CHAPTER – I
INTRODUCTION

1.1 INTRODUCTION

Whether Capital Punishment in India should be continued or dispensed-with? – has been a central question of various debates since decades. On analysing the legal position, human rights jurisprudence, judicial trends and socio-economic background of the accused and the victims, this study has focused on the efficacy of capital punishment to identify contemporary developments in capital punishment system in India in the context of the human rights.

Man is believed to be accountable for his acts and a penalty is the sanction that supports accountability. Crime increase is deeply related to the fall in ethical and moral values of a society. A lightning bolt is necessary to stop a ferocious lion that turns upon the shot of a rifle. But to the extent that spirits are softened in the social state, sensibility increases and, as it increases, the force of punishment must diminish if the relation between object and sensory impression is to be kept constant.¹ Punishment, whatever shape it may assume, is an evil. In social life, penalties have the same relation to crime that medicine has to disease. After a disease has developed in an organism, we have recourse to a physician.² The anticipation of punishment deters socialized members of the society. Punishment is an expression of society’s disapproval of the act and the degree of approval is expressed by the magnitude of punishment. A serious crime must be answered with a severe punishment, a minor misdemeanour with a lenient reaction³. Since people fear death more than anything else, the death penalty has been provided as one of the punishments in the statutes to effectively deter people from committing crimes. Deterrence is intended to operate by fear. The idea is that the sentence imposed shall be so unpleasant – so terrible, if the word be understood without exaggeration – that the offender will hereafter be afraid to repeat similar

offences, and that others will be afraid to imitate his crime.\textsuperscript{4} The purpose of law is the establishment of rules for the regulation of human conduct amidst the diversity of inclinations and desires, so as to reconcile and harmonise the wishes of the individual with the interest of the community.\textsuperscript{5} The purpose of sentence is ultimately to protect the society against crime. The term ‘capital punishment’ stands for the most severe form of punishment which is imposed for the most detestable crimes. In India, theory of deterrence and the use of capital punishment have been subjected to intense criticism as to their use in a society espousing the goal of rehabilitation. However, there is also a call for strictly following death sentencing arguing that when a member of the society sees others defy rules without untoward consequences, he needs some reassurance that his sacrifices were made in a good cause.

It is the case of the Abolitionists that “right to life and fundamental freedoms are deprived when one is hanged to death, his dignity is defiled when his neck is noosed and strangled”.\textsuperscript{6} It is stated that “there is divinity in every man and no one is beyond redemption. It was Ramakrishna Paramhansa, one of the greatest saints of the last century, who said, ‘Each soul is potentially divine’. There is Brahna in every living being, सब खनु हैं ब्रह्मा, as the Upanishad says and to the same effect we find a remarkable utterance in the Brahmasukta of Atharvaveda where a sage exclaims: ‘Indeed these killers are Brahna; these servants (or slaves) are Brahna; these cheats and rogues are also manifestation of one and the same Brahma itself.’ Therefore, once the dross of tamas is removed and satva is brought forth by methods of rehabilitation such as community service, yoga, meditation and satsang or holy influence, a change definitely takes place and the man is reformed.”\textsuperscript{7}

Abolitionists argue that capital punishment is violates basic human rights being affront to human dignity. It is nothing short of killing by the State. It is discriminatory and is often used disproportionately against poor people. It legitimizes an irreversible act of violence by the State and will inevitably claim innocent victims. As long as human justice remains

\textsuperscript{5} SEN, PRIYANATH, The General Principles of Hindu Jurisprudence, 1 (Tagore Law Lectures 1909)
\textsuperscript{6} Rajendra Prasad v. State of UP, (1979) 3 SCC 646
\textsuperscript{7} Bachan Singh v. State of Punjab, (1982) 3 SCC 24 para 41
fallible, the risk of executing the innocent can never be eliminated, therefore, it will be in the
interest of justice to abolish the death penalty.\(^8\)

Crime rate is increase everyday.\(^9\) A reference to the snapshots (1953-2012) compiled by
the National Crime Records Bureau, Ministry of Home Affairs, will show that from 1953 to
2012 there has been higher increase in crimes (in total 296.6%) under the Indian Penal
Code e.g., murder has increased by 251.3%; kidnapping & abduction by 804.6%; robbery by
225.2%; and in cases of rape, for the period 1971-2012 there has been an increase of 902.1%.
The increased rate of crime shows that death penalty has no deterrence. Various countries of
the world, particularly the European countries, have abolished the extreme penalty of death
on humanitarian grounds. Therefore, the extreme penalty having no deterrence should be
dispensed with in India.

On the other hand, it is the case of the retentionists that capital punishment is need of
the day for maintaining law and order of our society. “If there is any element of retribution in
the law, as administered now, it is not the instinct of the man of jungle but rather a refined
evolution of that instinct - the feeling prevails in the public is a fact of which notice is to be
taken. The law does not encourage it, or exploit it for any undesirable ends. Rather, by
reserving the death penalty for murder, and thus visiting this gravest crime with the gravest
punishment, the law helps the element of retribution merge into the element of deterrence.”\(^10\)
In our judicial system, “ample safeguards have been provided by law and the Constitution
which almost eliminate the chances of an innocent person being convicted and executed for a
capital offence.”\(^11\) The humanistic approach should not obscure our sense of realities. When a
man commits a crime against the society by committing a diabolical, cold-blooded, pre-
planned murder, of an innocent person the brutality of which shocks the conscience of the
Court, he must face the consequences of his act. Such a person forfeits his right to life.\(^12\) In a
society like ours where terrorism and other crimes are increasing day by day, if the extreme
penalty is abolished, the fear that comes in the way of people committing murders will be
removed. They contend that the prevailing socio-economic conditions of one part of the

\(^9\) CRIME IN INDIA 2012 COMPENDIUM, SNAPSHTOS (1953-2012), NATIONAL CRIME RECORDS BUREAU
(MINISTRY OF HOME AFFAIRS) (online) Available at: http://www.ncrb.nic.in/ (lastly accessed on 9 May 2017)
\(^10\) LAW COMMISSION OF INDIA, REPORT NO.35, CAPITAL PUNISHMENT IN INDIA, para 265 (1967)
\(^12\) Rajendra Prasad v. State of UP, (1979) 3 SCC 646 para 120
world cannot be equated with other part of the world. We should not equate the condition of European countries with the condition prevailing in our country.

It is stated that we have a transparent legal process and capital punishment is inflicted with greater care and caution in rarest of rare cases only where heinous crimes shocked the society. Furthermore, Indian law provides for all the requisite safeguards. Each State has a sovereign right to determine its legal system and punish criminals accordingly. In addition, there are specific legal provisions suspending capital punishment for pregnant women and prohibiting it for juvenile offenders; death sentences are confirmed by a superior court. The Constitution of India provides for grant of pardon to the accused. The issue should not be held hostage to create an artificial consensus for abolition. India is proud of its record of good governance, sustained democracy and for protection of the fundamental and human rights of its people. Given the diversity of public opinion, it would be unwise to abolish the same contrary to the wishes of the public at large.

1.2 PROBLEM STATEMENT

_Bachan Singh v. State of Punjab_\(^{13}\) and _Machhi Singh v. State of Punjab_\(^{14}\) are two landmark decisions of the Supreme Court of India in Capital Sentencing regime. Both these decisions define Rarest of Rare Cases for awarding death sentence.

In series of cases\(^{15}\), the Supreme Court of India has questioned the Rarest of Rare principle being applied in Capital Sentence cases and observed that “sentencing in capital punishment cases has now really become Judge-centric and this aspect of the sentencing policy seems to have been lost in transition.” It is leading to disparity in decisions in similar set of cases. There is a need for an up to date research on the issue in question.

1.2.1 PURPOSE OF STUDY:

In order to identify inconsistencies in death penalty cases, the researcher has identified and examined 578 cases of the Supreme Court of India mainly for the period 1950 to 2015. Few important decisions for the period 2015 to 2018 have also been selected for discussion in the present study.

\(^{13}\) _Bachan Singh v. State of Punjab_, (1980) 2 SCC 684
\(^{14}\) _Machhi Singh v. State of Punjab_, (1983) 3 SCC 470
It needs to be examined as to what are the reasons for not following the decisions in *Bachan Singh* and *Machhi Singh*. It also needs to be examined as to “whether the sentencing process in capital offences has become judge-centric”\(^\text{16}\) or “whether the Courts award death sentence, because the situation demands, due to constitutional compulsion, reflected by the will of the people and is not judge-centric.”\(^\text{17}\) In this study, the Researcher has made an attempt to review the decisions of the Supreme Court of India to evaluate as to whether there are inconsistencies in the decisions of the Supreme Court of India? The Researcher has also made an attempt to find out as to whether the decisions delivered in *Bachan Singh* and *Machhi Singh* require a revisit? And, whether continuance of capital punishment is justified from human rights perspective?

### 1.3 SIGNIFICANCE OF THE RESEARCH

The upshot of the discussion on the application of rarest of rare test is that there is no uniformity in the decisions. The guidelines formulated in *Bachan Singh* and *Machhi Singh* are not being followed in subsequent decisions. It is averred that not only there are divergent decisions of the Supreme Court of India but equally the trial courts and the High Courts are also not following the settled principles for awarding death sentence. In the wake of wider discretion, the sentencing policy within the judicial parameters is changing day by day. There is gnawing uneasiness amongst the litigants that if their matter was heard by a particular bench, the result would have been different and such a trend always rankles in the minds of unsuccessful death row convicts. In such a scenario, a detailed study is need of the hour to find out as to whether the guidelines relating to capital punishment as laid down by Supreme Court of India in *Bachan Singh* and *Machhi Singh* have been followed consistently or some circumstances have arisen requiring revisit by a larger bench of the Supreme Court of India?

Further, keeping in view the decisions of the Supreme Court of India relating to capital punishment on account of terrorism and its observations relating to the constant development in human rights jurisprudence in international fora, a study is called upon to consider the questions - what is the legality of capital punishment *vis-a-vis* international and regional human rights jurisprudence? And, - should interrelationship of capital punishment and human rights be reviewed against the contemporary transnational developments such as terrorism?

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\(^{16}\) *Sangeet & Another & State of Haryana*, (2013) 2 SCC 452  
\(^{17}\) *Gurvail Singh v. State of Punjab*, (2013) 2 SCC 713
Supreme Court of India in its various decisions has questioned the principle of Rarest of Rare and stressed the need for an up-to-date research, upon which the Law Commission of India examined the matter and submitted its 262nd Report. However, the Law Commission of India simply advocated abolition of death sentence except in cases of terrorism and waging of war. The Law Commission of India couldn’t provide the reasons for inconsistencies in decisions, if any, or the way forward for principle sentencing. Even at present, a question of “death with dignity in capital sentencing cases” has been raised in the Supreme Court of India. Further, the literature available on the subject in question also falls short for reaching at any reasonable finding on efficacy of Rarest of Rare principle. The present study, therefore, has become very important to answer the unanswered questions in various studies.

In this study, to come to a just conclusion concerning inconsistencies in following the guidelines formulated in Bachan Singh and Machhi Singh, the researcher has examined 578 cases (1950 – 2015) of the Supreme Court of India. Out of this case examination, the researcher has created a database of Year Wise Statistics 1950-2015; Category Wise Statistics 1950-2015; Urban Rural Cases Statistics 1950-2015; Statistics of Women Victims & Accused 1950-2015; Judge-wise & Tenure-Wise Analysis 1950-2015; Statistics relating to follow-up of guidelines formulated in Bachan Singh and Machhi Singh; and Analysis by Graphs & Tables. In-depth examination of parliamentary debates and human rights jurisprudence makes this student very important and different than other studies undertaken by any author in India and abroad.

1.4 RESEARCH OBJECTIVE

In view of the foregoing discussion, it transpires that the study on capital punishment in India is far from satisfaction and in the prevailing scenario, it requires re-evaluation. In the prevailing circumstances and considering the diverse views of the abolitionists and the retentionists, it is difficult for one to easily reach to a decisive conclusion as to whether we should abolish or retain the capital punishment. There is no study as to why the guidelines formulated in Bachan Singh and Machhi Singh are not being followed strictly. There is a need to re-evaluate whether terrorism has become one of the problems; whether death penalty violates the basic human rights; and whether our society is ready to abolish this extreme penalty? To reach at a just conclusion, re-evaluation of the concept of capital punishment

18 Rishi Malhotra v. Union of India, Writ Petition (Criminal) No.145 of 2017
from human rights perspective with reference to the judicial verdicts and the prevailing scenario at national and international level is very much necessary. This study will be undertaken with the following objectives:

- To analyze the important decisions of the Supreme Court of India dealing with capital punishment;
- To analyze the socio-economic background of the accused & the victims to understand the circumstances under which crime was committed by the accused;
- To analyze whether the guidelines formulated in Bachan Singh and Machhi Singh have been followed consistently by the Indian Courts or do they require a revisit by a larger bench;
- To analyze whether continuance of capital punishment is justified from human rights perspective?
- To analyze the present day requirement of law reforms, sensitizing of the judges and the media etc.

1.5 RESEARCH QUESTIONS

Following are the Research Questions:

- What is the legality of capital punishment vis-a-vis international and regional human rights?
- Whether the guidelines relating to capital punishment as laid down by Supreme Court of India in Bachan Singh and Machhi Singh have been followed consistently or do they require a revisit by the Supreme Court of India?
- Should the interrelationship of capital punishment and human rights be reviewed against the contemporary transnational developments such as terrorism?
- Is there any need for law reforms such as in case of Indian Penal Code, Criminal Procedure Code relating to capital punishment, sensitization of judges and guidelines for the media?

1.6 SCOPE AND LIMITATIONS OF THE RESEARCH

The scope of the present research is limited to the study of the Supreme Court decisions for the years 1950 to 2015. The modus operandi applied for in the present study has never been undertaken by any researcher in India, except the Law Commission of India in its 35th Report submitted in 1967. In the present study, the Researcher has mainly examined
578 decisions for the years 1950 to 2015. Some reference has also been made to the important decisions for the years 2016-2017. The study being exhaustive, there was no need to undertake comparative study with other jurisdictions. The issues raised in this study may be taken up for further research projects by Post-Doctoral, Ph.D. and LL.M. students.

1.7 **RESEARCH METHODS:**

The method of study is doctrinal and non-doctrinal coupled with qualitative and quantitative data analysis, which helps in validating the findings. During the course of this study, the researcher has taken note of the latest developments and trends in the field of study through different literary sources available.

1.7.1 **THEORY SELECTION**

In this qualitative research, the researcher has relied on both doctrinal and non-doctrinal method of research. The researcher has also used descriptive, analytical and comparative mode of research.

1.7.2 **DATA COLLECTION**

For the non-doctrinal methodology of research, the researcher has taken the sample size of various stake-holders which includes lawyers, judges, academicians, prison authorities and others.

1.7.3 **SAMPLE COLLECTION**

In the doctrinal methodology, the researcher has concentrated on the primary sources and in non-doctrinal research, the questionnaire and interview methods.

1.7.4 **CASE STUDY METHOD**

As a part of qualitative technique, the researcher has adopted the case study method for analytical and comparative mode of research. The importance of whole research is based on this case study method.

1.7.5 **SOURCES FOR GATHERING THE DATA UNDER CASE METHOD**

Documents for case study method are solely the decisions of the Supreme Court of India which have provided vast data to carry out the empirical research. All the decisions have been collected from the online database of the Supreme Court of India, online database.
from the portal of Manupatra and database software programme of the Supreme Court Cases, EBC Webstore.

1.7.6 **RESEARCH APPROACH**

The researcher has combined both deductive and inductive methods, since it is the most suitable approach for the purpose of this research “not only is it perfectly possible to combine deduction and induction within the same piece of research, but also it is often advantageous to do so.”\(^{19}\) The deductive approach provides data for or against a theory. The inductive approach provides information to develop new hypothesis or theory.\(^{20}\) An inductive approach helps in arriving at understanding of the nature of the problem and analyzing the data to create new theory. The outline has a deductive perspective, where a theoretical framework is defined and then used in the analysis. By adopting both approaches in the current research, an objective outcome is aimed at.

For the purpose of gaining theoretical insight *vis-à-vis* polemic topic of Capital Punishment, the researcher has referred to a vast amount of literature consisting of primary and secondary sources. In the primary sources, reference has been made to various acts, statutes, case laws, parliamentary debates, international instruments relating to capital punishment and human rights. In the secondary sources, reference has been made to a vast amount of text books, journals articles etc.

1.7.7 **TOOLS USED**

The present study has been carried out with the help of different books written by Indian and foreign authors on Capital Punishment and other related topics. For carrying out this study different web resources were used including legal data bases such as Manupatra, SCC Online, Lexisnexis, Westlaw, Heinonline, Wilson, etc. Various journals have also been studied for the purpose of the present research. Reference has also been made to original texts of ancient scriptures.

\(^{19}\) **SAUNDERS, M., LEWIS, P. & THORNHILL, A. RESEARCH METHODS FOR BUSINESS STUDENTS**, (Prentice Hall, Madrid, Spain 2003)

1.8 **RULES OF CITATION**

The Researcher has followed the Blue Book (19th Edition) Rules of Citation in the present research.

1.9 **SCHEME OF CHAPTERIZATION**

The contents of this study have been presented in the following manner:

**CHAPTERIZATION:**

I. **INTRODUCTION**

This deals with introduction of topic of research, problem statement, research objective, research questions and research methods applied in the present work.

II. **LITERATURE REVIEW**

This Chapter explores the available literature on the topic of present research. It provides a roadmap of all primary and secondary sources required for present research.

III. **CAPITAL PUNISHMENT: HUMAN RIGHTS JURISPRUDENCE OF THE INTERNATIONAL, REGIONAL AND NATIONAL BODIES**

This Chapter explores the Rule of Law in absence of State and Origin of Kingship/State in Ancient India. It also deals with human rights jurisprudence of the International, Regional and National bodies concerning capital punishment.

IV. **CAPITAL PUNISHMENT IN INDIA: AN OVERVIEW**

This Chapter deals with historical perspective of Capital Punishment in India. This Chapter provides a study on Object & Purpose of Punishment, influence of the religions on Capital Punishment, Legislative Development, Law relating to Capital Punishment, Pardoning Power, Imprisonment for Life, Remission of Sentence, Hearing of Death Penalty cases by Three-Judge Bench and Open Court Hearing of Review Petitions in Death Penalty cases.

V. **CAPITAL PUNISHMENT: ANALYSIS OF SOCIO-ECONOMIC BACKGROUND OF THE ACCUSED AND THE VICTIMS**

This Chapter deals with Socio-Economic Background of the Accused and the Victims.
VI. CAPITAL PUNISHMENT & HUMAN RIGHTS PERSPECTIVE: JURISPRUDENCE OF THE SUPREME COURT OF INDIA

This Chapter deals with jurisprudence of the Supreme Court of India from Human Rights perspective. This Chapter discusses International Covenants and the Constitution of India, Widening Scope of Article 21 of the Constitution, Constitutional validity of Death Sentence, Human Rights jurisprudence vis-à-vis Rarest of Rare Formula and various other guidelines formulated by the Supreme Court of India.

VII. ANALYSIS OF JUDICIAL TRENDS (1950-2015)

This Chapter is main limb and heart of this Research work. It deals with Analysis of Judicial Trends for the period 1950-2015 by formulating various categories (Total: 19 categories) based on the decisions of the Supreme Court of India for the period 1950-2015. It also provides statistics relating to follow-up of the the guidelines formulated in Bachan Singh and Machhi Singh. It also provides statistics involving women as victims and accused.

VIII. FINDINGS, CONCLUSION AND RECOMMENDATIONS/SUGGESTIONS

This Chapter deals with Findings, Conclusion and Recommendations/Suggestions.

- References
- Appendices

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