter how good his conduct is while he is incarcerated.\textsuperscript{75}

b. Aggravating circumstances outweighing the mitigating circumstances:

Some of the judgments in which the courts decided to uphold the death sentence have been reviewed individually, in order to gather the particular conditions in which the extreme and irrevocable punishment is meted out.

The High Court of Bombay in \textit{Vasant Sampat Dupare v. State of Maharashtra}\textsuperscript{76} drew up a balance sheet of both the mitigating and aggravating circumstances, as had been suggested in \textit{Machhi Singh}. While the aggravating circumstances were that the girl who was raped and subsequently murdered was a minor of about four years. The accused first subjected her to a brutal rape while acting in a rapacious and depraved manner, and afterwards battered her to death. The possible mitigating factors were also considered and it was seen that the accused in this case was a history sheeter who showed no remorse throughout the course of sentencing. Therefore it cannot be said that there is a possibility of reformation and the accused would most probably remain a threat to the society if allowed to live. Considering these conditions, the court upheld the death sentence.

In \textit{Mofil Khan v. State of Jharkhand}\textsuperscript{77}, where the accused murdered eight innocent relatives of his due to property disputes, the court ruled that giving a death sentence is justifiable considering the circumstances and manner in which the crime was committed. The accused showed no signs


\textsuperscript{75} \textit{Anil Arikswamy Joseph v. State of Maharashtra}, 2014 (2) ACR 2090(SC); \textit{Rajkumar v. State of Madhya Pradesh}, 2014 (2) aLD(Crl.) 312 (SC); \textit{Selvam v. State through Insp. Of Police}, AIR 2014 SC 1911.

\textsuperscript{76} MANU/SCOR/51075/2014.

\textsuperscript{77} 2014 (4) RCR(Criminal) 683.
of remorse and the manner in which he murdered the helpless members of his family, including four minors, was so gruesome that it called for a death sentence. Further, there was absence of mitigating factors and there was a high possibility that he would continue to be antithetical to harmony in the society. However, the court did not provide any evidences supporting this statement.

A death sentence may also be given on the account of the crime being so cruel, diabolical and grave so as to send shockwaves through the society. This rationale was used in Santosh Maruti Mane v. The State of Maharashtra where the accused after hijacking a bus, killed nine innocent people, and injured thirty seven others. As per the statements given by the Bombay High Court in this case, the crime was an exceptional one and fell in the rarest of rare cases. Moreover, the mitigating circumstances did not work as the accused had committed several accidents in the past as well and there was no probability of his rehabilitation. Thus, since the aggravating circumstances clearly outweighed the mitigating ones, a death sentence was valid.

Another contention of the courts is that if there is evidently no possibility of reform seen in the accused, then it will act as absence of an important mitigating factor. In Yogendra v. State of Madhya Pradesh the accused was earlier sentenced to death by the lower court but his sentence was suspended on appeal. While the accused was out on bail, he committed another murder of a gruesome nature. The court thus sentenced him to death on account of being a repeat offender.

In Manoharan v. State by Inspector of Police although the accused was of a young age of 23 years, the court found that he showed no signs of remorse and reformation, and in the absence of any other mitigating factors, it is reasonable to sentence him to death for committing a rape and murder of two minors in a brutal manner.

Other justifications given by courts to support capital punishment include: the criminals being so inherently violent that they move like predators on the streets looking for preys, or if the offence committed is so vicious that the only reasonable punishment which can be awarded is that of a

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78 2014 (4) BomCR(Cri) 22.
79 Id.
80 MANU/MP/1812/2014
81 2014(2)MLJ(Crl)1
death penalty. Also, if while considering the mindset of the criminal it is found that it would be too much to expect reformation from him, the court may reach the conclusion that a death sentence is valid.\textsuperscript{83} The courts also took the hapless and vulnerable state of the victim,\textsuperscript{84} and the society’s expression of abhorrence\textsuperscript{85} into consideration in some of the cases. In one of the cases the judges also mentioned that there were only aggravating and no mitigating circumstances\textsuperscript{86}.

After examining the judgments in which the higher court decided to uphold the death sentence given by the lower court, it can be seen that such a judgment is usually passed in the cases where the along with the crime being exceptionally bestial, there is an absence or dearth of mitigating circumstances which can be ignored keeping in mind the nature of the crime.

Even after the application of the rarest of rare doctrine, there still exists some sort of arbitrariness and inconsistency in the judicial decisions. Since the judges are given wide discretionary powers, at times their decisions tend to be highly subjective. This problem has been discussed in some major judgments as well, including the cases of \textit{Shankar Kisanrao Khade v. State of Maharashtra}\textsuperscript{87} and \textit{Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra}.\textsuperscript{88} While in the former case the Supreme Court expressed its concern over the “lack of a coherent and consistent basis” for awarding capital punishment and commuting the sentence\textsuperscript{89}, in the latter the Court affirmed the absence of uniformity in judicial precedents. Therefore, according to the courts, “principled sentencing” has become “judge-centric” sentencing.\textsuperscript{90}

\textsuperscript{83} \textit{Vijay Kumar v. State}, MANU/JK/0435/2014
\textsuperscript{85} \textit{The State of Maharashtra v. Dattaraya}, 2014 ALLMR (Cri) 2078.
\textsuperscript{87} (2013) 5 SCC 546.
\textsuperscript{88} \textit{Supra n. 41.}
\textsuperscript{89} \textit{Supra n. 89.}
\textsuperscript{90} \textit{Supra n. 11.}
CONCLUSION

The author in this article has looked at how the capital punishment has developed throughout the course of time and has examined the data related to this topic. The relevant articles and reports have been studied in order to review the various opinions and recommendations regarding this extreme punishment. Further, a number of recent cases pertaining to death penalty have been analysed to gather the current sentencing trends and reasoning behind the judgments.

It was found by the author that presently, while deciding between the alternatives of death penalty and life imprisonment, the judges apply the guidelines which have been laid down in the judicial precedents. Awarding someone a capital punishment, no matter what the offence committed by the criminal was, is a grave and a most extreme step, which should be taken only in the complete absence of any other alternative. The mitigating circumstances should be looked at extensively, for ascertaining the actual guilt of the offender.

As for determining if the judgments in such cases are at times arbitrary or unjust, the author believes that the cases selected for analysis in this article present a fairly just picture, where the judgments were not highly arbitrary, but were well-reasoned. The doctrine of “rarest of rare cases” is the predominant standard which the judges follow, along with preparing a balance sheet of the aggravating and mitigating circumstances. The conditions related to the crime as well as the accused are studied extensively and are given full weightage while deciding. Generally awarded only if the aggravating circumstances clearly outweigh the mitigating ones or if there is an absence of mitigating circumstances altogether. Otherwise the higher court commutes the sentence to one of life imprisonment. Therefore, it can be said that till date life imprisonment is treated as the norm and death penalty is only an exception.