

Capital Punishment- A Protection of Society or a Sanction: A Legal Study

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Abstract

Capital punishment is one of the current highly controversial matters of subject in the society. Capital sentence as one of the legal method of punishment among various kinds of punishment under the judicial system. It is applicable only in “rarest of the rare cases” which are severe uncommon grave criminal offences. According to the judiciary, in order to reduce crime rate in the society stringent punishment or harsh penalty should be imposed. Capital punishment is defined as hanging the offender till death in order to have justice for society and also to prevent society from further such offences. This mode of capital sentence has been followed by most of the countries in the world at some point of time for reducing the crimes. India is one of the nations that follow capital punishment till date. The constitution itself struggles with the legality of capital sentence as it violates Article 21¹ of the constitution which says right to life and personal liberty of an individual. This research paper focuses on the legislation of capital punishment and its structure in India. The study provides both side aspects of a society whether it serves as a punishment to prevent future crimes or it snatches right to life from an individual. The paper also validates the legality of capital punishment by discussing constitutional norms and various cases which says capital sentence is executed by judiciary in only “the rarest of the rare cases”. This research is descriptive in nature as it primarily explains society’s point of view regarding capital punishment. The paper involves both quantitative and qualitative measures to analyze the primary data collected in the research and the data collected through secondary resources. The research emphasizes on modes of punishment other than capital sentence in order to protect human right to life and it also discusses the need to have legitimate punitive actions to protect the society against criminal offences.

Keywords: capital punishment, criminal offence, judiciary, constitution, rarest of the rare crimes, legislation, execution, legality, crimes.

Footnote 1 Article 21 "Right to life and personal liberty"

CHAPTER 1

Introduction

Crime rates have been rapidly increasing in the developing countries like India. Indian judiciary imposes various kinds of punishment to the criminal offender in order to provide justice to the victim of crime and it also discourages other people in society from committing such crimes (Moharana, 2015). The different forms of punishment under Indian judicial system are "incarceration, life imprisonment, levy fee and fines and capital sentence which is often called death penalty". These punishments are executed by judiciary depending upon the severity of an offence committed by an individual. Capital punishment is the highest form of sentence, given to the criminals for their offences, it is regarded as death penalty which says that criminal must be hanged till death. This kind of harsh punishment of capital sentence is given in "rarest of the rare cases" (Shivani, 2020). All punishments imposed by the country have its legal validity and its major aim is to provide justice and to protect the society from such criminal offences that no one dares to commit such crimes in the future (Shivani, 2020). The existence of Capital sentence to punish the offenders has been prevalent from ancient centuries. Every country at some period of time have had used capital punishment to penalize the severe offences and prevent others from committing such grave offences. Capital sentence awarded to an individual in case of only most severe crime which is against humanity. During 1600s and 1700s, criminal offences were increasing in Britain and capital sentence had been executed even for minor crimes only to prevent the commencement of crimes by others in future and also to protect society from offenders. Even in India during the period of kingdom or dynasties death penalty was assigned to the culprit. All the developing and developed countries were involved in the controversy either to retain or abolish capital punishment (Shivani, 2020). Every country has different execution of capital sentence backed by their constitutional norms. Depending upon the country's legislation and judicial system, culprits would get death penalty or imprisonment for their offence. Many of the countries impose capital sentence in cases like supply of drug, economic offences such as bribe or corruption, robbery of large amount. Developed countries like United States, China, Japan and a developing country, India, execute capital punishment timely depending on their legal constitutional validity. Ongoing debate over capital punishment as it violates individual rights as well as United Nation's intension to abolish the same, which have called many countries altogether to abolish the punishment of death penalty. Countries like US, Japan, China and India are standing against the abolition of capital sentence and they are still retaining the execution of death penalty in order to prevent society from severe criminal offences and to provide justice to the victims (Ganesh, 2018). International law and legal structure abolish capital sentence for certain category of crimes for which death penalty can be substituted with

life imprisonment. “The International Covenant on Civil and Political Rights (ICCPR)” explains Article 6 which involves the right to life of an individual and “the Second Optional Protocol” to the ICCPR intends to eliminate the execution of capital sentence in all countries. United Nations resolution on Human rights focuses on abolition of death penalty as it not only violates fundamental right of an offender, it also affects people related to him/her. The Article 37(a) of “Convention on Rights of the Child” explains that every State should make sure that “no child under the age of 18 years should be granted life imprisonment or capital punishment.”

Indian constitution validates the legality of capital punishment for extremely wicked and severe offences. India retained with Indian Penal Code, 1860 to execute capital sentence. The Criminal code under IPC imposes five different forms of punishment depending on seriousness of the criminal offences “death penalty, life imprisonment, simple or rigorous punishment for some years, fine or fine”(Tiwari, 2018). Indian constitution itself protects the life of an individual as Article 21 explains the fundamental right to life. Ongoing national as well international debate over abolition of capital sentence says it violates person’s right to life and liberty. India opposed the United Nations resolution ‘to abolish capital sentence and rather punishing the offender with an alternative to death penalty i.e. life imprisonment’. The first objective of the study discusses about the procedure and execution of capital sentence according to the Indian penal code. Capital punishment are enforced on offences such as “terrorism, waging war against the state, murder and activities against arms act, navy act, army act, it also includes various legislations such as Prevention of Atrocities act, Narcotic drugs and Psychotropic substance act, Commission of Sati prevention Act” to protect the society from such grievous crimes. Under Indian Penal Code(IPC), various sections including 121², 132³, 194⁴, 302⁵, 305⁶, 364A⁷, 396⁸ and 376A⁹ are granted for capital punishment(Tiwari, 2018). The execution of capital sentence uphold in “rarest of the rare cases” that is fair and just according to the validity of law. Indian constitution validates two methods of executing capital sentence either through hanging the culprit. The research will discuss the purpose of capital sentence either it prevents implant of such grave crimes further or it snatches individual’s right to life. Enforcement of death punishment based on principal of rarest of the rare cases explains that offender will get the same, only if the case justifies the two tests that validate the sentence. At first the offence is uncommon that deserves death penalty and second there is no alternative punishment other than death sentence for such heinous crime. Judiciary reviews the case and draw a “balance sheet of aggravating and mitigating situations” to provide justice to a victim of the crime(Blackshield, 1979). The principle of “rarest to the rare cases” enforced at the time of case “Bacchan Singh v. State of Punjab”¹⁰ which explains that “death penalty should only be imposed in exceptional cases, instead life imprisonment should be taken into consideration as a rule and right to life of an offender should not be violated”(Ganesh, 2018). Case of “Jagmohan Singh v. State of Uttar Pradesh”¹¹ discusses that “capital sentence would not only protect society from severe crimes but also prevent further commitment of such offences”(Ganesh, 2018). The third objective of the study will analyze the society’s demand for abolishing or executing capital sentence for criminal offences.

Footnote 2 Section 121 “Waging war against government of India”, *Footnote 3* Section 132 “Abetment of mutiny”, *Footnote 4* Section 194 “if an innocent individual is convicted and executed within the results of fake evidence to obtain conviction of capital sentence”, *Footnote 5* Section 302 “Murder”, *Footnote 6* Section 305 “Abetment of suicide of insane or child”, *Footnote 7* Section 364A “Kidnapping for ransom”, *Footnote 8* Section 396 “Dacoity with murder”, *Footnote 9* Section 376 “Rape” (An amendment made in 2013 grants for death sentence if a person inflicts any injury upon women during rape which results in death or to be in vegetative state.), *Footnote 10* “Bacchan Singh v State of Punjab”, “AIR 1980 SC 898”, *Footnote 11* “Jagmohan Singh v State of Uttar Pradesh”, “AIR 1973 SC 947”

Objectives of the study

1. The study aims to examine the execution of capital punishment in India.
2. To examine whether capital sentence protects the society from severe crimes or it violates the right to life of an individual.
3. To analyze the perception of society regarding retention and elimination of capital punishment in India.

Statement of Problem

Right to life and personal liberty is granted to all persons by the Constitution of India. No one wants to lose their right to life. Capital punishment as death penalty violates the right to life of human beings. Death sentence is awarded in rarest of the rare cases that are inhuman and harsh threats to the society’s well-being. The debate on abolishment of capital sentence is not only national but international controversies are also going on either to retain or eliminate death sentence. Sentence awarded based on the grievous and grave crimes committed by offender against humanity. UN Resolutions in favor of abolishing death penalty states that this form of sentence is against humanity as it takes away the person’s right to life. India opposes the abolition of death sentence but at the same time India’s execution of capital sentences are decreasing and its alternative life imprisonment has been enforced for criminal offences. Indian judicial system follows the doctrine of “rarest of the rare cases” to execute capital punishment and takes society’s demand for such execution into consideration while imposing the sentence on an offender. The study will analyze the arguments of both the sides i.e. retention and abolition of capital sentence. The paper focuses on need of capital sentence to prevent the society from such unkind offences and also discuss alternatives of capital punishment to protect individual’s right to life.

CHAPTER 2

Review of literature

S. Shruthi Taarana and M. Kannappan (2018), in their study, "A Critical Analysis on Capital Punishments Boon or Bane" states that whether capital punishment has really reduced the crime rates in India. The data is collected in the paper through secondary sources. The study has also done comparative analysis between India and USA regarding execution of capital punishment. The paper has also discussed about various cases and state laws. This Study mainly stressed upon reducing capital sentence in public. The researcher discussed about various kinds of punishment such as reformative and hindrance. The paper mainly states whether punishments are enough to reduce criminal rate in India.

Raj Sethuraju, Jason Sole and Brian E. Oliver (2016) in their study, "Understanding Death Penalty Support and Opposition Among Criminal Justice and Law Enforcement Students" conducted a research about whether the college students oppose or support the capital punishment which is mainly based on their academic levels. The paper also stated that in United States, there is a certain set of people on whom capital punishment is not imposed which included minor, mentally retarded people and crime which eventually did not resulted in death of a person. The data is collected through a survey which involves college students as their research population. The study stated whether academics affect the view point of the college students who are enrolled in programs such as criminal justice and law enforcement. The study revealed that opinions differ among the students based on their main area of study as students who are majoring in criminal justice are likely to support human rights and oppose harsh punishments like death penalty.

Sujay Sivasankar and Mrs. Prof. A. Sreelatha (2018) in their study "A Comprehensive Study On Capital Punishment" discussed about the two major theories which are reformative and preventive theory related to capital punishment. The paper stated about the basic concept and origin of capital sentence. Secondary data has been used to conduct the research as well as for stating case laws. The paper also states about policies of different countries regarding abolition and retention. The research paper also stated the need and methods of capital sentence in India. It represented various disadvantages of capital punishment and talked about the position of capital sentence in various other countries. The researcher revealed that capital punishment violates the human rights aspect of an offender specifically the right to life, therefore life imprisonment should be granted for heinous and grave crimes instead of capital punishment.

Olalere Shona (2018) in her study "The Dilemma of Death Penalty" mainly focuses on the cost analysis system and also stated the procedural cost of capital punishment including trials,

investigating and appeals in a particular case is way more expensive if compared to the cost of life imprisonment. The study emphasizes on simply killing someone through death penalty will not serve the purpose because murder and terrorist activities will still persist. The researcher also stated that if victims will be entitled to kill offenders through means of capital punishment, it makes victim an offender and the cycle goes on and the problem will not be solved. The research paper also stated that capital punishment can be misused to exploit certain section of people in the society. The paper also talked about that murder and capital sentence are both the same as killing an offender will eventually violate the right to life of an offender. The study stated if once capital sentence capital punishment is performed, it cannot be revoked so it is unfair on the part of an offender because it can include probability of mistake in judicial system.

Richard C. Dieter in his study "The Death Penalty and Human Rights: U.S. Death Penalty and International Law" stated about "the position of United States with regard to capital punishment". The researcher stated that now United States is becoming more open about the idea of the human rights. The study stated that many countries including China and United States continues their practice of death penalty since years but still in the international scenario the practice of death penalty is reducing and in near future it may be possible that continuous decline in death penalty can influence other nations to abolish death penalty. The study reveals the reasons behind the abolishment of death penalty, many countries think that it violates human rights and basic right to life, therefore it should be abolished. The study also emphasized on whether juvenile offenders should be executed or not, it revealed that many states in U.S opposes giving death penalty to juvenile offenders. The study stated that there is a constant fear in the minds of Justices of Supreme Court regarding the mistakes in the judicial procedure as it can result into the execution of an innocent person if any error has been made.

Akanksha Madaan (2014) in her study "Capital Punishment in Rarest of Rare Case: Is it Just and Fair?" stated that as "Indian Constitution provides right to life as fundamental rights to its citizens, at the same time it retains capital sentence as a punishment". The study also reveals as India is a part of various United Nations convention on human rights but still there is a provision of capital punishment in our country. The researcher dealt with many case laws which includes cases in which circumstances death penalty should be awarded. Researcher also revealed public rage also plays an important role in awarding death penalty to an accused. The study also emphasizes on awarding death penalty in cases where rarest of rare crimes are witnessed and also seeing the gravity of the case. Researcher also revealed in some rarest of rare case, judiciary awarded life imprisonment instead of death penalty because the accused will not be a troublemaker in future for our society. The study finally resulted in that death penalties given in rarest of rare crimes are absolutely fair and just and it is performed for the welfare of the society in India.

Abhinav Narayan in his study "Capital Punishment: A comparative study" stated that capital sentence is the maximum level of punishment given to an offender to keep up with law and order in the country. Researcher stated that killing someone with capital sentence is equivalent to the murdering. The study emphasized on getting rid of crime instead of the criminal. The researcher revealed that China is at the top in execution of capital punishment whereas India follows the doctrine of Rarest of rare crimes. The study stated if death sentence is granted it reduces the scope of improvement in an individual. Researcher suggested that reformatory theory of punishment should be granted instead of deterrent theory. He also focuses on various theories of punishment from which he supports the reformatory theory of punishment. The study revealed that disparity between a human being and an animal as humans can change if given a chance to reform themselves.

Dr. Vimal R. Parmar (2015) in his study "Capital Punishment in India with Recent Recommendation of the Law Commission of India" stated that "140 nations have abolished capital sentence as it violates the human rights". The researcher revealed the Law Commission in their Report number 262¹² stated that capital punishment can slowly abolish with time. The study revealed various legal provisions regarding capital punishment. The study described article 21 of the Indian constitution and asked to protect individual right to life and liberty. The researcher has well explained the meaning and forms of sentence under Indian judicial system and described the legal sanctions and executions stating arguments in favor or against capital punishment. The study legalized the sentence laws with the help of cases and it concluded that there are countries that have abolished capital sentence based on the norm that it violates rights and morals of a society.

Footnote 12 Law commission of India, Report no. 262, August 2015, on death penalty suggested "abolishing the capital punishment for all offences except crimes related to terrorism and waging war"

CHAPTER 3

Research Methodology

The study has used qualitative and quantitative methods to analyze the collected data. Qualitative methods help in analyzing the secondary data whereas quantitative measures will comprehend the data collected through primary studies.

Research Design

The paper involves descriptive research design which is characterized by cases facts and findings of surveys. The main purpose of the study is to describe the method of executing capital sentence in India and it characterizes the perception of the population either to retain or abolition capital punishment and also provide reasons for the same. This descriptive study serves mainly three purposes i.e. to explain, define and validate the research objectives. The research is explanatory in nature as it explains the detailed objective of the area under the study.

Sampling method

The researcher has adopted purposive sampling method in the study. The sample size of the study has been chosen keeping in mind the objective of the paper since the study analyzes the society recognition over the execution of capital punishment. The main population undertaken in the study is all adults above 18 and any response below this age will not be considered for the research.

Data collection

The study has collected data both from primary and secondary means. The secondary sources of data have been used for referring legal sanction laws and cases that serve the principle of "rarest of the rare cases". The secondary data have been collected from annual statistical project reports of "equal justice and equal opportunity" and also from various law journals and articles. The research has also used primary data collected through surveys and questionnaires which were circulated among the study population as Google forms. People of different age groups, occupations, genders and from different social and cultural background are the target population of the research. Surveys and questionnaires are structured based on

Footnote 13 *it shows total case of death penalty in states of India in 2019.*

The above figure belongs to 2019 data which shows the total number of offenders in capital punishment row. The number of cases for each state is different which clearly enables the difference in crime rate among the Indian states. According to these reports number of cases under capital sentence row in 2018 are 426 where in 2019 they are 378.

Table: 1

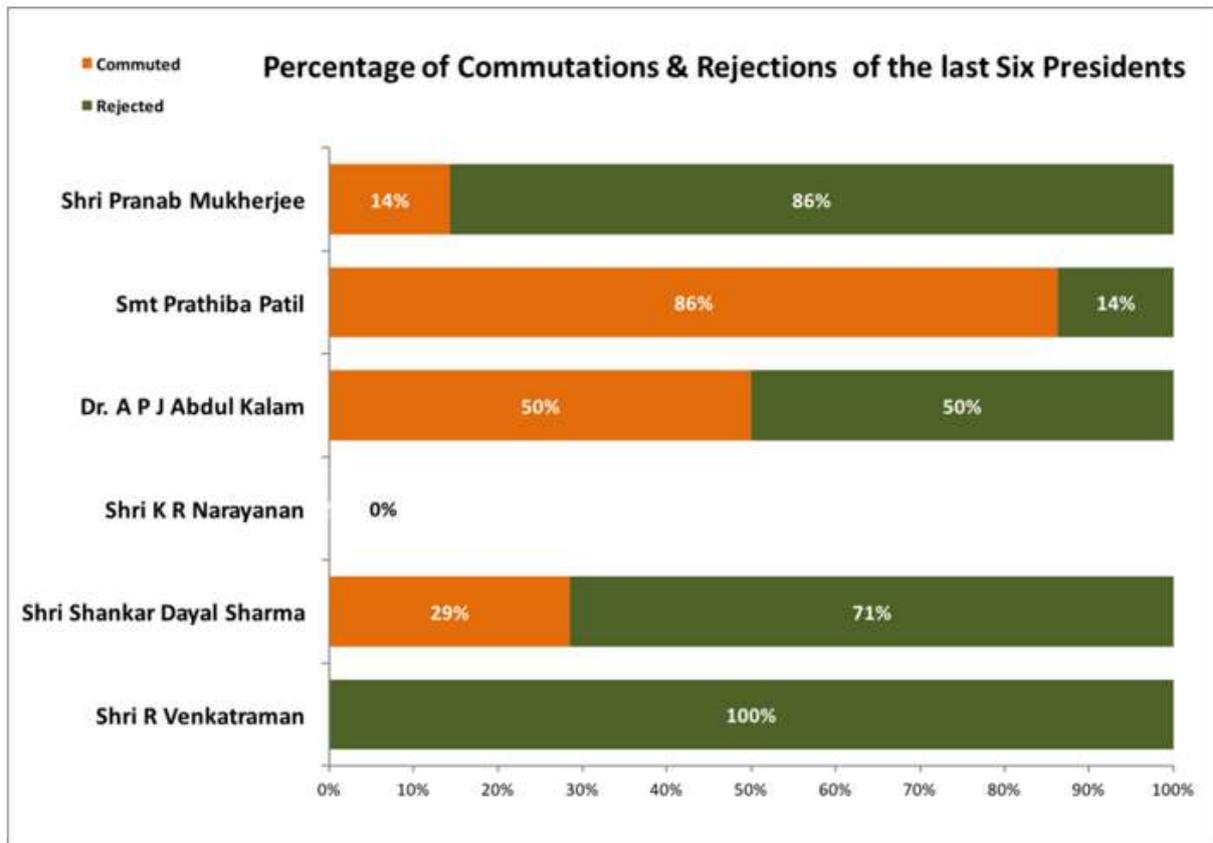
STATISTICS					
Sessions Courts		High Courts		Supreme Court	
DEATH SENTENCES IN 2018	162	CONFIRMATIONS	26 (15)	CONFIRMATIONS	6 (6)
DEATH SENTENCES IN 2019	102	COMMUTATIONS	56 (35)	COMMUTATIONS	17 (17)
		ACQUITTALS	32 (17)	ACQUITTALS	10 (3)
		REMITTALS	7 (15)	REMITTALS	2 (2)

Source: *annual statistical project 39A report equal justice & equal opportunity of 2019*¹⁴

Footnote 14 *total number of cases announced with death penalty in different level of courts.*

The above table explains the total number of enforcement to death sentence to the offender at each level of judicial system. The different levels of judiciary have their own judgments related to the cases as they either follow the same sentence of previous jurisdiction or can oppose them with their own judgments. The last sentence of any case is executed by only Supreme Court. According to this report Supreme Court have confirmed only 6 cases for execution and it commuted 17 cases with life sentence and 10 were acquittals or found innocent and 2 were remitted or surrendered. The offender can only file a mercy petition to the president after sentenced to death penalty by the Supreme Court. The president can either commute or reject the mercy petition of an offender.

Figure: 2



Source: Data journal portal of India¹⁵

Footnote 15 percentage of cases commuted or rejected out of the total disposed of mercy petition.

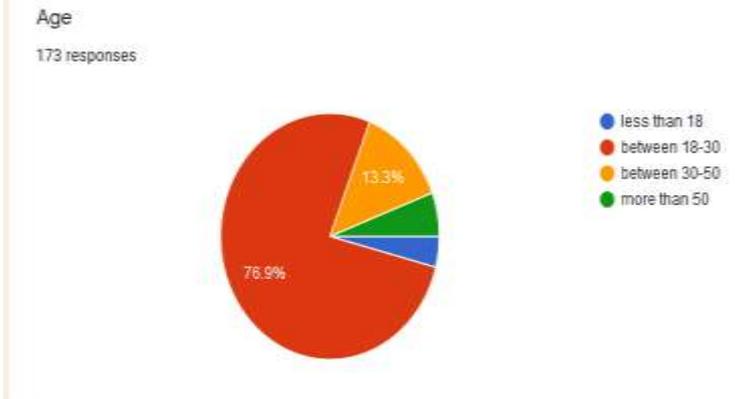
The above figure explains total number of disposed mercy petitions before the president. The findings of the report have shown percentage of mercy petitions rejected or commuted by the all presidents till 2017. The last president of India has rejected 86% of the petitions and commutes only 14% of the total disposed.

The second and third objective of the paper will be analyzed with the help of primary data collected through surveys and questionnaires. The first few questions explain the demographics of the study population.

Table: 2

Row Labels	Count of serial no.
between 18-30	133
between 30-50	23
less than 18	7
more than 50	10
Grand Total	173

Figure: 3

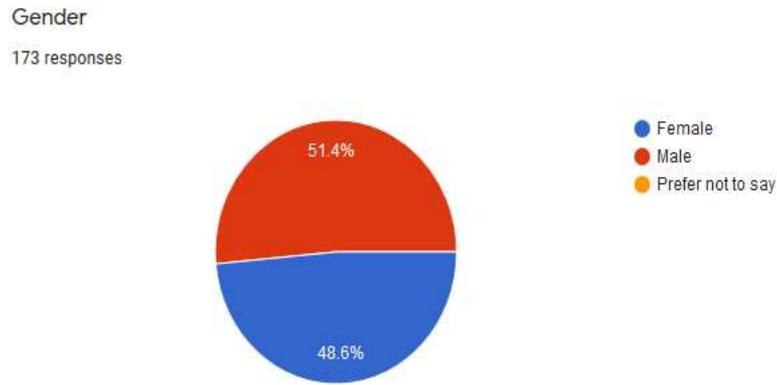


The study involves different age group people who have their different viewpoints on execution of the capital system. The findings state that the age group “between 18 to 30” is the highest respondents i.e. 76.9%. The youth of our country is the future who has their own view regarding the country state of affairs. As citizen of this country people have their own say for country rules and regulations and their demand for the same matters. The paper therefore analyses the society’s perception on capital punishment continuation in India. The study has not taken into consideration the response of population less than 18 as the constitution does not consider them adults and haven’t provided them with legal rights.

Table 3

Row Labels	Count of serial no.
Female	84
Male	89
Grand Total	173

Figure: 4

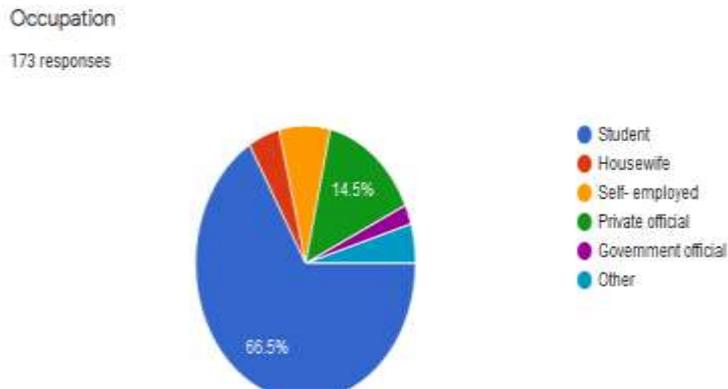


The demographic data shows the total numbers of respondents out of which 51.4% are males and 48.6% are females. The law defines all the genders as equal and all have equal say over the subject matter.

Table: 4

Row Labels	Count of serial no.
Government official	4
Housewife	8
Other	8
Private official	25
Self- employed	13
Student	115
Grand Total	173

Figure: 5



The above figure demonstrates the occupation of the population under the study as 66.5% are students, where all other remaining are private or government official, self-workers or housewives.

Hypothesis

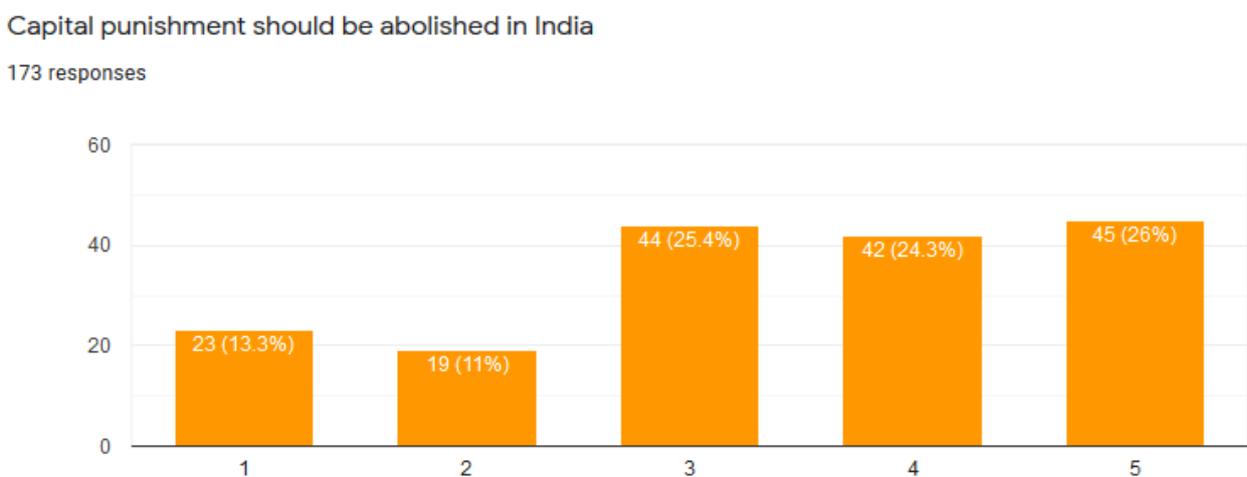
The below questions have answered on likert scale 1 to 5 i.e. strongly agree, agree, neutral, disagree, strongly disagree. The second and third objective of the study has been explained through analyzing the following results.

Hypothesis 1

Null hypothesis: Capital punishment should not be abolished in India.

Alternate hypothesis: Capital punishment should be abolished in India.

Figure: 6



The above result has shown that high percentage i.e. 26% and 24.3% strongly disagree and disagree respectively are against the abolition of capital punishment and 13.3% and 11% strongly agree and agree respectively to abolish the same whereas 25.4% of the population is neutral towards, whether to abolish capital punishment or not. The result of analysis accepts the null hypothesis as majority of population does not want to abolish capital punishment.

Hypothesis 2

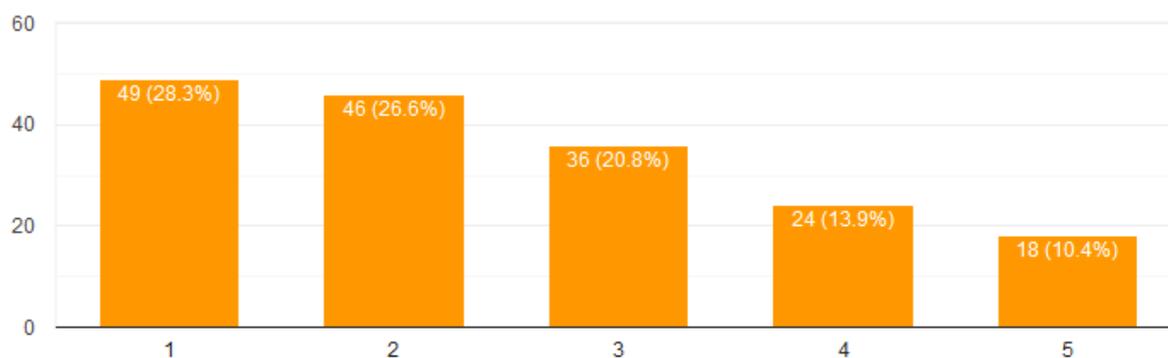
Null hypothesis: Capital punishment does not serve justice and maintain peace in the society.

Alternative hypothesis: Capital punishment serves justice and maintain peace in the society.

Figure: 7

Sometimes the only way to achieve justice and maintain the peace is through capital punishment

173 responses



The above statement has been analysed as the findings show majority of population i.e. 28.3% and 26.6% strongly agree and agree that capital punishment maintains peace and justice in the society where 13.9% and 10.4% of them disagree and strongly disagree to the statement that capital punishment brings justice and peace to the society. 20.8% of the population is neutral towards the subject matter. So we reject the null hypothesis that capital punishment do not serve justice and maintain peace in the society.

Hypothesis 3

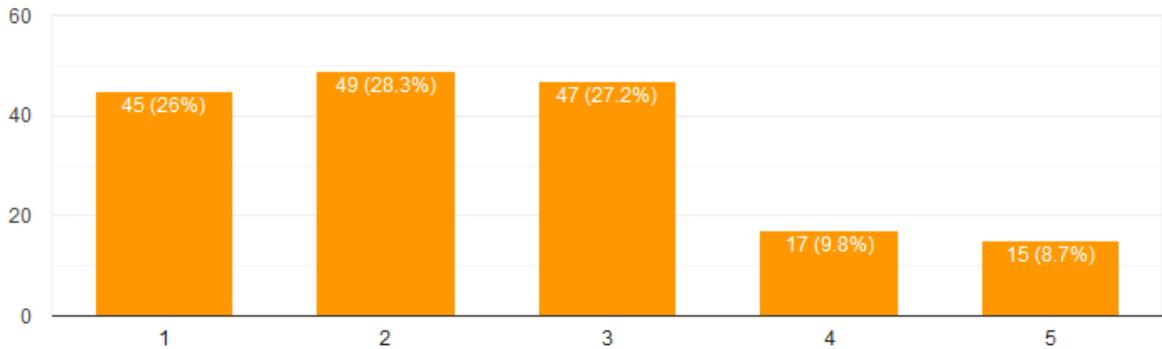
Null hypothesis: Capital punishment does not serve a purpose.

Alternative hypothesis: Capital punishment serves a purpose.

Figure: 8

Capital punishment serves a purpose

173 responses



The above result shows that 26% and 28.3% population strongly agree and agree towards the statement that capital punishment serves a purpose where 17% and 15% shows that people disagree and strongly disagree that capital punishment serves a purpose. Hence we reject the null hypothesis.

Hypothesis 4

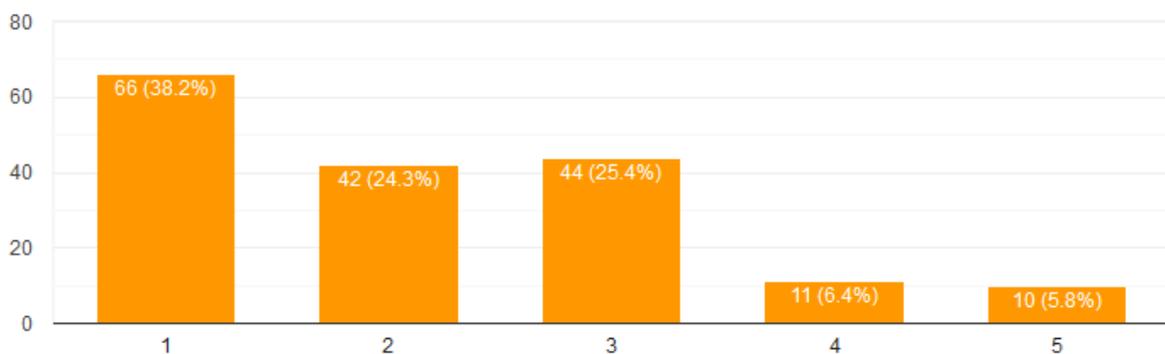
Null hypothesis: Right to appeal to Supreme Court should not be given to the offenders.

Alternative hypothesis: Right to appeal to Supreme Court should be given to the offenders.

Figure: 9

Should a Right of Appeal to Supreme Court be given

173 responses



The results explain that 38.2% and 24.3% of the people agree that right to appeal to Supreme Court should be given to the culprits, whereas, 6.4% and 5.8% disagree as it says offender

should not be given right to appeal to the Supreme Court. Hence we reject the null hypothesis of the statement.

Hypothesis 5

Null hypothesis: Hanging in public should not be a mode of executing capital sentence to severe crimes.

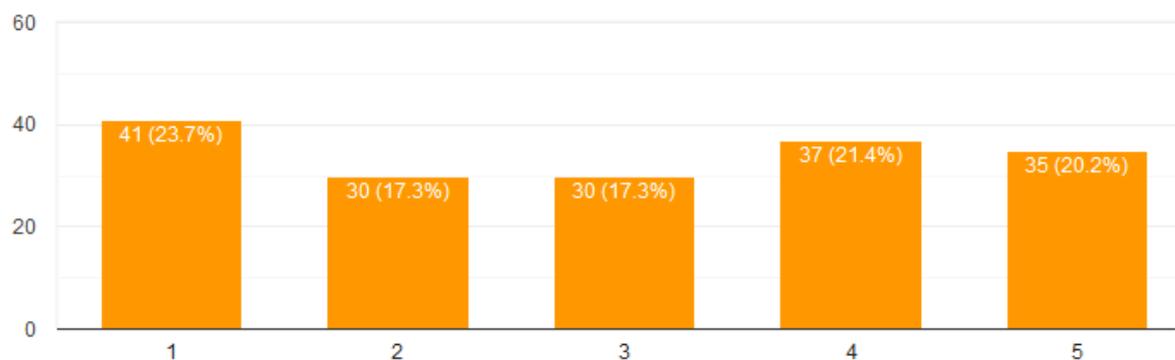
Alternative hypothesis: Hanging in public should be a mode of executing capital sentence to severe crimes.

Figure: 10

Hanging in public as a mode of execution for a hardened criminal should be justified



173 responses



The finding has shown that there is a minor difference among the results of the study population as 23.7% and 17.3% agree that criminal should be hanged in public ,whereas, 21.4% and 20.2% disagree believe that they should not be hanged in public. 17.3% of the study population is neutral towards the statement. Hence we reject null hypothesis.

Hypothesis 6

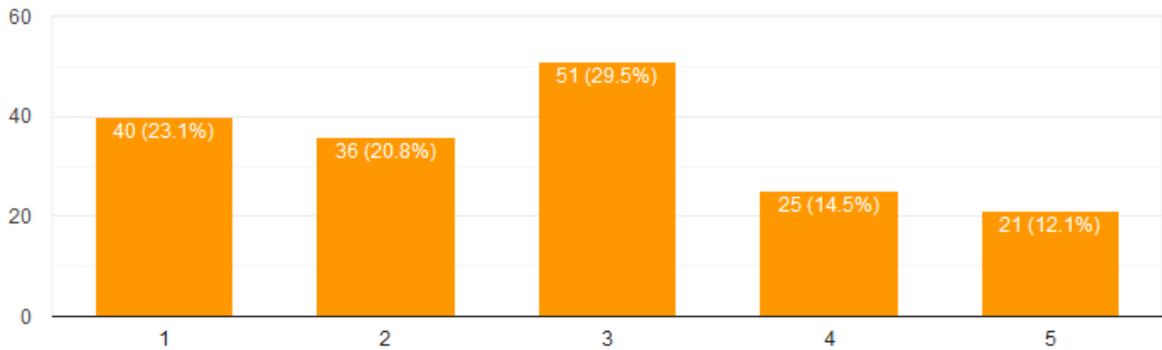
Null hypothesis: Hanging in private should not be a mode of executing capital sentence to severe crimes.

Alternative hypothesis: Hanging in private should be a mode of executing capital sentence to severe crimes.

Figure: 11

Hanging should be in private/jail as a mode of execution for a hardened criminal

173 responses



The results show that 23.1% and 20.8% agree that there should be private mode of executing capital sentence, whereas, 14.5% and 12.1% disagree to the same. There are 29.5% who are neutral towards the statement. Hence the study rejects the null hypothesis.

Hypothesis 7

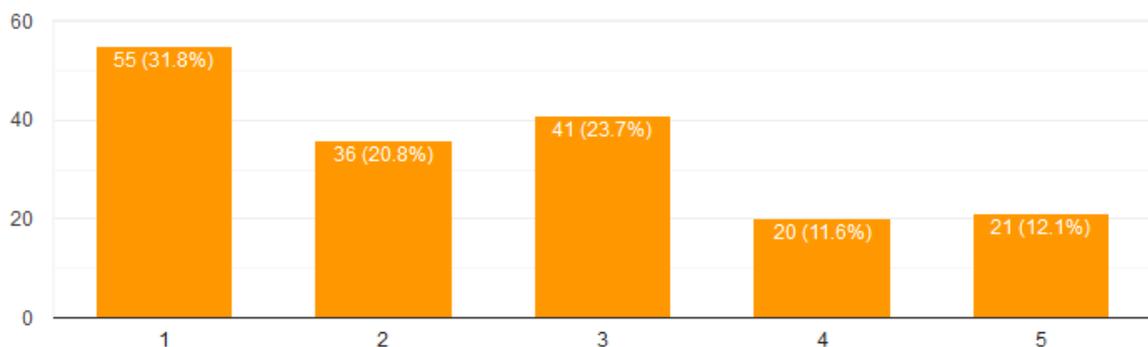
Null hypothesis: Abolition of capital punishment would not increase criminal offences.

Alternative hypothesis: Abolition of capital punishment would increase criminal offences.

Figure: 12

If capital punishment abolished, then the murder rate would increase

173 responses



The results of the above statement explain that 31.8% and 20.8% of the population strongly agree and agree that abolition of capital sentence will increase criminal murder rate in society whereas 11.6% and 12.1% disagree and oppose that eliminating capital punishment would not increase criminal rate. Therefore we reject null hypothesis.

Hypothesis 8

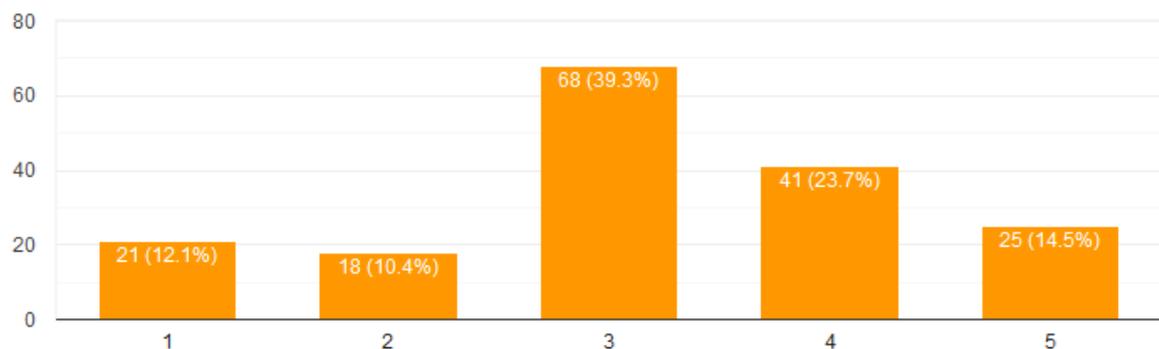
Null hypothesis: Capital punishment has not been used efficiently under Indian judiciary.

Alternative hypothesis: Capital punishment has been used efficiently under Indian judiciary.

Figure: 13

Capital punishment is being used efficiently in the Criminal Justice System

173 responses



The finding of the study explains that only 12.1% and 10.4% think that capital punishment is used effectively by the law and justice where 23.7% and 14.5% are with the view that capital sentence is not used effectively by our legal system. 39.3% of population is being neutral towards the statement. Hence the study do not reject null hypothesis.

Hypothesis 9

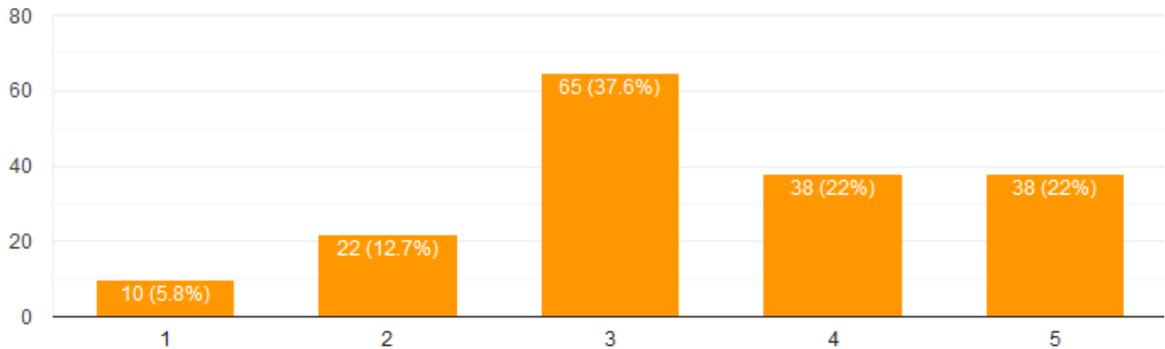
Null hypothesis: Capital punishment should not be based on religious and moral reasons.

Alternative hypothesis: Capital punishment should be based on religious and moral reasons.

Figure: 14

The opposition to capital punishment based on moral or religious reasons

173 responses



The result analysed states that 5.8% and 12.7% population agree capital sentence should be opposed with moral and religious reasons where 44% of the people disagree to the statement. There are 37.6% people who are neutral towards both arguments. So for this statement we do not reject null hypothesis.

Hypothesis 10

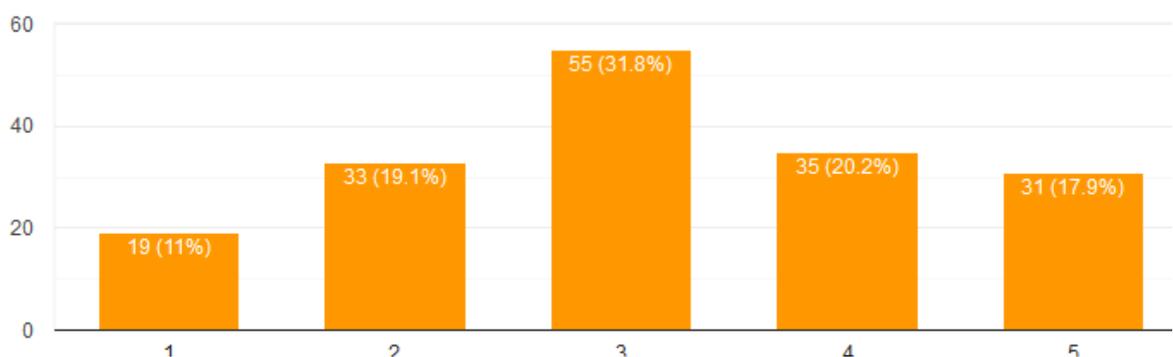
Null hypothesis: offender should not be given another chance.

Alternative hypothesis: offender should be given another chance.

Figure: 15

People who are facing capital punishment should be given another chance

173 responses



The study reveals that 11% and 19.1% of the population are in favour of giving another chance to offender whereas 20.2% and 17.9% people against the statement. There are around 31.8% people who are neutral to this. So with this result we do not reject null hypothesis.

Hypothesis 11

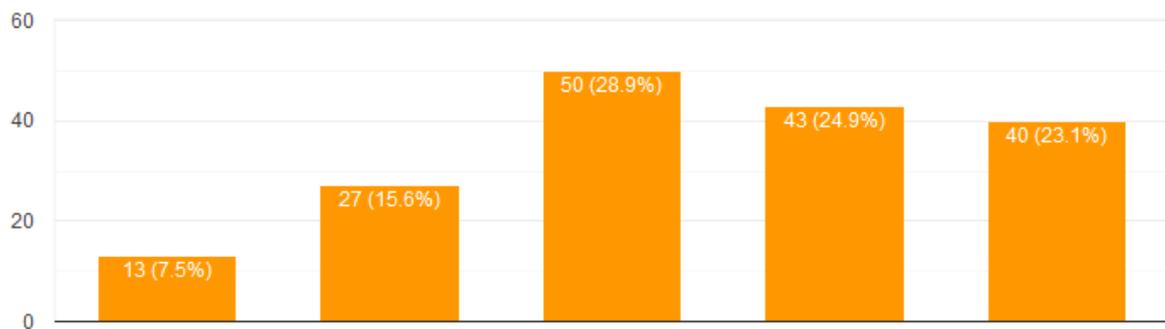
Null hypothesis: capital punishment does not violate human rights.

Alternatives hypothesis: capital punishment violates human rights.

Figure: 16

Capital punishment violates human rights

173 responses



The study shows that 7.5% and 15.6% population agree that capital sentence violate human rights and 24.9% and 23.1% population disagree that capital sentence violates human rights and 28.9% of them is neutral towards. Hence we do not reject the null hypothesis.

Hypothesis 12

Null hypothesis: There is no need to abolish capital punishment as it is granted only in “rarest of the rare cases”.

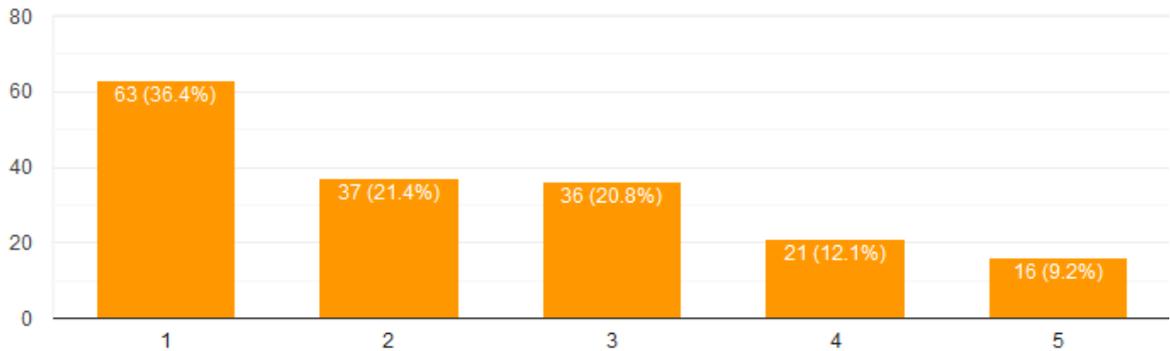
Alternative hypothesis: There is need to abolish capital punishment even if it is granted in “rarest of the rare cases”.

Figure: 17

Capital punishment is mostly awarded in the rarest of the rare cases and hence, there is no need to abolish it



173 responses



The study explains that 36.4% and 21.4% of the population says that there is no need to abolish capital sentence as it is executed in “rarest of the rare cases” where 12.1% and 9.2% disagree and are in favor of abolishing capital sentence. Hence we do not reject the null hypothesis.

Hypothesis 13

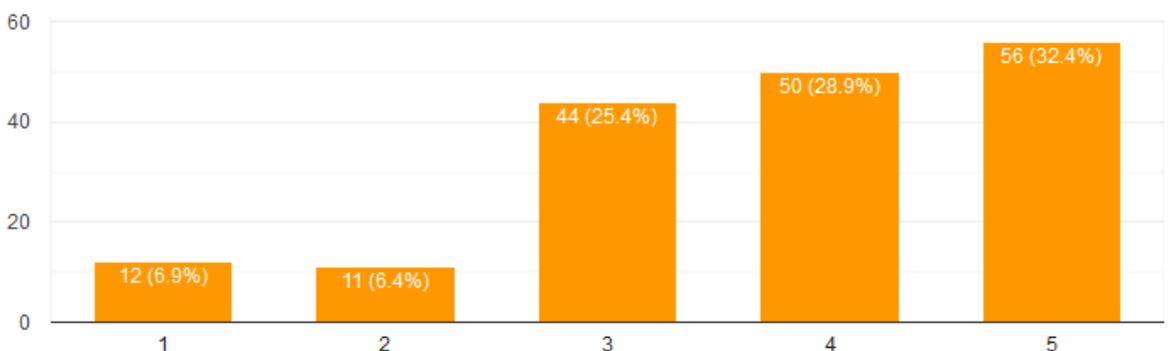
Null hypothesis: capital sentence should not be awarded to women culprits.

Alternative hypothesis: capital sentence should be awarded to women culprits.

Figure: 18

Capital punishment should not be given to the women offenders

173 responses



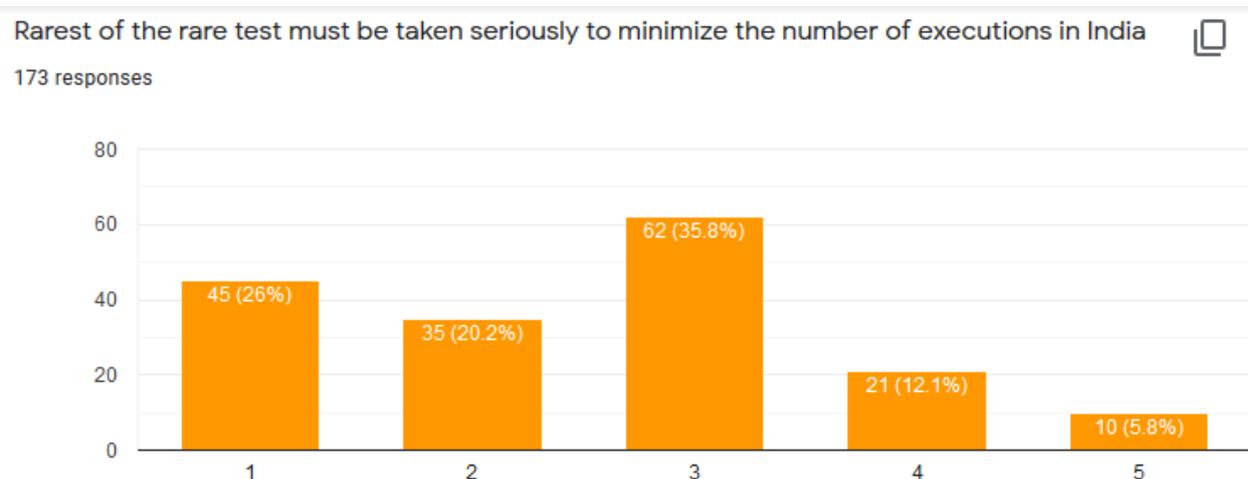
The result has shown that only 6.9% and 6.4% of the people agree that women culprit should not be punished with capital sentence whereas 28.9% and 32.4% disagree with the statement as all are equal before law and women should also be punished with capital sentence for severe crimes under “rarest of the rare cases”. Hence the study rejects the null hypothesis.

Hypothesis 14

Null hypothesis: execution of capital sentence based on “rarest of the rare cases” principal should not be taken seriously in India.

Alternative hypothesis: execution of capital sentence based on “rarest of the rare cases” principal should be taken seriously in India.

Figure: 19



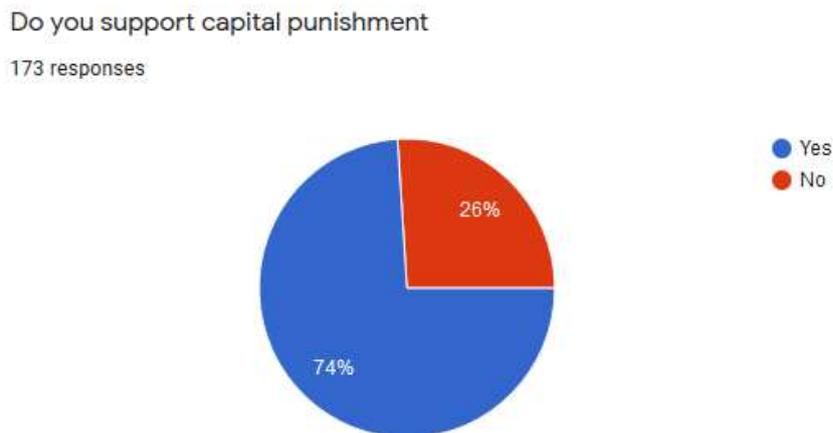
The paper found that the 26% and 20.2% of the study population views that execution of the principle “rarest of the rare cases” test should be undertaken seriously in India where 12.1% and 5.8% population disagree with the statement and believe that it should not be taken seriously. 35.8% people have neutral perception towards it. Hence we reject the null hypothesis.

Hypothesis 15

Null hypothesis: society does not support capital punishment.

Alternative hypothesis: society supports capital punishment.

Figure: 20



The result of the survey shows that the majority of the study population i.e. 74% agrees that capital punishment should be continued where only 26% of them are against capital punishment and are in favor of abolishing the same in India. Therefore we reject null hypothesis.

CHAPTER 5

Suggestions

There are several theories of punishment available in Indian judicial system in which the most appropriate theory which should be regarded as punishment to an offender is reformatory theory as it keeps alive the scope of change or improvement within an offender (Sivasankar, 2018). The main motive behind this theory is to rehab the perpetrator. Life imprisonment is a great option instead of capital sentence for grave crimes as it is not at all expensive. Humans are bound to make mistakes as capital punishment is irrevocable in nature it can lead to death of an innocent which can be unjust (Boolchandani).

Legal aid should be given to offenders who are all economically weak and illiterate. As constitution of India provides free legal aid in Article 39A which states that government is obliged to give free legal aid to underprivileged sections of the society and Article 14 (equality before law) and Article 22(1) also provides provision of legal justice (Sivasankar, 2018). Pardoning power of President as well as governor mentioned in Articles 72 and 161 must be limited in brutal cases or cases including terrorism (S. Taarana and M. Kannappan, 2018). Juvenile offenders should also be punished with capital sentence if they commit any crime which is related to rape and terrorism but proper and extra care should be taken during investigation of such sensitive matters (Madaan, 2014).

Capital punishment should only be granted in crimes pertaining terrorist activities and rape or any barbarous act. Constitution of India grants Article 21 as a fundamental right which is right to life so if capital sentence is awarded casually in any crime it would violate right to life of an individual (Boolchandani). The purpose should be to impede criminal intent but not the criminal himself. As killing someone by the means of capital sentence is equivalent to murdering someone because life is valuable and human rights should be given utmost importance.

The definition of "Rarest of rare crimes" should be made more clear and comprehensible by courts of India as to what all crimes should be included under this definition (Shivani, 2020). Women and juvenile offenders should not be treated differently and their execution should be done as male offenders. In some cases public rage can also influence several judgments so judges must not feel pressurized while announcing any judgment regarding capital sentence and due care must be taken (Madaan, 2014).

Conclusion

Indian Constitution grants right to life with dignity to its citizens. If an individual commits any criminal offence, he or she should be punished under judicial law. Capital sentence is a severe punishment among all the forms of punishment given by the state. United Nations' resolution to abolish capital punishment as it is against the human rights doctrine (Boolchandani, n.d.). India did not follow the resolution and retain the execution of capital sentence. The study has discussed about execution of capital punishment in India. Capital sentence is validated with the principle of "rarest of the rare cases" and also tested with two main aims i.e. first is that offence needs to be uncommon that deserves death penalty and second that there is no alternative sentence to this severe crime. The recent capital sentence announced to the culprits of Nirbhaya Delhi gang rape. This crime is uncommon against humanity and there should be no punishment for them other than death penalty.

From the literature review, it is evident that capital punishment has been executed from ancient period, only the procedure and laws have changed from time to time. The research has also discussed cases which explains the changes in sentence implementation and the doctrine of "rarest of the rare cases" (Madaan, 2014). The primary data results state whether capital sentence has really reduced crime rates and protected society from severe crimes or it has only violated individual right to life. The constitution has given some rights to the offender who is punished with death penalty i.e. right to appeal to the Supreme Court and can file mercy petition before the president under Article 72. The capital sentence is assigned in "rarest of the rare cases" without any biasness of religion, political and moral grounds (Shivani, 2020).

Modern civilized society is involved in controversy over retention and elimination of capital sentence. Capital sentence assigned to a culprit in order to reduce crime and implant fear among the society so no one tries to commit such offence. But there are views that it could also be possible with other punishment instead of death penalty. Whereas the study reveals that majority of the study population around 74% is in favor of capital sentence as to punish criminals who have committed crimes against humanity. Recent capital punishment was executed to the culprits of Delhi gang rape 2012 as they had committed cruel and grievous crime, this incident makes it quite evident that capital punishment still plays a vital role in our judicial system. The study concludes that capital punishment should not be abolished completely as it is executed only in case of brutal crimes. In order to protect the society from further such offences, there should be strict punishment that no one even dares to commit such crimes. There could be other rigorous sentences, alternate to death penalty which could be more effective as offenders should remember their crime and should find themselves guilty during their entire life sentence (Narayan, 1978). The research concludes that we need to eliminate criminal intent rather than criminals as to reduce the crime rates in our society.

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