

A Critical Study on Punishment with Reference to Section 302 of IPC

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Abstract

Death sentence is still prevails in the judicial system of several countries in spite of strongly opposed by numerous organisations across the world as well as many countries' recommendation to abolish this barbaric and inhuman punishment to the human beings. The death penalty or capital punishment is terrible in listening itself and when it is used for someone it horrify all those who hear this word. The pronounciation of the death penalty itself a word which makes uneasy to all those people in whose ear it enters. Although, the death penalty has been opposed by several organisations and still several organisations with the help of Governments of many countries are working to make the world free from death penalty/capital punishment in any form either by hanging, shooting, stoning etc. because this is cruel form of punishment. The debate on death punishment has three major issues, desirability, constitutionality and proportionality. Desirability involves an exercise that implies a value judgment which needs examination of the wisdom of legislative choices. In the year 1956, 1958 and 1962, a Bill or resolution to abolish capital punishment was brought in the parliament but could not be passed even in one house of the parliament. This signifies the intention of parliament on desirability of capital punishment. A few members of political parties have expressed random thoughts in favour of abolition but the parliamentary wisdom goes in favour of retention of death sentence. Recently capital punishment was incorporated in Indian Penal Code 1860 through an amendment under section 376A in 2013.

Key Words: Punishments, constitutionality, parliament, retention, amendment.

1. Introduction

Every general public has its own specific manner of social control for which it outlines certain laws and furthermore specifies the approvals with them. These authorizations are only the disciplines. The primary thing to say in connection to the meaning of discipline is the insufficiency of definitional hindrances meant to demonstrate that one or other of the proposed legitimizations of disciplines either sensibly incorporate or consistently prohibited by definition. Criminal assents like detainment and capital punishments are assigned and apportioned by state specialists. Other formal discipline include common claims and authoritative pronouncements to reestablish relations among the gatherings, make up for individual wounds, as well as counteract assist wrongful direct through confinements of continuous practices. Distinctive kinds of disciplines are utilized for various purposes. Criminal sanctions serve to fortify appreciated qualities and convictions, cripple and stop the individuals who might consider criminal unfortunate behavior, and regularly capacity to keep up control relations in a general public and to take out dangers to the predominant social request. The control and support of social request is likewise a vital capacity of common and managerial approvals. Both formal and casual disciplines may additionally serve to sensationalize the fiendishness of specific lead in a general public, upgrade mutual solidarity against outside dangers, and give the way to social designing endeavors coordinated at enhancing the personal satisfaction.

Indeed, even a careless take a gander at disciplines, in any case, uncovers that they change broadly after some time and place. Formal endorses by the state or other "authority" bodies were to a great extent obscure in prior agrarian social orders, though social request in current mechanical social orders is conceivable as a rule just by a detailed arrangement of formal authorizations. Variety additionally happens in the utilization of specific authorizes inside nations after some time. A relative verifiable approach offers a significant method to all the more completely comprehend this variety in discipline after some time and place. An examination of disciplines from a near authentic viewpoint turns out to be much more vital inside the present setting of worldwide economies, world frameworks, and multinational infiltration. Inside this inexorably littler and interconnected world framework, a relative chronicled approach challenges our ethnocentric convictions of "good" and "awful" practices in light of our specific social and national encounters. The potential revelation of discipline reactions and rules that rise above limits of time and space gives a premise to enhancing our comprehension of criminal assents and disciplines in Western and non-Western social orders alike. The aim of this study is to study about the Punishment under IPC, and to analyse the section 302 of IPC.

Research Question

whether the punishment under section 302 of IPC can be re – organised ?

Objectives

- To study about the punishment under IPC.
- To analyse Section 302 of IPC

Hypothesis

Null hypothesis

The punishment under section 302 of IPC is wider and cannot be re-organised.
Alternate hypothesis

The punishment under section 302 of IPC is wider and can be re-organised

2. Study Design

The researcher has used analytical research methodology and descriptive research methodology. That is researchers has used facts on information already available and analyzed those facts to make a critical evaluation of the material. Analytical research involves secondary data. A meta analysis is a quantitative method of review. Descriptive research is used to obtain information concerning the current status of a phenomena and to describe “what exists”.

3. Review of Literature

(Llc 2010)This book deals with the punishment and its types and also deals about the philosophy of punishment. This book also talks about the issues in sociology of punishment. This book also covers the crime trends in Saudi Arabia and other Islamic countries.(Beccaria and Davies) This books gives the overview of origin and history of punishment. It makes the proportion between crimes and punishment. It also deals with the circumstances that occasioned crimes. It gives an evidence and proof of crimes and forms of crimes.(Brooks 2012).This book deals with the social norms and sentencing felons. This book mainly deals with the federal crimes. It makes the clear difference between social and individual factor. It also talks about the race and ethnic differences in sentencing. (Blomberg and Cohen 2003)This book talks about the political power and the threat of nuclear weapon by the foreign people. It also provide and overview of enormous shifts threaten our way of life. This books makes the discussion about punishment - a Heart pounding. (Tonry 2000)This book deals about the general theories of punishment. It also talks about the hybrid theories of punishment and it differentiates the general and hybrid theory of punishment. It also talks about the Domestic abuse and also talks about the Capital Punishment.Gertrude (Tonry 2000; Ezorsky 2015).This book deals with the concept of punishment in India. And it also deals about the Justification of Punishment. It gives the detailed view on death penalty. Main concept of this book is the ethics of Punishment.(Meranze 2011).This book tells that the justice system is the confession of murder. This book raises the question “is punishment is based ?” . And also this book tells that the death Penalty can be also called as the public. (Kronenwetter 2001)This book deals with the primary

laws of nature. It also talks about the constitutional pre – disposition to crimes. It also covers the accidental crimes. This book mainly deals with the principle which govern the action of human rights. (Kronenwetter 2001; Laurence)This book deals with the capital punishment and its conflicts. It deals with the concept of Death penalty It also deals with the prosecutor and defender narratives. It also covers the concept of cause lawyering.(di Beccaria and Voltaire 1819)This book deals with the background of crimes and punishment. This book also deals with the critical reception of crimes and also this book deals with the critical recession of punishment.(Mccord 2005) This book deals with the nature of reasoning for punishment. This book deals with the types of punishment, it mainly covers the physical punishment. This book also deals with the generative theories of the effects of punishment. (Wiggins 1991)This book deals with the ingredients of attempt to murder. This book also explains the concept of nature of injuries. This book also deals with the elements of crimes which is actually reuse and Mens res. (Wiggins 1991; Lāhiṛī 1986).This books deals mainly on the concept of crimes. It also deals with the judicial administration. This book covers the sources of Hindu law. And also talks about the punishments in ancient India. (Wiggins 1991; Lāhiṛī 1986; Reinhardt).This book deal with the murder with brutality. This book covers the 75 murder cases in India. This book deal with murder and the constitutional validity of death sentence. It also deals with the murder with dacoity. (Anderson 2011)This book deals with the state violence and the punishment in India. This book overviewed the concept of police action in the state. It also talks about the rethinking colonial punishment. It also deals with the limits of state power in India. (Prabha Unnithan 2013)This book deals with the governance and coercion in India. And also deals with the public order in India. It overcomes the chapter contains secularism. This book also deals with the measures to prevent terrorism in India. (Lucken 1997).This book deals the sociological aspects of crime in India. It also deals with the economic aspects of crime in India. This book discusses the probability of apprehension. This book also deals with the value and price of punishment. (Dostoevsky 2014)This book deals with the social and economic issues in India. It also value the result of financial problem. It also deals with the life and personal contentment. It further deal with the effect of revolutionary thought. (Dostoevsky 2014; Cox 2018)This book deals with the regular punishments in India. It mainly talks about the punishment for abetment. It also deal with the short history of punishment. It also covers the tales of ancient India. (Kolsky 2011)This book deals with the colonial justice in India. It also deals with the violence in colonial India. It overviewed the ordinary part of British rule. This book also deals with the imperatives of command.

4. Punishment under IPC

Punishment is a procedure by which the state causes some torment to the people or property of individual who is discovered blameworthy of Crime. At the end of the day discipline is endorse forced on a blamed for the encroachment for the built up rules. The Object of Punishment is to shield society from insidious and

bothersome components by discouraging potential guilty parties, by keeping the genuine wrongdoers from submitting further offenses and by transforming and transforming them into honest nationals.

The stage of punishment is the final process of the criminal jurisprudence system. As is well known, one of the fundamental tenets of criminal law is that 'person is considered innocent until proven guilty'. Once the court comes to a conclusion, based on evaluation of the evidence admitted before the court, that the accusation are proved against the accused, then the court necessarily decide the quantum of punishment to be awarded to the accused.

The object of the punishment in the scheme of modern social defence is correction of wrong doer and not wrecking gratuitous punitive vengeance in the criminal. The punishments to which offenders are liable are enlisted under Section 53 of the Indian Penal Code. Section 53 to 75 of the Indian Penal Code 1860 deals with the scheme of Punishment. Section 53 of the Indian Penal Code prescribes five kinds of punishments.

Section 53 of the Indian Penal Code prescribes five kinds of punishments are as follows

- a) Death
- b) Imprisonment for life
- c) Imprisonment, which is of two descriptions, namely -
 - (1) Rigorous, that is with hard labour.
 - (2) Simple
- d) Forfeiture of property
- e) Fine.

Death

Capital punishment is the harshest of discipline endorsed in the Indian Penal Code, which includes the legal murdering or ending the life of the blamed as a frame for discipline. The question of whether the state has the right to take the life of a person, however, gruesome the offence he may have committed, has always been or contested issue between moralists who feel that the death sentence is required as a deterrent measure and the progressives who argue that judicial taking of life is nothing else but court mandated murder. The following are the offences for which a sentence of death may be passed.

- Waging or attempting to wage war or abetting the waging of war against Government of India (S. 121).
- Abetment of mutiny actually committed (S.132).
- Giving or fabricating false evidence upon which innocent person suffers death (S.194).
- Murder (S.302).
- Punishment for murder by lifer (S.303).
- Abetment of suicide of a child, insane or intoxicated person (S.305).

- Abetment to murder by a person under sentence of imprisonment for life; if hurt is caused (S.307).
- Dacoity with murder (S.396).

The law vests in the judge a wide discretion in the matter of passing a sentence and as such the award of death penalty, except in the solitary cases provided the section 303, is left to the discretion of the court. Section 303 I.P.C. which had left no option to the judge as it made capital sentence compulsory in the case of a convict who committed murder while undergoing a sentence of imprisonment for life; was however struck down as unconstitutional by the Supreme Court.

Imprisonment–for Life with Hard Labour, Simple Imprisonment

Before 1955, the words “transportation for life” was used. The Code of Criminal Procedure Amendment Act, 1955 (Act No. 26 of 1955) substituted the words “Imprisonment for life” in place of “transportation for life”. The punishment of the Imprisonment for Life means imprisonment for the whole of the remaining period of the convicted person’s natural life.

Imprisonment

Imprisonment in its pure and simple form is a kind of punitive reaction. Its object being primarily to deprive the offender of his liberty which is the most serious damage which can be caused to a human being, next to deprivation of life by death sentence.

The most serious problem associated with imprisonment is what has been termed as ‘prisonization’. The prisoner introduced to a new environment which has its own culture and values, is affected by the direct impact on the earlier culture which the prisoner was exposed to before entering the jail. All that results in some sort of social debasement of the convict in his own eyes : Equally damaging effect is inflicted on family relationship. Imprisonment for life ordinarily connotes imprisonment for the whole of the remaining period of the convicted persons natural life. The life convict is not entitled to automatic release on completion of 14 years imprisonment unless the government passes an order remitting the balance of his sentence connotes sentence to life imprisonment are detained in jails.

The sentence of imprisonment for life is provided for about 50 offences under the code.

Kinds of Imprisonment

- Simple imprisonment
- Rigorous imprisonment

In the case of the former the convicted person is not put to any kind of work or labour. There are various offences mentioned in the code which are punishable with simple imprisonment only. They are as follows:

- Public servant unlawfully engaging in trade or unlawfully buying or bidding for property (Section 168 and 169).
- Absconding to avoid service of summons or other proceedings or not attending to obedience to an order from a public servant (Sections 172-174).
- Intentional omission to produce a document to a public servant by a person legally bound to produce such document or intentional omission to give notice or information to a public servant by person legally bound to give or intentional omission to assist a public servant when bound by law to give assistance (Sections 175, 176 and 187).
- Refusing oath when duly required to take oath by a public servant (Section 178, 179, 180).
- Disobedience to an order duly promulgated by a public servant if such disobedience causes obstruction, annoyance or injury (Section 185).
- Intentional insult or interruption to a public servant sitting in any stage of a judicial proceedings (Section 341).
- Uttering any word or making any sound or gesture with an intention to insult the modesty of a woman (Section 509).
- Misconduct in a public place by a drunken persons (Section 510).

In case of rigorous imprisonment, the convicted person is put to hard labour but not harsh labour. A vindictive officer victimising a prisoner by forcing on him particularly harsh and degrading jobs violates laws mandate.

The determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down. It being a matter of discretion which is to be guided by a variety of considerations but the court has always to bear in mind the necessity of proportion between an offence and the penalty. In imposing a punishment it is necessary to have as much regard to this pecuniary circumstances of the accused person as to the character and magnitude of the offence.

Forfeiture of Property

Forfeiture of the whole of the property of the criminal is not possible according to the present Law. The opinions received by the Law Commission of India in its 42nd report, were largely against the introduction of confiscation of property. The Commission too was of the view that the harsh punishment which will fall not only on the criminal but on his dependent family, is not to be recommended. Such a punishment is certainly called in case of smugglers and black markets where prima facie the source of income or property acquired by the offender may be illegal. As regards hardships to the family, the same is caused in varying degrees in all forms punishments. This punishment has been retained in the I.P.C. Bill of 1972.

Sections 61 and 62 of the I.P.C. which provided for absolute forfeiture of all property of the offender, have been repealed. There are three cases in which

specific property of the offender is liable to forfeiture, viz.,

- where depredation is committed on territories of any power at peace with the government of India, such property as is used or intended to be used in committing such degradation is liable to forfeiture in addition to the sentence of imprisonment and fine (Section 126).
- Where property is received knowing the same to have been taken in the commission of depredation on the territories of any power at peace with the government of India or in waging war against any Asiatic Power at peace with Government of India. The property so received is liable to forfeiture (Section 125 and 127).
- A public servant unlawfully buying or bidding for property forfeits the property so purchased. (Section 169).

Fine

Fine as an additional or alternative form of punishment has been increasingly favoured by the law as well as judicial authorities. They are very frequently imposed in relation to property crime and the embezzlement, fraud, theft, violations of lottery and gambling laws and minor offences like loitering and disorderly conduct.

The imposition of fines may be made in four different ways as provided in the I.P.C. It is the sole punishment for certain offences and the limit of maximum fine has been laid down : in certain offences it is an alternative punishment but the amount is limited, in offences where it is imperative to impose fine in addition to some other punishment and in offences where it is obligatory to impose fine but no particular pecuniary limit is laid down.

As regards the question of quantum of fines, no general provision exists in England to regulate it. But both Magna Carta and the Bill of Rights contain provisions prohibiting excess and unreasonable fines and assessment. In I.P.C. it is observed, that in offences, which are the result of greedy, the amount of fines ought to be so excessive as to reduce the offender to poverty. The measure of punishment of fine must be carefully regulated and due regard must be had to the nature of the offence and the means of the offender.

The I.P.C. prescribes only the sentence of fine in the following cases :

- The master negligently concealing a deserted on board a merchant vessel (Section 137).
- The owner or occupier of the land upon which an unlawful assembly or riot has taken place if he does not give the earliest notice at the nearest police station (Section 154).
- Any person for whose benefit a riot is committed and who does not use the lawful means to prevent it. (Section 155).
- An agent or manager of a person for whose benefit a riot is committed if he does not use lawful means to prevent it (Section 156).
- Bribery by treating with food, drink etc. (Section 171 E).

- A person making a false statement in connection with an election (Section 171 G).
- Any person incurring illegal payments in connection with an election (Section 171-H).
- Failure to keep election accounts (Section 171-I).
- Dealing in or selling any fictitious stamp (Section 263-A).
- Making atmosphere noxious to health (Section 278).
- Obstructing a Public way or line of navigation (Section 283).
- Committing a public nuisance not otherwise punishable by this code (Section 290).
- Publication of proposal regarding a lottery not being a state lottery or authorized by the Stage Government (Section 295-A).

Section 302 of IPC

Punishment for murder.-Whoever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine.

This section, which prescribes punishment for murder, says that whoever commits murder shall be punished either with death or with imprisonment for life, and shall also be liable to fine. In other words, the Indian Penal Code has prescribed only two kinds of punishment, death sentence and imprisonment for life, out of which one has to be imposed on a murder convict who shall also be liable to fine if the court so deems necessary.

The section, as is clear, does not enumerate the circumstances under which either of these sentences can be imposed. Naturally, the courts are guided by the Code of Criminal Procedure and the pronouncements made by the Supreme Court in the process. Under section 367(5) of the Code of Criminal Procedure, 1898, before its amendment in 1955, the normal rule was to pass a sentence of death in cases of murder, and if a court was not inclined to pass such a sentence, it was required to specifically state the special reasons in the judgment for doing so.

In other words, during that time imposition of death sentence was the rule and imprisonment for life (transportation for life, before the same was replaced by section 117, Schedule of Act XXVI of 1955 to imprisonment for life) was the exception. The Code of Criminal Procedure (Amendment) Act, 1955 amended section 367(5) of the Code of Criminal Procedure, 1898 and this amendment came into effect on January 1, 1956. By this amendment that part of the law which obliged the court to write reasons for imposing imprisonment for life was dropped.

This, in effect, means that the court was empowered to pass either a sentence of death or of imprisonment for life at its discretion. The old Code of Criminal Procedure was repealed in 1973 when a new Code was enacted. Section 354(3) of this Code of Criminal Procedure, 1973 states : ‘When the conviction is for an

offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence’.

5. The ‘Rarest of Rare’ Principle for Imposing Death Sentence

As stated already section 354(3) of the Code of Criminal Procedure, 1973 makes it mandatory for the court to state reasons for the sentence awarded, and in case of sentence of death ‘special reasons’ for the same. The Supreme Court was seized of the question of imposition of death sentence in *Bachan Singh v. State of Punjab*¹ in which the appellant was held guilty of murder of three persons and sentenced to death by the lower court which was subsequently confirmed by the High Court.

The question for consideration in appeal was whether the facts found by the courts below would be ‘special reasons’ for awarding the death sentence under section 354(3) of the Code of Criminal Procedure, 1973. The Supreme Court observed by a 4 to 1 majority that now, according to the changed legislative policy which is patent on the face of section 354(3) the normal punishment for murder and six other capital offences under the Indian Penal Code is imprisonment for life or imprisonment for a term of years and death penalty is an exception. In this context section 235(2) of the Code of Criminal Procedure, 1973 which is also relevant provides for a bifurcated trial and specifically gives the accused a right of pre-sentence hearing at which stage he can bring on record material or evidence which may have a bearing on the choice of sentence.

The present legislative policy discernible from sections 235(2) and 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under section 302, Indian Penal Code, the court should not confine its consideration principally or merely to the circumstances connected with the particular crime but also give due consideration to the circumstances of the criminal.

The Supreme Court should not venture to formulate rigid standards in an area in which the legislature so warily treads. Only broad guidelines consistent with the policy indicated by the legislature in sections 354(3) and 235(2) can be laid down. It is quite clear that in making the choice of punishment or for ascertaining the existence or absence of ‘special reasons’ in that context the court must pay due regard both to the crime and the criminal.

¹ AIR 1980 SC 898

What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. In many cases the extremely cruel and beastly manner of the commission of murder is itself a demonstrated index of depraved character of the perpetrator.

That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murderers are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that 'special reasons' can legitimately be said to exist.

There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. It cannot be over emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy. Judges should never be blood-thirsty. Hanging of murderers have never been too good for them.

In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded the community may entertain such sentiment in the following circumstances:

- When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- When the murder is committed for a motive which evinces total depravity and meanness, for example, murder by hired assassin for money or reward, or a cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course for betrayal of the motherland.
- When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of bride-burning or dowry death or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.
- When the crime is enormous in proportion, for instance, when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community or locality are committed.
- When the victim of a murder is an innocent child or helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a

dominating position or a public figure generally loved and respected by the community.

6. Constitutionality of Death Sentence

It has been held by the Supreme Court in *Jagmohan Singh v. State*, that death sentence is not violative of Articles 14, 19 and 21 of the Constitution. It cannot be regarded per se as unreasonable or not in public interest. The provision does not suffer from the vice of excessive delegation on the ground that the legislature has abdicated its essential function in not providing by legislative standards in what cases the judge should pass death sentence.

The provision is not violative of Article 14 on the ground that unguided and uncontrolled discretion is given to the judges to impose death sentence or imprisonment for life. Death sentence is not unconstitutional on the ground that no procedure has been laid by law for determining as to whether the sentence of death or a lesser punishment is appropriate in a case.

The same question as to whether death sentence is constitutional or not again came up before the Supreme Court in *Bachan Singh v. State of Punjab*², which once again held it constitutional. It was observed that the provision of death penalty as an alternative punishment for murder in section 302 is not unreasonable and it is in the public interest. Therefore, section 302 does not have to stand the test of Article 19 (1) of the Constitution. Retribution and deterrence are not two divergent ends of capital punishment. They are convergent goals which ultimately merge into one.

The provision of death penalty as an alternative punishment for murder is not violative of Article 21. The founding fathers of the Constitution recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.

There are several other indications in the Constitution, including entries 1 and 2 in the Concurrent List specifically referring to the Indian Penal Code and the Code of Criminal Procedure, which show that the Constitution makers were fully cognizant of the existence of death penalty. By reason of the same constitutional postulates, it cannot be said that the framers of the Constitution considered death sentence for murder or the traditional mode prescribed for its execution as a degrading punishment which would defile the dignity of the individual within the contemplation of the Preamble to the Constitution. On parity of reasoning, it cannot be said that death penalty for the offence of murder violates the basic feature of the Constitution.

Article 6 of the International Covenant on Civil and Political Rights to which India acceded in 1979 requires that death penalty shall not be arbitrarily

² AIR 1980 SC 898

inflicted and it shall be imposed only for most serious crimes in accordance with a law which shall not be an ex post facto legislation. These requirements are similar to the guarantees provided by Articles 20 and 21 of the Constitution of India.

The Indian Penal Code prescribes death penalty as an alternative punishment only for heinous crime which are not more than seven in number. Section 354 (3) Code of Criminal Procedure, 1973 in keeping with the abovementioned International Covenant, has further restricted the area of death penalty. In addition to this, section 235 (2), Code of Criminal Procedure, 1973 provides for hearing of the accused for sentence.

It is implicit in this provision that if a request is made either by the accused or by the State or by both, opportunity for producing evidence or material relating to various factors relating to a question of sentence should be given by the court. Thus, circumstances not only of the crime but of the criminal as well have been given due importance.

What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. For persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality.

That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. In view of the above section 302 of the Indian Penal Code and section 354 (3) of the Code of Criminal Procedure, are constitutional. Justice Bhagwati who gave a minority opinion held that section 302, in so far as it provides for imposition of death penalty as an alternative to life sentence, is ultra vires and void as being violative of Articles 14 and 21 of the Constitution since it does not provide any legislative guidelines as to when life should be permitted to be extinguished by imposition of death sentence.

In *Deena alias Deen Dayal v. State*³, the Supreme Court reiterated that execution of death sentence by hanging as provided by section 354 (5), Code of Criminal Procedure, 1973 does not violate Article 21 of the Constitution as the system of hanging is as painless as possible in the circumstances and causes no greater pain than any other known method of execution, and there is no barbarity, torture or degradation involved in it.

In *Shashi Nayar v. Union of India*⁴, the Supreme Court observed that the procedure provided by the law for awarding death sentence is reasonable. The death sentence should be awarded in rarest of rare cases and it does not violate the mandate of Article 21. The Law Commission had opined in 1967 that the

³ AIR 1978 SC 1605

⁴ AIR 1992 SC 395

country should not take the risk of abolishing the death sentence.

Judicial notice can be taken of the fact that the law and order situation in India has not improved since 1967 but has deteriorated over the years and is fast worsening today. It was also observed that the method of execution of capital punishment by hanging is scientific and is one of the least painful methods and so no other method seems to be warranted.

7. Conclusion

Unsuccessful attempts to change by legislation the provision of capital punishment for murder under section 302 of the Indian Penal Code are reviewed from the early 1930's to 1971. Indian proponents of the abolition of capital punishment next directed their efforts primarily toward the Supreme Court of India, which however, rejected in 1972 the abolitionists' arguments. In effect, the court reduced the issue to one of whether the legislative policy of capital punishment was reasonable in its consideration of the argument that capital punishment deprives individuals of essential freedoms. The possibility of invalidation of capital punishment through the route of the lawyer's technique of statutory interpretation was exemplified in the case of *Ediga Anamma v. State of Andhra*⁵, which is discussed at length. Four distinct legal devices used in justifying life imprisonment rather than capital punishment for murder are discussed. It is noted that, aside from the establishment of a precedent in a few cases to equally consider the sentences of life imprisonment and capital punishment for the crime of murder, no clear subsequent patterns have emerged. The offence under section 302 of the Code is cognizable, non-bailable and non-compoundable, and is triable by court of session.

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⁵ AIR 1974 SC 799

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