THE MOST PRE-MEDITATED OF MURDERS: SUGGESTING PRACTICAL MEASURES TO MOVE AWAY FROM DEATH PENALTY

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ABSTRACT

In India, the retention or elimination of the death sentence has historically sparked heated arguments. Debates in favor of the death penalty frequently rely on deterrence, victim satisfaction, or the protection of society from criminals; on the other hand, those opposed to it often invoke progressive penology, failure of the deterrence theory, or the worst abuse of a convict's human rights, to name a few. As a dynamic society with a functioning legal system, India must take a firm stance on the fate of the death sentence in the criminal justice system. Sham beliefs and advocacies that see the death penalty as the best form of retaliation, vengeance, or setting an example for others do not get us very far in analyzing India's death penalty's retention. On the other hand, good thinking about punishment, appropriate remedies for victims on a case-by-case basis, accused reform, and community interest protection are some pragmatic factors for determining the sentence of convicts. Such actions significantly support and justify the abolition of the death penalty in India. India is currently one of just 59 countries out of 193 that retain the death sentence. It is past time for India to follow the concrete empirical results that show that the death sentence is entirely unrelated to crime rates.

Taking someone's life as a punishment, both legally and morally, does not serve the goal of justice or public interest.

Keywords- Death penalty, punishment, Criminal Justice System, Crime, Democracy

INTRODUCTION

In most parts of the world, the tide is swiftly moving against the death sentence, with the majority of countries outright prohibiting it. According to Amnesty International, 141 nations have abolished the death sentence for all offences under the law as of July 2015. According to the 262nd Law Commission of India Report on the Death Penalty,[i] India belongs to a small and declining group of countries that retain capital punishment. India is presently one of the few non-democratic and developing countries to maintain the death penalty. Despite being the world's largest democracy, India has preserved the death penalty since colonial times; yet, it is past time for us to recognize the flaws in maintaining such a sentence in our judicial system.

The death sentence is sometimes regarded as the most undemocratic punishment that is unfit for a progressive and civilized society. The death penalty is sometimes referred to as the most heinous type of punishment due to how it is carried out. It is believed to be the most inhumane and severe kind of punishment in terms of administration. The death sentence is frequently criticized as a tool of vengeance and retribution rather than a discipline in and of itself. These are some of the most prevalent and well-known arguments against the death sentence; nonetheless, there are several important psychological, social, legal, and moral reasons to altogether abolish the death sentence.

The primary motivation for lobbying for and supporting the death sentence is to generate societal deterrence. Although deterrence is a significant component in controlling and reducing crime rates, recent studies and surveys demonstrate that this is not the case. According to scientific and empirical investigations, the continuation of the death sentence and deterrence are independent of each other. At this point, the discussion has progressed to the point where it is being asked why the death sentence is still required and needed. Furthermore, the death penalty appears to be an outlier in a legal system that promotes modern penology, which beliefs

in finding new ways to rehabilitate offenders in society. Killing the perpetrator because he killed someone else does no justice to the community or the victim in general. In this regard, the death sentence fails to achieve justice.

After the pronouncement of the death sentence, the legal and administrative process has also been a tumultuous situation in India. While on the one hand, the convict utilizes all the legal and constitutional options to commute the death sentence or seek pardon; conversely, he has to wait for a long time to get a remedy. But this is not it. Along with the inordinate delay in executing the death sentence, the death row convict must bear the mental torture and suffering of his fate. He stands at the point where life is about to terminate. Human rights report also reveal that the death sentence has become a ground for more custodial violence and torture on the convict. While the Indian Judiciary has increased the right to life to include prisoners' right to a dignified life, the death row convict leads a miserable life with fear and mental torture.

NECESSITY TO ADOPT PRAGMATIC MEASURES TO IMPLEMENT THE DEATH PENALTY

Many realistic facets suggest that the death penalty is not an effective punishment for controlling and redressing crimes in any society. First of all, a very vague and faulty line of reasoning supports the death penalty. Based on the argument that it is the best form of punishment to cause deterrence, this line of reasoning has many psychological and jurisprudential negations. Secondly, the death penalty does not possess the merit of being a punishment. It is solely based on vengeance, which may satisfy a personal cause but never dispense a social cause. Killing a convict cannot be a measure to immunize society from serious crimes. Thirdly, the manner of administration of the death penalty has been very inhuman and cruel. Surveys and research conducted by academia and human rights fora in India suggest that the death penalty is mainly handed down to the poor, unprivileged, minorities, and lesser-educated masses of society. Legally, the pronouncement of the death sentence is the "closing point" of any case. Still, pragmatically, it has become the "starting point" of inflicting other undue recourses like solitary confinement, custodial violence, and torture and custodial deaths.

Inordinate and unexplained delays by administrative machinery and the Judiciary in deciding on clemency are other procedural lapses that kill the convict every moment rather than determining whether he should live or die.

A. Faulty and Weak Premise Supporting Death Penalty

Debates on the wisdom and value of punishment depend on the specific discipline's appropriateness, fairness, and effectiveness for a particular offence rather than any fundamental principles. The death penalty is no exception to this phenomenon; it is the only type of punishment subject to intense debates because of its drastic and irrevocable nature. The death penalty in contemporary times has become more open to discussions considering its inappropriateness, unfairness, and ineffectiveness in controlling and redressing crimes. However, this has not been the case always. At times, the death penalty was popularly invoked by many societies to punish political and other criminal offenses. It was the only punishment, in many cultures and at many times, imposed besides infliction of fines and confiscation of properties.[ii]

The death penalty has been used sparingly and carefully in recent years. Many modern countries do not use the death penalty, while others primarily punish heinous crimes. Society had progressed well beyond the days when the death penalty was seen as a necessary tool for punishing criminals. The death penalty has been the subject of numerous scholarly and institutional discussions worldwide in recent years. Experts and the intelligentsia have mostly agreed that the time has come to accept that the death penalty is no longer "*that kind*" of punishment as it was once thought. According to a recent survey performed by the University of Colorado, around 88 percent of America's top criminologists agree that the death sentence is not an "*effective*" deterrent to crime. According to the study's findings, the death sentence does not reduce the rate of homicide in any situation.[iii]

In the surveys conducted worldwide, especially in the United States of America, strong evidence has suggested that the death penalty does not cause deterrence in society. Extensive research has been done in western countries to determine whether the death penalty deters the prospective perpetrators of crime—some favor that it does cause deterrence, but on receiving

counters that it does not cause deterrence. The former only pacify by saying that "*they do not know whether deterrence has been showing*" and that "*they have not concluded that deterrence has reached a deterrent certain threshold level*." Further, many studies show no causal relationship between the two research variables, i.e., "*death penalty*" and "*deterrence*." The imposition of the death penalty remains independent of any deterrent effect. This is further proved by the statistics, which shows that for decades commission of murder has been common in those states imposing capital punishment than those which do not set it.[iv] Even in other forms of brutal crimes like genocide and terrorism, the sentence of death hardly works as a deterrent to stop the perpetrators from committing crimes against humanity.

The death penalty's punitive potential is based mainly on the concept of deterrence; nevertheless, deterrence has several flaws. The purpose of law enforcement is to catch wrongdoers and persuade would-be wrongdoers that committing a crime would result in their arrest and punishment. As a result, it's acceptable to claim that the threat of punishment is at the heart of the criminal justice system.

However, despite its central importance and a high expectation that criminal sanctions will deter crime, the science of psychology suggests that despite its paramount importance. A high expectation that sanctions will prevent crime; there is no credible empirical evidence that deterrence through the imposition of criminal sanctions works very well. Deterrence is also difficult to isolate and measure since numerous things happen before deterrence may take place. Deterrence isn't something that can be measured quickly or correctly. It is also critical to recognize that generating deterrence through the legal system is extremely difficult because the institution continues to struggle to comprehend human logic.[v]

Over-relying on the "*sanction*" of the death penalty does not take us far long in terms of jurisprudence too. The primary reason behind this analogy is the drawbacks of Austin's approach (analytical positivism) of defining law in terms of sanction. Sanctions indeed play an essential role in controlling crime and ensuring orderly behavior, but they cannot be "*the inalienable*" principles of preventing crime. There are many other persuasive factors like morality, societal pressure, peer pressure, fear of malignity of reputation that can control a

person from committing crimes. Sanctions alone cannot take the credit for managing the commission of crimes.

Thus, many flawed assumptions and beliefs have made the premise of the death penalty a vague and faulty base. As reflected above, these assumptions and opinions cannot sustain the rational attacks from the science of psychology, jurisprudence, and moral arguments.

B. The Death Penalty Does Not Serve the Purpose of The Criminal Justice System

The rise and fall in the crime rate have many factors working behind them. The crime rate is controlled with a genre of requiting penal legislation, which must be the living laws[vi] for the society. At the same time, there must be thorough compliance and implementation of these laws by the executive agencies. The method of punishing crimes plays a pivotal role in redressing crimes; however, looking at punishment as the "*only*" measure to address crime gives a shallow view of the administration of criminal justice. In contemporary times, the administration of criminal justice is confined to punishing crimes and extends to exploring different ways in which the perpetrator of the crime can be rehabilitated back in society. The earlier notion of eliminating the convict from society by killing him no longer seems pragmatic to impart justice.

A reformative approach towards the criminal justice system shuns the idea of promoting and retaining a punishment that replicates the crime. The death penalty is indeed a replication of the crime of homicide, with the only difference that it is done with institutional and legal compliance. Killing the perpetrator of the "*worst of worse crime*" also can give nothing more than sham satisfaction and an assumed sense of protection. But, even after executing such a worst perpetrator, can society be immunized of like-crimes and criminals? The answer, of course, remains "*No.*" Even if we assume that the death penalty deters the commission of heinous crimes, why do we still see and hear waging war on the state, murders, rape with murder, kidnapping for ransom, and dacoit with murder to date? The same analogy also goes with other crimes like terrorism and crimes against humanity. This shows that vengeance and retribution have never been viable means to curb and redress crime in any society at any point in time.

Further, adding qualifications to the imposition of the death penalty like its invocation in "*rarest of rare cases*" adds more complication in the administration of justice. It adds more subjectivity to an unproductive type of punishment. The conferment or denial of rarest of rare status to a case squarely rest on the judicial process, which everyone intuitively knows, is not free from bias and fallibility. Even judges are humans and subjected to fallibilities. Rarest of rare principle adds utmost onus on the Judiciary by expecting a judge to weigh all facts and circumstance in a calculative manner against mitigating circumstance.

In short, the infliction of the death penalty does no good to the criminal justice system, victim, convict, and society at large. It is a regressive form of punishment when modern penology devises all means to reform the criminals and rehabilitate them in society. Distancing criminals from the community and that too non-recidivists, as most of the current death convicts in India are, will do nothing but add to the existing problems in the justice delivery system. It will embed the convict with fear of death every moment while his execution gets delayed, burden courts and offices with cases and clemency petition, and even fail to dispense timely justice to the victim or his dependents.

C. Alarming Issues About Administration of Death Penalty in India

Here are three essential facts which argue and suggest that the administration of the death penalty has become a compelling abuse of constitutional and procedural safeguards in India.

i. Socio-Economic Profile of Death Convicts:

The opposition to the death penalty is often rooted in the arguments that it is an irreversible, inhumane, and cruel form of punishment and subject to the fallibility of decision-makers. It is often criticized for its "*false sense of justice*" by doing nothing more than just killing the person who happens to kill another person. But these are not "*the only*" arguments that impinge on the demand that capital punishment must be abolished from the Indian legal system. Several other glaring socioeconomic facts suggest that the death penalty can be an abusive punishment for the underprivileged, poorer section, and mostly uneducated convicts in India.[vii]

For the first time, research conducted of its kind by the National Law University, Delhi (NLUD) on the Death Penalty revealed many unknown and ignored facts about death row

convicts. During this research project, undertaken from July 2013 to June 2015, 385 prisoners were examined in India's different states and union territories. The research found that most of the death convicts interviewed were virtually destitute. Surprisingly, most of them were first-time offenders and did not belong to the class of habitual offenders. Not surprisingly, most convicts on death row belonged to the backward castes, Dalit class, and minorities. Most of them were convicted based on recoveries arising out of confessions made in police custody.[viii] It must be remembered here that admissions made in police custody are inadmissible under Section 25, Indian Evidence Act, 1872. However, only that part of the confession can be proved, leading to discovering facts in furtherance of such admission under Section 27 of the Act, 1872. This further leads to another suspicion as to how far the recoveries made by police in furtherance of convict's confessions are genuine and authentic.

Complementing the above research, there is yet another true narrative of poor socioeconomic profiles of death convicts in India. While dealing with clemency petition during 2002-07, the former President of India, Dr. A.P.J. Abdul Kalam, witnessed a social and economic bias in the fact-stories of pending petitions. In his book Turning Point, Dr. Kalam revealed that he examined all the commutation of death sentence as a common man and not the Union Executive. This sort of examination led him to conclude that all the convicts were in some way or the other socially and economically discriminatory. Out of this bias, he derived an impression that even persons who were least involved in enmity and had no direct motive for committing the crime were also sentenced to death.[ix]

The debate on the existence of the death penalty has received due academic attention in the past two decades. Academic research on death convict's socioeconomic profiles has given rise to many questions: Is the criminal justice system fair to the poor and deprived convicts? Is it working to punish the actual culprit?

ii. Custodial Sufferings of Convicts- Violence, Torture, and Death

Custodial violence is an aggravated form of human right violations. What makes it a heightened version of human rights abuse is that the perpetrator of such abuse happens to be the police. It is committed within the precincts of police stations wherein the authorities ought to adhere to the principle of the rule of law. Custodial violence is a severe onslaught on the pristine human

rights protected by the Indian Constitution. The Indian Constitution, under Part III, has recognized and protected many inalienable rights like the right to equality before the law, equal protection of the law, freedom of speech and expression, right to life, and personal liberty since its enforcement. After the enforcement of the Indian Constitution and with the gradual adoption of Public Interest Litigation in the late 1970s, the Indian Judiciary has infused more meaning to the term's "*life*" and "*personal liberty*" protected under Article 21 of the Indian Constitution, even to the extent of safeguarding the rights of prisoners and convicts.

The Indian Constitution and judicial pronouncements of higher courts[x] have ensured that sentencing a convict to the death penalty is not per se made a ground for hurling other punishments. Sentencing a person to the death penalty does not give a prerogative to the police to commit violence on the convict to his/her prejudice. Handing the death penalty to a person does not become a starting point of imposing undue procedural restraints on the convict. In *Sunil Batra v. Delhi Admn.*[xi], the Supreme Court observed that solitary confinement imposed on a prisoner was "*bad*" under law. It was set not for violating prison rules but on the ground that the prisoner was a death convict. The Court pointed out that the conviction of a person for a crime does not reduce him to the value of a non-person vulnerable to significant punishment by the jail authorities, in utter violation of procedural compliance. In *D.K. Basu v. State of W.B.*,[xii] the Supreme Court held that the police are forbidden from using any method of torture, including third-degree treatment, during every stage of trial and inquiry. The Court's directive that departmental investigation and contempt of court proceedings be initiated against those committing custodial violence.

There also exist many procedural safeguards against custodial violence under the criminal law of the land, reflecting that the legislators had the idea of potential misuse of power by the police system in India. To avert custodial violence by police, the confessions made before the police officer are inadmissible[xiii]; confessions obtained using threat, promise, and inducement are also inadmissible.[xiv] Only those confessions are admissible that are made in the presence of Magistrate in police custody.[xv] Similarly, supplementing the preceding provisions of the Indian Evidence Act, 1872 are the safeguards laid under the Criminal Procedure Code (CrPC), 1973. Under CrPC, any person arrested by a police officer without a warrant must be produced before the Magistrate within twenty-four hours of arrest.[xvi] The duty to extend police and judicial

custody of an accused is vested with the Magistrate. So also, the Magistrate recording the confession and statement of the person charged with an offence has to ensure that such admission is free from all inducements and given voluntarily.[xvii]

Even though sound Constitutional-Criminal Jurisprudence operates within the Indian legal system to protect the accused/convicts from unruly atrocities of police, the factual matrix suggests otherwise. Prisoners continue to remain unsafe in the police and judicial custody, wherein torture remains a common practice. The Asian Centre for Human Rights documented a report in 2010 on several deaths in judicial custody due to alleged torture. Of all the cases examined in the said report, the police discharged the onus of deaths of prisoners by citing fake narrations like medical complications, disease, and alcohol intake, to name some. On the other hand, the testimony of the relatives of prisoners and disposition made by the prisoners to their relatives before their death and post-mortem reports showed custodial violence as the "*only*" reason for such deaths. The bodies of prisoners were often found hanging in mysterious circumstances or with unexplained injury marks that suggested excessive custodial brutality and beating.[xviii]

The earlier-discussed NLUD Research Project revealed that out of 270 prisoners who spoke about their experience in jail, 216 admitted having suffered custodial violence. The prisoner interviews exhibited different kinds of torture practiced on them. The method and type of torture the death convicts underwent were astonishing and inhumane, and degrading in nature. Such happened to be the extent of pain and suffering those prisoners had no option but to sign blank papers and agree to the version suggested by the police. While confessions made to the police are non-admissible, prisoners' statement was often used to support staged-recoveries, mostly of deceased bodies. In reality, it is tough to measure the extent and magnitude of physical and mental trauma, but the manner of narration given by the prisoners suggested it all. The prisoners battled a sense of shame while narrating custodial violence and often used actions or indirect words to avoid recalling those incidents.[xix]

iii.Delayed Execution Causes Worst Form of Human Rights Abuse

According to the 262nd Law Commission of India Report, 2015, inmates continue to experience protracted delays in trials, appeals, and executive clemency on death row. During

this time, the death row inmate experiences excruciating suffering, worry, and crippling fear due to impending but uncertain execution. The convict sentenced to death lies in a void between life and death.[xx] Every moment the convict spends seems to be a reminder of his life terminating anytime. The Supreme Court of India has agreed that the death row inmate is subjected to near-torture conditions as a result of a confluence of such unusual circumstances.[xxi] Delay in carrying out a death sentence has had some unique moral and legal ramifications on the criminal's life for an extended period.

A controversial issue before the Supreme Court of India has been the delay in the execution of death sentences and the resulting demand for mitigation of death sentences by the condemned. In *Triveniben v. the State of Gujarat*[xxii], the accused, who had been convicted and condemned to death, petitioned the Supreme Court of India to set aside the death sentence and replace it with life imprisonment, claiming that the execution of the sentence had been delayed. He contended that the dehumanizing factor of a significant delay in carrying out a death sentence coupled with mental torment while incarcerated rendered the execution illegal. Following a careful examination of the facts, the Court determined that excessive delay in the performance of the death punishment can be a reasonable basis for commuting the death sentence to life imprisonment. Unlike earlier examples where a period of unreasonable delay was recommended, this one particularly cautioned against prescribing any period of a slight delay in a strait jacket term. The Court concluded that delaying the execution was equivalent to killing the convict's soul.

The *Triveniben* decision considered three following important cases that reflected the time duration of delay of execution which would entitle the convict for commutation of a death sentence. It examined *T.V. Vatheeswaran v. the State of T.N.*,[xxiii] wherein the two-judge bench of Supreme Court of India decided that delay exceeding two years in execution of death sentence should be held as "*sufficient ground*" for the convict to demand to quash of a death sentence. It also considered *Sher Singh v. the State of Punjab*,.[xxiv] The three-judge Bench of the Supreme Court of India held that trial procedure must be fair at each stage of the case, but delay in execution must not be the sufficient ground for seeking commutation of a death sentence. Further, *Javed Ahmed Abdul Hamid Pawala v. the State of Maharashtra*[xxv] was also considered where the two-judge Bench held that two years and nine months constitute the period of delay

after which convict can apply for commutation. After having used its mind on the duration of delay time, the Supreme Court in *Triveniben* case partly overruled the *Vatheeswaran* decision and held that it will not fix any particular period of delay that would entitle the convict to seek commutation.

The discussion over postponing executions did not end there. A different pattern of judicial pronouncements has resulted from the Supreme Court's contrasting opinions in establishing "*what is unreasonable delay*" and "*what is not unreasonable delay*." Precedent is thought to be a reliable source of law; but it is anything but predictable when determining what constitutes an undue delay in a death penalty case. This unpredictability only adds to the misery of death row inmates. Here's an example of the Supreme Court of India's surprising precedents on this topic: The two-judge Bench in *Devender Pal Singh Bhullar v. State (NCT of Delhi)*[xxvi] concluded that the defendant is not entitled to a commute of death into life, despite an eight-year delay in the disposition of his mercy appeal. In less than a month, the same Bench of judges ruled in *Mahendra Nath Das v. Union of India*[xxvii] that a criminal is entitled to a commuting sentence after twelve years of excessive delay in rejecting a mercy petition.

It is true that while deciding a case, the Court has to examine a diverse matrix of facts and formulate the reasoning accordingly. It is may also seem unreasonable to expect the same Bench to pronounce the same decision in different cases. Nonetheless, the other side, which focuses on the convict's suffering, is not as diverse as their cases and crimes are. In the capacity of a death row convict, a human being undergoes the same anxiety and mental torture awaiting a decision on his death in any and every span of his left life. An excessive, undue, and unexplained delay caused by constitutional machinery to decide on the life of death convict questions the fairness of the procedure established by law. An unexplained delay in decision-making on the execution of a sentence is a direct attack on the right to life[xxviii] of death convict, which cannot be deprived by any delayed procedure which is unjust, unfair, and unreasonable.

CONCLUSION AND SUGGESTIONS

The above discussion demonstrates that the death penalty has failed to achieve the goals for which it was implemented in the criminal justice system. It is an inappropriate manner to end a person's life from a moral standpoint. Killing the perpetrator would never bring justice; instead, it will create a vicious spiral of death. In harsher terms, the death sentence has become regarded as an institutional execution of criminals, particularly those who come from low socioeconomic backgrounds and are first-time offenders. Even as an alternative to other forms of punishment, returning the death sentence is nothing more than conformity with ancient notions of punishment that demanded revenge. Retribution is not supported by modern penology thought. It promotes reform, and reformative theory benefits not just the victim but also society. It is based on the premise that crime is a wrong committed against the entire community, not just an individual. Reformative measures must be incorporated into the science of punishment to bridge the gap between the offender and the rest of society.

Putting a convict in confinement where every moment seems like facing death and causing grievance, anxiety, distress, agony is more of an injustice than taking life immediately. The time-taking phase during which appeals and pleas of review and clemency keep on pending in courts and executive's office, respectively, shows that the criminal justice system keeps on adding more to the mental sufferings of the convict and his near and dear ones. If this was not sufficient, custodial violence meted out to death row convicts makes life more degrading and undignified, in fact, worse than death!

Suggestions

Keeping the above discussion in view, the following suggestions have been incorporated in the Conclusion-

i. The rise in the commission of heinous crimes has many factors working behind them. Retention of the death sentence for the punishment of such crimes does not form "the only" factor to control or check their occurrence. It is better than the legal system must focus on all the elements that prevent the control of crimes. Solely focusing on the death

penalty, as the only means of preventing crime, is not an intelligible means to protect society from crimes and criminals.

ii. It is high time that the death penalty must be compared with other types of punishment to decide how much each discipline contributes to reducing and redressing crimes. Merely measuring deterrence caused by death sentence alone would not help in arriving at any conclusion.

iii. It is strongly suggested that the factor of deterrence, on which the supporters of capital punishment squarely rely, must be put to critical discussions before it is used for advocating the retention of the death penalty. Deterrence needs to be understood in terms of the science of psychology rather than a legal narrative.

iv. It is strongly suggested that the death penalty must be scrapped from penal statutes as it has not done much to safeguard society from crimes. But, till the time it is done away, the criminal justice system must assure that the death sentence should not become an excuse or sham ground for inflicting more abuse, mental torture, custodial violence on the convict. It is the solemn duty of the state to protect the fundamental right to a dignified life of prisoners and convicts.

ENDNOTES

[i] Commission of India, Death Penalty (Report No. 262, 2015) 216.pdf, , https://lawcommissionofindia.nic.in/reports/report262.pdf (last visited Jun 4, 2021).

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[iii] Michael Radelet & Traci Lacock, *Do Executions Lower Homicide Rates: The Views of Leading Criminologists'*, 99 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 489 (2009).

[iv] John Lamperti, *Does Capital Punishment Deter Murder*, https://math.dartmouth.edu/~lamperti/my%20DP%20paper,%20current%20edit.htm (last visited Jun 4, 2021); Donohue John & Wolfers Justin J, *The Death Penalty: No Evidence for Deterrence*, 3 THE ECONOMISTS' VOICE 1–6 (2006).

[v] Raymond Paternoster, *How Much Do We Really Know about Criminal Deterrence*, 100 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 675–676 (2010).

[vi] 'Living laws' refer to the laws that have potential to tackle and address exiting malady and which indeed give effective redress to society at large. They exclude laws that are obsolete and redundant and unfit to regulate the dynamic society. Living Law is originally a term coined by Ehrlich, one of the proponents of Sociological School of Law.

[vii] Poverty and the death row - The Hindu,, https://www.thehindu.com/opinion/editorial/poverty-and-the-death-row/article8573130.ece (last visited Jun 4, 2021).

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[x] Higher Courts here collectively refers to the High Courts and Supreme Court of India.
[xi] (1978) 4 SCC 494: AIR 1978 SC 1675.
[xii] (1997) 1 SCC 416: AIR 1997 SC 610.
[xiii] Indian Evidence Act 1872, s 25.
[xiv] Indian Evidence Act 1872, s 24.
[xv] Indian Evidence Act 1872, s 26.
[xvi] Criminal Procedure Code 1973, s 57.
[xvii] Criminal Procedure Code 1973, s 164.
[xviii] Asian Centre for Human Rights, *Torture in India 2011*, HTTP://WWW.ACHRWEB.ORG/REPORTS/INDIA/TORTURE2011.PDF (2011), https://www.ecoi.net/en/document/1014794.html (last visited Jun 4, 2021).
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[xx] Commission of India, *supra* Note 1
[xxi] *Shatrughan Chauhan* v. *Union of India*, (2014) 3 SCC 1.
[xxii] (1989) 1 SCC 678: AIR 1989 SC 1335.
[xxiii] (1983) 2 SCC 68: (1983) 2 SCR 348.
[xxiv] (1983) 2 SCC 344: (1983) 2 SCR 582.
[xxv] (1985) 1 SCC 275: (1985) 2 SCR 8.
[xxvi] (2013) 6 SCC 195.
[xxvii] (2013) 6 SCC 253.
[xxviii] The Constitution of India 1950, art 21.