CHAPTER – II

LITERATURE REVIEW

2.1 INTRODUCTION

In this Chapter, the researcher would like to provide a literature review of most important sources that he proposes to use. There is plethora of material on the subject under study. The Researcher has selected 71 books and more than 200 Articles relating to death sentence of Indian and Foreign Authors. This study is mainly based on examination of 578 cases of the Supreme Court of India, which are concerning death penalty sentencing. Various instruments concerning human rights jurisprudence have also been examined by the Researcher. Vast Online Data has also been examined *in extenso*.

2.1.1 JUDICIAL TRENDS

To understand the problem in question, it was imperative to examine the decisions of the Supreme Court of India. The crusade to peep into the prevailing scenario of criminal justice system concerning death sentence led the Researcher to examine 578 decisions (Annexure ‘A’) in death sentence matters delivered by the Supreme Court of India, which have been bifurcated into 19 categories. These 578 decisions cover the period 1950-2015. Apart from these cases, few latest important cases for the period 2015-2017 have also been examined by the researcher.

2.1.2 BOOKS

In order to understand the problem statement of this study in proper perspective, the Researcher has carried out literature survey of following relevant books/monographs in chronological sequence.

*MAINE, SIR HENRY SUMNER, ANCIENT LAW– ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS* (1st ed., John Murray, Albemarle Street 1906)

This book gives a bird’s eye view on ancient law, law of nature, primitive society and the origin of modern law. It is also useful from the point of reading and understanding the early forms of “written” and “unwritten law”.

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1 A complete list of books examined in this research is referred to in Bibliography.
This book has dealt with the Punishment in different aspects. The author has dealt with ancient concept of punishment, the root idea of punishment, the power of purpose in law, affinities between the past and present. He has dealt with the deterrence in the penal law of Hindu India. While dealing with Death Penalty, the author states that in primitive conditions of society where war was in truth the condition of existence, life was held cheap. Mere death being an ordinary phenomenon, torture was employed to add to the severity of the death penalty. The problem was how to make the extreme penalty of law severe enough. Since the days of Beccaria the tendency has been to reduce capital punishment to the limits of indispensable necessity. The voice of protest against capital punishment is gradually gaining in volume. It is no longer a sentimental cry, but a well-reasoned and organized scientific public opinion.

The book has attained a unique position as ancient Indian Law. It gives a reflection of different types of punishments including death penalty being inflicted in ancient time in different situations. It finds mentioned in the book that crime leads to a fall from caste status and in grave cases it puts a person outside the four varnas as an outcaste. Re-admission is possible through undergoing prescribed penances. A person convicted to branding for crimes is treated as an outcaste. In driving one out of society after branding him, he is deprived of both the chance of rehabilitation into society and of recovery in the text. The effect of the punishment stretches beyond this life, it is more terrible than capital punishment which, when undergone, cancels post-mortuary consequences of the sin.

In this celebrated book, the arguments dealt with by the author almost six decades ago are still being discussed. The author has discussed historical and sociological aspects, psychological aspects and the case for and against capital punishment. It is stated that any consideration of the death penalty involves many difficulties mainly owing to the presence of unknown factors. It is stated that in all savage and primitive society the death penalty is purely retaliatory. Its origin lies in man’s natural desire to return blow for blow and injury for injury. Capital punishment falls between two stools. If it is to prove a deterrent, it must be carried out so rigorously that it inevitably involves a grave risk of the innocent being executed; if it is to be surrounded by sufficient effective safeguards as to avoid this risk, then it has to be carried into effect so seldom that it loses practically all its reputed deterrent effect. There is no middle course. And this is the great evil inherent in every system of capital punishment that has ever been or ever can be devised. The author says that it would be folly to shut one’s eyes to the danger implicit in capital punishment. Anything that affects the people’s respect for the sanctity of life is to be deprecated. Death is death in any circumstances. Once the importance of the sanctity of life is realized, it is difficult to understand the argument that retention of death penalty is necessitated for protection of the society.
Discussing the issue “Can life imprisonment take place of death penalty?”, a reference was made to the House of Lords’ opinion on the Criminal Justice Bill (per Viscount Simon) and quoted: “... to shut a person up completely for the whole of his life, without the prospect of earning one day’s remission for good conduct, condemned there until he rots in the grave, is one of the most horrible, bestial, barbaric treatments that was ever invented by one man to impose upon another. .. it is a doom far worse than death.” Finally, the author calls for complete abolition of the death penalty.

GOWER, SIR ERNEST, A LIFE FOR A LIFE? (1st ed., Chatto & Windus 1956)

The author is a former Judge who had served the Royal commission. He has tried to set out the facts and arguments about capital punishment in a compact and convenient form.


This book is a compilation of articles relating to Death Penalty – Past and Present, Arguments Pro and Con, Public reactions and What can be done? It is stated that capital punishment is at once a ‘universal’ problem and a very ‘individual’ one. Earlier generations were confident in dealing with these matters. It was assumed that God approved of punishment of death and man invoked such punishment in the name of the state as God’s agent. The controversy is fully explored in the articles included in this book. The articles providing alternatives to capital punishment are not conclusive yet it is only in the light of possible alternatives that one can decide whether the death penalty is necessary. This book is good for ascertaining the opinion of people of other jurisdiction.

TUTTLE, ELIZABETH ORMAN, THE CRUSADE AGAINST CAPITAL PUNISHMENT IN GREAT BRITAIN (EDWARD GLOVER AND HERMANN MANHEIM (ET. AL.) (Ed.), Stevens & Sons Ltd. 1961)

As it appears from the name of the book, the book gives a panoramic view of the crusade against Capital Punishment in Great Britain. Even though the author has dealt with the aspect succinctly but the work is very informative from human rights perspective.


The author has made an attempt to show why and how the legalised taking of human life by the State in the name of social defence has become an issue of earth-wide proportions. The traditional theory and practice of judicial killing by the State – to make the rest of us feel safe – takes on a disturbingly new relevance. When the human race is facing imminent incineration by its own hand, as it is today, the only question which really matters is whether we can snatch a long reprieve from our self-appointed executioners to enable us to abolish the collective death penalty which reliance upon nuclear weapons has imposed upon every living creature on this planet. The author has discussed UN Debates for the period 1958 and 1960 leading towards an appraisal of the alternatives to Capital Punishment and finally made an attempt to draw some of the threads of the underlying argument, namely, that punishment does not pay – for nations, any more than for individuals.
CHRISTOPH, JAMES B., CAPITAL PUNISHMENT AND BRITISH POLITICS– THE BRITISH MOVEMENT TO ABOLISH THE DEATH PENALTY 1945-57 (George Allen & Unwin Ltd. 1962)

In this book, the author has made an attempt to illuminate the process of political decision making in contemporary Britain by focusing on the question of the proper penalty for the crime. The study running into seven chapters pertains to the period from the end of the Second World War to the passage of the Homicide Act 1957. The book runs into seven chapters.


Capital punishment is one of the great moral and political issues facing the world. The author Leslie Hale illustrates the thinness of the dividing line between innocence and the irrevocable sentence. He has discussed fifteen cases of miscarriage of justice and wrongful convictions and cases in which innocent people narrowly escaped and cases in which guilt was not proved. The author, who has been a lawyer and parliamentarian, presents his experience of life on papers regarding doubtful verdicts.

MANNES, TIDMARCH AND HALLORAN, JAMES D. (ET. AL.), CAPITAL PUNISHMENT : A CASE FOR ABOLITION (Sheed And Ward 1963)

After discussing theoretical framework of capital punishment it is opined that no case has been made out for retaining capital punishment in their country on the grounds of its being necessary for the protection and good of society. A punishment which fails to achieve some measure of success in attaining any of these ends is failing of its purpose and one that attains a particular objective entirely regardless of its effects in the other spheres is also failing of its purpose. Society cannot abdicate all responsibility for the state of a man’s soul, perhaps, but it seems to be going beyond its authority in hanging men in hopes of thereby bringing them to repentance. If we abolish capital punishment we shall have lost nothing; we shall not have endangered society; and we may do some practical good, because our energies may be diverted to solving the problem by new techniques.

BRESLER, FENTON, REPRIEVE - A STUDY OF A SYSTEM (1st ed., George G. Harrap & Co. Ltd. 1965)

In this book, the author deals with the “use of power possessed by successive Home Secretaries (of Britain) to recommend the Crown to reprieve a person convicted of murder and sentenced to death”. For over a century the decision to reprieve was that of the Home Secretary, a politician who need have had no special knowledge of the law or of life, a man like any other. The Home Office worked in secret, in the seclusion of the Home Office. There was no publicity and no one knew the reasons for his decisions, they were almost never made public. The author has made an attempt to lift the veil on years of secrecy by dealing with historical aspect and individual cases. The author has discussed individual cases and has expected the reader to be in a position to decide whether or not he would have granted a reprieve. The author quotes Edmund Burke, “Mercy is not a thing opposed to justice. It is an essential part of it.”

The author has compiled the readings of different writers under different chapters including, the Death Penalty, Past & Present; Movements of Abolition; The Problem of Deterrence; and the Death Penalty and Judicial Administration. Otto Pollak in his write up “The Errors of Justice” states, “To recognize the fallibility of human judgment and still to act, but act wisely in the light of such fallibility, is one of the great challenges of mankind.” In another reading, Mark Ancel on “the Problem of the Death Penalty” states that “in a world pretending to be humane and to believe in universal human rights, the first right of a person is the right to life that society should guarantee him. Therefore, the first duty of the state is to abstain from killing.” The author says that “death is the rarest of all punishments. Capital punishment performs none of the utilitarian functions claimed by its supporters, nor can it ever be made to serve such functions. It is an archaic custom of primitive origin that has disappeared in most civilized and is withering away in the rest.”


In this book, the author has dealt with traditional ‘theories of punishment’, about human freedom and responsibility and their relevance to punishment.


In this well written book, the author has dealt with different theories of punishment. All theories have been discussed with good examples. It is stated therein that the punishment of offenders promotes the solidarity of conformists. 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. If “the good die young and the wicked flourish as the green bay tree”, the moral scruples which enable conformists to restrain their own deviant inclinations lack social validation. Referring Cesare Beccaria, it finds mentioned in the book that “Let us consult the human heart, and we shall find there the basic principles of the true right of the sovereign to punish crimes”.


The author has done very nice work in this book. He considers a system of punishment as a mean of safeguarding human society which requires powerful motivating forces behind its actuation, its regulation and its rational administration. Punishment is an organized hurt, an impairment of life organized in the form of laws, which society consciously uses to train humanity to avoid certain possible courses of action potentially injurious or hostile to itself. Human progress – still more, human decline – is reflected in our need to punish and in our skill in carrying it out. The author has discussed the scope and limits of punishment; the evolution of punishment; theories and means of punishment; and the development and future of punishment.


In this book, the author has discussed the crime of murder in India from 1959 to 1968. The author also took interviews of prisoners and has presented their views. Discussing deterrence point, the author has stated that there are two types of cases in which the death sentence does
not operate as a sufficient deterrent. The first includes people who commit murder at any cost out of enmity, hatred and desire to take revenge. If one does not care for one’s own life, one will not care for that of another. For such individuals, capital punishment is not deterrent. The second category includes persons who commit murder on the spur of the moment. Such murders cannot be prevented. For such people capital punishment cannot act as deterrent.


As the name of book shows, the author discusses the morality of killing and sanctity of life. The author refers to Charles J. McFadden, “Man is merely the custodian of life, not its master… It is man’s duty to accept the decisions of God, not to pass judgments on them. If God has created and bestowed life upon man, it does not fall within the right of man to destroy it”. The sanctity of life tells us when one ought not to kill. The book is useful from human rights perspective.

Bedau, Hugo Adam And Pierce, Chester M., Capital Punishment In The United States (1st ed., American Orthopsychiatric Association Press, Inc 1976)

The authors of the book have examined the judicial decision, scientific evidence and legislative response post Furman decision by US Supreme Court. They have discussed as to what the public thinks about the death penalty and why; whether the death penalty deters; and how moral attitudes develop toward capital punishment. Since the decision of Furman has been revisited by the US Supreme Court, the present study and scholarly work concerning the judicial decisions by many writers becomes hardly of any use. However, the remaining chapters are useful to some extent.


This book examines the issue central to the debate on Capital Punishment. It speaks about value of human life and asks why, if we are so troubled about using the death penalty, we should not be even more concerned about all the victims, particularly the many who die in wars or those who are killed because of negligence.

Shin, Kilman, Death Penalty And Crime - Empirical Research (1st ed., Centre For Economic Analysis, George Mason University, 1978)

The author has discussed whether the crime rate may be reduced by simply increasing the arrest rate and by imposing a more severe punishment including the death penalty. Death penalty carries no deterrence. By death penalty alone, the capital crime rate would not decrease. For anti-crime policies, more significant may be the medical, economic, social, educational and cultural policies.


The book is a compilation of lectures delivered by the author. In one of the chapters, the author has dealt with capital punishment and human rights and has stated that A narrow perspective misleads. A wider world view illumines. Right’s writ must run, in the long run, even against Might’s fist. Law is evolutionary, not atavistic, dynamic in terms of the values it activates, not repressively red in tooth and claw. The time is ripe for social scientists to rehabilitate Law and Man. Generation after generation, man is born anew.
Each generation gives rise to new quests for fulfilment, new aspirations in life and new standards of thought and action, beyond obdurate obscurantism. Law is for life, let us declare from this whispering gallery, and look beyond death penalty lying buried on the debris of civilisation to a Human tomorrow fashioned by the new-frontiersmen carving Cosmos out of Chaos.


The author has dealt with the issue of capital punishment prevalent in United States of America. He has interestingly discussed the issue in one chapter “The Divine Command : Death to the Wicked” stating that anyone whose conduct was looked upon as provoking the anger of these powers and thus inviting their wrath, which might strike not him alone but also his family and tribe, became a public enemy who had to be sacrificed to appease them. Thus sins against the deities became criminal acts endangering the community. It is not surprising to find that the earliest codes of justice of which we have knowledge were assumed to have divine origin. It was with the Law of Moses which has had a significant influence on the shaping of capital justice in the Western World.


The author has tried to place a study to show that there is a wide gap between what the Justices say the “cruel and unusual punishments” clause “requires” and the limited purpose the Framers meant it to serve. Control of death penalties and of the sentencing process, it may confidently be asserted, was left by the Constitution to the States. Once the people realize that they are wrongfully being deprived of the right to decide for themselves whether or not to enact death penalties, they will not be at a loss for corrective measures.


The constitutional validity of capital punishment is an issue which has troubled the constitutional courts of the world. It is a question the answers to which provide a litmus test of the spirit in which a supreme court performs its duties. This book is an attempt to analyse and compare the universal judicial experience in assessing the validity of the death penalty


Continuing the debate on death penalty and discussing ‘punishment’, the authors say that when the law violation is very serious, the punishment may be death. The intended effect of all legal threats obviously is to deter from doing what the law prohibits, from committing the crimes threatened with punishment. And needless to say, the threatened punishments must be carried out – otherwise the threats are reduced to bluffs and become incredible and therefore ineffective.


In this book, the author discusses the crime and punishment and sentencing patterns and efficiency. He has discussed different theories of punishment. He has tried to explore the causes and problems of the sentencing disparity. According to him, a sentence conceived
in accordance with the individual needs paves the way for early resocialization of the offenders. However, disparity in sentences affects the process of resocialization. New sanctions have been devised, new punishments invented, but all in vain. Even the death penalty, where it is still applied, does not restrain murderers and experience shows that all other threats are equally futile. The chapter relating to sentencing is worth reading.

GUPTA, H.P., CRITERIA FOR DEATH SENTENCE (Modern Law Publications 1985)

In this book, the author has tried to distinguish decisions relating to section 302 IPC delivered from 1974 to 1984. In first two chapters, on the basis of observations of the Courts, the author has discussed as to how and when the Death Punishment should be awarded and what are the guidelines for awarding the Death Punishment. The remaining Chapters discuss smaller points.

GUPTA, SUBHASH C., CAPITAL PUNISHMENT IN INDIA (1st ed., Deep & Deep Publications 1986)

In this book, the author has dealt with history, justification and penological considerations, legislative developments, existing legal framework and judicial process of capital punishment. The author has opined that even the recent trend of reforms in the field of penal laws has left the death penalty norms almost untouched. This book is important for everyone who is interested in the death penalty debate and allied issues.


In this book, the authors have made an attempt to measure what is known about the social, political and moral realities of the United States of the 1980s against policy options on the death penalty. The authors have discussed the historical decisions of US Supreme Court in Furman v. Georgia and Gregg v. Georgia. The authors discuss that if the Furman decision and its aftermath were consistent with a long-term trend toward abolition of capital punishment, what happened to reverse the trend in Gregg?

SORELL, TOM, MORAL THEORY AND CAPITAL PUNISHMENT (1st ed., Oxford, Basil Blackwell in Association with The Open University 1987)

In this book, the author has discussed the morality of capital punishment and the application of philosophical theories of right and wrong. Capital punishment has been firstly discussed as one among other kinds of killing that philosophers and others sometimes try to justify. Secondly, it is discussed that capital punishment is wrong because it is a cruel and unusual punishment.

SHELEFF, LEON SHASKOLSKY, ULTIMATE PENALTIES – CAPITAL PUNISHMENT, LIFE IMPRISONMENT, PHYSICAL TORTURE (1st ed., The Ohio State University Press, 1987)

The author of this book has lived, studied and taught in different jurisdictions and because of his exposure in three cultures and their different approaches has made him more aware of the international dimensions of the problem as a primary issue of human rights, a factor that is a major aspect of this book. He has dealt with the issue of capital punishment in different perspective. The chapters - Life Imprisonment and Human Rights - and - Worse than Death are very informative.

This book is a compilation of various articles relating to Capital Punishment in United States. The authors have compiled the work with better understanding and clear vision on the issue in question. They have dealt with the pros and cons of the capital punishment with case laws. On one hand they say that there are the inevitable “monsters” who inflame public passions, therefore, it could be concluded that the death penalty is the only answer to truly evil crime. On the other hand, they say that although we understand the opinions of those who support capital punishment and we share their desire to protect innocent victims from violent criminals, we cannot embrace the punishment of death in the face of overwhelming evidence that it inevitably leads to loss of innocent human life, is applied in an arbitrary and discriminatory manner, and is not the best available deterrent to violent crime. Finally, they favour abolition of the death penalty.


In this book, the authors have made an attempt to present his view on prevailing racial disparities in the decisions relating to Capital Punishment. The authors, after discussing the causes and consequences of racial discrimination in capital sentencing, have found the US Supreme Court acknowledging that race continues to play a major role in capital sentencing in America. Finally, they hope that the Supreme Court will itself overrule its own misleading decision. Critical analysis of various decisions of the Supreme Court has been found helpful in the present study.


In this report, the author has discussed the present status of the abolitionist movement and the trend towards expanding the scope of the death penalty. In this issue, the author also discussed the status of the abolitionist movement in India. He stated that over the last forty years, a strong abolitionist lobby has tried to persuade the Indian Parliament to repeal the death penalty, but still without success. Like, challenge to its constitutionality in Supreme Court also failed.


This book is a study of equal justice in death sentencing during the fifteen year period between two United States Supreme Court decisions from Georgia, Furman v. Georgia (1972) and McCleskey v. Kemp (1987). This book is useful to know about the administration of criminal justice relating to capital punishment in USA.


This book is a collection of readings on the pros and cons of capital punishment. The views reflected in different articles will provide an exposure of mindset of people towards capital punishment in other jurisdiction. It is useful in comparative study.
In this book, the author has highlighted aspects of human rights with reference to the report of the Amnesty International (1994) relating to India. Out of fifteen Chapters, two chapters relate to Theories of Punishment and Capital Punishment. It is indeed a good book.


This book is really very well written. Seldom has there been any significant study of the ancient legal regime. This scholarly work is a remarkable step. The author says the great debate on capital punishment is as old as sastras. A view of the ancient administrative system and the judicial set up enables the reader to notice to what their modern counterparts strike a parallel in their functions, duties and procedure.


This book has been published primarily to address the needs of judicial officers though it is also intended to be a useful tool for anyone interested in the protection of human rights. The book very well deals with Human Rights and Criminal Justice System. It discusses human rights for being practised at pre-Trial, Trial and Post-Trial stages. This book is useful so far as it states that the Indian Courts should include principles of international human rights law for the administration of justice.

South Asia Human Rights Documentation Centre’s Submission To The National Commission For The Review Of The Working Of The Constitution, Abolition Of The Death Penalty (New Delhi, South Asia Human Rights Documentation Centre 2000)

This work is in fact a submission of South Asia Human Rights Documentation Centre (SAHRDC) presented before the National Commission to Review the Working of the Constitution (NCRWC) seeking abolition of capital punishment. It has also discussed International Legal Standards towards abolition of capital punishment.


The concept of human rights is truly a vast one and embraces many diverse fields of human endeavour. This book is very informative relating to human rights and it can be called as Human Rights Encyclopedia. The book not only gives introduction to Human Rights but also evaluates India’s ratifications and reporting history besides enumerating reservations and declarations entered by India to Human Rights Conventions. Under the Chapter “Civil and Political Rights”, the author has also discussed the issue of Death Penalty.


This book is a remarkable work on Indian Judicial System. The author says, if penal law is weak or ineffective, basic human interests are in jeopardy. Crime is an anti-social conduct and the criminal justice system has the responsibility to curb it. In chapter on Human Rights, he says that human rights are no new principles of morality for Indian people. They have been

This book authored by Dr. Sinha, my research guide, is one of the best books relating to Human Rights. He says, Human Rights is a dynamic and live concept; it has to be treated with sensitivity and its meaning has to be interpreted and understood with the changes brought in by the developments in social, economic, cultural, civil and political spheres. These developments also give rise to further aspirations of the people to be able to exercise their right of equality and justice in its finer aspects. Evolution of Human rights after all depends on evolution of mankind. This book is very useful.


In this book, the author has provided a study of the Constitution and criminal justice administration discussing their reciprocal relationship. He has discussed criminal justice system from its evolution to the present and after evaluation he has given his suggestions for reforms. The author says, socio-economic and political conditions prevailing during different phases of the history of India influenced evolution of criminal justice system. Accordingly, the objectives of the criminal justice and methods of its administration changed from time to time and from one period of history to another. To suit the changing circumstances the rulers introduced new methods and techniques to enforce law and administer justice.


This book has been designed to give insight on death penalty in India. It is for the readers to formulate opinions on the disparate issues that all come under the discussion of death penalty. The book is a campaign for abolition of death penalty in India.


The book consists of two parts. First part contains articles written by the author and the second part contains the articles of different writers. The author’s articles relating to movement for abolition of capital punishment and powers of President to pardon are informative. The articles of different writers are also informative.


This booklet discusses human rights relating to criminal justice. It is stated that life, liberty and dignity of person are at the core of human rights without which a human life will be more miserable than animals. The penal and procedural laws enacted should be in consonance with constitutional theme and human rights so as to reinforce the faith of the people in the rule of law. This booklet is useful from human rights perspective.
Even though this book is a guiding principle for the District Magistrates to protect the human rights, yet it would be helpful to see as to how the Government is sensitizing its officer for protection of human rights so as to ensure good governance to the people. The book states that human Rights form a vital area of life. The democracy can only be meaningful and effective if government and civil society go hand in hand to give the citizens a dignified life and this should be the best practice in the world’s largest democracy. This book is very useful from human rights perspective.


In this book, the author has dealt with historical aspect of capital punishment. The author has tried to present the issue in different perspective by giving examples of various jurisdictions and thereby leaving the readers at liberty to form their own opinion on the subject in question.


The authors say that their involvement in researching this subject has convinced them of the strength of the case for abolishing judicial executions throughout the world.


The authors have discussed certain issues e.g. historical perspective, mode of execution, pardoning power of executives. The statistics mentioned in the book to some extent are helpful but in fact the authors having predetermined the conclusion have not been able to bring some different ideas and principles to be laid down in the law relating to capital punishment.

DAS, P.K., SUPREME COURT ON RAREST OF RARE CASES (Universal Law Publishing Company 2011)

In this book, the author has mainly discussed some decisions relating to capital punishment. He has also tried to present some statistics out of some studies undertaken by various authors of the world.

BHAGWATI, P.N., DEATH PENALTY AN AFFRONT TO HUMAN RIGHTS, (1st ed., Society For Community Organization Trust, 2011)

This book is a compilation of lectures of Hon’ble Dr. Justice P.N. Bhagwati, Former Judge, Supreme Court of India. One of the Chapters of this book is titled as “Death Penalty an affront to Human Dignity” which discusses that Justice Bhagwati stood in favour of complete abolition of death penalty on moral and ethical grounds as he feels it is a violation of all constitutional values and an affront to the dignity of man. This book particularly the article relating to Death Penalty is very useful.
JAIN, PAWAN, SUPREME COURT ON DEATH PENALTY (1st ed., Universal Law Publishing 2016)

In this book, the author has discussed the constitutional validity of death penalty, delay in its execution and comparative study of murder cases categorizing them in Single Murder Cases, Double Murder Cases, Multile Murder Cases, Mass-Murder Cases. However, this book doesn’t speak about human rights perspective or the need of the hour in capital sentencing regime in India. This book is useful to some extent.

MISHRA, DR. PRAVEEN, DEATH PENALTY AND SOCIAL JUSTICE (1st ed., Regal Publications 2016)

In this book, the author has made an attempt to touch various aspects of death penalty. The author seeks abolition of death sentence as it is not compatible with the concept of social justice.

2.1.3 ARTICLES

In addition to the case laws and books/monographs, the literature survey of the relevant Articles published in law journals has also been carried out by the Researcher.

Blackshield, A.R., Capital Punishment in India, 21 Journal of Indian Law Institute 137 (1979)

Prof. Blackshield’s present work was prepared for a conference designed to explore the ways in which law could be used to explore a country’s culture. For his study, he examined Supreme Court decisions (Total 70 decisions – for the period 28th April 1972 to 3rd March 1976) concerning capital punishment. He says, in a population of 600 million, life is cheap and can be snuffed out on any pretext. One needs to remember that the mirror of criminal law is always a dark and distorting mirror. What appears as ferocity in the context of murder might in other contexts be mere vitality.

Sinha, Anil Kumar, Capital Punishment and Deterrence, 1-3 Gauhati University Journal of Law 1 (1985)

The author discusses about the deterrence of capital punishment. He says that the debate on capital punishment being deterrent is going to continue for an indefinite and uncertain time and can only be settled through the careful study and research that the social scientist can offer.


No right is so sacred as the right to life. The authors call for abolition arguing that there is no truth in the statement that habitual and professional criminals are beyond reformation. They may prove an asset to the nation. The best alternative to capital punishment in this modern era is that the criminal should be sent to imprisonment. In a given case, one family is ruined by the accused. It is not proper to ruin the family of the accused by the wise.

A complete list of articles is referred to in Bibliography.

In the words of Moin Qazi, sentencing to death does not seem to have any deterrent effect and so it is high time the authorities decide to do away with capital punishment in India as European countries have done.


The author discusses that the decade of the eighties started with a judicial response to the courtroom class of the abolitions and the retentionists. After analysing few cases from the last decade, the author found that the court has miserably failed in defining what is meant by rarest of rare and what is worse, what one judge considers a rarity, another does not. There is no way in which the subjective element in sentencing can be kept out of the courtroom. Life can be taken by the law without the certainty of guilt. The case for abolition of death penalty today is as strong as it was before Bachan Singh.


The author analyses the impact of the plea of insanity on the award of capital punishment. Acceptance of the defence of insanity does not result in discharge. After a survey of 211 cases, she finds that insanity is a vital mitigating factor even at the original court level; and the mitigation potential has only increased over the years. She then refers to decision of the Supreme Court in *Amrit Bhushan Gupta v. Union of India*, AIR 1977 SC 608 wherein the Court held that there was no provision in Indian law which prohibits the execution of an insane person. The author says that in the light of subsequent constitutional developments, the validity of the above decision seems suspect though it has not been expressly overruled.

Upadhyay, Ravindra Prasad, *Death Penalty in India*, 5 Central India Law Quarterly 400 (1992)

The purpose of punishment is twofold. One is to prevent the commission of any act injurious to the society and the second is to deter the prospective criminals from committing crime besides punishing those who commit an offence. Death penalty is awarded only in case of serious and heinous offences. The author says that in our country the time is not yet ripe to abolishing the death penalty.


The author discusses that delay in execution of death sentence as an extenuating factor has received uncertain and varied treatment from the apex court. All possible mitigating factors including inordinate delay in execution of death sentence must receive liberal and human treatment.


Austin Sarat has made an attempt to deal with the questions – How are violence and pain put into legal discourse? How does law distinguish its violence – capital punishment – from other kinds of violence? Do the strategies used to differentiate legal and extralegal violence alleviate anxiety about law and the uses to which law’s violence is put? Austin addresses these questions through an analysis of a capital trial. It examines the social and cultural
resources used to speak about violence and to differentiate legal and extralegal violence, and it suggests that the juxtaposition of narratives about violence in capital trials arouses rather than alleviates anxiety.


Prof. Pande has critically examined the Supreme Court decision in *Ravindra Trimbak Chouthmal v. State of Maharashtra* (a dowry death case). A simple understanding of the finding of the Court in the instant case would be that rarest of rare category would not attract “dowry murder” because of its growing number and incidence. He has described this decision as unusual. Such a failure to create a clear line would have ordinarily been passed over, but a case involving the killing of a young eight month pregnant wife by the in-laws in terms of a well laid out plan is certainly not most suited for such a misadventure.


The author discusses that the constitutional validity of capital punishment has been challenged number of times, as briefly discussed in this article, but it has been held valid and permissible being not violative of constitutional provisions.


The author has made an attempt to establish that death penalty is a socially insufficient form of punishment and its disadvantages can overcome only by abolishing it. The author states that to ensure adequate punishment for cold blooded or pre-meditated crimes, as a matter of policy, the Government may consider granting remission of life sentence only after 60-70 years instead of 14 years imprisonment. The judiciary and the legislature should strive towards the abolition of this cruel, inhuman and barbaric form of punishment.


The authors are of the view that in India where the machinery of police as well as the magistracy is inadequate to tackle the problems of criminality effectively, the continuance of capital punishment is inevitable and the present safeguards for the life and liberty of the individuals are more than sufficient. Today, the need of the time is not for abolition of death sentence but for prompt and effective enforcement of criminal laws to create better confidence and respect for law in the masses.


The author states that there is no scientific proof that executions have a deterrent effect in comparison to life sentence. There is a greater need to have re-thinking in the entire gamut of the growing importance of the right to life since it cannot be wrong to think that death sentence totally relieves the criminal from the actual ordeal of earthly punishment of imprisonment for life.

The paper states that the federal Anti-Terrorism and Effective Death Penalty Act enacted in 1996 includes provisions that severely undermine death row inmates’ ability to use federal habeas corpus procedures to challenge their unconstitutional convictions or death sentences. Death row inmates have been subjected to numerous due process violations, particularly in state courts, in the litigation and appeal of capital punishment cases. The author quotes former ABA President John J. Curtin who said, “Whatever you think about the death penalty, a system that will take life must first give justice”.

Kumar, A. Sampath, *Capital Punishment and Medical Sciences*, 39 Journal of Indian Law Institute 386 (1997)

In this paper, the author has made a serious attempt to give scientific and contemporary definition to “Life” and “Death”. He says that the organs and tissue (even vital organs) from a dead person can be removed, stored and returned to a living individual. The introduction of the “brain stem death” in the Transplantation of Human Organ Act (THOA) 1994 has demonstrated a progress in law that has recognised the developments in medicine. This definition is now universally applicable in most developed and developing countries. It is time for the death sentence to be rewritten. He says, if capital punishment is here to stay then the death sentence should be more humane. It may be read “Be subjected to painless brain death and such of his organs as are healthy and viable be transplanted to suitable recipients within the clauses of THOA. The judiciary and the Law Commission should consider these observations and take active steps to provide the enormous benefit to society that can be expected.


The author states that with the arena of human rights being vastly expanded, the time has come to have another look at the paradoxical provisions where a person can be punished with death for allegedly having caused death to another. India too should breathe in the winds of change and efface from our statutes the inhuman provision of death penalty. The dawn of a new century is just the right time to draw up workable ethical standards for the nation that would appeal to the ideals defined by justice and the requirements of the community.


The author in this article states that the debate over the death penalty has in the recent past acquired renewed vigour. He has examined few cases after the evolution of rarest of rare test in the landmark decision in *Bachan Singh* and found that there is no consistent or reliable pattern under which judges will exercise their discretion. He has also indicated the non-adherence to the mandatory procedural requirement of a pre-sentencing hearing. The gnawing uneasiness that the same case if heard by a different set of judges may have resulted in a different punishment will always rankle in the minds of those unsuccessful death row convicts facing the noose. One sure safeguard is the strict adherence to the pre-sentencing hearing requirement. The author states that the dicta in *Bachan Singh* accepting the proposition that the state must be required to show through evidence that the accused cannot be reformed or rehabilitated is seldom applied in the trial court. Lawyers must seriously address this issue and ensure that the mandatory requirement of the Cr.P.C. is not a dead letter.

The author celebrates completion of 50 years of Independence of India by introspecting the efficacy and constitutional morality of retaining death penalty on our statute books. He says, the efforts to have the death penalty repealed were made time and again. The issue had been debated at length on a number of occasions. The Supreme Court of India has opined that death penalty did not offend Article 21 of the Constitution. The author examines the post Bachan Singh’s experience along with international developments and human rights. He states that when the judgment in Bachan Singh was delivered in 1980, the Court had not ruled on the contours of the right to life, under Article 21. That position has undergone a sea change. The strides in the understanding of our basic rights lend a sense of urgency in the need to review the position, and continue to do so, at periodic intervals.


In this brief discussion, the author states that at present a substantial majority favours imposition of capital penalty. The pendulum can swing again from the retentionists to the abolitionist and we may take the humane step of expunging it from our penal laws. In a modern welfare State the need of the hour is to replace death-sentence with life imprisonment.


In this article, the author has discussed the provisions relating to the term of life imprisonment. The legal position as on today is that a life convict can be released any day after his completing 14 years of jail custody by extending the so-called benevolent provisions of remission, commutation and set-off. Remission, commutation and set-off provided under sections 432, 433 and 423 of the Code of Criminal Procedure to minimize the life term jail for killers are not in the interest of the society and, therefore, need review and overhauling.


Punishment is the treatment with a criminal as the painful reward of his misdeeds and also a lesson to correct or reform him. If a criminal undergoes any punishment and again he commits a crime and even acquires the criminality as a profession, then it proves the failure of statutory punishment. By granting of excessive human rights to the criminal, it appears that they are human beings and the victims as non-human. The humanitarian approach should start from the victim or aggrieved person and not from criminal.


The author examined the issue whether the death penalty under the Indian Penal code should be abolished considering the arguments of the human rights workers the world over. He says that the courts need to re-examine the constitutional validity of the death penalty in the light of the new developments both internationally and nationally.

In the words of the author, death penalty has been used as an effective measure to combat crime for centuries. After analyzing the discussions, the author is of the opinion that in the present circumstance it is not desirable to abolish death penalty. It may be used as a punishment of last resort considering the nature of offence, security of state or anticipated grave potential danger from dangerous criminals.


The author says a dispassionate analysis of criminology would reveal that a capital punishment is justified only in extreme cases in which a high degree of culpability is involved causing grave danger to society. The fear of being sentenced to death is perhaps the greatest deterrent which keeps an offender away from criminality. The object of punishment should be achieved by extending necessary safeguards to the life of individual, but at the same time by limiting their liberty so as to eliminate crime.


The authors in this article state that death sentence is unique. Once executed it is irrevocable. It may not be incorrect to say that the personal philosophy of the judges rather than any sound policy of ‘to be’ or ‘not to be’ governs this area of judicial discretion. This is not desirable for the growth of jurisprudence. The Supreme Court should provide the *terra firma* for generating the common law in this area.


Whether the death penalty conforms to the current standards of ‘decency’? Can there be any higher basic human right than the right to life, and can anything be more offensive to human dignity than a violation of that right by the infliction of the death penalty? In the background of these questions, the author has made an effort to highlight the dangers of awarding death penalty in the absence of perfect, foolproof, specific and meticulous legislation so far brought on the statute book.


Punishments are known to have existed throughout the history in every society. It is argued that capital punishment violates the humanitarian sentiments and as a result several countries of the world have abolished capital punishment. Even though the Supreme Court of India and the Law Commission have validated capital punishment yet there is growing demand for its abolition. The present era is not that of barbarism and therefore the death punishment should be punished.


In a short article, the author has stated that in cases of brutal merciless open daylight murders and assassination witnessed by a number of persons, it is not easy for the prosecution to get a death sentence from the Sessions Judge. It is rare to get it confirmed by the High Court and the Supreme Court. In view of this background, there is no room for any mercy at all. The
verdict of the Supreme Court must be the last and final word. The verdict should not be tampered with in the guise of the pardon.


The vexed question whether to abolish the death penalty forever or to retain it for all times to come stands out as an enigmatical problem not of today or yesterday but of a much earlier period. The author says that we cannot blindly follow other nations and we should evolve our own policy in the context of our own problems in maintaining law and order in our society and with the existing apparatus of crime control. As long as crime continues to be a major problem in our society as it is today any wholesale abolition of the death penalty instead of improving is likely to worsen the situation. Time is not yet ripe for its total abolition.


This article examines the landmark decisions of the Privy Council striking down the mandatory death penalty in the Eastern Caribbean. In three decisions *Reyes, Hughes and Fox v. the Queen* (2002) 2 WLR 1034, 1058, 1077, the Privy council held that the mandatory imposition of the death penalty in Belize, St. Lucia and St. Christopher and Nevis respectively is unconstitutional. The author concludes by saying that the penalty of death is qualitatively different from a sentence of imprisonment, however long.


It finds mentioned in this article that the object of the sentencing system should be to see that the crime does not go unpunished and the victim of the crime and also the society has the satisfaction that justice has been done to it. The concept of justice as an aim of punishment demands that the punishment inflicted should fit the offence committed. The courts will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed.


The authors of this article rebut the arguments of the abolitionists and state that death penalty acts as deterrence against capital offences. They argue that it would be puerile to suggest that life imprisonment would be any less brutalizing than death penalty. To assert that capital punishment is not a deterrent to murder is to deny reason. If the law is a dead letter, indeed it does not deter them. The authors however argue for adoption of a more humane method of execution by lethal injection replacing the system of death by hanging.


It is stated in this article that the death penalty is a violation of human rights. Right to life has been described as the most important and basic of human rights. It is the fountain from which all human rights spring. Awakening of feelings of remorse, repentance and introspection leading to avoidance of such crimes in future should be the purpose of punishment. The author calls for adoption and ratification of the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty showing its commitment to the world community.

This paper re-agitates the question of constitutional validity of death penalty. It states that death punishment is the most cruel form of punishment and has no functional rationale to its credit. It is the most barbaric and dehumanizing experience which pays no deference to the intrinsic value of human life and is thus hit by Article 21. The decision in *Bachan Singh* laying down guidelines has created more confusion than clarity by giving room for individual discretion and subjective application. This decision needs reappraisal.


The article states that the retributive theory has had its day and is no longer valid. Deterrence and reformation are the primary goals which make deprivation of life and liberty reasonable as penal panacea. The patience of society must be tempered by the prudence of social security and that is the limited justification for deprivation of fundamental rights by extinguishment of the whole human being. The extreme penalty can be invoked only in extreme situations.


The author deals with historical aspect of capital punishment and says that during no period of time death penalty has been discarded as a mode of punishment. The ancient criminal law in India provided death sentence for quite a good number of offences. Keeping in view the structure of the Indian society capital punishment should be retained. Protection of society and deterring the criminals is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.


The author has analyzed few cases upholding the constitutional validity of capital punishment. He says that the primary duty of the society is to protect innocence and law abiding citizens rather than take the spacious plea on behalf of persons who are not civilized and human. On the basis of ‘Rarest of rare cases” plea, several culprits who deserve to be hanged have escaped death sentence and are enjoying as guests of the society for long years in jail as if they are being rewarded for doing something which is for the benefit of the society. This theory of rarest of rare has been applied in letting off the accused of most gruesome murders. There is a need to make the law more stringent and effective tool as a deterrent.


In this paper, the author has discussed to execute the death sentence by use of lethal injection instead of hanging because it is less painful, quick and has no mutilation of the body.


The article discusses the question of delay in executing death sentence warranting life sentence. The author discusses few cases where death penalty was commuted to life but in Dhananjoy Chatterjee’s case, the judiciary refused to interfere and he was executed.

The author has discussed the question whether capital punishment has the necessary deterrent quality or not? The author after discussion states that the available trends and statistics do not favour the justifications put forward for death sentence.


Jasmine states that the deterrent and retributive schools favour capital punishment and the human rights aspirants and the reformatory school of thought vehemently condemn death penalty that it degrades the natural respect for human dignity and life. International community also disclaims capital punishment. After discussing the legislative framework and judicial trends of Indian courts, the author argues that the over emphasis on the rights of the offenders has resulted in mal-administration of criminal justice to certain extent. The present need is to maintain a judicial consistency in applying the various tests evolved by the decisions of the apex court.


In the words of author, the sentence of death is necessarily a deterrent one. It cannot reform the delinquent. The fear of death sentence cannot also prevent an offender from committing an offence by making him fear about the punishment since hard core criminals are least bothered about the resultant punishment. The author quotes Justice Krishna Iyer, “A potentially good person successfully processed into a hardened delinquent, thanks to the penal illiteracy of the prison system; the court must restore the man” and says “Let the life be there till it is taken back by its giver and let the gibbets be a part of our history, the history of non-violence”.


Sentence on an offender is probably the public face of the criminal justice process. The author has tried to analyze the theories of punishment and judicial trends for reaching to the conclusion that it would be utopian to work towards achieving absolute perfection in the sentencing domain but it is essential that tireless efforts be made towards developing a far more structured streamlined and articulate policy than that which may be said to exist today. The victim’s rights and suffering undergone due to the crime committed are never to be overlooked in the philanthropic zeal to be lenient to a convicted offender due to certain extenuating circumstances, unless such lenience is completely justifiable. Only a holistic, compassionate and yet objective understanding of the impact, which a sentence may have, will render such sentencing effective.


Capital punishment is a crime against humanity. There is a need for thorough debate on this issue for meaning criminal justice system and efforts should be made to make our system a reformative mode of sentencing rather than deterrent mode of sentencing by adhering to international human rights jurisprudence. The killing is not the answer for killing.
Jain, Praveen Kumar, *Should capital punishment be given capital punishment? A capital question*, 1 Delhi Law Review (Student) 248 (2004)

Whether to retain or to abolish the sentence of capital punishment has been a universal subject of endless debate. The author in this article states that we execute some people here and there, episodically confessing worry and even shame that we are not quite sure about what we are doing. Legally we cannot live without capital punishment, morally we have trouble living with it.


The maintainability of death sentence as an ideal mode of punishment for grave offence has been a subject matter of great controversy. All studies conducted on the justifiability of death sentence are incomplete in the sense that the sustainability of death sentence is analysed only on its objective merits and not on its subjective spirit. On analysing death sentence, we can conclude that for extinguishing life, the justification that it satisfies victims’ family and friends and also for its deterrent impact is not a convincing argument.

Kumar, Ramesh, *Capital Punishment : Rarest of the Rare cases*, 4 Delhi Judicial Academy Journal 80 (2005)

The author states that there are sufficient safeguards under the law to ensure that death sentence is not awarded casually or without due consideration. Capital punishment is awarded only in those cases where it is absolutely necessary to do so. If no such exceptional cases occur, the Judges may not award capital punishment at all. It is not necessary to abolish it by an absolute legislative provision or judicial pronouncement.


The author discusses that dowry deaths are the sensational manifestations of deep rooted and basic abuse of women. If the option of imposing the maximum sentence of death penalty is available before the judge, the purpose of imposing punishment in dowry death cases would be served better. The desired deterrent effect would only come into own with the weapon of a capital sentence in the judge’s repertoire.


The author has discussed the historic international perspective of death penalty. He has also discussed the death penalty in India, the disparity in decisions and legislative efforts to limit the death sentence. He is of the view that before taking any decision of abolition or retention of capital punishment, this sentence may be kept in abeyance for five years.


The author has discussed the different modes of execution of death sentence. He is of the view that in the time to come the ‘Hanging’ as a mode of execution will become obsolete with the advance time, inventions in science and modern humanitarian approach to penology. Electrocution or lethal injection will replace ‘hanging’ in decades to come.

The author has discussed the guidelines formulated in *Bachan Singh* and *Machhi Singh* and certain differing judgments to opine revisit and review of the settled guidelines.


In the words of the author, punishment is action taken by the State against who transgresses the law of State. Most severe punishment is capital punishment, which is based on revenging attitude of human being represented by society in its representing capacity. Capital punishment is undesirable penological practice and serves no purpose. So there should be no discussion about its constitutionality, but must be abolished.


The author after briefly discussing international perspective of capital punishment states that capital punishment is a barbaric remnant of uncivilized society. Capital punishment does not act as deterrent but breeds more hatred, anger and vengeance. The right to life must win.

Gomes, Lawrence, *Capital punishment or Death Sentence: Its abolition or retention worldwide and Indian Panorama*, 114 Criminal Law Journal 219 (2008)

According to the author, Capital punishment is a reaction against certain kinds of brutalities committed by men which is a relative concept. A country has the highest esteem for the lives of innocent faithful and law adherence citizens. In a succinct note, the author says that the present position of infliction of capital punishment is a balanced one.


The author has succinctly discussed capital punishment from human rights perspective. Abolition of death penalty is a global human right question. International resistance to capital punishment as a deterrent is mounting. Killing by law is contrary to Buddha, Jesus, Gandhi, Jayaprakash Narayan and yet there is no in-depth criminological investigation into the human right question in the land of Karuna. So it is a choice about the sort of world people want and will work to achieve: a world in which the state is permitted to kill as a legal punishment or a world based on respect for human life and human right – a world without executions.


The author after analyzing arguments for abolition and retention has calls for following capital punishment in rarest of the rare cases.


In this article, the author has discussed the use of the death penalty in the United States from historical perspective. According to the author, use of the death penalty in the United States has always been controversial. The debate has shifted from whether capital punishment is
appropriate in a modern civilized society to questions about the fairness of the trials and the reliability of the results. These questions gave rise to the current movement toward death penalty reform in the United States.

Biradar, M.B., Abolition of Death Sentence, 2 Karnataka Law Journals 17 (2009)
The author has discussed about the dignity of life and need of abolition of capital punishment. In order to strike a balance between law and life and to comply both statute law and natural law, Law Courts can impose sentence of life imprisonment than penalty of death sentence.

The author has succinctly discussed constitutional validity of capital punishment, delay in execution of death sentence, mercy petitions in India and other countries. In the words of the author, the very purpose of imposing death penalty would be frustrated by the delay in execution of death penalty. Mercy petition should be disposed of within a time-limit.

In the words of the author, human beings are neither angel capable of doing only good nor are they demons determined to destroy each other even at the cost of self-destruction. Taking human nature as it is, complete elimination of crime from society is not only impossible but also unimaginable. Death sentence must fulfill the conditions for protection of human rights in criminal justice administration in India. There is nothing to prove the fact that extreme measure of death sentence reduces crime rates in contemporary society; rather death sentence has failed as a deterrent. Life imprisonment is enough for deterrence as well as for mental and moral metamorphosis of human being.

Chandrachud, Abhinav, Inconsistent Death Sentencing in India, 46 Economic and Political Weekly 20 (2011)
The author has raised the issue of inconsistency of the Supreme Court of India in inflicting death penalty by discussing two recent cases delivered by the Supreme Court of India in Bhagwan Dass v. Delhi (2011) 5 SCALE 498 and Dara Singh v. Union of India (2011) 1 SCALE 615. The Author says that both the cases stand in stark contrast to one another and tend to obscure the death penalty doctrine.

There has been constant campaign in the civilized world for and against capital punishment. The author states that if the sentencing suffers from an element of ingenuity, arbitrariness and unfairness, the very award of death sentence has to face the challenge of Articles 14 and 21. So long as a common pool for awarding death sentence is not established, the formula of awarding life imprisonment for rest of life can be a potent guide in choice of the sentence.
In the words of the author, capital punishment should have no place in a civilized society. No civilized person will ever justify awarding capital punishment because it fully vindicates revenge theory. We should also not overlook a very pertinent fact that there are so many countries in the world especially in Europe where there is no capital punishment and still the crime graph is much lower as compared to India.

2.1.4 LEGISLATIONS

In this part, all legislations providing for death sentence have been referred to and examined. List of Legislations examined is attached as Annexure.

2.1.5 PARLIAMENTARY DEBATES

The issue of abolition of capital punishment has been debated for many decades. During the British Rule, attempts were made to procure the abolition of capital punishment. On 17th February 1931, an Abolition Bill was introduced in the legislative assembly but a motion for circulation of the Bill was negatived after reply of the then Home Minister. On 24th March 1933, Shri Gaya Prasad Singh made an unsuccessful attempt for abolition of death sentence under the Indian Penal Code. On 22nd March 1946, on query of Seth Govind Das as to whether Government would consider the proposal for the abolition of capital punishment at least for the political prisoners?, the Home Minister replied that the Government of India do not think it wise to abolish capital punishment. On 29th November 1948, Shri Z.H. Lari while discussing draft Article 11A also discussed abolition of capital punishment in the Constituent Assembly and suggested insertion of Article 11B in the Draft Constitution seeking abolition of capital punishment except for sedition involving use of violence. However, on 30th November 1948, after detailed discussion, the amendment was put to the voting by Dr. B.R. Ambedkar and the same was negatived. Again on 29th March 1949, Lala Raj Kanwar drawn attention of the Government to abolish capital punishment and Shri Sardar Vallabhbhai Patel replied that “the present is considered inopportune for the abolition of capital punishment”. On 23rd March 1956, Shri M.L. Agarwal sought leave “to introduce a Bill further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1898 to provide for abolition of capital punishment”. The motion was adopted. The bill was introduced. On 24th August 1956, Shri Mukund Lal Agarwal sought consideration of the bill for abolition of capital punishment. After detailed discussion, on 23rd November 1956, the bill was negatived. It is interesting to note that the rarest of rare principle expounded in 1980 in *Bachan Singh*
was in fact propounded by Pandit Thakur Dass Bhargav in the first Lok Sabha in the debate over 1956 Bill. On 25th April 1958, a resolution for abolition moved in the Rajya Sabha by Shri Prithvi Raj Kapur, Member of Parliament was withdrawn after debate. On 25th August 1961, a further resolution was moved in the Rajya Sabha by Smt. Savitry Devi Nigam, Member of Parliament which was negatived after discussion. On 21st April 1962, finally the resolution moved in the Lok Sabha by Shri Raghunath Singh, Member of Parliament received more serious attention. The said resolution was discussed and later on withdrawn on assurance of the Government that the matter will be forwarded to the Law Commission of India for consideration in the context of its review of the IPC and CrPC. Thereafter, on 19th December 1963, a question was put in the Rajya Sabha on the subject. The Government again gave an assurance that a copy of the debates that had taken place in the Rajya Sabha in 1961 on the resolution of Smt. Savitry Devi Nigam would be forwarded to the Law Commission of India. Finally, in the year 1963, the matter came to be referred to Law Commission of India. All the debates have been examined by the Researcher to go in depth of the issue in question.

2.1.6 REPORTS OF THE LAW COMMISSION OF INDIA

In its 35th Report, the Law Commission has concluded that capital punishment does act as deterrence and, therefore, the question of abolition of death penalty doesn’t arise. In 262nd Report, the issue in question was again examined and the Commission recommended for abolition of death sentence except in cases of terrorism and sedition. The report is pending consideration with the Government of India. Both these reports have been examined and referred to subsequently.

2.1.7 HUMAN RIGHTS JURISPRUDENCE OF THE INTERNATIONAL, REGIONAL AND NATIONAL BODIES

The crusade to protect and preserve the human dignity against any kind of discrimination has brought the nations together. The concept of United Nations itself is based on the principle that entire humanity is one family. The member nations, big or small, are equal and are entitled to fair and just treatment in the pursuit of happiness and shaping the destiny of their people. A study of the working of the International, Regional and National
bodies demonstrates dynamic force of the human rights concept in contemporary history leading towards exploring the new horizons in the study of capital punishment. In this part, the Researcher has made an attempt to present a study on capital sentencing \textit{vis-à-vis} the Human Rights Jurisprudence of International, Regional and National Bodies.

\subsection*{2.1.8 WEBOGRAM}

In this part, online database relating to death sentence have been accessed. For this purpose, various portals viz. manupatra.com, scconline.com, westlawindia.com, sci.nic.in, un.org, SSRN, JSTOR etc. have been used to secure relevant data.

\subsection*{2.2 CONCLUSION}

A bare perusal of the foregoing, it transpires that there being no research by any Indian or foreign author on the case study methodology adopted by the Researcher, this study carries great importance. No one ever has made an attempt to go deep inside death sentencing regime of the Supreme Court of India for a period of more than six decades.

The literature in the form of books selected by the researcher provides valuable insight in the study of ancient law concerning crime and punishment. Some of the books have been found very valuable in the course of present study. Mr. K.V. Rangaswami Aiyangar in his book \textit{“Aspects of the Social and Political System of Manu-smrti”} has made an attempt to reflect different types of punishments being inflicted in ancient time in different situations. Mr. Rama Jois in \textit{“Seeds of Modern Public Law in Ancient Indian Jurisprudence and Human Rights – Bharatiya Values”} and Dr. H.R. Bhardwaj in \textit{“Crime Criminal Justice & Human Rights”} have provided valuable information about ancient law and vedic philosophy.

The concept of human rights is truly a vast one and embraces many diverse fields of human endeavour. There is plethora of material concerning human rights of the accused. \textit{“Death Penalty an Affront to Human Rights”} by Justice P.N. Bhagwati; \textit{“Minorities, Capital Punishment and Human Rights, Civil Liberties & Criminal Justice”} by Justice V.R. Krishna Iyer; and \textit{“Implementation of Basic Human Rights”} by Dr. Manoj Kumar Sinha have been found very informative.

Some of the books discuss about abolition or morality of death sentencing and some speak about retention of death sentence, the force behind of the argument that punishment is a mean of safeguarding human society which requires powerful motivating forces behind its
actuation, its regulation and its rational administration. Some books provide historical study on “Theory of Punishments”. “Is Capital Punishment Necessary” by Shri U.K. Jadhav; “Criteria for Death Sentence” by Shri H.P. Gupta; and “Capital Punishment in India” by Shri Subhash C. Gupta, are some of the books which were found good enough to study capital sentencing but since these studies were undertaken many years back have lost its relevance in the present day scenario. “Death Penalty : National and International Perspective” by Ms. Thirty D. Patel and Ms. Rohini A. Madhurkar; and “Supreme Court on Rarest of Rare Cases” by P.K. Das, are the latest studies and have discussed certain aspects of capital sentencing, but do not provide the way forward in death sentencing regime.

Two latest books in the present research work include (i) Supreme Court on Death Penalty by Pawan Jain; and (ii) Death Penalty and Social Justice by Praveen Mishra. Pawan Jain has dealt with the constitutional validity of death penalty, delay in its execution and comparative study of murder cases categorizing them in Single Murder Cases, Double Murder Cases, Multile Murder Cases, Mass-Murder Cases. However, this book doesn’t speak about human rights perspective or the need of the hour in capital sentencing regime in India. The case study methodology applied by him doesn’t help the researcher. Likewise, Praveen Mishra has made an attempt to touch various aspects of death penalty and seeks abolition of death sentence as it is not compatible with the concept of social justice. His research work also doesn’t help the researcher in the present work which is solely based on the case study method.

As stated above, an analysis of the books shows that many books important and informative but for the purpose of this study there is hardly any relevance for variety of reasons. Apart from the books, there are number of important Articles discussing various aspects of death sentencing, human rights regime and inconsistencies in decisions of the Supreme Court of India.

None of the Authors has ever studied the historical perspective of the Parliamentary Debates in connection with Death Sentencing in India. The material to study the jurisprudence of International, Regional and National Bodies was not available on one source and the same has been collected through various sources so as to bring altogether for the present study.

In nutshell, this study will be on entirely different footing in comparison to other studies and will always be referred to in future research on the subject in question.