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(CAPITAL PUNISHMENT)

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GOVERNMENT OF INDIA ● MINISTRY OF LAW

REPORT ON CAPITAL PUNISHMENT

EXPLANATION OF ABBREVIATION

R. C. Report	Report of the Royal Commission on Capital Punishment (1949—1953), Cmd. 8932.

APPENDICES

APPENDIX I

QUESTIONNAIRE ISSUED BY THE LAW COMMISSION ON CAPITAL PUNISHMENT

1. Are you in favour of retention or abolition of capital punishment?

2. (a) What, in your opinion, is the object of capital punishment? Does the existing law sufficiently achieve that object?

(b) In particular, do you think that the sentence of death acts as a deterrent?

3. (a) Would you like to retain the sentence of death for all or any of the offences under the Indian Penal Code which are at present punishable with death[1]?

(b) Are there any other offiences under the Indian Penal Code or any other law which, in your opinion, should be punishable with death?

4. The relevant provisions in the Indian Penal Code vest in most cases a discretion in the court to award the sentence of death or the lesser sentence of imprisonment for life. Is the vesting of such discretion necessary and are the provisions conferring such discretion working satisfactorily? If not, have you any suggestions to make in this behalf?

5. If the vesting of such discretion is necessary, what should be the considerations which should weigh with the court in awarding the lesser punishment of imprisonment for life? Is it possible to codify such considerations?

6. (a) Is it possible to divide murders into different categories for the purpose of regulating the punishment for murder?

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1. The relevant sections of the Indian Penal Code and the offences concerned are as follows:—

Section 121—Waging war against the Government.

Section 132—Abetment of mutiny by a member of the armed forces.

Section 194—2nd paragraph—False evidence leading to conviction of innocent person and his execution.

Section 302—Murder.

Section 303—Murder by a life convict.

Section 305—Abetment of suicide by child or insane person.

Section 307—Attempt to murder by life convict.

Section [illegible] Dacoity with murder.

(b) Is it possible to divide murders into two categories--

(i) murders punishable with death;

(ii) murders not punishable with death.

If so, what kinds of murders would you include in category (i)?

7. (a) Are you in favour of the view that the normal sentence for murder should be imprisonment for life, but in aggravating circumstances the court may award the sentence of death?

(b) If so, what, in your opinion, should be the aggravating circumstances?

8. Should there be a provision in the law requiring the court to state its reasons for imposing a sentence of death or the lesser punishment of imprisonment for life?

9. Do you consider that even if the sentence of death is retained, certain classes of persons should not be punished with death, *e.g.*, children below a particular age, women, etc.? What classes of persons should, in your opinion, be excluded from the sentence of death?

10. At present the Supreme Court has limited jurisdiction when a High Court has passed, confirmed or upheld in appeal a sentence of death (article 134 of the Constitution and section 411A, Criminal Procedure Code). Are you in favour of enlarging the powers of the Supreme Court so that an appeal shall lie to the Supreme Court as a matter of right in all cases in which a sentence of death has been passed or confirmed or upheld by the High Court?

11. (a) Have you any suggestions to make with respect to the power of the President and the Governor to grant pardon, reprieve, respite or remission in respect of the punishment of death or to suspend, remit or commute the sentence of death under articles 72 and 161 of the Constitution and the power of the Government to suspend, remit or commute such sentence under sections 401-402, Criminal Procedure Code?

(b) What, in your opinion, should be the principles which should guide and the procedure which should be followed in the exercise of these powers?

12. At present, the sentence of death is carried out by hanging. Have you any suggestions to make with respect to the manner in which a sentence of death may be carried out?

APPENDIX II

ANALYSIS OF CERTAIN ILLUSTRATIVE CASES IN RELATION TO THE SENTENCE IMPOSED FOR MURDER

NOTE:—This analysis is not intended *to discuss all cases.* It discusses certain illustrative cases—

(i) showing how the discretion regarding death sentence has been exercised;

(ii) showing how the *appellate Court* has rectified injustice;

(iii) indicating the *variety of situations* and the numerous circumstances that have to be considered while awarding sentence; and

(iv) incidentally, showing certain *other points of interest* that fell to be decided.

CAPITAL PUNISHMENT

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Case No. 1.

Kashmira Singh v. *State of Madhya Pradesh*

A.I.R. 1952 Supreme Court 159—

1952 S.C.R. 526

(Fazl Ali, B. K. Mukherjea and Bose JJ.)

(Judgment by Bose J)

The appellant was convicted of the murder of a small boy of 5 years and sentenced to death. On the facts, the Supreme Court allowed the appeal filed with special leave, and acquitted him of the charge of murder and kidnapping. He was, however, convicted of an offence under section 201 following *Begu* v. *The King Emperor*[1]. The Court pointed out, that where the murder committed is particularly a *cruel and revolting* one, it is necessary to *examine the evidence with more than* ordinary care, lest the shocking nature of the crime might prevent a dispassionate judicial scrutiny of the facts and law.

Case No. 2.

Kalawati v. *State of Himachal Pradesh*

1953, S.C.R. 546 A.I.R. 1953

S.C. 131, 135

(Patanjali Sastri, C. J. Mukerjea, Chandrasekhara Aiyer, Bose and Ghulam Hasan JJ.)

(Judgment by Chandrasekhara Aiyar J.).

Sentence of death was, in this case, replaced by the sentence of transportation of life, having regard to the *time that had elapsed* since the offence and to the fact that the probable motive was one of *prevention of cruelty* to a helpless women—to a wife who was ill-treated by her husband. (In this case, the husband was murdered by the accused. The husband used to ill-treat his wife. The accused murdered the husband for protecting her from this cruelty).

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1. *Begu* v. *The King Emperor*, A.I.R. 1925 P.C. 130—52 I.A. 191.

NOTE :—This does not mean that in every case of delay the sentence must be reduced to imprisonment for life. The death sentence may be maintained notwithstanding, delay if the murder is brutal. *Babu* v. *State* A.I.R. 1965 S.C. 1467.

Case No. 3.

Dalip Singh v. *State of Punjab*

A.I.R. 1953 S.C. 364, 367, 368

1954 S.C.R. 145

(Mahajan, Bose, and Jagannadhadas JJ.)

(Judgment by Bose J.)

Death Sentence should *ordinarily be imposed for* murder. [Section 367 (5), Criminal Procedure Code was not referred to.] But, when the trial judge has imposed the lesser punishment for reasons which are such that a judicial mind could properly act on them, the appellate *Court should not interfere with the discretion.*

In the instant case, the Sessions Judge convicted the appellants under section 302, Indian Penal Code and sentenced them to transportation for life, as it was not possible to determine who inflicted the blows which were fatal and who took a lesser part. The case was one in which "no one has been convicted for his own act but is being held *vicariously responsible.*" The Punjab High Court *enhanced* the sentence to death. The Supreme Court held, that the Sessions Judge had a discretion which had been judicially exercised. The discretion was *his,* and not the High Court's.

Sentence reduced to transportation for life[1].

Case No. 4.

Nisa Stree v. *State of Orissa*

A.I.R. 1954 S.C. 279. (Not in S.C.R.)

(Mahajan, S. R. Das and Bhagwati JJ.)

(Judgment by S. R. Das J.)

The accused, a woman of 20 years, was convicted of murder on circumstantial evidence. On the date of the occurrence, about an hour before sunset, she was seen proceeding with the deceased in the direction of the scene of occurrence. She came home without the deceased in the evening, in hurried steps, with her cloth lifted up. The cloth was found to be stained with human blood, and two ornaments of the deceased seen on the person of the deceased when she was going towards the scene of murder, were discovered at her instance from the thatch of her hut. She was convicted of murder (and also under sec-

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1. For other cases stressing that sentence is a matter of discretion, see *Nar Singh*, A.I.R. 1954, S.C. 457; 1955 S.C.R. 238 and Bed Raj A.I.R. 1955 S.C. 778, 781.

tion 379) and sentenced to death. The sentence was confirmed by the High Court, which, however, gave certificate for appeal under article 134 (1) (c).

The Supreme Court held, that the circumstantial evidence in the case was only consistent with guilt of the accused.

The murder was coldblooded and out of pure greed. Conviction upheld. (Question of sentence not specifically dealt with)[1].

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1. *See* also—

(i) Mnai v. Emp., A.I.R. 1938 Nag. 318 (1938) 39 Cr.L.J. 405; (Grille and Digby JJ.)—case of a woman murdering her husband by Dhatura poisoning. The woman was on terms of intimacy with one and committed murder to get rid of her husband. Death sentence confirmed.

(ii) Rasammal, *In re.* A.I.R. 1915 Mad. 821 (In this case, a woman aged 50 years, had murdered her 5 years old grandson, with a heavy pointed file. She was sentenced to transportation. On revision, Ayling J. wished to enhance the sentence. Seshgire Aiyar J. disagreed, and considered the lesser sentence as proper owing to her age, and lapse of time. The matter was referred to Oldfield J. who enhanced the sentence to death, holding that sex and age had to be weighed against the other factors of the case, which were, *pre-meditated and brutal murder*, committed owing to the accused's hatred of her daughter-in-law.

(ii) *Emp.* v. *Misri* (1909) I.L.R. 31 ALI. 592, 593, 598 (Death sentence on woman for murder of a girl of 12 years for ornaments confirmed by Richards & Alston JJ.).

(iii) *In re. Thithanchumma.* A.I.R. 1941 Mad. 27 (Burn and Mocket JJ.)—Sentence of death on woman of 20 years confirmed. She had murdered a girl of 12 years by strangling, and took, her silver jewels worth Rs. 5/-. As the crime was deliberate and brutal the sentence was confirmed. Court noted that she was in an advanced stage of pregnancy at the time of murder, and had (since the murder) give birth to a child. But this was a matter for the Government to consider.

(iv) *Karuppal In re.*, A.I.R. 1944 Mad. 50, 51 (Burn and Mockett JJ.) —A woman who had been ill-treated by her husband killed her own two children—girl of five and boy of two, by throwing them into a well. She also jumped into the well, but managed to get out. The Additional Sessions Judge sentenced her to death, saying that he had no option out to award the extreme penalty. The High Court reduced it to transportation for life, and agreed that even that was excessive in the circumstances of the case.

(v) *Ma Shwe Yi* (woman poisoning husband sentenced to death I.L.R. 1 Rang. 751; A.I.R. 1924 Rang. 179.

(vi) *Emp.* v. *Jeoly* I.L.R. 39 All. 161 (Richards CJ & S.C. Banerji J.).

(vii) *Emp.* v. *Mt. Har Piari* A.I.R. 1926 A 1. 737, 741 (woman cruelly administering poison to husband sentenced to death).

Case No. 5.

Kutuhal v. *State of Bihar*

A.I.R. 1954, S.C. 720 (Not reported in S.C.R.)

(S. R. Das and Bhagwat JJ)

(Judgment by Bhagwat J.)

The appellant was convicted of the murder of an old woman of 70 years. The woman had died as a result of shock caused by injuries on her chest. The *circumstances* were such that the only reasonable inference was that the injuries were caused by the appellant. The appellant had an opportunity for the same and also strong motive to do away with the old woman. He was in great hurry to cremate the corpse and to dispose of the dead body.

He was convicted under section 302, Indian Penal Code and sentenced to death by the Sessions Judge. The High Court dismissed his appeal and confirmed the sentence. Having regard to these circumstances and to the fact that the appellant did not care to inform the relations of the dead woman, the Supreme Court upheld the conviction. (Sentence was also upheld).

Case No. 6.

Pran Das v. *State*

A.I.R. 1954 S.C. 36 (Not in S.C.R.)

(Kania C. J., Fazl Ali, Patanjali Sastri, Mahajan, B. K. Mukherjee and S. R. Das JJ.)

(Judgment by Fazl Ali J.)

In this case, which was heard by special leave on appeal from the decision of the High Court at Nagpur, the Supreme Court altered a conviction under section 302, Indian Panel Code into one under section 304. This was a case of *sudden quarrel* between the accused and the deceased, which ensued in free fight between the two parties in which each party assaulted the other with sticks. The accused dealt only one blow on the deceased, which resulted in his death. The Sessions judge acquitted the accused, while the High Court on appeal convicted him under section 302, Indian Penal Code and sentenced him to transportation for life.

On appeal, the Supreme Court held that this was a case falling under the *Fourth Exception to section* 300 and therefore, came within the Second Part of section 304. The accused had dealt only one blow, and the High Court's observation that it could not be said that he had not taken under advantage or acted in a cruel manner was not supported by the evidence.

(Sentence altered to rigorous imprisonment for five years).

Case No. 7.

Nawab Singh v. *State of U.P.*

A.I.R. 1954, S.C. 278 (Not in S.C.R.)

(Mahajan, B. K. Mukerjee and Jagannadhadas JJ.)

(Judgment by Mukherjee J.)

This was a case of cruel and *premeditated* murder for which the appellant had been sentenced to death under section 302. The Supreme Court dismissed the appeal filed with special leave. As regards the argument of the appellant that a good deal of time had elapsed since the death sentence was imposed and that it should be commuted to one for transportation for life, the Supreme Court *observed* that it was true that in proper cases *an inordinate delay in the execution* of the death sentence may be regarded as a ground for commuting it, but "we desire to point out that this is no rule of law and is a matter primarily for consideration of the local Government. If the Court has to exercise a discretion in such matters, the other facts of each case would have to be taken into consideration."

(In the case before the court, there was no extenuating circumstances and the murder was regarded as a cruel and *deliberate one,* and therefore the court did not order commutation).

Case No. 8.

Sunder Lal v. *State of Madhya Pradesh*

A.I.R. 1954 S. C. 28 (Not in S.C.R.)

(Mahajan and Bhagawati JJ.)

(Judgment by latter).

There was circumstantial evidence to the effect that the accused and the deceased were seen together at a particular time and that immediately after the murder, the accused went to one B with gold, etc., and then next morning to a goldsmith with gold and silver. The silver was identified as habitually worn by the deceased. The Sessions Judge acquitted him of the offence under section 302, Indian Penal Code but convicted him under sections 394 and 323. Accused appealed. Government also appealed against the acquittal in respect of section 302, Indian Penal Code. The High Court confirmed the conviction under section 394 and also convicted him under section 302 (in place of section 323) and sentenced him to death.

On appeal to the Supreme Court, the conviction was upheld. Appeal dismissed. (No discussion as to sentence).

Case No. 9.

Rishi Deo Pande v. *State of U.P.*

A.I.R. 1955 S. C. 331, 333, paragraph 4 (Not in S.C.R.)

(S. R. Das, Bhagwati and Imam JJ.)

(Judgment by Das J.)

The appellant, though he did not inflict any blow, yet shared the *common intention* to kill the deceased and was present on the spot with his lathi. He was convicted under section 302, Indian Penal Code read with section 34 and sentenced to death by the Sessions Judge. On appeal, the High Court confirmed the conviction and sentenced.

On appeal, the Supreme Court upheld the conviction and sentence. Counsel for appellant pleaded for mercy, as he himself did not inflict any blow. The Supreme Court rejected the plea, as the accused had shared the common intention and was present on the spot with his lathi, while his brother actually dealt the blow on the sleeping man. "If there is any extenuating circumstances outside the record, the appeal must be to authorities other than the Courts of Law.".

[Section 401, Criminal Procedure Code not referred to.]

Case No. 10.

Pandurang v. *State of Hyderabad*

A.I.R. 1955 S.C. 216, 223, paragraph 37—(1955) 1 S.C.R. 1083.

(B. K. Mukherjee, S. R. Das and Bose J.J.)

(Judgment by Bose J.)

When appellate Judges who agree on the question of guilt *differ on that of sentence,* it is usual not to impose the death penalty, unless there are compelling reasons. So observing, the Supreme Court in this case reduced the sentences of death of two persons (to transportation for life) in view of the fact that in the High Court, there was difference of opinion regarding them, not only as to guilt but also as to sentence.

(Also discusses section 34, Indian Penal Code).

NOTE :—Where there is a difference of opinion as to *guilt*, certain other small points also arise:—

(*a*) Is the third Judge bound to agree with the acquitting opinion, in the absence of strong and compelling reasons? There is some controversy *In re Narsiah*, A.I.R. 1959 A.P. 313, 318, Paragraph 15, Uma Maheshwaran J. answered this in the affirmative disagreeing with *In re Sitaramayya*, A.I.R. 1953 Mad. 61, 63 (Paragraph 5), 66 (paragraph 18). For a contrary view, *see* Mistri *v.* King I.L.R. (1949) 1 Cal. 43. It would seem that the third Judge is not bound by any such limitation. *Cf. Babu* v. *State* A.I.R. 1965 S.C. 146, paragraph 7.

(*b*) Cannot the third Judge pass death sentence as a matter of law? *See* the doubt expressed by Mack J. in *In re Sitaramayya*, A.I.R. 1953 Mad. 51,64, paragraph 8 in view of the wording of Section 377, Criminal Procedure Code which requires that the confirmation should be by at least two Judges.

NOTE :—From a recent Supreme Court case, it would seem that the proposition enunciated in Pandurang's case (*supra*) cannot be raised to *the pedestal of a rule* for that would leave the sentence to the determination of one judge to the exclusion of the other" *Babu v.* State A.I.R. 1965 S.C. 1467.

Case No. 11.

Sunder Singh v. *State of U.P.*

A.I.R. 1956 S.C. 411 (Not in S.C.R.)

(Bhagwati, Venkatarama Ayyar, Sinha JJ.)

(Judgment by Sinha J.)

The appellant was in intimacy with the wife of the deceased and this was the motive for the crime. On the night of the occurrence, the appellant and the deceased went out together, and only the appellant returned. Blood stained marks were seen on appellant's shoes during the investigation, and he was arrested. Thereafter blood-stained clothes were also discovered with him. A sword was recovered at the scene of offence at his instance, and there was other evidence also. He was convicted and sentenced to death. The conviction was upheld by the Allahabad High Court, which confirmed the sentence also.

While discussing the appeal filed on certificate granted by the High Court under article 134(1)(c), the Supreme Court very strongly criticised the High Court for granting the *certificate*. The High Court's order was described as erroneous. There was no substantial question of law or principle involved and the High Court would not be justified in granting a certificate. Attention of the High Court was drawn to *Nar Singh* v. *State*[1] and *Baladin* v. *State*[2].

Case No. 12.

Basdev v. *State of Pepsu*

A.I.R. 1956 S.C. 488—(1956) S.C.R. 363.

(Bhagwati and Chandrasekhara Aiyar, JJ.)

(Judgment by Chandrasekhara Aiyar J.)

The appellant, a retired military Jamadar was charged with the murder of a young boy aged about 16 years. They along with others went to attend a marriage in another village and went to the house of the bride to take the midday meal. Some persons has settled down in their seats and some had not. The appellant who was very drunk and intoxicated, asked, the boy to step aside a little so that he may occupy a convenient seat, but the boy did not move and the appellant whipped out a pistol and shot the boy in the abdomen. The boy died. It was found that though the appellant was under the influence of drink, he was not so much under the influence that his mind was so obscured that there was incapacity in him to form the required intention.

His drunkenness and absence of pre-meditation were taken by the Sessions into account regarding the sentence.

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1. A.I.R. 1954 S.C. 457—1955 S.C.R. 238.
2. A.I.R. 1956 S.C. 181—(Not in S.C.R.).

He was therefore convicted of murder under section 302, but awarded the lesser penalty.

An appeal to the PEPSU High Court was unsuccessful. The Supreme Court granted special leave, *limited to the question,* whether the offence committed fell under section 304 of the Penal Code, having regard to the provisions of section 86 of the Penal Code.

The Supreme Court *held,* that while it was true that drunkenness which renders the accused incapable of entertaining requisite intent should be taken into consideration along with other facts proved inorder to determine whether or not he had this intent, yet in this case the drunkenness had not proceeded to that degree. The accused had failed to prove such incapacity as would have been available to him as a defence. The offence was not reduced from murder to culpable homicide and "the conviction and sentence are right.".

The case contains an excellent discussion of the effect of *drunkenness* and approves of the proposition laid down by the House of Lords in *D.P.P.* v. *Board*[1] and summarised in Russel on Crime, 10th Edition, page 63 on the subject.

Case No. 13.

Narayanan v. *State of Travancore-Cochin*

A.I.R. 1956 S. C. 99 (Not in S.C.R. Bose, Jagannadhadas and Sinha JJ.)

(Judgment by Bose J.)

Appellant was convicted under section 302 *for murdering one 'A' and sentenced to death.* There was longstanding litigation in which the appellant and the deceased were on opposition sides. There was a fight between the son-in-law of the deceased and the appellant. The deceased, not participating in the fight, merely asked the son-in-law to stop fighting, and said that he would settle their dispute. Thereupon the appellant stabbed the deceased with a pen-knife which he drew out from his waist, and hit him on the chest causing injury which eventually killed the deceased. The injury was sufficient in the ordinary course of nature to cause death. Two special facts to be noted are, that the fight was started by a slap by the son-in-law on the face of appellant, resulting in a minor scuffle between the two; and that the pen-knife was drawn out by the appellant from his waist. He was convicted under section 302 and sentenced to death.

The Supreme Court upheld the conviction and held that exception 4 to section 300 did not apply, since it was impossible to say that there was no undue advantage taken when the accused stabbed the unarmed person who had no threatening gesture and merely wanted to stop fighting.

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1. 1920 A.C. 479.

On the question of sentence the Supreme Court made the following observations while reducing it to transportation of life:—

"We feel the lesser sentence is called for, because the slap on the face evidently made the appellant who appears to be a hot-blooded man *lose control of himself*. That would not afford justification for killing an innocent bystander who intervened with a mild admonition to the appellant's adversary to stop fighting. But we feel that on the question of sentence this is not the type of case in which the death sentence is called for. There was no *premeditation* and the knife was not ready in the hand but was drawn from the waist after the appellant had been slapped and the qurrel between the (son-in-law) and him had started."

Case No. 14.

R. Venkalu v. *State of Hyderabad*

A.I.R. 1956 S.C. 171

(Bose, Jaganadhandas & Sinha JJ.)

(Judgment by Sinha J.)

The accused set fire to the cottage in which the deceased was sleeping. They also took care to lock the door from outside, so that servants sleeping outside could not give help, and to prevent villagers from bringing help to the person who was being burnt alive.

(There was a longstanding dispute about land). They were convicted under section 302, Indian Penal Code and sentenced to death. The High Court confirmed the sentence. On appeal (by special leave) to the Supreme Court, the Supreme Court confirmed the conviction, and observed[1] as follows:—

"The circumstances disclosed in the evidence point to the conclusion that the offence was committed after a *pre-concerted* plan to set fire to the cottage *after the man* had as usual occupied the room and gone to sleep. There is no doubt.....the charge of murder has been brought home.....and that in the circumstances there is no question but that they deserve the extreme penalty of the law".

1. Paragraph 10 in A.I.R.

Case No. 15

Wazir Singh v. *State of Punjab*

A.I.R. 1956 S.C. 754. (Not in S.C.R.)

(Bhagwati & Ayyar J.)

(Judgment by Bhagwati J.)

X and Y were charged under section 302 and 34 Indian Penal Code with the murder of S. Both were armed with rifles and had the common intention of killing B, but the shot fired by them at B resulted in the death of S. Some of the injuries received by S were sufficient in the ordinary course of nature to cause death, but it was not established which of the two accused was responsible for those fatal injuries. The Sessions Judge convicted both and passed the sentence of death. The High Court in the confirmation proceedings confirmed the sentence of death on X but reduced the sentence on Y to transportation for life.

X appealed by special leave to the Supreme Court, the appeal being limited to the question of sentence only. Contention of X was, that the common intention to kill B could not, by section 301, be transferred to the murder by B of S, because there was at no time any common intention to murder S. Held, on the evidence on record there was nothing which could necessarily lead to the conclusion that it was the appellant X *who was responsible for inflicting the fatal injuries on the deceased.* If it was doubtful as to who out of the two responsible, there was nothing to choose between X and Y. If Y was awarded the lesser penalty, there was equally good reason in favour of X also. Further, the act of the Appellant X would certainly fall within section 326 involving transportation for life. Under these circumstances, there was no justification for confirming the death sentence awarded to X. The High Court should not have distinguished the case of X. Conviction under section 302 read with 34, confirmed, but sentence reduced to transportation for life.

Case No. 15A.

Ram Chandra v. *State of U.P.*

A.I.R. 1957 S. C. 381, 387, paragraph 6.

(Jagannadhadas, Imam and Govinda Menon JJ.)

(Judgment by Jagannadhadas J.)

In this case, there was no tangible evidence (direct or circumstantial) of the *murder.* The Supreme Court observed, "It is true that in law a conviction for an offence does not necessarily depend upon the *corpus delicti* being found." But, on the evidence, the Supreme Court gave the benefit of doubt to the appellants as regards the

offence *of murder,* and set aside the conviction for murder and sentence of death confirmed by the High Court of Allahabad.

The case was one of conspiracy to extort Rs. 10,000 from one C by kidnapping and murdering his son aged about 14 years. On the facts, the Supreme Court regarded it as proved that the appellants had *kidnapped* the boy. Findings of the lower courts on offences under section 364 (kidnapping) and section 386 (extortion), Indian Penal Code were maintained and sentences on those counts confirmed.

Case No. 16.

Brij Bhukhan v. *State of U.P.*

A.I.R. 1957 S.C. 474 (Not in S.C.R.)

(Jagannadhadas, B. P. Sinha and Imam JJ.)
(Judgment by Imam J.)

The High Court, while upholding the conviction of the appellants under section 302 read with section 149, reduced the sentence of death on some of the accused to transportation for life but did not reduce the sentence of death passed on appellant P. Held, *merely because leniency* was shown to some appellants was *no ground for reducing* the sentence on P shown to be responsible for the killing.

Case No. 17.

Vadivelue Thevar v. *State of Madras.*

A.I.R. 1957 S.C. 614fi 619, (Note in S.C.R.)

Jagannadhadas, Sinha and Gajendragadkar, JJ.

(Judgment by Sinha J)

This was a case of cold-blooded murder, for which the accused had been sentenced *to death* by the sessions Court, East Tanjore, under section 302, Indian Penal Code and the sentence had been confirmed by the High Court of Madras. The accused appealed to the Supreme Court, by special leave.

K was the owner of a tea shop and at about 11-30 p.m. while he was busy preparing tea for a customer, the two appellants rushed into the premises. They attacked K and dragged him out of his shop to the road, and the first appellant gave him several blows in the front part of the chest with an "aruval" (cutting instrument about 2 feet long including the handle). K fell down on his back and cried out for help. His wife tried to rescue him and put his head into her lap. Soon afterwards realising that K had died, both the appellants returned, K's wife placed his head on the ground and went and stood on the steps of

the tea stall. The first, appellant made the body of K lie with his face downwards and gave a number of cuts in the head, the neck and the back. These injuries were such as to cause instantaneous death.

The Supreme Court, while *dismissing the* appeal, after positions of importance. First, it was argued that the propositions of importance. First, it was argued that the prosecution case was based entirely on the evidence of one witness—the wife of the deceased, (the other witnesses being not reliable) and that conviction in a capital case could not be based on a single witness. The court rejected this argument as totally untenable. It drew attention to section 134 of the Evidence Act, under which no particular number of witnesses was required for proving any fact, As far back as 1872, it said, the legislature, having considered the pros and cons, had decided that it should not be necessary for the proof or disproof of a fact to call a particular number of witnesses.

If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime would go unpunished. If the testimony of a single witness is found to be entirely reliable, there is no legal impediment to the conviction on such proof. Moreover, if courts were, irrespective of the quality of the evidence of a single witness, to insist on plurality of witnesses, they would be indirectly encouraging subordination of witnesses in situations where only one witness is available. There might be exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver. But where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. The court had, in this case, no reason for not accepting the testimony of the wife "which is the only reliable evidence in support of the prosecution[1].

On this point, see also—

(1) *Mohamed Sugal* v. *The King.*

A.I.R. 1946 P.C. 3.

(Appeal from Somaliland, to which the Indian Evidence Act and the Indian Oaths Act had been made applicable). In this case, the conviction and sentence of death for murder of a half-brother were upheld. Unsworn evidence of a girl of 10 or 11 years was held to be admissible. It was also pointed out that under the Indian Evidence Act, corroboration is not required by statute and goes only to the *weight.* (In the instant case, there was corroborative evidence).

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1. *See* paragraph 12 of the A.I.R.

(2) *Vemireddy* v. *State of Hyderabad,* 1956 S.C.R. 247, 252—A.I.R. 1956 S.C. 379, 381, paragraph 7 and page 380, paragraph 6.

(Observations to the effect that in the facts of the case it would be unsafe to hang four persons on the sole testimony of a dhobi boy, without corroboration). The dhobi boy was not an abettor, he merely witnessed the crime but did not inform anybody on account of the reign of terror that prevailed at that time.

Case No. 18.

Kalua v. *State of U.P.*

A.I.R. 1958 S.C. 180=(1958) S.C.R. 187

(Jaganadhadas, Imam and Govinda Menon JJ.)

(Judgment by Imam J.)

When D was sleeping on a cot, the report of a shot fired woke up the people. They saw the appellant running towards the east, accompanied by others. D died almost instantaneously as the result of the injuries on his chest and stomach, from where pellets were recovered at the time of the *post-mortem* examination. Near D's cot, a cartridge was found. The accused also produced a pistol. The *fire-arm* expert deposed that he (the expert) had fired four test cartridges from the pistol produced by the accused, and found that the individual characteristics of the chamber impressed upon the test cartridges and markings, were also present on the paper tube of the cartridge found near the cot of the deceased.

There was evidence of motive also. (Quarrels as to who should be the guardian of one R. and regarding construction of a wall by the appellant over R's land had been going on).

The appellant was sentenced *to death* for murder of the deceased. Appeal to the High Court was dismissed—Appellant obtained special leave to appeal to the Supreme Court.

The conviction was upheld by the Supreme Court, and appeal dismissed. (There is no discussion as to sentence).

Case No. 19.

Miza Ji v. *State of U.P., A.I.R.* 1959 *Supreme Court* 572=1959 *Supreme Court Journal* 554=(1959) *Supp.* 1*S.C.R.* 952 (Imam, Das & Kapur JJ. Judgment by Kapur J.)

The appellants, 5 in number, went with the common object of getting forcible possession of land which was in

possession of the deceased. Appellant Mizaji was armed with a pistol, his father was armed with a spear and others were armed with lathis. When the complainant's party were told that the appellants were cutting the crop, the complainants protested to the appellant Mizaji's father, whereupon the complainants were threatened by all the members of the accused party that they would be finished if they did not go. Then the father of appellant Mizaji asked Mizaji to fire and Mizaji fired the pistol, as a result of which 'R' was injured, fell down and died half an hour later. All were convicted under section 302 read with section 149 and sentenced to imprisonment for life, but Mizaji was sentenced to death. Appealed to the Supreme Court. The Supreme Court (discussing in detail cases on sections 34 and 149) upheld the conviction. As regards the sentence, the argument of Mizaji was that he did not want to fire the pistol and was hesitating to do so until he was asked by his father, and that the penalty of death should not have been imposed on him. This was repelled by the Supreme Court as Mizaji fully shared the common object. He also carried the pistol from his house and must have been taken to have carried it for using it and he did use it. "Merely because a son uses a pistol and causes *the death of another at the instance of his father* is no mitigating circumstance which the Court would take into consideration".

Case No. 20.

Mohan v. *State of U.P. A.I.R.* 1960

Supreme Court 659 (S. K. Das, Sarkar and Hidayatullah)

(Judgment by Sarkar J.)

(Not in S.C.R.)

Evidence in the case showed that the accused gave the deceased three "peras" and within half an hour the deceased became ill and within two hours he died. It was also proved that the food which the deceased had taken did not contain *poison* and that the deceased did not take any other food apart from the "peras". Chemical examination showed that he had died of arsenic poisoning. (As regards motive, suggestion was that accused had illicit intimacy with the wife of deceased). He was convicted under 302 and sentenced to death.

"The High Court confirmed the conviction. He appealed to Supreme Court with special leave. Supreme Court dismissed the appeal. It pointed out that on these facts, the lower courts had found that arsenic was contained in the "peras". The Supreme Court saw no ground for taking exception to this finding, and the finding inevitably led to the conclusion that the appellant was in possession of arsenic before he gave the peras.

Case No. 21.

K. Subba Rao, Raghubar Dayal and J. R. Mudholkar

Court 1787—(1962) 2 S.C.R. 395.

K. Subba Rao, Raghubar Dayal and J. R. Mudholkar JJ.)

(Judgment by Reghubar Dayal J.)

Appellant along with a number of other persons, assaulted the deceased and his companions on account of a dispute about possession of land. The deceased, etc., also struck the appellant's party. The deceased received injuried and died. Thirteen persons were tried but 10 were acquitted (as the evidence did not prove the case beyond doubt) and 3 were convicted. One contention raised by the appellant was that since 10 persons out of 13 had been acquitted, the remaining 3 persons could not constitute an unlawful assembly and the conviction under section 302 and 307 Indian Penal Code read with section 149 was illegal. This contention was repelled by the Supreme Court, which laid down that if the actual number of persons in the appellant's party was more than 5, the said party would constitute an unlawful assembly, even though only 3 persons had been convicted. Acquittal of the remaining persons would only mean that they were not in the incident. (Question of the sentence not discussed).

Case No. 22.

K. M. Nanavati v. *State of Maharashtra.*

A.I.R. 1962 Supreme Court, 605 (Not in S.C.R.)

(S. K. Das, K. Subba Rao, and Reghubra Dayal JJ.)

(Judgment by K. Subba Rao J.)

A number of points were involved in this case. But for the present purpose, the case is noted for its discussion of the law relating to grave and sudden provocation constituted by confession of adultery by a wife to her husband. The court pointed out, that words and gestures may also under certain circumstances cause grave and sudden provocation in India. On the facts of the case, it was held, that though the confession by the wife of the accused of illicit intimacy with the deceased had caused momentary loss of self-control, yet after this the accused drove his wife and children to a cinema, left them there, went to his ship and took revolver and loaded it, did some official business and drove his car to the office of the deceased and then to his flat and then went to the bed room of the deceased and shot him. Interval between the time of his leaving his house and the time for murder was 3 hours—sufficient for regaining self-control. Hence the case did not fall within exception 1 to section 300 and the accused was rightly convicted of murder. (The High Court had, after hearing the reference made by the Sessions Judge

under section 307, Criminal Procedure Code convicted him of murder, and sentenced him to imprisonment for life. Question of sentence was not discussed before the Supreme Court).

Case No. 23.

Banwari v. *State of U.P.*

A.I.R. 1962 S.C. 1198 (Not in S.C.R.)

Raghubar Dayal

Kapur and Sarkar JJ.)

(Judgment by Raghubar Dayal J.)

A number of points involving interpretation of sections 234 and 239, Criminal Procedure Code and section 271 and amended section 537 Criminal Procedure Code and as to joint trials for offence under section 302 and section 307, Indian Penal Code were decided. But for the present purpose, the point of importance is one of *sentence on B.* B armed with a gun and R armed with an axe passed the field of L. L asked B where he was going. He replied that he was going for shooting birds. L turned back. B fired two shots at L who fell down and died. B and R then proceeded southwards and after going about seven furlongs met Bhagwan who questioned where he was going. B said that he was going to shoot crocodiles. Bhagwan said that there were no crocodiles and asked B to go back. When Bhagwan turned South, B fired a shot at him. Bhagwan sat down and B again fired at him and again fired two more shots. Bhagwan died.

B was found guilty under section 302 Indian Penal Code for murders of L and of Bhagwan and sentenced to death for both the murders. He was also found guilty under section 307 and convicted and sentenced to 8 years' rigorous imprisonment. (This was in respect of an attempt to murder later, after the villagers had pursued the appellant). R was found guilty under section 302 read with section 34 and sentenced to life imprisonment for the murder of L. and of Bhagwan. He was also found guilty under section 307 read with section 34 and sentenced to 5 years rigorous imprisonment.

(There were points regarding irregularities, etc., not relevant for the present purpose). It was urged on behalf of B, that the sentence of death was too severe, as the shots at L were the result of the provocation constituted by certain conversation with B and there was no motive for shooting at L. This argument was repelled, first, because the courts below had not believed B's version of the conversation and secondly, because the conversation even if believed was not such as to provoke B to firing at L twice. Further, there was no justification for firing at Bhagwan *without provocation.* Hence sentence of death was *not* reduced by the Supreme Court.

As regards R, however, it was held that the evidence did not prove the offence against him and that his running away from the scene was merely the result of his anticipating popular reaction. He was acquitted.

Case No. 24

Tara Chand v. State of Maharashtra. A.I.R. 1962, S.C. 130—

SCJ-17..(1962) 2 S.C.R. 775. (Qapur, Subba Rao,

Hidayatullah, Shah and Raghubar Dayal JJ.)

Majority judgment of Kapur, Subba Rao and Shah JJ held that as both the trial court and the High Court had found that the deceased, wife of the accused, had died as a result of burns caused by fire set to her clothes by the accused who had sprinkled kerosene oil on her and this finding was supported by her dying declaration against which no cogent reasons were given, the conviction based on such evidence was sustainable.

The Sessions Judge had convicted the accused only of an offence under section 304, Part I and sentenced him to three years' rigorous imprisonment and a fine of Rs. 100/-. On appeal by the State the accused was sentenced by the High Court to death. The accused applied for certificate to appeal to the Supreme Court under article 134(1)(a), but the certificate was refused and the Supreme Court gave special leave under article 136. Ultimately, however, in this case the majority of the court held that the appellant was entitled to a certificate under article 134(1)(a), because since the appellant had in the trial court been acquitted of the offence under section 302 and convicted under section 304, Part I, the High Court's order reversing the acquittal and substituting an acquittal under section 304 was one of reversing an order of acquittal. Citting *Kishan Singh* v. *Emperor*, *A.I.R.* 1928, P.C.—254—55 Indian Appeals, 390, the court held that acquittal does not mean that the trial must have ended in the complete acquittal, and must include a case where the accused is acquitted of murder but convicted of a lesser offence.

According to the majority judgment, the appeal failed and was dismissed. Question of sentence was not as such in issue.

The minority.—Raghubar Dayal and Hidayatullah JJ.— was of the opinion that it was not satisfactorily proved that appeallant committed the murder, and therefore allowed the appeal.

Case No. 25

Muniappan v. *State of Madras.* A.I.R. 1962, S.C. 1252—(1962) 3 S.C.R. 869. Kapur and Hidayatullah JJ.)

(Judgment by Hidayatullah J.)

After making a dying declaration which was complete in itself, the declarant suddenly collapsed so that his thumb impression could not be affixed in his life time and was taken by the Sub-Inspector after his death on the statement as recorded. The court observed that though the Sub-Inspector should have left the document as it was, yet he had no improper motive in taking the thumb impression after death. The *dying declaration* was a complete statement and could be relied upon. In fact it needed no corroboration—*Khushal Rao* v. *State of Bombay,* 1958, S.C.R. 552—A.I.R. 1958 S.C. 22. There was in this case, however, other incriminating evidence also. Conviction for murder was upheld. (Question of sentence was not discussed as such).

Case No. 26.

Piare Dusadh v. *Emperor.* A.I.R. 1944, F.C. 1, 14,—I.L.R. 23, Patna 159—I.L.R. 1944 Nagpur 300—, 1944—6 F.C.R. 61. (Spens C. J., Varadachariar and Zafrulla Khan JJ.)
(Judgment by the Chief Justice.)

These appeals from judgments of different High Courts were heard together as raising common question of law regarding the special Criminal Court Ordinance. For our purpose, the case is of interest only for the observations regarding death sentence. In one of the appeals before the court, the death sentence had been imposed several months ago and the appellants had been lying ever since under threat of execution, delay having been caused largely by the time taken in proceedings regarding constitutionality of the ordinance creating the courts, etc. The Court observed, that it had power to substitute lesser sentence where there had been in ordinate delay (in cases which came before it) even though the sentence when originally imposed was right. But this was a jurisdiction which any court should be slow to exercise, being a jurisdiction closely entrenching on the powers and duties of the executive. Accordingly, in cases Nos. 40, 41 and 42, the court refused to reduce the sentences from death the transportation, in view of the other circumstances of those cases. (But, the courts said, it had no doubt that the executive would give full consideration to the period that elapsed and the mental suffering undergone by the convict.).

In case No. 47, the appellant was a young man of 25, twice widowed, who had killed his aunt (father's wife)

and who had, after being sentenced to death. Lost his reason while awaiting the execution and was now detained as a lunatic. The court reduced his sentence to transportation for life on the ground that the appellant *probably* suffered from an *unbalanced* mind.

Case Nos. 27 and 28.

Rajagopalan v. *Emperor*, A.I.R. 194, F.C. 35, 36, 38 1944, F.C.R. 169 (Spens C.J., Varadachariar and Zafrulla Khan JJ.)

This case is of importance for the proposition laid down (by Zafrulla Khan J., Spens C. J. Concurring) that in a case of conviction under section 302 read with section 149, Indian Penal Code the sentence must in all cases be transportation for the life could not be accepted. The question of sentence is to be decided on the facts of each case. (On the facts of the case, it was held that since there had been a finding that the appellants were among the seven or eight persons, who inflicted large number of injuries, the sentence of death was appropriate).

Varadachariar J. had, on the facts some difficulty in sustaining the sentence of death on accused No. 1, as he had a doubt whether accused No. 1, inflicted any wound. But, since the question was bound up with inferences of facts with which "it was not the ordinary practice" of the Federal Court to interfere, and since his brother judges thought that death sentence was justified, he left the matter there.

Case No. 29

Bhadu. (1896), I.L.R. 19 All. 119.

It was held that it was not advisable to convict the accused solely *on the plea of* guilty by the accused in a capital case, where there is any doubt as to whether the accused fully understood the meaning and effect of the plea.

Note:—For other cases on this point, see the undermentioned decisions of Bombay[1] and Madras[2]. The Bombay case reviews the case law also, and holds that a plea of guilty can be accepted only when there are proper safeguards, which must include representation by counsel.

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1. Abdul Kader Allarakhia, (1946), 49, Bombay Law Reporter, 25—A.I.R. 1947 Bom. 345 (Special Bench), (Stone C.J., Sen and Rajadhyaksha JJ.).

2. Aiyavu. (1885) I.L.R 9 Madras 61.

The Bombay Special Bench of *Abdul Kedar Allarakhia*[1] is interesting. The appellant had been convicted by Lokur J. and a special jury under section 302, Penal Code for the murder of his own daughter and only child—a girl of about 14 years—and found by unanimous verdict to be guilty and sentenced by the Judge to transportation for life.

On appeal under section 411A, Criminal Procedure Code the conviction and sentence were set aside, and the case sent to the next Sessions to be dealt with according to law. The reasons for setting aside the conviction were these. The accused had asked the committing Magistrate for legal aid. But, at the opening of the Sessions, he was arraigned to plead without counsel. So arraigned and asked to plead, he said that he was guilty. In the charge to the jury, the judge referred to the plea of guilty, though the judge made it clear that he (the Judge) did not accept the plea and that the plea was not before the Jury. These two "irregularities—taking the plea of guilty without counsel, and referring to it in the charge to jury—were held to vitiate the trial. (Stone C.J.[2] also observed that without proper safeguards, the plea of guilty should not be accepted. These safeguards he said, must include the accused's representation by counsel who must be in a position to answer the questions of the Court with regard to whether the accused knows what he is going and the consequences of his plea and also a medical report or medical evidence upon him). Lacuna in section 272, Criminal Procedure Code was also pointed out by Sen J. and Rajadhyadsha J[3]., observing that it did not cover a case where the accused pleaded guilty and the court did not wish to convict him in exercise of the discretion conferred upon the Court under section 272(2).

Case No. 30.

Umi Kom Joyaji (Bombay) (1911) *Chandavarkar*[1] and *Heaton J.*

A barren woman who killed another's child to get children was sentenced to death.

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1. *Abdul Kader Allarakhia* A.I.R. 1947 Bom. 345 (Stone C.J., K.C. Sen and Rajadhyaksha JJ.) (S.B.).

2. Paragraph 4 in the A.I.R.

3. Paragraph 26 and 36 in the A.I.R. dissenting on this point from *Mahomed Yusuf* v. *Emperor*, A.I.R. 1931, Calcutta 341—I.L.R. 58 Calcutta 1214, 1219.

1Judgment was by Chandavarkar J. These were confirmation cases No. 112 & 119 of 1911, dated 23-3-1911 cited Ratanalal, (1961) p. 786 footnote 17. (Unreported).

Case No. 31

Kali v. *Emperor,* A.I.R. 1923 All. 474(2)—I.L.R. 45 All. 143 (Stuart J.)

In this case, the Sessions Judge of Meerut requested the High Court to set aside the conviction recorded by his predecessor (and affirmed in appeal by the High Court), on the ground that on certain material that had since come to the knowledge of the District Magistrate the conviction was wrong. This application by the Sessions Judge for revision, it was held, could not be entertained. The District Magistrate may, it was suggested, refer the matter to the Local Government for exercising its power under section 401 and 402, Criminal Procedure Code.

(The person concerned had been sentenced under section 395, Indian Penal Code to 10 years rigorous imprisonment for dacoity. After his conviction, one R was arrested and R made a confession regarding several dacoities including this one, and said that the convicted person was not in the gang at all.).

Case No. 32

Bandhu v. *Emperor,* A.I.R. 1924, All. 662, (Stuart and S. M. Sulaiman JJ.)

In this case the appellant had been found guilty by the Sessions Judge of murder under section 302, Indian Penal Code, and sentenced to death. One D had been brutually attacked with lathis and beaten into unconsciousness, dragged away along the ground, leaving traces of blood dragged by the assailants until they reached the Koilar river. D had never been seen since then. The attack was committed at about mid-night.

The High Court (on appeal) was unable to arrive at a conclusion that D was dead and therefore could not uphold the conviction for murder, but on the facts, the crime of an attempt to murder under section 307 was held to have been committed, and, therefore, the conviction was altered to one under that section, and the appellant sentenced to transportation for life.

Case No. 33

Ghulam Jannat v. *Emperor* A.I.R. 1926 Lah. 271—I.L.R. 7 Lah. (Shadi Lal C. J. & Jafar Ali J.)

(Judgment by Shadi Lal C.J.).

A young girl of 18 years married to a boy of 13 years contracted intimacy with another person and became pregnant and gave birth to an illegitimate child in Multan. To conceal her shame, she strangled the child. She was convicted of murder and sentenced to transportation for

life. Conviction and sentence were upheld, by the High Court. But it made a recommendation to the Local Government to exercise its powers under sections 401 and 402, Criminal Procedure Code and commute the sentence to one of rigorous imprisonment for 3 years.

Case No. 34

MSt. Daulan v. *Emperor,* A.I.R. 1926, Lahore 144.
(Scott Smith and Fforde JJ.)

A woman aged 15 murdered her step-son by striking a blow on his head with a "Kahi". She and her husband were not getting on well, and the murder was committed to avenge herself against her husband. The Sessions Judge convicted her under section 302 Indian Penal Code and sentenced her to death.

On appeal, the High Court in view of *the age* and the other *circumstances,* reduced it to transportation for life, and further recommended local Government to take action under *section* 401, Criminal Procedure Code.

Case No. 35.

Ram Nath v. *Emperor,* I.L.R. (1926) 1 Lucknow 327.—A.I.R. 1920 (Sir Louis Stauart, Chief Judge, Oudh—234 and Mohammed Raza J.)

In this case, on Prag Gir (and others) had been attacked by some assailants at night with lathis. The dead body of Prag Gir had not been recovered, nor had he himself returned alive. There was some delay in making of the complaint by those who survived. The Sessions Judge had found five persons guilty of the murder of Prag Gir, but refused to sentence them to death, giving this reason[1]:—

> "I think it is a legitimate reasons to say that when in a case like this the dead body is not found, there is a reasonable case where sentence of transportation may be awarded instead of the heavier sentence.".

The Chief Court "disassociated" itself entirely from this view, and stated, that the question of sentence should be determined upon the gravity of the offence irrespective of the circumstances whether *the body* or has not been discovered. A decision of the Allahabad High Court was explained as merely holding that *death of* the victim must be proved and not as holding that dead body must have

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1Page 330 in the I.L.R.
1Bandhu, A.I.R. (1924), All. 662.

been discovered. (On the facts, however, in view of the unreliability of the evidence, the conviction was reversed).

NOTE:—(a) To the same effect are the following cases:—

(1) *Bhagirath* (1880), I.L.R. 3 All. 383, 384 (Straight J.).

(2) *Maya Basuva,* (1950) 1 M.L.J. 428—A.I.R. 1950 Mad. 452.

(3) *Bhairon Lal,* (1952) I.L.R. 2 Raj 669—A.I.R. 1953, Raj. 131.

(4) *Munda* A.I.R. 1931 Lah. 25.

(5) In *Raggha* v. *Emperor,* A.I.R. 1925, All 627, 636, Middle, and 636 bottom—I.L.R. 48 All. 88, (F.B.), Sir Grimwood Mears C.J. and

Lalit Mohan Banerji, J. held that the absence of the recovery of the dead body should not be taken into account as regards sentence, if the court was otherwise satisfied about the guilt of the accused.

(b) Mukerji, J. however, though upholding the conviction under section 302 read with section 114, Indian Penal Code expressed the view that the sentence should be reduced to transportation for life. He had no "reasonable" doubt about the guilt of the accused. But in view of the fact that the dead body had not been recovered, he had a doubt about the proper sentence. "There are degrees of doubt and there is no harm in being cautious." There may be a doubt which, (though less than a reasonable doubt) might still require that the Judge be cautious in passing the sentence. There were cases where, if the dead body was not recovered or the facts were not clear, the lesser sentence was given. He cited:—

(i) *Queen* v. *Buddruddeen,* 11 W.R. (Cr.) 20 (facts not given).

(ii) *Queen Empress* v. *Gharya,* I.L.R. (1895) Bom. 729 where Jardine and Ranade JJ. while accepting an appeal from an acquittal, passed a sentence of transportation because all the facts were not clear;

(iii) Kashna (1894) Criminal Reference No. 7 of 1894 (Bombay), (See Ratan Lal, 1961, page 778). In this case the accused had thrown a girl of less than two years into a canal, where the water was deep, and swollen by the monsoon. The High Court held him guilty merely to attempt to commit murder.

(c) For other cases on the point, see:—

(i) Rajkumar Singh, A.I.R. 1928. Pat. 473;

(ii) Azam Ali, A.I.R. 1929 All. 710.

(iii) Adu Shikdar, I.L.R. 11 Cal. 635, 642, 644.

(d) For an English decision, see R. V. Onufrejczy, (1955) 1 All Eng. Report, 247 (C.C.A.) in which, a conviction for murder was upheld on other evidence, even though the dead body had not been found.

(e) The celebrated New Zealand case of R. *v.* Harry (1952) N.Z.L.R. 111 (N.Z. Court of appeal) also holds that discovery of dead body is not essential.

Case No. 36

Tola Ram v. *Emperor* A.I.R. 1937 Lah. 674-I.L.R. 8 Lah. 684 (Zafar Ali and Tek Chand JJ.)

Accused was convicted of murder. He was suffering from epileptic fits and, because of that, was liable tolose self-control on the slightest provocation. He was sentenced to transportation for life. The High Court upheld the conviction and sentence. It also made a recommendation to the State Government for exercise of the prerogative of mercy, under section 401 Cr. P.C. and for "substantial reduction" in the sentence.

[Cites following cases where similar recommendation was made—

Ramzan v. *Emperor,* (1919) 30 P.R. 1918 Cr.-20 Cr. L.J. 1.

Lachhman v. *Emperor,* A.I.R. 1924 All. 413-I.L.R. 46 All. 243—Q.E. *v.* Kedar, (1896) I.L.R. 23 Cal. 604].

Case No. 37

Preman v. *Emperor*

A.I.R. 1928, Lahore 93.

(Shadi Lal C. J. and Addison J.)

In this case the fatal attack was not premeditated and the victims were injured in the *heat of passion on a sudden quarrel.* There was, however, no fight and the requirements of exception 4 to section 300, Indian Penal Code had not been established. A violent blow was delivered with a "dang" on the head and therefore the court observed, the assailant must be deemed to have intended to cause bodily injury which he knew was likely to cause death. Conviction under section 302 was upheld, but sentence was reduced from death to transportation for life.

Case No. 38

Harnamun v. *Emperor*

A.I.R. 1928 Lah. 855

(Shadi Lal C. J. and Coldstream J.)

(Judgment by Shadi Lal C.J.)

The accused and one K killed one Narain Singh and his wife while they were sleeping on the roof. K was attacking the husband and the accused was seen striking the wife with a hatchet in his hand. Blood stained clothes were also recovered from the accused. Conviction under section 302 was upheld by the High Court.

As regards sentence, the High Court noted that on the one hand, the accused was responsible directly for the murder of the wife and constructively for that of the husband, and that the double murder was committed after premeditation and in cold blood. On the other hand, the accused was a *boy of* 17 and, while youth alone was no extenuating circumstance, there was the additional circumstance that the accused had no *personal enmity* with the victims and was probably a tool in the hands of the victims' enemies who had been acquitted by the Sessions Judge. Hence the sentence was reduced to transportation for life.

Case No. 39

Shafi Khan v. *Emperor*

A.I.R. 1929, Patna 161, = I.L.R. 8 Patna 181,

(Courtney—Terrell, C. J. and Macpherson J.)

(Judgment by the Chief Justice)

In this case, 18 persons were convicted by the Sessions Judge under section 302, Indian Penal Code for the murder of a constable M. Two of them were sentenced to death, and the remaining to transportation for life. The facts were these. The accused who had been sentenced to death had long been suspected as dangerous criminals implicated in various dacoities and robberies. There were complaints of thefts against them, and also a proceeding under section 110 Cr. P.C.[1] pending against them. One prosecution witness in one of these proceedings lodged an information at a police station, charging the appellants and other unknown persons with the theft of 6 bullocks. The F.I.R. was recorded and a police party sent to the village for investigation. Thereafter, a party consisting of constable M (deceased) and another constable, etc., was sent to arrest the appellants by the Sub-Inspector. Two hours

1 Judgment through slip mentions Indian Penal Code.

after this, the Sub-inspector himself, set out, taking with him a shot gun and six cartridges. When he arrived near the place, he heard an outcry that the constables he had sent had been beaten. He went to the spot and found the constable M (deceased) with his arm broken and bound in a sling, and the other constable had marks of lathi blows. It appears that constable M when he tried to arrest appellants S and I was resisted, and then about 14 or 15 men including the appellants ran up with lathis and beat the constables inflicting the injuries. The Sub-Inspector, again, after recording the F.I.R. for this incident, went in the direction of the house of appellant S for investigating the matter of the theft and for arresting the appellants. His party was again opposed by a big mob of persons armed with spears and lathis. The Sub-Inspector's party included the injured constable, M.M tried to remonstrate with the mob, but he was immediately struck down by a spear wound in the chest and a lathi blow on the head, each of which wounds was separately of a fatal character. The attack by the mob still continued, and the Sub-Inspector had to fire. Three persons in the mob, R. S. and J. armed with spears, took refuge in a house, R. S. and J. were arrested by force by the police.

The High Court, while confirming the conviction, rejected the argument that those *appellants* who had been sentenced to death should be awarded the lesser sentence. The argument was, that where a large number of persons had participated in a murder and where it may be undesirable that *a large number* should undergo the death penalty, only those who took the active part were selected for death penalty. The High Court rejected this as unsound. In its opinion *prima facie* all the persons convicted should be sentenced to death penalty, and it was only where special circumstances were shown in favour of any individual that the court should sentence him to the lesser penalty. There were no special circumstances in favour of the appellants who were sentenced to death. In its opinion, R. S. and J. armed with lethal weapons and taking a foremost place in the assault should also have been sentenced to death, but it was not the practice of the Court, except in extreme cases, to enhance the sentence. (Hence their sentence was not enhanced).

Case No. 40

Emp. v. *Dukari Chandra Karmakar,*

A.I.R. 1930 Calcutta, 193, 33 C.W. No. 1226

(C. C. Ghose J. on difference of opinion between Cuming J. and S. K. Ghose J.)

Accused was charged with murdering his wife. The wife was staying with her father, and apparently there

was at the time of marriage some arrangement that accused should stay with the father-in-law (as a ghar-jamai). The accused was not satisfied with this arrangement, and went away to his house. The girl remained with her father, though she did go to her husband's house from time to time. Relations between the accused and the father-in-law were not cordial. On the day of occurrence, the accused went to his father-in-law's house and stayed there for a day and also on the next day. Next day evening he went out returned at night, and, after taking his meal retired to the upper room, where his wife joined him; and the door was bolted. Next morning, the aunt of the wife, seeing that the wife did not come down, went upstairs to call her. On pushing the door, she found the wife dead in a pool of blood with a number of wounds. The accused was not there. He remained absconding for six weeks and surrendered himself after a proclamation was issued and his property attached.

On these facts, in the Sessions Court, five members of the Jury found him not guilty and the remaining four found him guilty. The Sessions Judge referred the case to the High Court under section 307, Criminal Procedure Code. Both the Judges hearing the reference in the High Court agreed about the guilt of the accused; but there was difference of opinion about *the sentence.* Cuming J. observing that it was a cruel and *brutal* murder perpetrated apparently without motive on a defenceless girl in her sleep, thought that there was no ground for not giving him the sentence of death. *Quoting section* 367(5) *Criminal Procedure Code* (as it stood then), he observed:—

> "It is clear that the sentence of death has been considered as the normal sentence and the sentence of transportation for life as the abnormal sentence for which reasons are required to be given."

S. K. Ghose J.[1] regarded the sentence of transportation for life as sufficient. First, he pointed out, the murder was committed in a fit of desparate resentment in circumstances for which the accused was not entirely to be blamed. Secondly, the accused had borne a uniformly good character, had been good towards his wife's relations and not outwardly quarrelsome. Thirdly, his last visit was one of many that had ended in failure. Fourthly, it was found that the weapon had not been taken by the accused, but was already there in the room, being a sacrificial knife

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1. The judgment of S.K. Ghose J. was regarded as illuminating by the editor of the C.W.N. *See* (1929) 33 C.W.N. (journal) page 185.

kept in the room. (The father-in-law of the accused was a professional sacrificer, who kept the knife there to avoid its use by children.) The provision in the Criminal Procedure Code, section 367, was regarded by S.K. Ghose J. as a one of *procedure only*. It did not take away the Court's duty to see that in a particular case the punishment fitted the crime. Reasons for *death* sentence, it was true, were not required to be stated by any express provision in section 367, "but these reasons must exist in the mind of the Judge. It is unthinkable that the Judge will pass a sentence of death in preference to the alternative sentence without good and sufficient reasons.".

The matter was referred to C. C. Ghose J. owing to this difference of opinion. C. C. Ghose J. agreed with S. K. Ghose J. that the facts of the case justified the lesser sentence, because the accused committed the murder in the fit of *desperate resentment*, and was a mere lad of 20 years. Moreover, his repeated visits had ended in failure. "The question of appraising the sentence to be passed on a prisoner is at all times a difficult one. But I think in this case it would not be straining the language of section 367 if I were to hold that the prisoner should be sentenced to transportation for life." (Apparently, he agreed with S. K. Ghose J. on the interpretation of section 367 Criminal Procedure Code also, though the point is not discussed in his judgment.)

Case No. 41

Emperor v. *Bhagwan Din*

A.I.R. 1931, Oudh, 89 (1)

(Raza and Pullan JJ.)

Accused was found guilty of murdering a small boy of six, for his ornaments. He was sentenced to transportation for life. For imposing the lesser sentence, the Sessions Judge had given three reasons—(i) the accused was a young lad of 18; (ii) he may still reform; and (iii) there was no premeditation. The Local Government applied in revision for enhancement. The Chief Court heard the appeal of the accused also regarding conviction. The Chief Court upheld the conviction.

As to sentence, the Chief Court observed that there is no law which justifies a court in not passing a sentence of death on any person merely because he is young. All persons who can understand the nature of their acts are liable to the extreme penalty of the law. Youth may be taken into consideration where the accused is not able to understand the nature of his act or acts under the influence of others. But this was *deliberate murder for* greed. Next, the consideration that the accused may still reform

"*should be excluded entirely in all questions where a capital sentence can be inflicted.* It is not for the legislature to reform murderers." The sentence of death was primarily a deterrent one. The lesser sentence was imposed where some extenuating circumstance was there and it was not necessary in the interest of the public at large that the sentence of death should be inflicted. The sentence was enhanced to death.

Case No. 42

Tiri v. *Emperor*

A.I.R. 1931, Rangoon 171

(Maung Ba and Dunkley JJ.)

Youth alone is not an extenuating circumstance, but it can be taken into consideration with other facts.

In the case under discussion a young man, *probably under* 18, had been sentenced to death for murder of his own uncle because of some dispute regarding flow of water in a channel. The injury was an incised wound, cutting right through the spine. The High Court dismissed the appeal of the accused against the conviction, and regarded the sentence as quite proper, as this was a cold-blooded and premeditated murder at a time when the deceased was peacefully engaged in his plough and was unarmed.

Case No. 43

Aung Hla v. *Emperor.* A.I.R. 1931, Rangoon 235—I.L.R. 9 Rangoon 494 (Special Bench). (Page C.J. mya Bund Baguley JJ.)

(Judgment by page C.J.)

In this case, 103 persons in all were charged under section 131, Indian Penal Code (waging war against the King). Of these, 15 were sentenced to death, 56 to transportation for life, 5 discharged, 24 acquitted and there were found to have absconded. Persons sentenced to death or transportation for life appealed to the High Court, and the High Court also served notices against 23 of the accused for enhancement of their sentence of transportation to death. Ultimately, the High Court confirmed the conviction of several persons, and enhanced the sentences of 3 persons. It stressed the gravity of the offence under section 121 describing it as the most grievous offence that can be committed against the State, and said, that rebels who waged war were guilty of the most heinous of all crimes. The judgment also contained a lengthy discussion of the meaning of section 30. Evidence Act. (Waging war in this case was constituted by deliberate attack on the armed forces, to prevent collection of taxes).

Case No. 44

Gul v. *Emperor,* A.I.R. 1932, Lahore 483. (Agha Haidra **J.**)

This was a case of rape of a young girl, discussed here to show the unusual circumstances in which it was committed. The girl aged 16 or 17 years had gone to the hills for cutting grass with her sister and other young children at about "rotiwela" (between 10 and 11 in the morning) M and A (accused) met them. Both were armed with a gun, and M also carried a big dagger. They got hold of the girl and dragged her to the hills. On her offering resistence, M struck her several times with the buttend and of the gun. The accompanying three children could offer no resistence and returned to the village. Before help could come, the girl had already been raped by M (apparently, twice). She was alleged to have been raped by A also.

The trying Magistrate (empowered under section 30 Criminal Procedure Code) had sentenced both M and A to three years' rigorous imprisonment under section 366, and as regards the offence under section 376 Indian Penal Code M was sentenced to three years' and A to one year's rigorous imprisonment. The sentences were to run consecutively.

The High Court, while dismissing their appeal, enhanced the sentence of M under section 376 from three years' to five years, in view of the circumstances of the case and in view of the fact that the accused were armed with deadly weapons and by a show of brute force they overawed the children and ragged away the girl at the point of the gun, and committed rape. (A was acquitted of rape, as his part in relation to that offence was not very clear.).

Case No. 45

Nawab v. *Emperor,* A.I.R. 1932 Lahore, 308
(Shadi Lal C.J. & Abdul Qadir J.)
(Judgment by Abdul Qadir J.)

This was a case of murder committed by youth of tender age, who was provoked by the conduct of the deceased in having sexual intercourse with a relative of the accused in an open manner three days before the murder. Case was recommended for exercise by the local Government of its prerogative of mercy.

(Age of the Youth was taken to be 15 or 16 years.).

Case No. 46

Kartar Singh v. *Emperor,* A.I.R. 1932 Lahore 259, 260.
(Tek Chand & Jai Lal JJ.)
(Judgment by Tekchand J.)

This was a case of young boy of 17 years participating in murder under the influence of his father and elder

brother. He was sentenced to transportation for life by the Sessions Judge. High Court agreed, and also recommended to Local Government to reduce it under section 401 Criminal Procedure Code to four years' rigorous imprisonment.

Case No. 47

Mt. Dhulan v. *Emperor,* A.I.R. 1934 Lahore 31.
(Jai Lal and Bhide JJ.)

(Judgment by Jai Lal J.)

A woman of 20 years and weak intellect was turned out by her husband on account of her weak intellect and led a roaming life. She became pregnant and was turned out by the relations. She gave birth to a child. Owing to poverty and ill-treatment by the relations, she threw the child—a girl of 11 days—in a pond. She was sentenced to transportation for life by the Sessions Judge.

The sentence was affirmed by the High Court. But in view of the circumstances, recommendations was made by the High Court to the Local Government for reducing the sentence to one one year's rigorous imprisonment under section 401, Criminal Procedure Code.

Case No. 48

Kaim

A.I.R. 1935, Sind 44, 46

(Ferrers J. C. and Dadiba C. Mehta A.J.C.)

It was held that the Baluchi custom of killing for *unchastity* is not a mitigating circumstance.

Case No. 49

Emp. v. *Mominuddi Sardar*
A.I.R. 1935. Cal. 591, 594, 595.
(Patterson and Cunliffe JJ.)

(Judgment by both)

Penitance of the accused is not a ground for imposing the lesser penalty[1]. (Nor is the fact that accused is the only son of his widowed mother). But penitence can perhaps be taken into account by the local Government.

(Sentence was, however, reduced in this case on other grounds—that of *provocation* and *the age* of the accused, who was 22 or 23 years).

1There are, however, observations in *Emp.* v. *Nirmal Jiban* A.I.R. 19355 Cal. 513, 525 which suggest that if the accused who were young had expressed, remorse for their offence, court might have imposed lesser penalty.

1Paragraph 8 in the A.I.R.

Case No. 49A

Emp. v. *Nirmal Jiban*

A.I.R. 1935, Cal. 513, 525, 526

(Costello, Bartley and Henderson JJ.)

In this case, the High Court confirmed the sentences of death on three persons—terrorists convicted of by the Commissioners (Special Tribunal) appointed under the Bengal Criminal Law Amendment Act, 1925 of the murder of Mr. Burge, District Magistrate, Midnapur. The Commissioners, while noting their "extreme youth" (exact age not given in judgment), had also observed that the object of their activities was a "deadly" one. The High Court agreed and stated that if the accused had shown that they were impressionable youths dominated by others and had expressed regret, extenuating circumstances might have been pleaded. But that was not the case here.

Case No. 50

Rangappa Goundan

(1935), I.L.R. 59 Madras 349

It was held that consent or *admission by* the Advocate of the accused to dispense with the medical witness in a murder case cannot relieve the prosecution of proving the nature of the injuries and the fact that they caused death. (It was also held in this case that a *post mortem* report is no evidence and can only be used to refresh the memory of the person who prepared it.)

Case No. 51

In re Rangappa Goundan

A.I.R. 1935 Lahore 337.

(Cornish and K. S. Menon JJ.)

(Judgment by Cornish J.)

I.L.R. 16 Lahore 1137.

Young C.J. and Abdul Rashid J.

(Judgment by the Chief Justice)

In this case the High Court enhanced the sentence of transportation for life to death in the case of all the three accused. The facts of the case were, that the three accused murdered one P who was acting as a lambardar and who used to assist the police in criminal matters. He used to give information to the police concerning crimes committeed by two of the accused. Some days before the murder, a relation of one of the accused told P that he should stop giving information to the police, failing which something would happen to him. Thereafter, P and his nephew were attacked by the three accused who had hidden themselves to wait for P's arrival. 15 injuries were

inflicted on P, out of which 10 were on the head. The Sessions Judge awarded the lesser sentence on the ground that it could not be said which of the accused gave a fatal blow.

The High Court rejected this approach. The mere fact it was impossible to say who actually inflicted the fatal wound was not a reason for a lesser punishment when the court was satisfied that there was a common intention to murder, brutally carried out and that all persons took part in the beating, the result of which was death. In this case there were no less than 10 wounds on the head; and probably each of the accused gave a blow on the head; the only other alternative was that while only one accused was beating the head, the others were giving blows on the body. It would make no difference if either of these alternatives was the fact. Hence the sentences were enhanced to death.

Case No. 52.

Aziz Begum v. *Emperor.*

A.I.R. 1937 Lahore 689, 691.

(Young C. J. and Monroe J.)

(Judgment by Monroe J.)

A girl of less than 17 years was a party to a murder in which her husband and others were the chief actors. Her statement as approver led to a sucessful investigation and to the conviction of the principal criminal, though she failed to earn her pardon. She was sentenced to transportation for life, by the Sessions Judge, after conviction under section 302.

The High Court, while confirming the conviction, observed that her situation was not an enviable one, since the husband and mother were determined on the murder. Her statement had led to successful investigation and conviction of the criminal. She had already suffered by the birth of her child in jail. Recommendation was made to Local Government to reduce the sentence of transporation of life, under section 401 Criminal Procedure Code.

Case No. 53.

Infanticide by young mother (of her own son)

Mt. Talian v. *Emperor.*

A.I.R. 1938 Lahore 473 (D.B.)

(Young C.J. and Monroe J.)

(Judgment by Young C.J.)

Need for lenient view was stressed on the ground that child-birth occasionally produced peculiar reaction. Sentence of transportation for life upheld, but Government was requested to reduce it to short period.

Case No. 54.

Mahabir Singh v. *Emperor.*

A.I.R. 1946 Caltutta 36—I.L.R.

(1944) 2 Calcutta 287.

Five persons were convicted under sections 396 and 120B/395 Indian Penal Code. The Sessions Judge refrained from passing the death penalty, as the murders (of 3 persons) could not be specifically fixed on any one of the accused. He sentenced them to eight years' rigorous imprisonment. The High Court enhanced the sentence to transportation for life.

In view of the fact that the prisoners were tried before the Sessions Court in December, 1942, and a certain amount of delay was occasioned by the necessity of making a reference to the Full Bench, the High Court refrained from passing the death sentence. But for this, the High Court observed, it could imagine no more suitable case than this for the maximum sentence. It observed, that it was precisely for such a case that *section* 396 was enacted.

Case No. 55.

Emperor v. *Ram Singh.*

A.I.R. 1948, Lah. 24.

(Marton and Khosla JJ.)

(Judgment by Marton J.)

In this case, on an appeal by the State, the High Court set aside the acquittal of the respondent for the murder of a woman. While noting that considerable time had elapsed since the acquittal by the Sessions Judge was announced, the High Court awarded the sentence of death in these words :—

> "I, however, feel strongly that the learned Sessions Judge should undoubtedly have sentenced Ram Singh to death and as there are not intrinsic circumstances warranting leniency, I consider it the duty of this Court now to do what should have been done at the trial".

It appears that before committing murder, the accused had sexual intercourse with the woman murdered and so also had the approver. After the murder, the accused and the approver robbed the woman of ornaments.

Case No. 56.

Gurdev Singh v. *Emperor*

A.I.R. 1948, Lah. 53.

(Muhammad Munir and Mohd. Jan JJ)

(Judgment by the former.)

In this case, the High Court *enhanced* the sentence of three persons from transportation for life to death.

The Sessions Judge, while convicting them of murder under section 302 and 148, Indian Penal Code had imposed the sentence of transportation for life on the ground that all the accused were young men of 20 or below and none of the injuries inflicted to the deceased were individually fatal. The High Court strongly criticised this attitude. The normal sentence for murder was death; the Judge could give reasons for imposing the lesser penalty but the reasons given by him were not conclusive and were open to revision. "It is only when any well recognised ground is found to exist that the judge is justified in withholding the capital punishment". (The High Court then proceeded to *enumerate a few* extenuating circumstances[1] but it made it clear that the classification was not exhaustive or absolute). It regarded *age* as insufficient ground for leniency, since the offenders were not of extreme youth and had not acted under influence of any elder. The fact that the injuries were not individually fatal, was also regarded as irrelevant to sentence (though it might be relevant on the question where the offence was murder). Again, the Sessions Judge had expressed the view that it would be extremely hard to send all the *four* accused to gallows. The High Court pointed out, that every sentence worked hardship on the man sentenced and on others. But that was not a circumstance that ever entered into a judicial determination of the sentence to be awarded. Sentence *enhanced* to death.

Case No. 57.

Kali Charan v. *Emperor.*

A.I.R. 1948 Nagpur 20(2)—I.L.R. 1947. Nagpur 226.

(Hemeon and Padhya JJ.)

The accused committed 4 murders in succession and was sentenced by the Sessions Judge after conviction under section 302 to death. The persons murdered were one woman and three children. It appears that he was not on good terms with his wife, and because of their bad relations, the wife left his house to stay with her sister. In spite of his request she did not return. This had enraged him. Next morning the wife wanted some money and

1. Paragraph 8 in the A.I.R.

made a request to the accused, whereupon the accused got enraged and threw the keys on her. The wife picked up the keys and went near the money box. This further enraged the accused, who, (to prevent and punish his wife) proceeded to the first floor where the box was kept. The minor son of the brother-in-law (wife's brother) of the accused was the first to be the subject of the anger of the accused, who killed him by causing not less than 13 injuries with a sharp knife. He then attacked his wife. When his wife was rescued by the wife of his brother-in-law with a daughter in the lap, they were killed by the accused. The accused also injured another young daughter of the accused's brother-in-law.

On his appeal to the High Court, the High Court confirmed the conviction. A plea of insanity was taken on behalf of the accused in the Appellate Court, though not in the lower court. The Court held that insanity of the nature required by section 84 of the Penal Code had not been proved. A crime is not excused by its own atrocity. No expert had been called to prove his mental condition, and a mere opinion by one Doctor that the accused may have been in a temporary fit of mania at the time of the incident did not help very much. The Court was, however, of the opinion that the sentence ought to be altered to one of transportation for life. The accused had no motive to kill the woman and her three children. The motive, if any, was against the wife, who however was not killed. It was in evidence that the accused loved and used to feed the children killed by him. There was no prearrangement, no accomplice and no secrecy. Under a strong and sudden *impulse* without any motive he had committed the murders. He was completely unhinged, and had lost the balance of his mind, and acted *abnormally* under an impulse which proved too strong for him. These were extenuating circumstances which impelled the Court to modify the sentence. The Court *reduced the sentence to transportation for life* and *also recommended* to the Provincial Government that the case may be dealt with under section 401, Cr. P.C.

As precedents for its recommendation, it cited the following cases :—

(1) *Tola Ram* v. *Emperor,* A.I.R. 1927 Lah. 674-I.L.R. 8 Lahore 684;

(2) *Emperor* v. *Gedka Goala,* A.I.R. 1937 Pat. 363-I.L.R. 16 Pat. 333;

(3) *Ramadhin* v. *Emperor,* A.I.R. 1932 Oudh 18-I.L.R. 7 Lucknow 341.

Case No. 58.

Amru v. *The Crown.*

A.I.R. 1950, East Punjab 159.

(Kapur and Soni JJ.)

(Judgment by Kapur J.)

The appellant and one R attacked B, using a kirpan and a barchha. B received 24 injuries and died instantaneously. Motive of the crime was dispute regarding mutation of certain estates gifted in favour of R and others. The Additional Sessions Judge convicted the appellant of the offence under section 302 Indian Penal Code and sentenced him to transportation for life. His reason for imposing the lesser sentence was, that the appellant was not related to B, (the deceased) and did not stand to gain by the murder but took part in the murder simply to oblige R.

On appeal to the High Court, the High Court confirmed the conviction and regarded the above reason for imposing the lesser sentence as inadequate. The murder was of a brutal kind and there were no extenuating circumstances. That appellant did not stand to gain was not such a circumstance. However, though the State made an application for enhancement of the sentence, High Court *did not* grant it, considering the fact that the appellant had been convicted *more than a year ago.*

Case No. 59.

Charan Das v. *The State.*

A.I.R. 1950, East Punjab, 321.

(Khosla and Soni JJ.)

(Judgment by Khosla J.)

Information was received that gambling was going on **in a tent in the** Refugee Camp at Muktsar. The Camp Commandant sent a party to make an inquiry. The party arrived outside the tent and surrounded it. Harnam Singh, Havildar of the National Volunteer Corps and Charan Das, the appellant (of the same Corps) constituted the party along with the Supervisor, Refugee Camp and one other person. Directions were given to the inmates of the tent not to move out, on which they protested. One of them tried to get out. Thereupon Haranam Singh, the Havildar, gave orders to fire. Charan Das, the appellant, one of the armed constables under the Havildar, fired as a result of which one N and a woman Rani were injured. Rani succumbed to her injuries. On these facts Charan Das and Harnam Singh were tried before the Additional

Sessions Judge, Ferozepur. Charan Das was charged under section 302, Indian penal Code and Harnam Singh under section 302 read with section 34, Indian Penal Code. The Sessions Judge acquitted Harnam Singh, but convicted Charan Das under section 302 and sentenced him to transportation for life.

On appeal to the High Court, the High Court maintained the conviction. The defence of the appellant was that he had acted in obedience to the orders of his superior. But the order, the High Court pointed out, was manifestly illegal. There was no disorderly crowd, nor murder. There was merely a suspicion of gambling. An order of firing could not be given in such circumstances. Therefore, the appellant could not be exonerated. (A soldier cannot plead manifestly illegal orders of his superior as a defence (English—Indian cases discussed). Since, however, the appellant was a youth of 20, recruited to the National Volunteer Corps, who had an exaggerated notion of his duties and of the authority wielded by his superior, the Court stated that while it could not reduce the sentence of transportation *which* was the minimum required by law, it recommended to the State Government to reduce the sentence to three Years' rigorous imprisonment under section 401, Criminal Procedure Code. The case was not one of ordinary murder and hence this recommendation[1].

Case No. 60.

Ulla v. *The King.*

A.I.R. 1950 Orissa 261,—I.L.R. 1950. Cuttack 293.

(Jagannadhadas and Panigrahi JJ.)

(Judgment by Panigrahi J.)

In this case a boy of 12 years was convicted of murder. This boy, Ulla, was plucking palm-fruit from a tree standing on his land. He was assisted in this by two other boys. One of them was eating the fruit that had fallen on the ground. At that time, the deceased boy, Ranka, arrived with another boy and picked up a fruit from the ground, whereupon the appellant Ulla protested and demanded its price. Ranka threw the fruit and remarked that he would cut the appellant in pieces if the appellant ever went to the "Tope" (the place concerned) to pluck fruits. At this remark the appellant got excited and said that he would cut Ranka to pieces, and actually struck Ranka with a "Kahi" on left side of the chest just below the collar bone. Ranka fell down and died on the spot. The appellant was convicted under section 302 and sentenced to transportation for life. The Child witnesses we believed, whose evidence found corroboration in Doctor's statement.

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1. *See* also Subba, I.L.R. 21 Mad. 249 as to obedience to orders of superiors.

On appeal to the High Court, the conviction was confirmed. The argument that the offence was one of culpable homicide not amounting to murder because of *provocation* was rejected on the facts. There was more verbal provocation in this case and it was not sufficient to cause loss of self-control. But in view of the *tender age* of the appellant, the High Court under section 8 of the Reformatory Schools Act, 1897 recommended detention in a reformatory school for five years (instead of transportation for life).

Case No. 61.

Serajuddin v. *State*

A.I.R. 1951 Allahabad 834 at p. 836.

As in awarding any other sentence, a judge who passes a sentence of death has to apply his judicial mind. The fact that he has to record reasons for awarding the lesser sentence (under section 367 Criminal Procedure Code) merely means that where no such reason is available, the sentence of death has to be passed. It is only to this limited extent that death sentence is the normal sentence for a capital offence. The Indian Penal Code leaves it to the Judge's judicial discretion to decide whether he should pass a sentence of death or transporation for life (or any other sentence permissible under law). He has to consider the question whether the case is one where a sentence of death should be passed or a lesser sentence, though *no Judge would* pass a sentence of death (where it is proper to pass a lesser sentence) merely because he has to give reasons for the lesser sentence.

Case No. 62.

In re Palaniswami Coundan

A.I.R. 1952 Madras 175. (Govinda Menon and Chandra Reddy JJ.)

(Judgment by Govinda Menon J.)

Accused murdered his wife and father and injured his son. Though the accused was not held to be of unsound mind, yet there was an evidence that he had so a kind of *frenzy or hallucination.* Sentence of death was reduced to transportation for life.

Case No. 63.

State v. *Kochan Chellayyan*—

A.I.R. 1954 Trav.-Cochin 435-I.L.R. 1953 T.C. 1062 (Koshi C.J. and Kumara Pillai J.)

(Judgment by Koshi C.J.)

Under the Travancore Penal Code, as amended by Proclamation of 11th November, 1944, rigorous imprisonment for life was the only sentence to be passed for murder. But after the passing of the Part B States Laws Act, 1951 a person convicted for murder committed after that date can be sentenced only to death or transportation for life.

Case No. 64.

Vijayan v. *State.*

A.I.R. 1953 Travancore-Cochin.

402 I.L.R. 1053 (I) P.C. 514.

(Koshi C.J. and Menon J.)

(Judgment by Koshi C.J.)

(i) The Travancore Proclamation of 11th November, 1944 and the Cochine Proclamation of 26th November, 1944, abolishing death sentence, were no longer good law after the extension of the Indian Penal Code and Criminal Procedure Code under legislation of 1951. Under the Indian Penal Code, the death penalty was *the normal* punishment for murder.

(ii) Youth by itself is not an extenuating circumstance.

Case No. 65.

Mool Chand v. *The State.*

A.I.R. 1953 All. 220 I.L.R. (1953) 1 All. 608.

(Raghubar Dayal and C.B. Aggarwala JJ.)

(Judgment by Aggarwala J.)

In this case, M aged 22 and P aged 30 years appealed to the Allahabad High Court against their conviction under section 302 and under section 302 read with section 34 respectively and the sentences of death. The appellants along with others were tried for murdering one N while N was sleeping on a cot in a field. The others were acquitted. but the appellants convicted as above.

There was some dispute about land, which was the motive behind the murder. The actual attack was by appellant M and another Brij Lal, while appellant P and another Ram Naresh held the feet of the deceased to facilitate his being killed. One or two person, who could not be recognised, armed with lathis were standing nearby. The main question discussed in the appeal was about sentence (The convictions were upheld).

Aggrawala J. maintained that section 367 (5), Criminal Procedure Code (as it stood then) gave an absolute discretion to the court as regards imposing the sentence of death. He also expressed the view that the Judge had to keep pace with the times[1], that capital punishment was being discouraged and there was nothing in the law to prevent his discretion being exercised by a judge. In consonance with the more humanitarian view of the modern age. The discretion which the judge had should be exercised to ensure social justice. He gave a list of some of the cases in which the lesser penalty was awarded. "To my mind the true principle of exercising the

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1. Contrast *In re Sambayo* A.I.R. 1939 Mad. 109, 112.

discretion of imposing either the penalty of death or of transportation for life should be that the sentence of death is awarded in cases in which the act is very brutal and highly repugnant to morals and the sentence of transportation for life is imposed in all other cases".

In his view, out of the four classes of murder mentioned in section 300 and its four clauses, the sentence of death should be restricted to—

(i) Cases under section 300(a) intention to cause death, because it is always brutal and barbarous to intentionally kill others.

(ii) *As regards section* 300—clauses (b), (c) and (d) in cases where the injuries caused are brutal or action of the accused is highly repugnant. In other cases transportation should be imposed.

Even where death should be the ordinary penalty according to the above classification, transportation should be imposed in certain circumstances. But he took care to observe that it is not possible to enumerate the circumstances exhaustively or to lay down any hard and fast rule. Each case will have to be decided on its own facts. Some of the cases enumerated by him as fit for lesser penalty were—

(1) where the accused is very young or too old. "I would normally consider that a young man below 18 should be considered too young for death sentence. Similarly a person above the age of 70 be too old for death sentence;

(2) where persons under 20 acting on the instigation or influence of elders;

(3) where murder is committed during a sudden quarrel and without premeditation or on the impulse, though the case does not fall under the exceptions to section 300;

(4) when conduct of the deceased furnished grave *though not sudden* provocation. For example, aggrieved husband or other near relation of a woman murders a man who persists in offending the feelings of the aggrieved relative by publicly carrying an immoral intrigue with the woman;

(5) Where the liability is vicarious and the accused neither took part in the beating nor instigated others to do so;

(6) Several persons are involved in the murder and only one death is caused and the actions of several accused are capable of being graded in the

matter of causing death. For example, where one person inflicts injuries which bring about the death and others merely help the former or perform a minor act. In such a case the others would be sentenced to transportation unless they were the ring-leaders. Though the murder may be premeditated the person who actually wields the instrument with which he causes death may be presumed to be more brutal than the others. On these principles, in his view, the appellant P who merely hold the legs of the deceased and was aged 20 years only should be sentenced to transportation for life instead of death.

Raghubar Dayal J. did not agree with the view that section 367(5) left any discretion to the Court. He cited several cases[1] on the subject in support of the proposition that the normal sentence is death (for capital offences). In his view, the provisions in the Indian Penal Code and Criminal Procedure had been consistently interpreted to mean that in the absence of extenuating circumstances death was the normal sentence.

In his opinion, the fact that the appellant P was merely standing nearby was not a justification for awarding the lesser sentence. [He referred to have discussed the Federal Court case of Rajagopalan."[2]]

However, in view of his brother Judge's opinion, that the sentence of death passed on P be commuted to transportation for life, he agreed with the order proposed for such commutation.

Case No. 66.

In re Govindaswami.

A.I.R. 1953 Madras 372.

(Govind Menon and Mack JJ.)

(Judgment by Mack J.)

This was a case of *double murder* by a youth aged 16. He murdered one G by cutting his neck with an "aruval" (Knife) (surved knife or sickle) while G was asleep. Thereafter, he also cut one M while M was asleep in his house on the other side of the street. M also died instantaneously. (The present case was tried only as regards the murder of G). The accused was convicted of the murder under section 302, but the Sessions Judge sentenced him

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1. *Local Government* v. *Sitrya Arjuna*, A.I.R. 1933 Nag. 307 *In re Ramudu* A.I **R.** 1943 Mad. 69, 71; I.L.R. 1943 Mad. 148 *Gurdev Singh* v. *Emp.*, A.I.R. 1948 Lah. 58, 61, 62 (Munir J.) *Naresh Singh* v. *Emp.*, A.I.R. 1935 Oudh, 265.

2. *Rajagopalan* v. *Emperor*, 1944, F.C.R. 169; A.I.R. 1944 F.C. 35.

to transportation for life only, as the accused had committed the murder in the fear that G was intending to make a report against him at the police station regarding some theft committed by the accused.

Mack J. dismissed the appeal against the conviction. He had also issued notice for enhancement of sentence. But as Govind Menon J. was reluctant to interfere in such a case for enhancing the sentence, Mack J. "though prepared to do that unpleasant duty," yet (out of deference to brother's view) merely dismissed the appeal without enhancement of sentence. He however pointed out to the Sessions Judge that the ordinary penalty for murder is a death sentence in the absence of extenuating circumstances, and that in the instant case there was no extenuating circumstance and neither *the youth of the accused* nor the fear of a complaint being made against him of theft could be taken into consideration as an extenuating circumstance.

Case No. 67.

Kanji v. *The State*

A.I.R. 1953, Rajasthan 40-I.L.R. 1951 Raj. 727

(Wanchoo C. J. and Ranawat J.)

(Judgment by Wanchoo C.J.)

The appellant in this case was convicted of murder of a boy aged 14 years and sentenced to death by the Sessions Judge. A marriage party had come to the village and was staying in a mango-grove (bageechi). In that connection, a lot of drinking had been going on since the morning, and the appellant was also one of those who had been drinking. At about 6 p.m. while the deceased boy was picking raw mangoes in the "bageechi" with another boy, the appellant turned up in the bageechi with a gun, went past the people who were sitting there and suddenly shot at the boy from a distance of about 10 paces. The boy fell down and died. The other boy was slightly injured.

The appellant's theory was, that the gun went off by accident and that he was intoxicated and did not know what happened, because he was not in his senses.

These pleas were not accepted by the Sessions Judge. On appeal to the High Court, the High Court also did not accept the pleas on the facts. It also pointed out, that under section 300, Fourth Exception, Indian Penal Code read with illustration (d), an imminently dangerous act was sufficient to bring the case within section 300 and it was not necessary that the gun should be aimed at a particular person. In the case before the court, further the

evidence was that the appellant shot at the boy. Where a person takes the risk of shooting at another, the act would ordinarily be an imminently dangerous act which just in all probability cause death etc.

However, as regards the sentence the High Court pointed out two important features of the case:—

(i) There was no satisfactory evidence of motive. (The father of the deceased had deposed that the deceased had told the father that the deceased had accidentally found the appellant having sexual intercourse with his widowed sister-in-law). Assuming that this was admissible, the High Court was hesitant to accept this as a motive, and held that there was no clear motive.

(ii) Though the appellant was responsible for the natural consequences of his acts and guilty under see 302, in the circumstances of the case intoxication afforded as a sufficient excuse for not exacting the extreme penalty of law. Since there was no evidence for motive and the appellant was certainly drunk, the sentence was reduced to transportation for life[1]. In support of the reduction of sentence in case of intoxication, the following cases were cited:—

(a) *Pal Singh* v. *Emperor*

A.I.R. 1917 Lah. 226; and

(b) *Judagi Mallah* v. *Emperor*,

A.I.R. 1930 Patna. 168.

Case No. 68

Gudder Singh v. *State*,

A.I.R. 1954, Punjab 37,—I.L.R. 1954. Pun. 649.

Falshaw and Kapur JJ.

(Judgment by Kapur J.)

G and B were convicted of murder in these circumstances. Certain people had refused to pay land revenue. The Tehsildar advised them to pay up the land revenue. He also asked them to produce the rifles which the Government of India had given to villagers under the Border

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1. For similar facts in a latter Pepsu case where this Rajasthan case is cited, *see*—

Basdev v. *State*

A.I.R. 1955. Pepsu 165, 169, 170 paragraph 24, 26, where also the lesser sentence was held as justified. It cited several cases also as to effect of intoxication.

Defence Scheme at the time of the formation of Pakistan. After some time, 70 or 80 persons of the village including G and B, came armed and stopped at a distance of 15 or 20 *Karams* from the place where the Tehsildar and others were. They shouted to G and B and others to kill Revenue and Police officials. Sub-Inspector K tried to pacify them, and while he was so doing, G fired his rifle which hit K in his chest and K fell down dead. Other people started firing, and the Police took up positions for firing in self-defence. Ultimately the villagers retreated.

(Subsequent events are not relevant).

G and B were convicted under section 302, Indian Penal Code for the murder of K. G was sentenced to death and B was sentenced to transportation for life. The High Court dismissed their appeals as regards the conviction. As regards the sentence on G, because of the fact that *he had been in custody* from May, 1951, the High Court substituted transportation for life in place of death.

Case No. 69

In re Muniyandi,

A.I.R. 1954, Madras 196 (Mack and Chandra Reddy JJ.

(Judgment by Mack, J.)

The appellant and one X intercepted two persons, accountants in the firm of Cannon Dunkerly who were carrying Rs. 5,600 in cash on cycle. The appellant was armed with a knife and X was armed with a revolver. X got hold of the cycle and asked one of the accountants to stop. That accountant jumped off the cycle. The other accountant riding the cycle lost his balance and fell down, and shouted for help, when X fixed four shots at him, which resulted in his death instantaniously. Immediately, the appellant went to remove the money bag. The accountant tried to prevent him, whereupon the appellant cut him with knife on the hand and snatched away the money bag. Then both the assailants ran away.

Four months after this, X and the appellant happened to be arrested for some other crime, and were identified for this crime also. X had been already sentenced to death for the other crime, and the sentence executed, and this case was now concerned only with the appellant. The Sessions Judge convicted the appellant under section 302 read with section 34, and sentenced him to death and also convicted him under section 392 and sentenced him to 7 years' rigorous imprisonment. (For the other case the appellant had already been sentenced to transportation of life under section 302 read with section 34).

The High Court confirmed the conviction on the merits. The argument, that since there was no pre-arrangement to kill the accountant, the appellant could not be convicted under section 302 read with *section* 34, was repelled. "When two persons start together for committing robbery and one of them is armed with a revolver and the other with knife, we may presume that the intention of these two persons is to use the weapon if the necessity should arise...." Hence, the shooting was committed in furtherance of the *common intention* and it was unnecessary to established a pre-arranged plan for the murder of the victim.

As regards sentence, having regard to the fact that it was X who fired the shots from a revolver and the injury caused to the surviving accountant by the appellant was of *simple nature,* the court felt that the ends of justice would be met by reducing the sentence of death to one of transportation for life.

(NOTE:—(i) As regards section 34, the court referred to *B. K. Ghosh* v. *Emperor,* A.I.R. 1925 P.C. 1—I.L.R. 52 Cal. 197 followed in *Ramaswami* v. *State.* A.I.R. 1952 Mad. 411.

(ii) The judgment records the fact that in the other case X had been sentenced to death and the present appellant was sentenced for transportation for life under section 302 read with section 34. But the court does not seem to have taken that factor as a factor *against* showing lenience to appellant. The sentences in the present case (transportation for life for 302 and 7 years' rigorous imprisonment for 392) were ordered to run concurrently with the sentences in "two other cases."

Case No. 70

In re. Palani Moopan

A.I.R. 1955, Madras 495.

Panchapakesa Ayyar and Basheer Ahmed Sayeed JJ.

(Judgment by the latter).

The appellant aged 24 had been convicted of the murder of his wife aged 20 years, by inflicting injuries with a tapper's knife and sentenced to death by the Addl. Sessions Judge. It seems that there were some quarrels between the two soon after the marriage in 1953 and the appellant started beating and ill-treating his wife. The appellant shifted to his sister's house leaving his wife in the house. The appellant made a confession under section 164, Criminal Procedure Code setting out the particulars of the offence and also stating that his wife was in illicit

intimacy with his "co-brother-in-law", that there were some misunderstanding between him and his wife; that his wife had tried to poison him and that after he left his house, the co-brother-in-law had a jolly life with his wife. On one occasion, in the "shaddy" (apparently, market) his wife was selling chillies and his co-brother-in-law was sitting near her. The wife said to the co-brother-in-law "my husband is not keeping me properly. I will come to Mevani tomorrow". This enraged the appellant who tried to drag his wife. The wife said "Who are you to drag me? I will go anywhere". Thereupon the appellant stabbed the wife with the knife.

The High Court, while confirming the conviction under section 302, reduced the sentence to transportation for life on the ground that the appellant was *provoked* by the insolent answer given by the wife.

Case No. 71

Khan v. *The State*

A.I.R. 1955 Calcutta 146

(Chakravarti C.J. and P.B. Mukherjee J.)

(Judgment by Chakravarti C. J.)

Appellant K had in this case been convicted under section 302, Indian Penal Code and sentenced to death, while appellant A had been convicted under section 302 read with section 109 and sentenced to transportation for life. The trial was held in the Sessions Division of the High Court of Calcutta by S. K. Sen, J. They both appealed.

The facts were these. While the deceased was engaged in conversation with one G, the two appellants came up. The deceased told the appellants that he was having some private conversation with G and they were intruding and should move away. Appellant K said that he had no intention to do anything of the kind and challenged the deceased to do what he could. The deceased repeated his request, but without any heed. Hence the deceased put his hand on the back of appellant K and pushed him a few cubits, whereupon appellant, A shouted out to appellant K to strike the deceased down. Appellant A also grabbed the deceased by the hands and held him fast. Appellant K whipped out a knife and inflicted several injuries on the person of the deceased, who later expired in the hospital in the night.

The High Court, while confirming the conviction, reduced the sentence on K to one of transportation for life

in view of one feature of the case, "which bears very pertinently on the question of sentence and requires attention". That was this[1]. After the appellants had refused to quit the place, it was the deceased who first laid his hand on Appellant 'K' and further started pushing—the pushing being of a somewhat vigorous kind. He was resisted because each was pushing the other, and it was during such affray that the knife was suddenly whipped out and steel took the place of bare hands. "In those circumstances, it appears to me that although no sudden and grave provocation, such as would reduce the crime from murder to a lesser offence can be made out, yet there was such *provocation* as bears pertinently upon the question of sentence, even if the provocation might have been caused by the conduct of the first appellant himself and, therefore, might not be a lawful excuse for the act done by him". Hence the extreme penalty was not called for. There was pushing, pushing for considerable time and pushing between men who are notoriously or excitable nature. (The Court made it clear that this did not mean that an excitable person is entitled to go about in the streets and do people to death whenever his will is opposed. In this case, the physical assault was commenced by the deceased and when the struggle grew, the fury of the first appellant fanned by the second appellant rose). Hence the sentence on first appellant 'K' was reduced. (The sentence on the other appellant was maintained).

Case No. 72

A.I.R. 1955 N.U.C. Bombay, 2977-C

Shivrudrappa v. *State*

(Dixit and Gokhale JJ.)

Youth by itself is not a sufficient reason for imposing the lesser penalty for murder[2].

Case No. 73

Sabir v. *State,*

A.I.R. 1955, N.U.C. All. 2279.

(Beg and Chowdhry JJ.)

Accused being *only* 22 *years* old is no reason to award lesser punishment.

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1. *See* paragraph 29 in the A.I.R.

2. *See* to the same effect—*Prodyot Kumar* v. *Emp.* A.I.R. 1933 Cal. I.F.B. "under age". Exact age not mentioned in judgment).

Case No. 74

A.I.R. 1955 N.U.C, Bombay 4251.

State v. *Namdeo*

(Chainani and Gokhale JJ.)

This was a case of an attack which resulted in four murders and severe injuries to six others. Numerous assailants took part in the attack, but *it was difficult to attribute any particular fatal injuries to any* particular accused. Court refrained from imposing death sentence.

Case No. 75

Nathu Lal v. *State*

A.I.R. 1955, N.U.C. All 2289.

(Agarwala and Roy JJ.)

That the accused was drawn into the murder as *a birelling* is no extenuating circumstance.

Case No. 76

(Subba Rao C. J. and Satyanarayana Raju J.)

(Judgment by Subba Rao C.J.)

In re Munirathnam Reddy, *A.I.R.* 1955, Andhra 118.

Accused, a student of college, below 21 years, shot the deceased when he abused him and his father. He was a man of good antecedents. He was sentenced to *transportation for life,* but the High Court recommended his case to government to take action under section 10A of the Madras Borstal Schools Act (Act 5 of 1926).

Case No. 77

In re Shivanna

A.I.R. 1955 Mysore, 17—I.L.R. 1954 Mys. 469.

In this case, there was difference of *opinion* between Medapa C.J. and Vasudevamurthy J. as to whether the accused where *guilty* of murder. The case was based on circumstantial evidence as to possession of stolen articles of a women murdered. The case was referred under section 429 of Criminal Procedure Code to Mallappa J. who acquitted the accused.

Case No. 78

Atma Singh v. *State*

A.I.R. 1955, Punjab 191.

Bhandari C.J. and Falshaw J.

(Judgment by Falshaw J.)

There was some dispute between the appellant's father on the one hand and the father of the deceased on the other (both Jats) regarding irrigation of land. A panchayat was called to settle the matter, and at that panchayat the appellant and his father had kept in their possession spear and a stick respectively while the meeting was going on. The discussion developed into an exchange of abuse between the father of the deceased on the one hand and appellant's father on the other hand. At the sound of the exchange of abuse, the appellant's brothers ran out of their house armed with sticks and the deceased came out of his father's house. On the arrival of the deceased, the appellant and this father and brothers set on him and the appellant spread him on the left side of the chest while others gave him a blow with their sticks. The deceased died the next day as a result of this spear injury which had penetrated to a depth of 4½ inches injuring the left lung. The appellant was convicted under section 302 and sentenced to death by the Sessions Judge. (His father and brothers were also tried but acquitted).

On appeal to the High Court, the argument was that the case fell within the fourth Exception to section 300—culpable homicide committed in the heat of the moment and without premeditation and in the course of a sudden fight following upon a sudden quarrel—was rejected. The High Court pointed out that the deceased had not come out with a weapon, nor had attacked or tried to attack the appellant or the other accused with any weapon. The accused had not laid any such evidence or put question on that line in cross-examination to any prosecution witness. It was *his duty to prove that* the case fell within the Exception which he had not discharged. Moreover, even if the deceased had come with a weapon, there had been no "fight" because it takes two to make a fight. The deceased had not aimed any blow at the appellant. Hence the conviction under section 302 was confirmed. But the sentence was reduced to transportation for life, after making these observations:—

> "It is, however, clear that Atma Singh speared Shangara Singh *in the heat of the moment* and in the course of a sudden *quarrel* and that the murder was not premeditated."

Case No. 79

Bansi v. *The State*

A.I.R. 1956 Allahabad 668, 670.

Raghubar Dayal and B.R. James JJ.)

(Judgment by the latter).

In this case, 'B' a Brahmin, was convicted of the murder of a 'Bhangi' woman. It appears that a small pig belonging to the Bhangi woman entered the house of the accused and defiled it. This enranged the accused and he tried to seize the animal and began hitting it with a lathi. The woman asked him to spare the animal, promising that it would not stray in future. Thereupon the accused hit the woman with a number of lathi blows, and both the woman and the pig fell down and died. The Sessions Judge convicted him under section 302 Indian Penal Code and sentenced him to transportation for life.

On appeal to the High Court, the interpretation of section 300, clauses Secondly and Thirdly, was discussed and it was pointed out (in reply to the argument that there was no intention to cause death) that the accused was liable under the Third Clause of section 300, because the bodily injuries were sufficient in the ordinary course of the nature to cause the woman's death. This was in view of the circumstances detailed below, namely, use of a lathi, ferocity of the blows, fact that the victim was a woman and fact that the blows were given in the chest and abdomen, lacerating the liver and the spleen. The Court confirmed the conviction. *Regarding enhancement* of *sentence* its observations was:—

"Since the Learned Trial Judge has himself awarded him the lesser sentence for this offence no *re-consideration* of the sentence is possible."

Case No. 80

State v. *Pandurang*

A.I.R. 1956 Bombay 711.

(*Gajendragdkar and J. C. Shah JJ.*)

(Judgment by Shah J.)

The accused had enmity with the deceased and to wreak vengeance he planned his murder and carried it into execution in a cold-blooded manner. The Sessions Judge sentenced him to transportation for life, while convicting him under section 302, Indian Penal Code and also ordered him to pay a fine of Rs. 500/-.

The High Court, while confirming the conviction, *enhanced the sentence* to one of death. (The sentence of *fine* was set aside as the offence was not committed for any monetary gain.) The Court observed, that the normal sentence for murder was death, and the discretion in awarding the sentence must be judicially exercised. In the instant case, there was no extenuating circumstance. Some 2 or 3 years ago, the deceased and his brothers had been convicted of an offence under sections 323 and 324 Indian Penal Code against the accused, but that could not justify the accused to argue (as was done in the Sessions Court) that they were in danger of their lives. If, with a view to taking the law into his own hands, the accused planned murder for wreaking *vengeance*, the proper sentence should be death and not lesser one. Sentence enhanced.

Case No. 81

State of Bihar v. *Ramautar Singh*

A.I.R. 1956 Patna, 10, 15.

(Ahmad and Sahai JJ.)

(Judgment by Sahai J.)

The appellant had been convicted by the Sessions Judge of murder of one M and sentenced to death. (He was also convicted of an attempt to commit the murder of M's daughter). On the Thursday preceding the day of occurrence a bullock belonging to the appellant's family had died. On Saturday, the appellant's father went to one "Bhagat", who told him that bullock had died due to witchcraft practised by M. Annoyed at this, the appellant, before sunset, came with a "tangi" in his hand to the field in which M and his daughter was watching the crops. He gave several blows to M and killed him on the spot and dragged M's body to a well at a distance of about 195 feet and threw the body in that well. M's daughter raised hue and cry, whereupon the appellant began to throttle her with the intention of killing her. But one person heard her cries and came to the place of occurrence, whereupon the appellant left the daughter and went away saying, that he would kill her mother.

The High Court, while confirming the conviction on both counts, reduced the sentence to one of transportation for life.

Making these observations:—

> "The appellant *belongs to a backward* class and he is *aged about* 20 *to* 22 years. Obviously, he believed that deceased Mangan Singh practised *witchcraft* and was responsible for the death of his bullock. As it

1. Page 715, paragraph 9 in the A.I.R.

seems to me that he under the stress of great emotion, I think that the lesser sentence will meet the ends of justice in this case.".

Case No. 82

In re Thothan,

A.I.R. 1956, Madras 425.

(Somasundram and Ramaswami Gounder JJ).

(Judgment by Somasundaram J.)

The appellant, aged about 40 years, stabbed his wife aged only 16 years. It appears that the appellant's wife started frequently going to the house of a cousin of the appellant and became intimate with him, and did not stop the intimacy in spite of the protests of the appellant. One day, the appellant was sleeping in the "pial" of the house and his wife was sleeping at the threshold of the house, when the appellant heard a noise caused by the beating of the coconut leaves with which the deceased was covering herself. Appellant asked her as to what the noise was, and she replied that she was driving away mosquitoes. He again asked his wife as the dog was barking, but the wife gave no satisfactory reply. Next morning, the appellant questioned her about the previous night's incident, and the wife gave no satisfactory reply. On returning from the field, the appellant was found sharpening a knife in the presence of the deceased and on being questioned, he replied that he was doing so to cut a goat. The wife left his place and went to her uncle, being disgusted with her husband's threats. A few days after, that, the appellant stabbed and killed his wife. He was convicted to murder by the Sessions Judge and sentenced to death.

The High Court confirmed the conviction and sentence. An argument was advanced before the High Court that the conduct of the deceased provoked him to commit the act, that the girl was unfaithful to him and that in spite of repeated requests and threats the girl presisted in going to M's house and that in a fit of passion the appellant stabbed her. High Court did not agree and pointed out that the appellant had been sharpening his knife even in the presence of the deceased and intended to use the knife against the deceased. There was no circumstances *at the time of the commission* of the offence which could be taken into consideration for lesser penalty.

As regards the recommendation of the Sessions Judge with regard to the desirability of commuting the sentence to one of transportation for life, the High Court observed that it was for the Government to consider whether it was fit case for such commutation.

Case No. 83

Prem Narain vs. *State*
(Mukherji and Choudhary JJ.)
(Judgment by Mukerji J.)
A.I.R. 1957 Allahabad 177

On the facts in view of the *youth* of the accused, the sentence was commuted to imprisonment for life.

Case No. 84

Hafizullah vs. *State*
A.I.R. 1957 Allahabad 377.
(Roy and Sahai JJ.)
(Judgment by Roy J.)

This was a case of the accused giving the deceased a number of incised wounds with a sharp weapon like a knife, which entered the ribs, causing rupture of the peritoneum and the abdominal cavity and entering into the stomach, the liver and the spleen. Sentence of death was held to be the proper sentence.

Case No. 85

State vs. *Shankar*
A.I.R. 1957 Bombay 226—I.L.R. 1958 Bom. 1092.
(Dixit and B. N. Gokhale JJ.)
(Judgment by Dixit J.)

In this case, 5 members of a family and a servant were killed by the accused persons. Those killed included a six months' old child. Injuries inflicted numbered 67. The Court described it as a shocking crime which would perhaps remain "unsurpassed in its ferocity". There was a deliberate conspiracy to commit the murders and the conspiracy was carried out in a planned manner. Some of the accused persons were acquitted and the remaining convicted, and out of those convicted some had been sentenced to death by the Sessions Judge. The conviction was under section 302 read with sections 34, 109 and 149, Indian Penal Code. The proceedings before the High Court comprised confirmation, State appeal against acquittal and appeal against conviction by those convicted. The importance of the case lies in the observations regarding sentence and the final order passed reducing the sentence of accused Nos. 10 and 11 from death to imprisonment for life.

The principle on which the reduction was ordered was, that where *several persons* were involved in a murder and evidence was forthcoming to show who were the persons who actually assaulted, then in a proper case the court should discriminate between the various accused on the ground of their major or minor part in the occurrence. After discussing several cases on the point whether in a case of vicarious or joint liability or liability for common intention for the act of others, the court should discriminate, the Court came to the conclusion that if a just

decision is to be arrived at, the Court should follow the principle laid down in *Dalip Singh* v. *State of Punjab*[1] to the effect that in cases where the facts are more fully known and it is possible to determine who inflicted the fatal blows and who took a lesser part, it would be a sound exercise of judicial discretion to discriminate in the matter of punishment. The Court was not prevented from doing so by the later Supreme Court case of *Rishideo* v. *State*[2], holding that the mere fact that the appellant did not inflict a blow did not justify a lesser sentence. The Court referred to what is known as the "*Bawla* murder case"—*Emperor* v. *Shafi Ahmed* decision dated 23rd May 1925 (referred to in 31 Bom. Law Reporter 515) in which there was a charge of criminal conspiracy, and Crump J. in awarding sentence upon several accused, considered the principle of discrimination as sound. The Court also referred to the following decisions[3]:—

(1) *Queen* v. *Basvanta*, (1900) I.L.R. 25 Bombay 168, 175.

(2) *Benoyendra Chandra* v. *Emperor*, A.I.R. 1936 Calcutta 73—I.L.R. 63, Calcutta 929. (Plague germs case, conspiracy)[4].

Case No. 86

State vs. *Basu Tanti*

A.I.R. 1957 Patna 462—I.L.R. 34 Patna 462

(Mishra and Sahai JJ.)

(Judgment by Misra J.)

This was a case of death by poisoning caused by the accused by administering oleander in liquor in high doze. Accused did this act for the benefit of his friend (son-in-law of the deceased) for a petty domestic matter between the husband and wife. It was held that this was an extremely wicked murder, and sentence of death could not be commuted.

Case No. 87

In re Murugian,

A.I.R. 1957 Madras 541, 546, I.L.R.

1957 Madras 805.

(Somasundaram and Basheer Ahmed Sayeed JJ.)

(Judgment by the latter).

In this case the accused murdered his wife (who was also his sister's daughter). The accused had suspected intimacy between one P and his wife, and asked her to stop

1. *Dalip Singh*, A.I.R. 1953 S.C. 364, 368.
2. *Rishideo*, A.I.R. 1955 S.C. 331.
3. *See* also discussion in Rattan Lal (1961) p. 784.
4. In *Benoyendra's case* (Plague germs, the sentences were reduced to transportation because of delay and because the *actual* murderer had not been arrested.

her relations. The wife said that she would not leave P as he had looked after her well, and then abused him and swore that she would continue her intimacy with P. The accused lost his self-control and murdered her. The Sessions Judge convicted him under section 302, Indian Penal Code, and sentenced him to imprisonment for life.

On appeal, the High Court regarded the case as falling within first exception of section 300 (Part I). It altered the conviction to one under section 304, Part I and reduced the sentence to five years. It expressed the view that the English decisions to the effect that mere *words* or a sudden confession of adultery would not constitute *provocation*, did not apply in India. In western countries, violation of marital ties was looked upon with a greater latitude than in India where adultery is an offence.

In a society where adultery is made punishable, if the lawfully wedded wife not merely resorts to adultery but also swears openly in the face of the husband that she would persist in such adultery, and also abuses the husband for remonstrating against such conduct, the court should take a more serious view of the matter in deciding whether such acts could not cause the husband to lose his self-control. (Case-law discussed).

Case No. 88

Sunder vs. *State*

A.I.R. 1957 Allahabad 809

(Mukherji and Choudhary JJ.)
(Judgment by Choudhary J.)

The accused dealt 4 "Kanta" blows out of which 3 were dealt on the skull. In these circumstance, the mere fact that he was *old*—70 *or* 75 *years* of age—did not warrant commutation of death sentence. He was old enough to have known better and his life was not being nipped in the bud.

Case No. 89

Satyavir vs. *State*

A.I.R. 1958 Allahabad 746.

D. N. Roy and R. K. Choudhary JJ.)
(Judgment by Choudhary J.)

Determination of the right measure of punishment is a matter of discretion and, therefore, within the province of the trial court. Hence interference by the appellate court is justified only on exceptional ground. One such ground may be that the trial court proceeded on wrong principle.

The assumption that the sentence of death was the normal penalty for murder and life imprisonment the exception, was based on the law embodied in *section* 367(5) of the Criminal Procedure Code before the Amendment of 1955 which came into force from 1st January, 1956. *Since the Amendment*, the question of proper sentence is to be decided not on any such assumption but like any other

point for determination with the decision thereon and the reasons for the decision as provided in section 367(1). Absence of cause of enmity between the accused and the deceased is a circumstance justifying lesser punishment[1].

1 NOTE:—After this case, the Allahabad High Court has considered the amendment of Section 367 fully in a later case—*Jan Mohammad* v. *State*, A.I.R. 1963 All. 501 (D.B.). A.P. Srivastava J. took the view, that the amendment did not change the substantive rule (*Dalip Singh* v. *State*, A.I.R. 1953 S.C. 364, 367), that for murder, death was the ordinary sentence. But K.B. Asthana J. doubted that. *See* Paragraphs 10-13 and 33-35.

Case No. 90

In re. Govinda Reddy

A.I.R. 1958 Mysore 150—I.L.R. 1957 Mysore 177.

(Hombegowda J. and Malimath J.)

(Judgment by Hombegowda J.)

This was a case of murder of 6 persons (belonging to an *advocate's* family) coupled with robbery. While confirming the conviction and the sentence of death awarded to each of the 3 appellants under section 302 read with section 34 of the Indian Penal Code, the High Court repelled the contention that in a case of *circumstantial evidence* the extreme penalty should not be imposed[1]. The question of sentence was to be determined not with reference to the volume or character of evidence but with reference to the fact whether there were any extenuating circumstances. The Supreme Court case of *Vadi Velu* v. *State of Madras*, A.I.R. 1957 Supreme Court 164 was cited to the effect that the nature of proof had nothing to do with the question of punishment. In the instant case, there were no extenuating circumstances. Appellants acted barbarously and killed 6 persons including 2 children who were fast asleep. They committed the murders for gain and were prepared for all eventualities and the murders were dastardly. No sentence other than death could be appropriate. (The appellants had been convicted of certain other offences also not relevant for the present purpose.

Case No. 91

Dasrath Paswan vs. *State of Bihar*

A.I.R. 1958 Patna 190.

Sahai and H. K. Choudhary JJ.)

(Judgment by Choudhary J.)

Accused was a student of class X. He failed at the examination successively for 3 years. Being very much upset at these failures he decided to end his life and informed his wife of his decision. The wife, aged 19, and

1. Paragraph 41 in the A.I.R. at the page 183 right hand.

a literate woman, asked him to first kill her and then kill himself. In accordance with this suicide pact, the accused killed his wife and was arrested before he could kill himself. It was held that the case fell not under section 302 but under section 304, First Part, in view of the Fifth Exception to section 300. The wife gave her consent without fear of injury or misconception. A lenient view was taken and the accused was sentenced to 5 years' rigorous imprisonment.

Case No. 92

Hazara Singh v. *The State*

A.I.R. 1958 Punjab 104-I.L.R. 1957 Punjab 1941

(Judgments by both)

(Judgments were delivered by both)

In this case, the accused laboured under a strong delusion that his wife was unfaithful. The brooding over the character of the wife had an effect on his mental faculties, which effect was described by the medical witness as taking the form of temporary insanity. But it was not insanity of the type mentioned in section 84, Indian Penal Code. The murder was committed at night by throwing nitric acid on all parts of the body of the wife. He was sentenced to death by the Sessions Judge after conviction under section 302, Indian Penal Code.

The High Court, while upholding the conviction, reduced the sentence to imprisonment for life, as the mental state of the accused showed that it was not a proper case for the extreme penalty. Tek Chand, J. pointed out that according to medical evidence, the accused was sensible in every respect but had a delusion about his wife's unfaithfulness. This delusion did not mean that he was incapable of knowing the nature of the act, etc. Assuming that his wife did have illicit relations, the law did not excuse taking the life of a faithless wife. But the circumstances of the case showed that the convict was *unbalanced*, was *not* quite normal and was labouring under an unshakable delusion. "A mental *derangement* which falls short of unsoundness of mind as understood in law, is a circumstance which must be taken into consideration in awarding the sentence.".

Case No. 93

Peethambaran.

A.I.R. 1959 Kerala 165

(Koshi C.J. and M. S. Menon J.)

(Judgment by Koshi C.J.)

(i) In this case, a *deaf and dumb* person (otherwise sane) convicted of murder was sentenced by the High

Court with the minimum sentence of life imprisonment. The case was disposed of by the High Court by virtue of the provisions in section 341 of the Code of Criminal Procedure. (Case law elaborately discussed).

(i) A suggestion was also made as to why the State Government should not, under *section* 401 *Criminal Procedure Code* reduce the sentence.

(ii) Since life imprisonment was the minimum imprisonment, it was awarded. But the Judgment shows that if a lighter sentence was allowed, the court would have awarded a still lighter sentence.

Case No. 94

Thannoo v. *The State*

A.I.R. 1959 Allahabad, 131, 132.

(R. K. Chowdhry J.)

In this case, the accused had been convicted of culpable homicide not amounting to murder under section 304, Indian Penal Code and sentenced to nine years' rigorous imprisonment by the Sessions Judge. Relations between the accused and the deceased were strained, because of the fact that the accused wanted to build some building on the disputed land which the deceased did not like. There was an altercation with exchanges of abuses between the appellant and the deceased, and then the appellant struck the deceased with a lathi on the head. This single blow caused the death of the deceased on the spot.

On appeal to the High Court, the High Court took the view that the act of the appellant clearly fell within section 300 (thirdly), and the case was one of murder. An injury had been inflicted intentionally; and if the injury was such as was sufficient undoubtedly in the ordinary course of nature to cause death, because, it had caused depressed fracture of the skull and laceration of the brain and death was instantaneous (citing the Supreme Court case of *Virsa Singh* v. *State of Punjab*, A.I.R. 1958 S.C. 465) (not reported in the S.C.R.) The court pointed out that section 300, Indian Penal Code clause thirdly did not require that the intention must be related to the words "bodily injury is sufficient". In other words, the intent required need not be linked up with the seriousness of the injury.

The appeal was dismissed and conviction and the sentence maintained. The High Court observed that the *conviction should have been* under section 302, but apparently did not alter the conviction.

In re Puttawwa,

A.I.R. 1959 Mysore 116-I.L.R. 1958 Mysore 411.

(Sreenivasa Rau and A. Narayana Pai, JJ.)

In this case the accused, a widow, was convicted of an offence under section 302, Indian Penal Code for having killed her newly born child, and was sentenced to imprisonment for life. The Sessions Judge also recommended that in the circumstances of the case, the case was a fit one for *Government to reduce* the sentence to one year's rigorous imprisonment.

In the appeal against the conviction to the High Court, the High Court set aside the conviction on the facts. The accused had lost her husband, married again and lost her second husband; while staying in her parental house, she came to have illicit intimacy with one A; she was sent out from her parent's house; then she came to a village and obtained shelter in the cattle shed of one T. who, on discovering that she was *carrying,* wanted her to leave the house. She, however, prevailed upon T to allow her to stay there. In the night she gave birth to a live child, and the wife of T assisted her during the confinement.

Some time afterwards, the dead body of a child was found lying near the house of C. The prosecution case was, that that child was the child born to the accused and killed by her. (*Post mortem* examination of the discovered child showed that it had born alive and strangled to death). The accused denied having committed the offence. She admitted that she had given birth to a child, but stated that she became unconscious; that she did not know that the child was born alive, that she saw the child some hours after the delivery and it was lying dead, and T's wife took it away for burying.

The High Court, on the facts, held that it was not proved that the child discovered and found dead near the house of C was the child born to the accused, and acquitted her. It agreed that even in the absence of discovery or production of dead body, a conviction for murder could be sustained. But the evidence must establish that the particular person was intentionally killed which was not proved here.

The High Court also decided that remissions of sentence did not mean acquittal, and the aggrieved party had every right to vindicate himself or herself.

Case No. 96

Balbir Singh v. *The State*

A.I.R. 1959 Punjab, 332—I.L.R. 1959 Pun. 1473.

(Khosla and Tek Chand JJ.)

(Judgment by Tek Chand J.)

The accused was carrying on intrigues with a lady teacher in the Government Girls Middle School. He suspected that M was also carrying on intrigues with that lady teacher, and became jealous and exhorted the teacher not to associate with M. The teacher persisted in mixing with M, and the accused left her in anger. The teacher wrote a letter to him that she would not have anything more to do with M, but did not give up relations with M.

On the day of occurrence M came to her, stayed with her and the two had meals together. At about 8.30 P.M. the accused came (all the way from Delhi) and knocked at the door of the teacher's house which was chained from within. The teacher advised M to conceal himself behind the outer door, so that M could escape while accused entered. (She had recognised the voice of the accused). The accused, suspecting that she was not alone, insisted that he should bring some light. At that time M came up and caught hold of the accused by the neck, whereupon the accused attacked M with a "Chhura" (dagger), and M died on the spot.

The accused was convicted of murder under section 302, Indian Penal Code by the Session Judge, Jullundur, who awarded him the lesser penalty of imprisonment for life.....

On appeal to the High Court, an argument was advanced about self-defence (sections 100, 300, *Exception* 2, Indian Penal Code.) The High Court held, that on the facts there was no right of self-defence. It did not believe the version that M had attacked the accused. But even if that was true, that could not have caused in the mind of the accused an apprehension of death or of grievous hurt. M was unarmed, and on being taken unawares by the accused, wanted to make good his escape. He was standing behind the door so that he could run away. The accused was not budging from the threshold, and was insisting on coming face to face with his rival. "The moment he cast eyes on him, he did not leave him till he had drawn blood by having given him no less than 16 thrusts with his *chhura*."

There was not a semblance of the existence of the right of private defence. The attack was without a warning, savage and unsparing and pursued from the start to the

finish with unaliated vigour and undiminished fury[1]. As regards the sentence it observed:—

> "The Sessions Judge has already awarded him the lesser penalty and therefore *there is no further scope for any interference with the sentence*".

Case No. 97

Jai Ram v. *The State,*

A.I.R. 1959 Bombay 463—I.L.R.

1959 Bombay 1580—61 Bombay Law Reporter, 35.

(Mudholkar and Kotwal JJ.)

(Judgment by Mudholkar J.)

The appellant was tried for the offence of the murder of his wife. They used to quarrel quite often. On the morning of the date of offence, the appellant went to a field where his wife and others were carrying on weeding operations. When the appellant saw his wife, he talked with her and struck her five or seven times with a knife, causing serious injuries leading to her death the very day.

The appellant's defence was that his wife was a woman of loose character, that the previous night he had seen her entering the house of a relation of one P with whom his wife was carrying on intrigues, and that he also saw her coming out of that house at about 1 A.M. Next morning, when he went to the field, he asked his wife whether she had gone to the house in question on the previous night. The wife replied, "yes, I will go; it is my sweet will. If you feel it so much then I will begin residing with P (the man with whom she was supposed to have been carrying on intrigue)". The appellant tried to pursuade his wife to improve her ways, but she said "if you are so much ashamed, then get away from here. Why have you come here and also used foul language". This enraged the accused and he caught her hand; the wife retaliated by kicking him, whereupon he lost his self-control and committed the offence. He therefore pleaded exception 1 to section 300. This plea failed.

He was convicted under section 302, but awarded the lesser sentence of imprisonment for life. On appeal to the High Court, the High Court rejected the defence of *grave and sudden* provocation. If the appellant did not lose his self-control the previous night and was thus sufficiently strong willed, it was difficult to accept the statement that he lost his power by reason of something less grave which happened in the field later in the morning. Apart from that, what occurred in the field could not ordinarily be regarded as grave and sudden provocation. (Passage from

1. *See* paragraph 32 in the A.I.R.

Holmes[1] v. *D.P.P.* that mere words do not amount to provocation cited)[2]

The High Court observed, that it would be extremely hazadrous to apply the First Exception to section 300 to a case of the kind merely on the ground that offences against marital rights are made punishable by law in India. What was to be considered was whether provocation was of a kind which would cause a reasonable man belonging to the social stratum of the accused to lose his self-control. Adultery though frowned upon in India, was not uncommon in the village community and even before the law provided for obtaining a divorce, a customary form of divorce prevailed in the village communities. Bearing in mind these considerations it would not be right to hold that the reaction of an Indian spouse from such a community would be different from that of one in the western countries.

Conviction upheld. As regards the sentence, the court observed:—

> "He has already been awarded the lesser sentence, *and therefore there is nothing more that can be done*".

Case No. 98

U. Kannan v. *The State,*
A.I.R. 1960, Kerala 24.
(Sankaran C.J. and Anna Chandy J.)
(Judgment by Anna Chandy J.)

In this case the accused was convicted by the Sessions Judge under section 302, Indian Penal Code and sentenced to imprisonment for life. His defence of insanity had been rejected by the Sessions Court. The case was one of murder by the accused aged 45 of his mother aged 70. The only evidence of motive was that the accused used to quarrel frequently with his mother over the quality of food which she used to serve. (The accused was unmarried).

On appeal to the High Court, the High Court on the facts accepted his plea of insanity. It regarded the case as one of *epileptic insanity*. The cousin of the accused and other relations had given evidence that the accused used to suffer frequently from epileptic fits. The cousin also swore that the accused would begin to show signs of madness about 24 hours before the actual fits and during these periods the accused used to abuse his mother and rush out of his house like a mad man, and that when the fits occurred the accused would fall down unconscious and get up about half-an-hour later recovered. There was also evidence that there were signs of an approaching epileptic

1. *Holmes* v. *D. P.P.* (1946) 1 All. England Reports, 124—1946 A.C. 488.
2Also cited, *In re Murgian*, A.I.R. 1957 Madras 541.

seizure noted on the day in question. The accused made no attempt to conceal his crime. When the police arrived, he was found sitting in the compound quietly and with his dress and hands smeared with blood. Multiple instruments had been used (bill-hook, wooden reaper and a stick of fire-wood). The facts showed that he was committing the murder at a time when he was incapable of knowing that he was doing something that was wrong or fontrary to law. The case fell under section 84, Indian Penal Code and in accordance with section 471, Criminal Procedure Code, an order was issued for his detention in safe custody in jail and reporting the matter to the State Government for further necessary action.

Case No. 99

In re. Natesan.

A.I.R. 1960, Madras, 443.

(Ramaswami and Anantanarayanan JJ.)

(Judgment and Anantanarayanan J.)

In this case the accused, a young man of 22, was convicted of the murder of a young girl. The girl aged 19 had been married 6 months ago to N. The accused had, some time before the crime, attempted to take liberties with the girl. (The girl had informed her husband who however regarded the matter as trivial). Again, shortly before the crime, when the girl was drawing water from a well, the accused patted her on the cheek and attempted to engage her in conversation in an improper manner. This was reported to the husband, and the two families ceased to be on talking terms. On the day of occurrence when the girl was alone in her portion of the house, the accused stabbed her. Apparently the accused had made some kind of overture and the girl resisted, whereupon the accused inflicted the injuries with a knife. Soon after the murder, the accused stabbed himself in an attempt to *commit suicide.*

The High Court while confirming the conviction, also refused to reduce the sentence of death and pointed out that it was a very brutal and cruel murder of an innocent girl. Age of the accused (22) was urged as a ground for lesser sentence, but youth, is not a circumstance[1] that the Court can take into account in awarding the penalty. That must be considered by the authorities of the State in exercising their prerogative of mercy. The attempt *at suicide* was also not regarded as an extenuating circumstance.

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1. There are however cases where sentence was reduced only on account of age.

See—

(*i*) *Mohan Lal* v. *Emperor* A.I.R. 1931 Lah. 177 (Addison & Coldstream JJ.) (Age "not much more than 16".)

(*ii*) *Prem* v. *Nara in State*, A.I.R. 1957, All. 177 (Mukerji & Choudhry JJ.) (Age "nearer 17 than 20").

(*iii*) *Naga Saw Htun* v. *Emperor*, A.I.R. 1937 Rang 121, 123, (Accused had just completed 16 years. Hence Section 15, Burma Prevention of Crime, (Young Offenders) Act, 1930 did not apply. Still, the Court regarded the sentence of death as not suitable, notwithstanding that the murder was brutal (wound on neck with a "da"). (Motive was rivalry in love). Court observed that the legislation of 1930 indicated that there was a considerable amount of public conscience against sentence of death (persons of immature age.)

(*iv*) *Mohammed Din* v. *Crown* (1937) I.L.R. 18 Lah. 658, 661, (Young CJ and Monroe J) (Age—15 1/2 years—evidence of provocation also—sentence reduced.)—Court observed that youth of the appellants was "sufficiently strong reason".

(*v*) *Madho* v. *Emperor*. A.I.R. 1926 Nag. 461 (Findlay J.C. and Prideanx A J.C. (Age — 14 years—Murder of boy of 8 by strangling sentence reduced on account of age.

Case No. 100

Arun Kumar v. *State.*

A.I.R. 1962 Cal., 504, 509

(P. B. Mukerji and N. K. Sen JJ.)

(Judgment by Mukerji J.)

Capital Punishment—lesser penalty where evidence not clear as to blow.

In this, the evidence did *not make it clear which* of the two *appellants gave the* fatal blow or did the the last act of strangulation. While the conviction for murder was upheld, the sentence was altered to life imprisonment. The court followed the principle laid down by the Supreme Court in *Dalip Singh's case*,[1] where the following observations had been made:—

> "This is a case in which no one has been convicted for his own act but is being held vicariously responsible for the act of another or others. In cases where the facts are more fully known and it is possible to determine who inflicted blows which were fatal and who take a lesser part, it is a sound exercise of judicial discretion to discriminate in the matter of punishment. It is an equally sound exercise of judicial discretion to refrain from sentencing all to death when it is evident that some would not have been, if the facts had been more fully known and it had been possible to determine, for example, who hit on the head or who only on a thumb or an ankle; and when there are no means of determining who dealt the fatal blow, a judicial mind can legitimately decide to award the lesser penalty in the case...."

1*Dalip Singh* v. *State of Punjab* A.I.R. 1953, Supreme Court 364, 368.

Case No. 101

Amalla Koleswara Rao, In re.

A.I.R. 1963. Andhra Pradesh 249

(Basi Reddy and Muhammad Mirza JJ.)

(Judgment by Basi Reddy J.)

Since the amendment of section 367 *Criminal Procedure Code* in 1955 the theory that death is the normal sentence for capital offences does not hold good. If there are aggravating circumstances, death must be imposed in the larger interests of the society. If there are no aggravating circumstances, the Court would be justified in giving the lesser sentence. The fact that human life has been taken does not justify the imposition of the extreme penalty of death.[1]

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1. Compare *Mojiya* v. *State*, A.I.R. 1961 M.P. 10, where it was emphasised that though (after the amendment of section 367 Criminal Procedure Code) there is no direction for recording reasons for imposing lesser sentence still Courts are not absolved of exercising their judicial conscience as to whether the extreme penalty should be awarded or only the life sentence.

To the same effect is *Arjoon* v. *State*, (1963) 2 Cr. L.J. 234, 237. (Orissa citing *Ram Singh* v. *State*, A.I.R. 1960 All. 748.)

APPENDIX III

TABLE OF ABOLITIONIST

COUNTRIES OR STATES, WITH DATE OF ABO

(ARRANGED ALPHABETICALLY)

Table of Abolittionist States a-b
(Arranged alphabetically)

Date shown is of countries which have abolished the death penalty (date of last execution in brackets).

Argentina	1922 (1922)
Australia (New South Wales)	1955
Queensland	1922 (1913)
Austria	1950
Belgium	discontinued (last civil execution, 1863)
Brazil	1946
Colombia	1910
Costa Rica	1880
Denmark	1930 (1892)
Dominican Republic	1924
Ecuador	1897
Finland	1949 (1926)
German Fed. Rep.	1949
Greenland	1930
Honduras	1894
Iceland	1944
India—	
Travancore	1944 (Restored 1951 on extension of Indian Penal Code)
Israel	1951

(*a*) The table is taken from Joyce, Right to Life, (1962), pages 242 and 243.

(*b*) In the cases of the Dominican Republic, Finland, Iceland, Luxembourg, Portugal and Rumania, the position is doubtful, but so far as the Common law crime of murder is concerned, the *de facto* abolition prevails.

Italy	1948
Luxembourg	discontinued (1822)
Mexico	1928 (Partly reintroduced in 1943)
Nepal	1931
Nether lands	1870 (1860)
Norway	1905 (1876)
Panama	1915
Peru	1900 (reintroduced for political crimes, 1949)
Portugal	1867
Puerto Rico	1929
Rumania	1865 (last civil execution, 1893)
Sweden	1921 (1910)
Switzerland	1942 (1939)
Uruguay	1877
U.S.A.	
Alaska	1957
Delaware	1958
Hawaii	1957
Maine	1887
Michigan	1847
Minnesota	1911
N. Dakota	1915
Rhode Island	1852
Wisconsin	1853
U.S.S.R.	1947 (reintroduced for political crimes, 1951; restored in 1954; qualified abolition, 1958; extension to certain civil crimes, 1961).
Venezuela	1863

APPENDIX IV

COUNTRYWISE STATEMENT OF ABOLITION OR RETENTION I—3

(ARRANGED ALPHABETICALLY)

Explanation of Symbols

A J . . Abolitionist *de jure*

A F . . Abolitionist *de facto*

A C . . Almost completely abolitionist

R . . Retentionist

NOTES :—(1) Year in brackets to show the year of abolition (or final abolition after re-introduction) in the country concerned.

(2) Figures 8, 10, 11 or 12 in brackets against each country indicate the relevant paragraph in the U.N Publication[3] where the name of the country is mentioned.

Afghanistan (8)	R
Arab Republic	*See* U.A.R.
Argentina (1922) (10)	A J
Australia (except two States) (8)	R
Australia (Queensland) (10)	A J
Australia (New South Wales) (12)	A C
Austria (1945) except in the event of proclamation of a state of emergency (10)	A J
Belgium (1867)(11)	A F
Brazil (1889) (10)	A J
Burma (8)	R
Cambodia (8)	R
Canada (8)	R
Central African Republic (8)	R
Ceylon (8)	R
Chile (8)	R
China (Taiwan) (8)	R
Colombia (1910) (10)	A J
Costa Rica (1882) (10)	A J
Cuba (8)	R

1. Prepared on the basis of information given in U.N. Publication "Capital Punishment" (1962), pages 7 and 8, paragraphs 8—12.

2. A table of Abolitionist States is given in Joyce. Right to life, 1962, page 242.

3. U.N. Publication "Capital Punishment" (1962), pages 7 and 8.

Czechoslovakia (8) . . . . . R

Dahomey (8) . . . . . R

Denmark (1930) (10) . . . . . A J

Dominican Republic (1924) (10) . . . . . A J

Ecuador (1897) (10) . . . . . A J

El Salvador (8) . . . . . R

Federal Republic of Germany . . . . . *See* "Germany"

Finland (1949) (10) . . . . . A J

France (8) . . . . . R

Gambia (8) . . . . . R

Germany (Federal Republic) (1949) (10) . . . . . A J

Ghana (8) . . . . . R

Gibraltar (8) . . . . . R

Greece (8) . . . . . R

Greenland (1954) (10) . . . . . A J

Guatemala (8) . . . . . R

Hong Kong (8) . . . . . R

Iceland (1940) (10) . . . . . A J

India (8) . . . . . R

Indonesia (8) . . . . . R

Iran (8) . . . . . R

Iraq (8) . . . . . R

Ireland (8) . . . . . R

Italy (1944) (10) . . . . . A F

Ivory Coast (8) . . . . . R

Japan (8) . . . . . R

Laos (8) . . . . . R

Lebanon (8) . . . . . R

Liberia (8) . . . . . R

Liechtenstein (1798) (11) . . . . . A F

Luxembourg (11) . . . . . A F

Malaya (8) . . . . . R

Mauritius (8) . . . . . R

Mexico (four States out of 29 *i.e.* the States of Morelos, Oaxaca, San Luis Potosi and Tabasco) (8) . . . . . R

Mexico (25 States out of 29 and the federal territory) Constitution, 1931 (10) . . . . . A J

Morocco (8) . . . . . R

Netherlands (1870) (10) . . . . . A J

Netherlands Antilles (1957) (10) . . . . . A J

Netherlands New Guinea (8) . . . . . R

New Zealand (retains for treason only. *See* Crimes Act, 1961, sections 74 and 172) . . . . . A C

Nicaragua (12) . . . . . A C

Nigeria (8) . . . . . R

Northern Rhodesia (8) . . . . . R

Norway (1905) (10) . . . . . A J

Nyasaland (8) . . . . . R

Pakistan (8) . . . . . R

Philippines (8) . . . . . R

Poland (8) . . . . . R

Portugal (1867) (10) . . . . . A J

San Marino (1865) (10) . . . . . A J

Senegal (8) . . . . . R

Seychelles (8) . . . . . R

Somalia (Northern) (8) . . . . . R

Somalia (Central and southern) (8) . . . . . R

South Africa (8) . . . . . R

Spain (8) . . . . . R

Sudan (8) . . . . . R

Surinam (8) . . . . . R

Sweden (1921) (10) . . . . . A J

Switzerland (1937) (10) . . . . . A J

Tanganyika (8) . . . . . R

Thailand (8) . . . . . R

Togo (8) . . . . . R

Turkey (8) . . . . . R

United Arab Republic (8) . . . . . R

United Kingdom (8) (for capital murder) . . . . . R

United States of America—Alaska (1957), Delware (1958), Hawaii (1957), Maine (1887), Minnesota (1911), Wisconsin (1853) (10) . . . . . A J

United States of America—Michigan (1847), North Dakota (1915), Rhode Island (1852) (12) . . . . . A C

North Dakota and Rhode Island provide death penalty for murder committed by a lifer in prison.[1] Michigan has kept it for treason.)[2]

United States of America (in principle, 42 states out of 50, the District of Columbia and the federal system) (8) . . . . . R

Union of Soviet Socialist Republics (8) . . . . . R

Uruguay (1907) (10) . . . . . Af

Vatican City State (11) . . . . . A F

Venezuela (1863) (10) . . . . . A J

Vietnam (8) . . . . . R

Western Pacific Islands (8) . . . . . R

Yugoslavia (8) . . . . . R

Zanzibar (8) . . . . . R

APPENDIX V

CAPITAL OFFENCES IN VARIOUS COUNTRIES[3-4]

(OFFENCEWISE)

Offences against *Life* or *Body*

1. Murder	Afghanistan, Western Pacific Islands, Belgium (*b*), Burma, Canada, (if capital murder) Ceylon, Chile, China (Taiwan), Ivory Coast, Dahomey, Spain, United States of America (*c*), Federation of Malaya, France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, Mauritius, India, Iraq, Iran, Japan, Laos, Lebanon, Liberia, Luxembourg (*b*) Morocco, Nicaragua (*d*), Nigeria, Netherlands, New Guinea, Nyasaland, Pakistan, Philippines, Poland, United Arab Republic, Central Afircan Republic, Republic of Viet-Nam, Republic of South Africa, Northern Rhodesia, *United Kingdom*[5] (if capital murder), El Salvador, Seychelles Somalia (Northern), Sudan, Surinam (*c*) Tanganyika, Czechoslovakia, Thailand, Togo, Turkey, U.S.S.R. (*e*), Yugoslavaia, Zanzibar.

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1. *See* Joyce, Right to Life, page 167.

2. Joyce, Right to Life, page 159.

3. Based mainly on U.N. Publication on Capital Punishment (1962), Table at the end.

4. Countries are listed in French alphabetical order.

5. Position regarding U.K. is stated as in November, 1964.

2. Wilful homicide	Federation of Malaya, Gambia, Ghana, India, Nigeria, Netherlands, New Guinea, Nyasaland, Pakistan, Phillippines, Poland, Republic of South Africa, Northern Rhodesia, Scychelles, Somalia (Northern), Sudan, Tanganyika, Thailand, Zanzibar.
3. Poisoning	Belgium (*b*), Ivory Coast, Dahomey, France, Guatemala, Mauritius, Iraq, Japan, Laos, Luxembougrg (*b*), Morocco, United Arab Republic, Central Afrian Republic, Republic of Viet-Nam, Togo.
4. Patricide ; Infanticide . . .	Belgium (*b*), Chile, China (Taiwan), Ivory Coast, Dahemey, Spain, France, Guatemala, Mauritius, Iraq, Japan Laos, Lebanon, Luxembourg (*b*), Morocco, Nicaragua (*d*), Philippines, El Salvador, Thailand, Togo, Turkey.
5. Homicide accompanied by another crime (robbery, highway robbery, piracy).	Western Pacific Islands, Belgium (*b*), Burma, Canada (if falling under capital murder), Chile, China (Taiwan), Ivory Coast, Dahomey, France, Gibraltar, Gautemala, Hong Kong, India, Iraq, Japan, Lebanon, Luxembourg (*b*) Nicaragua (*d*), Nyasaland, Pakistan, Philippines, United Arab Republic, Central African Republic, Republic of Viet-Nam, *United Kingdom* (if capital murder), El Salvador, Seychaleles, Sudan, Surinam (*c*), Thailand, Togo, Turkey.
6. Killing of a policeman or of an official on duty.	Burma, Ivory Coast, Dahomey, Gibraltar, India, Iraq, Laos, Pakistan, *United Kingdom*, Somalia (Northern), Sudan, Thailand.
7. Kidnapping of a minor.—Simple Followed by death.	Chile, Dahomey, United States of America (*c*) Federation of Malaya, Philippines, Ivory Coast, France, Morocco, Central African Republic, Republic of Viet-Nam, Togo.
8. Aggravated assault—causing death of a child.	Ivory Coast, Dahomey, France, Morocco, Central African Republic, Republic of Viet-Nam, Togo.
9. Wrongful detention—with torture .	China (Taiwan), Dahomey, France, Guatemala, Iran, Laos, Philippines, Czechoslovakia, Togo.
Perjury	
10. Perjury (false-witness) or unlawful arrest causing sentence of death and execution.	Ceylon, Ivory Coast, Dahomey, France, India, Iraq, Luxembourg (*b*), Norocco, United Arab Republic, Somalia (Northern), Somalia (Central and Southern), Sudan, Togo, Turkey.
11. Recidivism after sentence to hard labour for life ; commission of more than one offence punishable with hard labour for life.	Chile, Ivory Coast, Dahomey, Iraq, Moracco, Somlia (Central and Southern), Togo, Turkey, U.S.S.R. (*c*).
12. Castration followed by death .	Ivory Coast, Dahomey, Mauritius, Laos, Morocco, Central African Republic, Togo.

13.	Rape.—Simple Followed by death	China (Taiwan), United States of America, Nayasaland, Republic of South Africa, Northern Rhodesia. Japan, Philippines, Turkey.
	Suicide	
14.	Aiding in the suicide of a child or of a person of unsound mind or under the influence of drink.	Ceylon, India, Somalia (Northern), Sudan.
	Arson	
15.	Arson, wilful inundation, sabotage, dynamiting causing death. *See* also Sabotage.	Belgium (*b*), Chile, China (Taiwan), Ivory Coast, Dahomey, United States of America (*c*), France, Gibraltar, Guatemala, Mauritius, Iraq, Iran, Japan, Morocco, United Arab Republic, Central African Republic, United Kingdom, Somalia (Northern), Togo, Turkey, Yugoslavia.
	Narcotics	
16.	Traffic in narcotics (aggravated) .	China (Taiwan), United States of America (*c*), Iran, Turkey.
	Crimes against Property	
17.	Robbery (armed burglary) . .	Ivory Coast, Dahomey, United States of America (*c*), France, Greece, Nether lands, New Guinea, Republic of Sout Africa, Togo.
18.	Piracy (aggravated)	Western Pacific Islands, Canada, Chile, Spain, Gibraltar, Guatemala, Hong Kong, Nyasaland, Philippines, Scychelles.
19.	Aggravated hoarding, unlawful raising of prices, misappropriation of public funds.	China (Taiwan), Spain, Republic of Viet-Nam, Yugoslavia.
	Economic Crime	
20.	Counterfeiting currency; currency speculation.	Poland, U.S.S.R. (*e*).
21.	Grave Crimes against socialised property.	Poland, U.S.S.R. (*e*), Yugoslavia.
	Crimes against the Security of the State	
22.	Attempt on the life of the sovereign or the Head of State.	Australia (*a*), Belgium (*b*), Spain, Greece, Guatemala, Indonesia, Iran, Laos, Luxenbourg (*b*), Morocco, Netherlands, New Guinea, New Zealand, Surinam (*c*), Thailand, Turkey, Yugoslavia.
23.	Treason	Netherlands, Antilies, Western Pacific Islands, Australia (*a*), Belgium (*b*), Burma, Canada, Ceylon, Chile, China (Taiwan), Ivory Coast, Dahomey, Spain, United States of America, Federation of Malaya France, Gambia, Ghana, Gibraltar, Greece, Guatemala, Hong Kong, Mauritius, India, Indonesia, Iraq, Iran, Japan, Lebanon, Liberia, Luxembourg (*b*), Morocco, Nigeria, New Zealand, Pakistan,

		Philippines, Poland, United Arab Republic, Central African Republic, Republic of Viet-Nam, Republic of South Africa, Northern Rhodesia, United Kingdom, El Salvador, Seychelles, Somalia (Central and Southern), Tanganyika, Czechoslovakia, Thailand, Togo, Turkey, U.S.S.R. (*e*), Yugoslavia, Zanzibar.
24.	Spying : disclosure of national defence secrets.	China (Taiwan), Dahomey, Spain, United States of America (*e*), France, Greece, Iran, Luxembourg (*b*). Morocco, Poland, United Arab Republic, Central African Republic, Republic of Viet-Nam, El Salvador, Somalia (Central & Southern), Czechoslavokia, Togo, Turkey, U.S.S.R. (*e*), Yugoslavia.
25.	Assisting the enemy (collaboration) .	Netherlands, Antilies, Western Pacific Islands, Australia (*a*), Belgium (*b*), China (Taiwan), Indonesia, Iraq, Iran, Japan, Lebanon, Luxembourg (*b*), New Zealand, Pakistan, Philippines, Central African Republic, United Kingdom, Surinam (*c*), Turkey, Yugoslavia.
26.	Crimes against the country's integrity and independence.	Australia (*a*), China (Taiwan), Spain, France, Greece, Iraq, Japan, Luxembourg (*b*), Poland, Northern Rhodesia, Somalia (Central and Southern), Surinam (*c*), Yugoslavia, Zanzibar.
27.	Mutiny : incitement to mutiny, if followed by mutiny.	Netherlands Antilies, Ceylon, Ghana, Mauritius, India, Indonesia, Iraq, Iran, Pakistan, United Kingdom, Somalia (Northern), Sudan, Surinam (*c*).
28.	Armed rebellion; insurrection; conspiracy against the State.	Australia (*a*), Burma, China (Taiwan), Spain, France, Ghana, Guatemala, Mauritius, India, Iraq, Iran, Japan, Laos, Morocco, New Zealand, Pakistan, Poland, Central African Republic, Somalia (Northern), Somalia (Central and Southern), Sudan, Czechoslovakia, Turkey, U.S.S.R. (*e*), Yugoslavia.
	Sabotage, etc.	
29.	Looting, Massacre; sabotage, devastation; diversionism (*e*). *See* also "Arson".	Western Pacific Islands, China (Taiwan), Spain, France, Greece, Iraq, Laos, Lebanon, Poland, Central African Republic, Somalia (Central and Southern), Czechoslovakia, U.S.S.R. (*e*), Yugoslavia.

NOTE :—The indication "A. C." means that the crime is punishable with death only if committed with aggravating circumstances.

(*a*) For Australia and the United States, only the provisions of federal law are taken into account.

(*b*) Belgium and Luxembourg have abolished the death penalty *de facto*, but the penalty continues to appear in their penal codes.

(*c*) The indication (*c*) means that list of capital crimes is incomplete or has not been supplied at all.

(*d*) In Nicaragua, the death penalty is applicable only in the very exceptional cases of the most odious crimes committed with aggravating circumstancees

(*e*) The term "diversionism" has been adopted by Soviet authors to describe a counter-revolutionary act of sabotage which in their eyes constitutes a "diversionist manoeuvre", precisely in that it seriously hampers efforts to build socialism (translator's note under article 68 of the Penal Code of the Russian Soviet Federative Socialist Republic in *Reforms Penale Sovieties* published by the Centre francais de Droit compre Paris 1962).

APPENDIX VI

POSITION REGARDING APPEALS FROM DEATH SENTENCES IN CERTAIN COUNTRIES

(i) Australia.

(ii) U.S.A.

(iii) England.

(iv) New Zealand.

(v) Canada.

APPEALS

AUSTRALIAN CAPITAL TERRITORY AND NORTHERN TERRITORY[1]

(i) The same position obtains with regard to sentences of death as obtains with regard to other sentences: there is no appeal as of right. A sentence of death can be pronounced only by the Supreme Court of the respective Territories, and the rights of appeal are set out in section 52 of the Australian Capital Territory Supreme Court Act, 1933—1959, and section 47 of the Northern Territory Supreme Court Act, 1961, respectively. References to the High Court in those sections are to the High Court of Australia.

(ii) The High Court of Australia hears the first appeal.

(iii) There is an appeal to the Privy Council, by special leave—under the Constitution, section 74. As to the grounds of appeal, *see* Bentwich, "Privy Council Practice" (3rd Edn.) p. 137 *et seq.*

NEW SOUTH WALES[1] (Australia)

By virtue of the provisions of the Criminal Appeal Act, 1912, as amended, a person convicted on indictment may appeal, to the Court of Criminal Appeal, which is constituted by three or more Judges of the Supreme Court of New South Wales. The appeal may be:—

(a) against his conviction on any ground which involves a question of law alone; and

(b) with the leave of the court, or upon the certificate of the Judge of the Court of trial that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone, or question of mixed law and fact, or any other ground which appears to the Court to be a sufficient ground of appeal; and

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1. Based on information obtained through the Australian High Commission, New Delhi

(c) with the leave of the Court, against the *sentence* passed on his conviction.

Second Appeal

The Commonwealth Judiciary Act, 1903, as amended, provides a right of appeal in criminal matters to the High Court of Australia. Such an appeal from the Court of Criminal Appeal is, in general, by special leave, which is made on notice to the court, where an indictable offence is involved.

Under Orders-in-Council of 2nd April, 1909, and 2nd May, 1925, appeals lie to the Privy Council from the High Court in criminal matters, only by special leave of the Privy Council.

SOUTH AUSTRALIA[1]

Section 11 of the Criminal Law Consolidation Act provides that any person who is convicted of murder shall suffer death as a felon. On conviction for murder pronouncement of sentence of death is automatic. It is the only sentence which can by law be imposed. Whether the sentence is carried into effect or commuted is a matter for the Governor of the State, with the advice and consent of the Executive Council, to decide.

There is no appeal to any Court against sentence of death as such, although of course *an appeal against conviction lies to the Full Court of the Supreme Court,* sitting as a Court of Criminal Appeal.

An appeal on matters of law lies as of right; an appeal on a matter of fact or mixed fact and law lies only with the leave of the Full Court.

Further appeals can be made to the High Court of Australia and to the Privy Council, but only with *the leave* of those tribunals.

TASMANIA[1] (Australia)

Under the provisions of the Tasmanian Criminal Code Act, 1924, sentence of death is restricted to two crimes *viz.,* Treason (Section 56) and Murder (Section 158) and in both cases sentence of death is *mandatory.*

Regarding appeals, see section 401 of the Criminal Code Act, 1924. Section 401(1) states "A person convicted before a Court of trial may appeal to the Court of Criminal Appeal:—

(a).....

(b) .....

1. Based on information obtained through the Australian High Commission, New Delhi.

(c) by leave of the Court of Criminal Appeal, against the sentence passed on his conviction unless the sentence is one fixed by law."

As the sentence of death is one which is fixed by law, the position is that a person so sentenced has no right of appeal against the *sentence* as such. But an appeal by a person under sentence of death *against his conviction* is regulated by numerous statutory provisions.

VICTORIA[1] (Australia)

(i) Death sentence is not appealable *as such.*

(ii) The Full Court of the Supreme Court of Victoria hears the first appeal.

(iii) Appeals from (ii) may be made to the High Court of Australia or to the Privy Council, or in succession to the High Court of Australia and then to the Privy Council.

Point (i) may be elaborated thus: There is an appeal as of right against *conviction* on any ground of appeal which involves a question of *law alone,* otherwise a certificate of leave is required. See section 567 of the *Crimes* Act, 1958 (cited below):

In elaboration of Point (iii), special leave of the High Court is necessary on appeals to the High Court. The grounds are not prescribed by statute, so it is a matter of discretion for the High Court. As to appeals to the Privy Council, the appeal is only by leave. Such leave may be granted by the Court giving the judgment appealed from or by the Privy Council. The grounds on which leave will be given are not prescribed by statute, but depend on the practice of the Court or the Privy Council, as the case may be.

Section 567 of the Crimes Act, 1958 (No. 6231), reads as follows:—

"567. A person convicted on indictment may appeal under this Part to the Full Court—

(a) against his conviction on any ground of appeal which involves a question of law alone: Provided that the Full Court in any such case may, if it thinks fit, decide that the procedure with relation to Crown cases reserved under Part III of this Act should be followed, and require a case to be stated accordingly under that Part in the same manner as if a question of law

1. Based on information obtained through the Australian High Commission, New Delhi.

had been reserved and thereupon the provisions of the said Part shall with the necessary modifications apply accordingly;

(b) upon the certificate of the judge of the Supreme Court or chairman of general sessions before whom he was tried, that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of mixed law and fact;

(c) with the leave of the Full Court, upon any such ground as is mentioned in paragraph (b), or any other ground which appears to the Full Court to be a sufficient ground of appeal; and

(d) with the leave of the Full Court, against the sentence passed on his conviction, unless the sentence is one *fixed by law*.

WESTERN AUSTRALIA[1]

(i) Section 688 of the Criminal Code provides in paragraph (c) "A person convicted on indictment may appeal to the Court..... (a) with the leave of the Court against the *sentence* passed on his conviction." The right in the case of sentence of death is not of great weight, as the sentence of death is mandatory and cannot be varied by a Court. Therefore, if a man is convicted of wilful murder or treason, the sentence of death must be passed, and unless commuted by the Executive Council, must be carried out.

(ii) The Full Court of the Supreme Court of Western Australia hears the first appeal.

(iii) There are no further appeals possible, although where the High Court grants special leave to appeal and substitutes a conviction for a lesser offence if it allows the appeal, then it substitutes the appropriate penalty, which in all cases (except wilful murder and treason) does not involve sentence of death.

QUEENSLAND[2]

3. The death penalty was abolished in Queensland by the Criminal Code Amendment Act of 1922, which was assented to on July 31, 1922.

U.S.A.[3]

The information is limited to pertinent Federal statutory procedure, including the availability of review in a

1-2. Based on information obtained through the Australian High Commission, New Delhi.

3. Based on information supplied by the Department of Justice, U.S.A. through the American Embassy, New Delhi.

Federal Court of a death sentence imposed in a State Court.

(i) *Whether sentences of death are appealable as of right to the highest appellate court?*

Sentences of death imposed in a Federal District Court are not appealable as of right to the highest appellate court, the Supreme Court of the United States. Review of a death sentence in the Supreme Court is limited to those cases wherein the Supreme Court in the exercise of its discretion grants *certiorari* from the intermediate Federal Court, the Court of Appeals[1]. Former section 681 of Title 18 allowed an accused the right to direct appeal from a Federal District Court to the Supreme Court in cases involving conviction of a capital offence. This section was repealed by those sections of Title 28 which completely reorganised distribution of appellate jurisdiction between the Supreme Court and the Circuit Courts of Appeals[2]. Now a defendant sentenced to death in a Federal District Court must appeal to a Circuit Court of Appeals.

(ii) *which court bears the first appeal?*

As indicated, the first appeal in a case where the death sentence has been imposed in a Federal District Court would be to a Circuit Court of Appeals. The Courts of Appeals have jurisdiction of appeals from all final decisions[3] of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands[4]. A defendant is entitled to a full review of his cases in a Circuit Court of Appeals. The Court reorganization referred to in (i), *supra* which eliminated direct appeal to the Supreme Court in capital cases infringed no substantial right of a defendant sentenced to death to a full review of his case, for he may take an appeal to a Circuit Court of Appeals as a matter of right. It was simply a suitation where the channel of appeal was changed.

(iii) *Are there any further appeal or appeals. If so, to which court and on what grounds?*

A defendant sentenced to death in a Federal court may attempt to have his case further reviewed in the Supreme Court of the United States by writ of *certiorari*. Cases in the Courts of Appeals may be reviewed by the Supreme

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1. *See* discussion (iii) *infra.*

2. *See United State* v. *Stephen*, 49 F. Supp. 897 (D. Mich., 1943), appeal denied, 319 U.S. 423 (1943).

3. Final decision is the sentence. *Berman* v. *United States*, 302 U.S. 211 (1937); *Northern* v. *United States*, 300 F. 2d 431 (C.A. 6, 1962).

4. 28 U.S.C. 1291.

Court by writ of *certiorari* granted upon the petition of any party to any criminal case, before or after rendition of judgment or decree[1]. Supreme Court Rule 19 sets forth the *guidelines* for the Court to follow in deciding whether to review a case on *certiorari*. They are as follows:

19 CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

Supreme Court rules.

1. A review on writ of *certiorari* is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:—

> "(a) Where a state court has decided a Federal question of substance not therefore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of Federal law which has not been, but should be, settled by this court, or has decided a Federal question in a way in conflict with applicable decision of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

2. The same general considerations outlined above will control in respect of petitions for writs of *certiorari* to review judgments of the court of claims, of the court of Customs and Patent Appeals, or of any other court whose determinations are by law reviewable on writ of *certiorari*."

Review by a Federal Court for a prisoner in Federal custody may also be obtained under 28 U.S.C. 2255 to the extent that relief is available under this section. It provides that;

"A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States,

1. 28 U.S.C. 1254

or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorised by law, or is otherwise subject to collateral attack, may move the court which imposed "the sentence to vacate, set aside or correct the sentence....." Thus, a murder indictment which charged that the crime had been committed on a Washington reservation but failed to allege that the defendant or the victim was an Indian, stated no basis for Federal jurisdiction, and even though the defendant had pleaded guilty, he could thereafter collaterally attack the charge in a s. 2255 proceeding[1].

This section, however, is not a substitute for appeal and cannot be resorted to by a petitioner to review the sufficiency of the evidence.

Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court of the United States[2]. A defendant who has been sentenced under a state statute which he claims is repugnant to the United States Constitution or who claims deprivation of other Constitutional rights may petition to have his case reviewed by the Supreme Court. Once again, the standards of Supreme Court Rule 19 apply. A recent state case illustrates the attitude of some members of this Court toward the granting of *certiorari* in death cases. The case involved the imposition of the death penalty on a convicted rapist who concededly had neither taken nor endangered human life. Although *certiorari* was denied, Mr. Justice Goldberg, with whom Mr. Justice Doublas and Mr. Justice Brennan joined, dissented. He said,—

"I would grant *certiorari* in this case and in *Snyder* v. *Cunningham* 169 Misc. to consider whether the Eighth and Fourteenth Amendments to the United States Constitution permit the imposition of the death penalty on a convicted rapist who has neither taken nor endangered human life. The following question, *inter alia*, seem relevant and worthy of argument and consideration—

> "(1) In light of the trend both in this country and throughout the world against punishing rape by death, does the imposition of the death penalty by those states which retain it for rape violate 'evolving standards of decency that mark the progress of [our] maturing society', or 'standards of decency more or less universally accepted'?

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1. *See Hildebrand* v. *United States*, 261 F. 2nd 354, (C.A. 9, 1958).
2. 28 U.S.C. 1257.

(2) Is the taking of human life to protect a value other than human life consistent with the constitutional proscription against 'punishment which by their excessive.....severity are greatly disproportioned to the offence charged?

(3) Can the permissible aims of punishment (*e.g.*, deterrence, isolation, rehabilitation) be achieved as effectively by punishing rape less severely than by death (e.g., by life imprisonment), if so, does the imposition of the death penalty for rape constitute 'unnecesary cruelty'?

Finally, a Federal court has the power to grant writs of *habeas corpus* for the purpose of inquiring into cause of restraint of liberty of anyone in custody under authority of the state in violation of the Federal Constitution[1], provided the applicant has exhausted all remedies available in the courts of the state and in the Supreme Court of the United States by appeal or writ of *certiorari*[2]. Thus, a defendant convicted of murder and sentenced to death in a state court who claimed that his conviction violation the Fourteenth. Amendment because of the admission in evidence of a confession obtained while he was under the influence of drugs and who had exhausted all state remedies was held to be entitled to a plenary evidentiary hearing in the Federal court on his *habeas corpus* application in view of the fact that he did not get a full and fair hearing on this question in the state courts[3].

ENGLAND

1. *Appeals to the Court of Criminal Appeal*—Under section 3 of the Criminal Appeal Act, 1907, (7 Edw. 7 c. 73), a person convicted on indictment may appeal under that Act to the Court of Criminal Appeal. The section is quoted below:—

"3. A person convicted on indictment may appeal under this Act to the Court of Criminal Appeal—

(a) against his conviction on any ground of appeal which involves a question of law alone; and

(b) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal; and

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1. 28 U.S.C. 2241; *Irwin* v. *Doud*, 359 U.S. 394 (1959).
2. 28 U.S.C. 2254.
3. *Townsend* v. *Sain*, 372 U.S. 293 (1962).

(c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law."

2. Under section 2(4) of the Sentence of Death (Expectant Mothers) Act, 1931 (21 and 22 Geo. 5, ch. 24) read with section 2(1), where a woman convicted of a capital offence alleges that she is pregnant or, the convicting court thinks it proper to make an inquiry, the question of pregnancy shall be determined by a jury before the sentence is passed; and if the jury finds that she is not pregnant, she may appeal under the 1907 Act to the Court of Criminal Appeal. That Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence of imprisonment for life.

3. Regarding sentences on capital murder, there are certain special provisions in section 9(1) and First Schedule, paragraph 1(2) of the Homicide Act, 1957 (5 & 6 Eliz. 2 c. 11) which are not of much importance for our purpose.

4. *House of Lords.*—Under section 1 of the Administration of Justice Act, 1960 (8 & 9 Eliz. 2 c. 65), an appeal shall lie from the Court of Criminal Appeal to the House of Lords in certain cases. The section is quoted below:—

"S. (1)—Subject to the provisions of this section, an appeal shall lie to the House of Lords, at the instance of the defendant or the prosecutor,—

(a) from any decision of a Divisional Court of the Queen's Bench Division in a criminal cause or matter;

(b) *from any decision of the court* of Criminal Appeal on an appeal to that court."

(2) No appeal shall lie under this section except with the leave of the court below or of the House of Lords; and such leave shall not be granted unless it is certified by the court below that a point of law of *general public* importance is involved in the decision and it appears to that court or to the House of Lords, as the case may be, that the point is one which ought to be considered by that House."

(Section 3 of that Act makes special provisions to the effect that an application for leave to appeal in a case involving sentence of death as well as an appeal for which leave is granted on such application shall be heard and determined with as much expedition as practicable, and provides that the sentence shall not be executed until expiration of the time allowed for such application, etc.).

NEW ZEALAND[1]

1. Treason is now the only crime which is punishable by the death penalty in New Zealand (section 73 of the Crimes Act, 1961). Appeal against conviction for (*inter alia*) treason is governed by section 383 of the Crimes Act, and lies to the Court of Appeal. On any ground of appeal which involves a question of law alone, the appeal is as of right. On any ground which involves a question of fact or of mixed fact and law, the leave of the Court of Appeal or the certificate of the trial or sentencing judge that it is a "fit case for appeal" is required.

No further Appeal.

2. There is no longer any provision in the Crimes Act or in any other New Zealand legislation providing for further appeals from the Court of Appeal. There is still, however, a right of appeal to the Privy Council by virtue of the Royal prerogative. Halsbury's *Laws of England* 3rd Edn., Vol. V, pp. 682 ff gives an adequate account of the New Zealand position. Two points should however be noted. In the first place, New Zealand Courts no longer have jurisdiction in any case from the Independent State of Western Samoa. In the second place, the Court of Appeal in *Woolworths N. Z. Ltd.*, v. *Wynne* (1952) N. Z. L. R. 496 held that, it could grant leave to appeal to the Privy Council in certain circumstances (*see* Halsbury op. cit. p. 685) but the legislation on which that decision was based is now repealed. The result is, therefore, that special leave to appeal must be obtained from the *Privy Council*, and this is granted only in exceptional circumstances where "..... by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done." *Nadan* v. *The King.* (1926) A. C. 482.

CANADA

The position regarding appeals in capital cases in Canada can be gathered from the following provisions of the Criminal Code of Canada, (as amended in 1961 by 9-10 Eliz 2 Ch. 44 assented to on 13th July 1961) sections 583, 584, 597, 598 and 601 cited below:—

Right of appeal of person convicted.

"583. A person who is convicted *by a trial court* in proceedings by indictment may appeal to the court of appeal—

(a) against his conviction

(i) on any ground of appeal that involves a question of law alone,

(ii) on any ground of appeal that involves a question of fact alone or a question of mixed law and fact, with leave of the court

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1. Based on information obtained through New Zealand High Commission, New Delhi.

of appeal or upon the certificate of the trial judge that the case is a proper case for appeal, or

(iii) on any ground of appeal not mentioned in sub-paragraph (i) or (ii) that appears to the Court of Appeal to be a sufficient ground of appeal, with leave of the court of appeal, or

(b) against the sentence passed by the trial court with leave of the court of appeal or a judge thereof unless that sentence is one fixed by law.

Right of appeal of person sentenced to death.

583A. (1) Notwithstanding any other provision of this Act a person who has been sentenced to *death* may appeal to the court of appeal.

(a) against his conviction on any ground of appeal that involves a question of law or fact or mixed law and fact; and

(b) against his sentence unless that sentence is one fixed by law.

Notice deemed to have been given.

(2) A person sentenced to death shall, notwithstanding he has not given notice pursuant to section 586, be deemed to have given such notice and to have appealed against his conviction and against his sentence unless that sentence is one fixed by law.

Court of appeal may consider.

(3) The court of appeal, on an appeal pursuant to this section, shall—

(a) consider any ground of appeal alleged in the notice of appeal, if any notice has been given, and

(b) consider the record to ascertain whether there are present any other grounds upon which the conviction ought to be set aside or the sentence varied, as the case may be.

Right of Attorney General to appeal.

584. (1) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal—

(a) against a judgment or verdict of acquittal of a *trial court in* proceedings by indictment on any ground of appeal that involves a question of law alone, or

(b) with leave of the court of appeal or a judge thereof, against the sentence passed by a trial court in proceedings by indictment, unless that sentence is one fixed by law.

(2) Acquittal. For the purposes of this section a judgment or verdict of acquittal includes an acquittal in respect of a principal offence where the accused has been convicted of an offence included in the principal offence.

Appeal from conviction Second Appeal

597. (1) A person who is convicted of an indictable offence whose conviction is *affirmed by the court of appeal may appeal to the Supreme Court* of Canada

(a) in case of dissent—on any question of law on which a judge of the court of appeal dissents, or

(b) on any question of law, if leave is granted by the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may, for special reasons, allow. 1956, c. 48, s. 19.

(2) A person

(a) Appeal where acquittal set aside—
who is acquitted of an indictable offence and whose acquittal is set aside by the court of appeal, or

(b) Where joint trial—who is tried jointly with a person referred to in paragraph (a) and is convicted and whose conviction is sustained by the court of appeal.

may appeal to the Supreme Court of Canada on a question of law. [ss. 1023(1), (2), 1025 (1) in part] amended (1956), c. 48, s. 19."

Appeal on law or fact or mixed law and fact.

597A. Notwithstanding any other provision of this Act, a person—

(a) who has been sentenced to death and whose conviction is affirmed by the court of appeal, or

(b) who is acquitted of an offence punishable by death and whose acquittal is set aside by the court of appeal,

may appeal to the Supreme Court of Canada on any ground of law or fact or mixed law and fact.

Appeal by Attorney General.

598. (1) Where a judgment of a court of appeal sets aside a conviction pursuant to an appeal taken under section 583 or 583A or dismisses an appeal taken pursuant to paragraph (a) of sub-section (1) of section 584, the Attorney General may appeal to the Supreme Court of Canada.—

(a) In case of Dissent.—on any question of law which a judge of the court appeal dissents, or

(b) on any question of law, if leave to appeal is granted by the Supreme Court of Canada within twenty-one days after the judgment appealed

from is pronounced or within such extended time as the Supreme Court of Canada or a judge thereof may, for special reasons, allow." [Am. 1956, ch. 48, s. 20(1)].

Right of Attorney General of Canada to appeal.

601. The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province has under this party.

APPENDIX VII

Provisions regarding Pregnant Women and Death Sentence

(Position in certain other countries)

PREGNANT WOMEN

Australia.—Sentence to death not to be passed on expectant mothers. (U. N. Publication, 'Capital Punishment' (1952) page 25, paragraph 69).

It is to be respited in Tasmania, and W. Australia (R. C. Report, page 451, paragraph 47).

Canada—Section 577, Criminal Code. Women sentenced to death may "move in arrest of execution" on ground of pregnancy. Thereupon court has to direct one or more registered medical practitioners to be sworn to examine her. If from their report it appears that she is pregnant, execution "shall be arrested" until delivery or until it is no longer possible in the course of nature that she be delivered.

(Appeal against finding allowed).

Ceylon—Sentence of death not to be passed on an expectant mother.

(S. 54, Penal Code) (*See* R. C. Report page 451, paragraph 46).

Chile—Sentence of death not to be notified till 40 days elapse after child-birth.

Greece—Postponed for 6 months in case of breast feeding; otherwise postponed for 30 days.

Iran—Postponed for two years in case of breast-feeding; otherwise postponed for 3 months.

(U. N. Publication, page 25, paragraph 69).

New Zealand—(Section 15, Crimes Act, 1961).

Sentence of death *not to be passed* on pregnant women. Instead, she is to be sentenced to life imprisonment. (Appeal against finding allowed).

U.K.—Sentence of Death (Expectant Mothers) Act, 1931—Substitution of penal servitude for life.

Many other countries.—Execution of sentence is postponed until delivery (U. N. Publication, page 49, paragraph 185).

APPENDIX VIII

AGE AND CAPITAL PUNISHMENT—POSITION IN CERTAIN STATES OF INDIA AND IN CERTAIN OTHER COUNTRIES

AGE

Part A—Position in some States of India

Andhra Pradesh

See Hyderabad.

Bombay

Bombay Children Act, 1948
(71 of 1948)

Section 68(1) *read with section* 4(*e*) *and* (*s*)

No youthful offender can be sentenced to death.

"Youthful offender" means any child who has been found to have committed an offence.

"Child" is a boy or girl under 16,

Under section 5, a person is deemed a child if at the *time of arrest or initiation of proceedings* he had not attained the age of 16 years. But if such person attains 16 during the proceeding, the proceedings shall be continued and "orders may be passed in respect of such person under this Act, as if such person was a child."

Central Provinces

C.P. Children Act (10 of 1928)

Section 26, *read with Section* 2(*a*) (b)

No "child" or "young person" can be sentenced to death. A "child" is a person under 14; where a child has been sent to a certified school, the definition applies to him notwithstanding that he may have attained 14.

"Young person" is a person who is aged 14 years or upwards but under 16.

East Punjab

Under section 27 of the East Punjab Children Act (East Punjab Act 39 of 1949) 'no person who was a child at the

date *of the commission of the offence*" shall be sentenced to death, etc. Under section 3(c) of that Act, "child" means a person under the age of sixteen years. The section contains the usual provision relating to a child sent to a certified school.

Gujarat

See Bombay.

Hyderabad

Under section 21 of the Hyderabad Children Act, 1951 (32 of 1951), no child shall be sentenced to death, but under section 21(2), this prohibition against sentence of death does not apply to offences against any law relating to a matter in the Union List. Under section 2(d), "child" means a person under the age of sixteen years, and, when used with reference to a child sent to a certified school, applies to that child during the period of his detention notwithstanding that the child has attained the age of sixteen years.

Madhya Pradesh

See Central Provinces.

Madras

Madras Children Act, 1920 (4 of 1920)

Section 22 *read with Section* 3(1), 3(2)

No child or young person can be sentenced to death.

"Child" is a person under the age of 14; but if a child is sent to an approved school, the definition applies to him during the whole period of detention. "Young person" is a person who is aged 14 years or upwards and is under the *age of eighteen* years. (*See* Amendment Act 37 of 1958).

Maharashtra

See Bombay.

Mysore

Under section 25 of the Mysore Children Act (Mysore Act 45 of 1943), a child shall not be sentenced to death. Under section 2(a) of that Act, "child" means a person under the age of sixteen years. The section contains the usual provision as to a child sent to a certificate school.

Uttar Pradesh

Under section 27 of the U.P. Children Act (U.P. Act 1 of 1952), no court shall sentence a child to death. Under section 2(4) of that Act, "child" means a person under the age of sixteen years.

West Bengal

West Bengal Children Act

(West Bengal Act 30 of 1959)

Assented to by the President and published on 3.1.1961

Section 24(1) read with section 2(h)—"juvenile delinquent" and section 2(d)—"child".

No juvenile delinquent can be sentenced to death. "Juvenile delinquent" is a "child" who *has been found* to have committed an offence.

"Child" is a person who has *not attained the age of 18 years.* Under section 3, if during the course of any proceedings, a child attains 18, "the proceedings may be continued and orders may be made under this Act in respect of him as if he was a child."

Union Territories

Children Act, 1960 (Central Act 60 or 1960)

Section 22(1) read with section 2(e) (j)

A boy under 16 *or a girl under* 18 cannot be sentenced to death. This is the effect in substance, because a delinquent "child"—that is a child who has been found to have committed an offence cannot be sentenced to death. "Child" is defined as boy who has not attained 16 or a girl who has not attained 18.

Under section 3, where an inquiry has been initiated and during the inquiry the "child" ceases to be such, the inquiry may be continued and "order" may be made as if such person had continued to be a child.

Part B—Position in some other countries

Austria (Europe)

A person under 20 years cannot be sentenced to death[1].

Canada

No exemption for age seems to have been enacted by statute.

France

A person under 18 years cannot be sentenced to death[2].

1-2. U.N. Publication, Capital Punishment, 1962, page 25, paragraph 70.

New Zealand

No death sentence can be ordered in respect of a person *under* 18 *years* at *the time of offence.* Section 16, Crimes Act, 1961.

United Kingdom

No death sentence can be ordered in respect of a person who "appears to the court" to have been under 18 years at the time of offence.

Section 53, children and young persons Act 1933 as substituted by section 9(3), Homicide Act (1957).

APPENDIX IX

CAPITAL CRIMES IN SOME COUNTRIES OF THE BRITISH COMMONWEALTH (DETAILED STATEMENT)

Note : Expl. of Symbols : + = Capital murder

.. = Not Capital murder

	Australia	Canada	Ceylon	New Zealand	U. K.
	1	2	3	4	5
General Note	(Queensland has totally abolished death sentence. See the Criminal Code Amendment Act, 1922).	(*See* Criminal Code of Canada as amended 1960-1961 Statutes Chapter 44).	Penal Code (Revised Laws) 1956—Chap. 19 (suspended in 1958 and restored by Act 25 of 1959).	(*See* Crimes Act, 1961).	Four Statutes :— (a) Treason Act, 1353. (b) Dockyards Protection Act, 1772 and Criminal Law Act 1827. (c) Piracy Act, 1937. (d) Homicide Act, 1857 Section 5.
Murder	+Commonwealth of Australia Section 24, Act 1914-1960 for treason and Ordinances for Territories for murder. +Victoria section 475, Crimes Act 1958.	+If Capital murder	+	..	+(Certain cases of murder. *See* Homicide Act, 1957).

1	2	3	4	5
	+South Australia Section 11, Criminal Law Consolidation Act 1935-1952.			
	+Tasmania Section 56 and 158, Criminal Code Act, 1924.			
	+Western Australia If wilful. *See* Section 37 and 282 Criminal Code Act 1913 amended in 1961.			
	..Queensland ..New South Wales—N.S.W. abolished for most offences by Crimes (Amendment) Act 1955			
Piracy	+New South Wales			+
Treason	+Commonwealth of Australia	+	+	+	+
	+Victoria				
	+Tasmania				
	+Western Australia				
	+New South Wales.				
Rape		(In Canada it was previously capital)		..	
Setting fire to H. M. Ships of War and dock-yards.					+
Arson					"*See* setting Fire".

APPENDIX X

COUNTRIES IN WHICH DEATH SENTENCE IS MANDATORY[1] FOR CERTAIN OFFENCES

List of countries in which death sentence is mandatory for certain offences

Country	Mandatory
Europe U.K. (Position as in November, 1964)	Mandatory or five cases of "capital murder", specified in the Homicide Act, 1957.
Spain	Mandatory for banditry and terrorism. (Sentence to be awarded by military courts).
Greece	Mandatory for crimes against national integrity.
America Canada	Mandatory for capital murder, for piracy, and also for conviction in military courts for certain crime against national defence and for treason in time of war.
U.S.A.	Mandatory in certain States.
South America	Mandatory in certain cases. Discretionary in others.
Australia	Under the federal legislation, mandatory for treason. Under the legislation of certain States, general mandatory for murder and treason.
Africa	Mandatory in some cases. Discretionary in others.
Asia :	
Burma	Mandatory for (i) murder committed by a convict serving a life or long-term sentence and for (ii) murder committed in the course of other crimes, and for (iii) certain aggravated forms of murder.
Japan	Mandatory for certain crimes against security of the State.
India	Mandatory for murder committed by a convict serving a sentence of life imprisonment for (section 303, Indian Penal Code).
Malaya	Mandatory for certain aggravated forms of murder.
Pakistan	Mandatory for murder committed by a convict servin a life or long-term sentence.
Iran, Iraq and Lebanon	Mandatory in certain cases.
Ceylon	Mandatory for certain aggravated forms of murder.
Hong Kong	Mandatory for certain aggravated forms of murder.

1. Based on study "Capital Punishment", published by the United Nations (1962), pages 11 and 12, paragraphs 15 to 19.

APPENDIX XI

EXTRACTS FROM THE BURMESE PENAL CODE, AND ANALYSIS OF THE BURMA PROVISIONS

Extracts from the Burmese Penal Code[1]

Culpable homicide.

299. (1) Whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death commits the offence of culpable homicide not amounting to murder.

(2) Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of culpable homicide not amounting to murder in any of the following cases:—

(a) If he, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident:

Provided—

First—that the provocation is not sought or the offender by an excuse for killing or doing harm to any person;

Secondly—that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; and

Thirdly—that the provocation is not given by anything done in the lawful exercise of the right to private defence.

Explanation—Whether the provocation was grave and sudden enough to deprive the offender of the power of self-control is a question of fact.

(B) If he, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and cause the death of the person against whom he is exercising such rights of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of defence.

(C) If he, being a public servant or siding a public servant for the advancement or public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of the duty of such public servant and without ill-will towards the person whose death is caused.

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1. Amended by Act XXXIII, 1947, and Act LII, 1948.

(D) If he acts without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner.

Explanation—It is immaterial in such cases which party offers the provocation or commits the first assault.

(E) If he causes the death of a person who is above the age of eighteen years and who suffers death or takes the risk of death with his own consent.

Murder.

300[1]. Whoever, in the absence of any circumstances which makes the act one of culpable homicide not amounting to murder, causes death by doing an act with the intention of causing death, or with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of murder.

Explanations of culpable homicide.

300A[2]. In sections 299 and 300—

(a) a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be demed to have caused his death.

(b) where death is caused by bodily injury, the offender's knowledge of the weakness or infirmity of the person on whom the bodily injury is inflicted is a relevant factor in proving the nature of his intention.

(c) the offender's knowledge that an act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, is a relevant factor in proving the nature of his intention.

(e) the causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Culpable homicide by causing death of person other than person whose death was intended.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits an offence by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the offence committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

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1. Substituted by Act XXXIII, 1947.
2. Inserted *ibid.*

Explanation.—In this section the word "offence" means an offence described in section 299 or section 300 or section 304A of the Penal Code.

Punishment for murder.

302[1]. (1) Whoever commits murder—

(a) being under sentence of transportation for life, or

(b) with premeditation, or

(c) in the course of committing any offence punishable under this Code with imprisonment for a term which may extend to seven years,

shall be punished with death, and shall also be liable to fine.

(2) Whoever commits murder in any other case shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Whether an act is premeditated is a question of fact.

303. * * * *

Punishment for culpable homicide not amounting to murder.

304.[2] Whoever causes the death of any person by life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death by negligence.

304A[3]. Whoever causes the death of any person by doing any rash or negligent act not punishable as culpable homicide or murder shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine provided that if such act is done with the knowledge that it is likely to cause death the term of imprisonment may extend to ten years.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any indict, or any person in a state of intoxication commits suicide whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

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1. Substituted for sections 302 and 303, *ibid.*
2. Substituted by Act XXXIII, 1947.
3. Substituted by Act LII, 1948.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Abetment of suicide.

307. Whoever does any act with such intention [* * *[1]] and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned. Attempt to murder.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death. Attempt by life-Convicts.

Illustrations

(a) A shoots at Z with intention to kill him, under such circumstances that, it death ensued, A would be guilty of murder. A is liable to punishment under this section.

(b) A with the intention of causing the death of a child of tender years exposes it in a deserted place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds X he is liable to the punishment provided by the latter part of the first paragraph of this section.

(d) A, intending to murder X by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

308. Whoever does any act with such intention [* * *][1] and under such circumstances that if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both, and, if hurt is caused to any person by such act shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Attempt to commit culpable homicide.

1. The words "or knowldege" were omitted by Act XXXIII, 1947.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Analysis of the Burmese sections

The important changes made by the Burmese Penal Code in the section relating to culpable homicide and murder can be roughly analysed as follows:—

(1) Causing death by an act done with the intention of *causing death* is murder in India in the absence of the exceptional circumstances (mentioned in section 300, Exceptions, in India). But in Burma the exceptional circumstances have been grouped with the section relating to culpable homicide not amounting to murder, and have been removed from the section dealing with murder, for better understanding. Section 300, Burma and section 299(2), categories A to E, Burma.

(2) Where death is caused by an act done with the intention of causing such *bodily injury* as is likely to cause death, it is only culpable homicide. The offenders knowledge of the peculiar infirmity of the victim does not necessarily make it murder, but is a relevant factor in proving the nature of his *intention*. Section 299(1), Burma, section 300A (*b*), Burma.

(3) Causing death by an act done with the intention of causing *bodily injury* as is sufficient, etc., to cause death—in this category, the words "in fact" have been inserted before "is sufficient"—apparently to make it clear that it is not the subjective knowledge of the offender which is here relevant, but (objectively) the nature of the injury. Section 300, Burma (If exceptional circumstances are present), section 299(2), Burma.

(4) Causing death by an act done with the *knowledge* that the offender is likely, by such act to cause death, ceases to be culpable homicide and ceases to be murder also, and merely becomes an offence punishable as "causing death by negligence" under section 304A, the only special provision being that in such a case, the imprisonment may extend to 10 years. Section 304A, latter half, Burma.

(5) Having made the substantive changes regarding the offence of murder, so as to take out certain categories out of that offence, the Burmese Code divides murders into two sub-clauses for the purposes of punishment. If the murder is committed by a person—

(a) being under sentence of transportation for life; or

(b) with pre-meditation; or

(c) in the course of committing any offence punishable under the Penal Code with imprisonment up to 7 years:

the offender "shall be punished with death and shall also be liable to fine" (no discretion to court to award lesser sentence). Section 302(1), Burma.

A person committing murder in any other case is punishable with transportation for life or rigorous imprisonment up to 10 years and also liable to fine. (Thus, the imprisonment need not be for life, as in India). Section 302(2), Burma.

(6) Punishment for culpable homicide which does not amount to murder, has been simplified. Instead of the two categories mentioned in the Indian Penal Code, section 304, the punishment in Burma is transportation for life or imprisonment of either description up to 10 years, and also fine. Section 304, Burma.

(7) Causing death by negligence—section 304A—the punishment in India is two years' imprisonment while in Burma, it is 7 years (or if the act is done with the knowledge that it is likely to cause death, then 10 years). Further, in India imprisonment is not compulsory, because fine can be awarded without awarding imprisonment while in Burma imprisonment is compulsory. Section 304, Burma.

(8) Regarding attempt to murder, mere knowledge is not enough and intention is required. Apparently, mere knowledge or likelihood of death in a case of attempt to murder is left to be dealt with by the ordinary provision in section 511. This appears to be consequential on the removal of knowledge from the section dealing with murder, Section 307, Burma.

Attempt to commit culpable homicide not amounting to murder—here also the word "knowledge" has been removed. This is also apparently consequential on the removal of the element of knowledge from section 299 and its placing under section 304. Section 308, Burma.

Summary

The scheme appears to be—

(i) To concentrate on *intention* while dealing with offences both under section 299 and under section 300.

(ii) Further, even international acts punishable under murder have been classified, as regards punishment, mainly on the basis of pre-meditation (apart from two special cases).

APPENDIX XII

CEYLON ACTS REGARDING

CAPITAL PUNISHMENT

Suspension of Capital Punishment Act, No. 20 of 1958.

(Date of Assent May 9, 1958)

L.D.-O. 13/56.

AN ACT TO SUSPEND THE IMPOSITION OF CAPITAL PUNISHMENT FOR MURDER AND THE ABETMENT OF SUICIDE AND TO PRESCRIBE OTHER PUNISHMENT FOR THOSE OFFENCES.

(Date of Assent: May 9, 1958)

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the Suspension of Capital Punishment Act, No. 20 of 1958.

2. During the Continuance in force of this act—

Suspension of capital punishment for murder and abetment of suicide and imposition of rigorous imprisonment for life for those offences.

(a) capital punishment shall not be imposed under section 296 of the Penal Code for the commission of murder and under section 299 of the Penal Code for the abetment of suicide, and

(b) section 296 and section 299 of the Penal Code shall have effect as if, for the word "death" occurring in each of those sections, there were substituted the words "rigorous imprisonment for life.".

Duration of Act.

3. This Act shall continue in force for three years and shall then expire:

Provided, however, that if the Senate and the House of Representatives by resolution so declare, this Act shall continue in force for such further period as may be specified in such resolution.

Suspension of Capital Punishment (Repeal) Act, No. 25 of 1959

(Assented to on December, 2, 1959.)

L.D.-O. 13/56.

AN ACT TO REPEAL THE SUSPENSION OF CAPITAL PUNISHMENT ACT NO. 20 OF 1958, AND TO PROVIDE FOR CERTAIN MATTERS CONNECTED THEREWITH

(Date of Assent: December 2, 1959)

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the Suspension of Capital Punishment (Repeal) Act, No. 25 of 1959.

Act No. 20 of 1958.

2. The Suspension of Capital Punishment Act, No. 20 of 1958, is hereby repealed.

Imposition of capital punishment on persons convicted, on or after the date of commencement of this Act, of the offence of murder or abetment of suicide committed prior to that date.

3. Notwithstanding anything in any other written law, capital punishment shall be imposed—

(a) under section 296 of the Penal Code on every person who, on or after the date of the commencement of this Act, is convicted of the offence of murder committed prior to that date; and

(b) under section 299 of the Penal Code on every person who, on or after that, date is convicted of the offence of abetment of suicide committed prior to that date.

APPENDIX XIII

EXTRACTS OF SECTIONS 194, 201 AND 202 OF THE CANADIAN CRIMINAL CODE

Homicide.

"194. (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

Kinds of Homicide.

(2) Homicide is culpable or not culpable.

(3) Homicide that is not culpable is not an offence.

Culpable Homicide.

(4) Culpable homicide is murder or manslaughter or infanticide.

Idem.

(5) A person commits culpable homicide when he causes the death of a human being,

(a) by means of an unlawful act,

(b) by criminal negligence,

(c) by causing that human being, by threats or fear of violence of by deception, to do anything that causes his death, or

(d) by wilfully frightening that human being, in the case of a child or sick person.

Exception

(6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law.

Murder

201. Culpable homicide is murder—

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

(b) Where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows to likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

Murder in commission of offences.

202. Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson, whether or not the person means to cause death to any human being and whether or not he knows that death is likely to be caused to any human being, if

Intention to cause bodily harm.

(a) he means to cause bodily harm for the purpose of—

(i) facilitating the commission of the offence, or

(ii) facilitating his flight after committing or attempting to commit the offence, and the death ensues from the bodily harm;

(b) he administers a stupefying or overpowering thing foe a purpose mentioned in panagaaph (a), and the death ensues therefrom; Administering overpowering thing.

(c) he wilfully stops, by any means, the breath of a human being for a purpose mentioned in paragraph (a), and the death ensues therefrom; or Stopping the breath.

(d) he uses a weapon or has it upon his person Using weapons.

(i) during or at the time he commits or attempts to commit the offence, or

(ii) during or at the time of his flight after commiting or attempting to commit the offence, and the death ensues as a consequence."

APPENDIX XIV

CANADIAN ACT OF 1961.

Canada—1961 *Amendments*

9—10 ELIZABETH II

CHAP. 44

An Act to amend the Criminal Code (Capital Murder). 1953-54, c. 51; 1955, cc.2. 45; 1956, c. 48; 1957-58, c. 28; 1958, c. 18; 1959, c. 41; 1960, c. 37

(Assented to on 13th July, 1961)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Criminal Code is amended by adding thereto, immediately after section 202 thereof, the following section:—

"202A. (1) Murder is capital murder or non-capital murder. Classification of murder.

(2) Murder is capital murder, in respect of any person, where— Capital murder defined.

(a) It is *planned and deliberate* on the part of such person. Deliberate.

(b) It is within section 202 where such person—

(i) by his own act caused or assisted in causing the bodily harm from which the death ensued, Own act.

(ii) by his own act administered or assisted in administering the stupefying or overpowering thing from which the death ensued.

(iii) *by his own act stopped or assisted in the stopping* of the breath from which the death ensued,

(iv) *himself used or had* upon his person the weapon as a consequence of which the death ensued, or

(v) *Counselled or procured* another person to do any act mentioned in sub-paragraph (i), (ii) or (iii) or to use any weapon mentioned in sub-paragraph (iv), or

(c) such person by his own act caused or assisted in causing the death of

Victim being a public officer.

(i) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

(ii) a warden, deputy warden, instructor, keeper, goaler, guard or other officer or permanent employee of a prison, acting in the course or his duties, or counselled or procured another person to do any act causing or assisting in causing the death.

Non-capital murder.

(3) All murder other than capital murder is "non-capital murder.".

2. Section 206 of the said Act is repealed and the following substituted therefor;

Punishment for capital murder. Mandatory.

"206. (1) Everyone who commits capital murder is guilty of an indictable offence and *shall be sentenced to death.*

Punishment for non-capital murder.

(2) Everyone who commits non-capital murder is guilty of an indictable offence and shall *be sentenced to imprisonment for life.*

Exception for persons under age of eighteen years

(3) Notwithstanding sub-section (1), a person who appears to the court to have been under the age of eighteen years at the time he committed a capital murder shall not be sentenced to death upon conviction therefor but shall be sentenced to imprisonment for life.

Minimum Punishment.

(4) For the purposes of Part XX, the sentence of imprisonment for life prescribed by this section is a minimum punishment.".

3. The said Act is further amended by adding thereto, immediately after section 492 thereof, the following sections:—

Capital murder to be specifically charged.

"492A. No person shall be convicted of capital murder unless in the indictment charging the offence he is specifically charged with capital murder.".

4. Sub-sections (1) and (2) of section 515 of the said Act are repealed and the following substituted therefor;

"515. (1) An accused who is not charged with an offence punishable by death and is called upon to plead guilty or not guilty, or the special pleas authorized by this Part and no others. Pleas permitted. Plea of guilty.

(2) Where an accused who is not charged with an offence punishable by death refuses to plead or does not answer directly, the court shall order the clerk of the court to enter a plea of not guilty Refusal to plead.

"(2a) An accused who is charged with an offence punishable by *death* and is called upon to plead may plead not guilty, or the special pleas authorized by this part and no others. Pleas where offence punishable by death.

(2b) Where an accused who is charged with an offence punishable by *death* does not plead not guilty or one of the special pleas authorized by this part or does not answer directly, the court shall order the clerk of the court to enter a plea of not guilty.". Where no plea offered.

5. Sub-section (4) of section 516 of the said Act is repealed and the following substituted therefor:—

"(4) When the pleas referred to in sub-section (3) are disposed of against the accused, he may plead guilty or not guilty, unless he is charged with an offence punishable by death, in which case the court shall order the clerk of the court to enter a plea of not guilty.". Pleading over.

6. Section 519 of the said Act is amended by adding thereto, immediately after sub-section (2) thereof, the following sub-section:—

"(2a) A conviction or acquittal on an indictment for capital murder bars a subsequent indictment for the same homicide charging it as non-capital murder, and a conviction or acquittal on an indictment for non-capital murder bars a subsequent indictment for the same homicide charging it as capital murder." Effect of previous charge of capital murder or non-capital murder.

7. Section 569 of the said Act is amended by adding thereto, immediately after sub-section (1) thereof, the following sub-section:—

"(1) (a) For greater certainty and without limiting the generality of sub-section (1), where a court charges capital murder and the evidence does not prove capital murder, but proves non-capital murder, or an attempt to commit non-capital murder, the jury may find the accused not guilty of capital murder but Where capital murder charged and part only proved.

guilty of non-capital murder or an attempt to commit non-capital murder, as the case may be.".

8. The said Act is further amended by adding thereto, immediately after section 583 thereof, the following section:—

Right of appeal of person sentenced to death. Appeal see also s. 597A below as to second appeal.

"583A. (1) Notwithstanding any other provision of this Act a person who has been sentenced to *death* may appeal to the court of appeal.

(a) against his conviction on any ground of appeal that involves a question of law or fact or mixed law and fact; and

(b) against his sentence unless that sentence is one fixed by law.

Notice deemed to have been given.

(2) A person who has been sentenced to death shall, notwithstanding he has not given notice pursuant to section 586, *be deemed to have given such notice* and to have appealed against his conviction and against his sentence unless that sentence is one fixed by law.

Court of appeal may consider.

(3) The court of apeal, on an appeal pursuant to this section, shall—

(a) consider any ground of appeal alleged in the notice of appeal, if any notice has been given, and

(b) consider the record to ascertain whether there are present any other grounds upon which the conviction ought to be set aside or the sentence varied, as the case may be.".

9. Section 586 of the said Act is amended by adding thereto the following sub-section:—

Suspension of execution of sentence of death.

"(5) Where,, pursuant to a conviction, a sentence of death has been imposed, the execution of the sentence shall be suspended until after determination of the appeal pursuant to section 583A whether or not the production of a certificate mentioned in sub-section (4) has been made, and where, as a result of such suspension, a new time is required to be fixed for the execution of the sentence it may be fixed by the judge who imposed the sentence or any judge who might have held or sat in the same court.".

10. (1) Sub-section (2) of section 588 of the said Act is repealed and the following substituted therefor:—

Transcript of evidence.

"(2) A copy or transcript of—

(a) the evidence taken at the trial,

(b) the charge to the jury, if any,

(c) the reason for judgment, if any, and

(d) the addresses of the prosecutor and the accused or counsel for the accused by way of summing up, if

(i) a ground for the appeal is based upon either of the addresses, or

(ii) the appeal is pursuant to section 583A, shall be furnished to the court of appeal, except in so far as it is dispensed with by order of a judge of that court.".

(2) Sub-section (4) of section 588 of the said Act is repealed and the following substitution therefor:—

"(4) A party to the appeal is entitled to receive, Copies to interested parties.

(a) without charge, if the appeal is against a conviction in respect of which a sentence of death has been imposed or against such sentence, or

(b) upon payment of any charges that are fixed by rules of court in any other case,

a copy or transcript of any material that is prepared under sub-sections (2) and (3).".

11. The said Act is further amended by adding, thereto, immediately after section 597 thereof, the following section:— Verying.

"597A. Notwithstanding any other provision of this Act, a person. Appeal on law or fact or mixed law and fact. Second Appeal. See also section 583A.

(a) who has been sentenced to death and whose conviction is affirmed by the court of appeal, or

(b) who is acquitted of an offence punishable by death and whose acquittal is set aside by the court of appeal,

may appeal to the Supreme Court of Canada on any ground of law or fact or mixed law and fact.".

12. All that portion of sub-section (1) or section 598 of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:—

"598. (1) where a judgment of a court of appeal sets aside a conviction pursuant to an appeal taken under section 583 or 583A or dismisses an appeal taken Appeal by Attorney General.

pursuant to paragraph (a) or sub-section (1) of section 584, the Attorney General may appeal to the Supreme Court of Canada.".

13. The said Act is further amended by adding thereto, immediately after section 642 thereof, the following section:—

Recommendation by jury.

642A. (1) Where a jury finds an accused guilty of an offence punishable by death, the judge who presides at the trial shall, before discharging the jury, put to them the following question:

Recommendation for mercy.

You have found the accused guilty and the law requires that I now pronounce sentence of death against him (or "the law provides that he may be sentenced to death", as the case may be). Do you wish to make any recommendation as to whether or not he should be granted clemency. You are not required to make any recommendation but if you do make a recommendation either in favour of clemency or against it, your recommendation will be included in the report that I am required to make of this case to the Minister of Justice and will be given due consideration.

(2) If the jury reports to the judge that it is unable to agree upon a recommendation, either in favour of clemency or against it, and the judge is satisfied that further retention of the jury would not lead to agreement he shall ascertain the number of jurors who are in favour of making for recommendation for clemency and the number of jurors who are against making such a recommendation and shall include such information in the report required by sub-section 1 of section 643.".

14. Sub-section (2) of the section 643 of the said Act is repealed and the following substituted therefor:—

When Judge may reprieve

"(2) Where a judge who sentences a person to death or any judge who might have held or sat in the same court considers:—

Mercy recommendation.

(a) that the person should be recommended for the royal mercy, or

Reprieve by court.

(b) that, *for any reason,* it is necesary to delay the execution of the sentence,

the judge may, at any time, reprieve the person for any period that is necessary for the purpose.".

15. Section 656 of the said Act is amended by adding thereto the following sub-section:—

Approval by Governor in Council of releas after commutation of sentence.

"(3) If the Governor in Council so directs in the instrument of commutation, a person in respect of whom a sentence of death is commuted to imprisonment for life or a term of imprisonment, shall, notwithstanding any other law or authority, not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council.".

Coming into force.

16. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.

Transitional. Pending proceedings.

17. (1) Where proceedings in respect of an offence that, under the provisions of the Criminal Code as it was before being amended by this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, namely:—

(a) subject to paragraph (b), the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force;

(b) where upon conviction for the offence a person is sentenced to death after the coming into force of this Act, the provisions of the Criminal Code, as amended by this Act, relating to appeals apply in respect of such conviction and sentence as if the offence had been committed after the coming into force of this Act; and

(c) where a new trial of a person for the offence has been ordered by the court of appeal of the Supreme Court of Canada and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court before which the accused is to be tried, and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act.

Idem.

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence shall be dealt with inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed.

When proceedings deemed commenced.

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced—

(a) upon the preferring of a bill of indictment before the grand jury of the court, in the case of a court constituted with a grand jury, and

(b) upon the preferring of an indictment before the court, in any other case.

APPENDIX XV

ABOLITION COUNTRIES

TABLE ANALYSING EFFECT OF RESTORATION

Country	Mandatory			
	Tables analysing the effect of Restoration			
Country	Before abolition	During abolition	After restoration	Remarks
Colorado (U.S.A.)[1] (Abolished 1897, restored 1901)	15·4 (Annual average of convictions for murder for five years before abolition).	18 (Annaul average of convictions for murder during four years of abolition).	19 (annual average of convictions for murder for five years following restoration).	Deterrent effect *not proved.*
Iowa (U.S.A.)[2] (Abolished 1872, restored 1878)	4 (convictions for murder) (1871)	7 (Convictions for murder). (1879)	15 (convictions for murder) (1873)	The figures after re-introduction are higher. *Deterrent effect not proved.*
(Recently some States including Iowa, have abolished or limited the death penalty).[3]	3 (Convictions for murder) (1872)	2. (convictions for murder) (1874) 15 (convictions for murder) (1875)	7 (1880) (Convictions for murder) 14 (1882) (convictions for murder). 17 (1883) (Convictions for murder). 12 (1884) (Convictions for murder).	

1Figures taken from R.C. Report, page 347, Professor Sellin's comments below Table 18.

2Figures taken from R.C. Report, page 346, Table 17.

3*See* Clarence H. Patrick, "The Status of Capital Punishment; A World Perspective" (1965 December), 56 Journal of Criminal Law, Criminology and Police Science, 397, 411 foot-note 52.

Country	Before abolition	During abolition	After restoration	Remarks
Kansas (U.S.A.)[1-2-3]	Not relevant for present purpose.	6·5 (Annual average homicide rate for the five years preceding restoration in 1935).	3·8 (Annual average homicide rate for the five years following restoration in 1935).	*These prove* the deterrent effect.
South Dakota (U.S.A.)[4-5] Abolished 1915, restored 1939	Not relevant for present purpose.	1·4 (Annual average homicide rate for five years preceding restoration in in 1939).	1·4 (Annual average homicide rate for five years following restoration in in 1939).	*Neutral.*
Tennessee (U.S.A.)[6-7] (abolished 1915, restored 1917).	*See* 4th column.	*See* 4th column.	The homicide rates available (separately for the white population and the coloured population) are for 1918 to 1924. These show a steady increase from 1918 to 1924. Thus, for the coloured population, the rates are 29·2, 41·3, 42·4, 39·5, 45·9, 49·8 and 52·5 for the years 1918, 1919, etc., respectively.	Inconclusive
Arizona (U.S.A.)[8] (Abolished 1916, restored 1918).	24 homicides (in all (1915) 23 homicides (in all) (1916)	53 homicides (in all) (1917) 24 homicides (in all) (1918)	25 homicides (in all) (1917) 35 homicides (in all) (1920)	*Inconclusive*

1. Figures taken from R.C. Report, page 346, paragraph 42.

2. For earlier figures, *see* R.C. Report, page 352, Table 27, 2nd column and Table 28 2nd column.

3. The figures are of deaths reported as due to homicide for 1,00,000 (One lakh) of the population, *see* R.C. Report page 346, paragraph 39.

4. Figures taken from R.C. Report, page 348, paragraph 46.

5. The figures are of deaths reported as due to homicide per 1,00,000 (One lakh) of the population, *see* R.C. Report page 346, paragraph 39.

6. Figures taken from R.C. Report, page 348, paragraph 47, Table 21.

7. The figures are of deaths reported as due to homicide, per 1,00,000 of the population *See* R.C. Report, page 346, paragraph 39.

8. Figures taken from R.C. Report, page 349, Table 22

Country	before abolition	During abolition	After restoration	Remarks
Missouri (U.S.A.)[1-2] (Abolished 1917, restored 1919)	9·9 (homicide rate for 1919)	10·1 (homicide rate for 1918)	7·9 (homicide rate for 1920)	*Inconclusive* because, after abolition one year shows increase, while the next year does not show much increase; and, after restoration, one years shows decrease, while the next two years show increase.
	9·2 (homicide rate for 1914)	9·7 (homicide rate for 1919)	10·1 (homicide rate for 1921)	
	9·2 (homicide rate for 1915)		11·4 (homicide rate for 1922)	
	(Figures for 1916-1917 not available).			
Washington (U.S.A.)[3-4] (Abolished 1913, restored 1919).	6·5(Annual average rate for the years 1908 to 1912).	7·4(Annual average rate for 1913 to 1915).	5·4(Annual average rate for the years 1920-24).	These figures would seem to *prove* the deterrent effect.
Oregon (U.S.A.)[5] (Abolished 1914, restored 1920).	59 (murderers received at State penitentiary) (1910—1914).	36 (murderers received at the State penitentiary) (1915—1920).	Not available.	Deterrent effect not proved.

NOTE :—The years of abolition have been taken from the Report of the Royal Commission on Capital Punishment[6] The years of abolition as given in another study differ in some cases[7].

1. Figures taken from R.C. Report, page 349, Table 23.

2. The figures are of deaths reported as due to homicide per 1,00,000. *See* R.C. Report, page 346, paragraph 39.

3. Figures taken from R.C. Report, page 347, Table 19(*a*), Average as given below the Table.

4. The figures are of deaths due to homicide per 1,00,000 (one Lakh) of the population. *See* R.C. Report page 346, paragraph 39.

5. Figures taken from R.C. Report, page 348, paragraph 45.

6. R.C. Report, page 345, Table 16.

7. Joyce, Right to Life (1962), page 79.

APPENDIX XVI

Table analysing effect of Non-restoration—(abolition countries)

Country	Figures before abolition	Figures after abolition	Remarks
Belgium[1] . . (in abeyance since 1863)[2].	5·8 (Annual average of death sentences for 1831-1835)	7·2 (Annual average of death sentences for 1866-70)	*Inconclusive.*
	6.2(dftto 1836-70	7·8(ditto for1871-75	It should be added that the figures are of convictions and sentences, and not of reported murders
Figures of homicides known to police, or deaths reported as due to homicide not available).	9·6 (ditto for 1841-45)	8·0 (ditto for 1881-85)	
	16·0 (ditto for 1848-53)	9·4 (ditto for 1886-90)	
	12·6 (ditto for 1856-60)	7·2 (ditto for 1898-1902)	
	7·6 (ditto for 1861-65)		
Denmark[3] . . (in abeyance since 1892, abolished 1933)	20 (Average annual number of convictions for homicide from 1866-1870).	8·6 (Average annual number of convictions for homicide for (1901-05).	The figures are of convictions, and not of reported murders *Inconclusive.*
	15·6 (—ditto. —for 1871-75).	8(—ditto for 1906-10).	
	(Figures for a few *later years* not available).	10·2 (—ditto— for 1911-15).	
		8 (—ditto— for 1916-20).	
		7·6 (—ditto— for 1921-25).	
Italy[4] . . . (in abeyance since 1876; abolished 1890; Restored 1931; Abolished again, 1944).	142 (per million for 1881-85) (*i.e.* average annual number of intentional homicides for the period).	112 (per million for 1891-1895) (*i.e.* average annual number of intentional homicides for the period)).	It may be added, that after restoration in 1931, the rate per million was 47 for the period 1931-35. This shows a decline after *restoration,* but it is said that as a matter of fact there is continuous decline in the homicide rate for Italy[5]. *May be regarded as inconclusive*

1. Figures taken from R.C. Report, page 353, Table 39, Third Column.

2. In Belgium, after 1863, death sentences were imposed by the Courts but were not actually carried out. *Cf.* R.C. Report page 346.

3. Figures taken from R.C. Report, page 354, Table2 Second Column.

4. Figures taken from R.C. Report, page 355, paragraph 60, and Table 32, First and Sixth Columns.

5. *Cf.* R.C. Report, page 356, paragraph 61 citing the comments of Professor Selin.

Country	Before abolition	After abolition	Remarks
Queensland (Australia)[1] (in abeyance since 1911, abolished 1922, not restored).	23 (murders known to police per million, 1905)	19 (Murders known to police per million, 1912).	*inconclusive.*
	37 (ditto 1906).	23 (ditto 1913)	After abeyance in 1911, there was no steady increase; after abolition in 1922 there was slight increase (*e.g.*, *see* figures for 1925), but later there was decrease.
	35 (ditto 1907).	16 (ditto 1914).	
	20 (ditto 1908).	16 (ditto 1915).	
	14 (ditto 1909).	24 (ditto 1916)	
	18 (ditto 1910).	20 (ditto 1917).	
	30 (ditto 1911). (In abeyance).	14 (ditto 1918).	
		20 (ditto 1919).	
		15 (ditto 1920).	
		21 (ditto 1921).	
		18 (ditto 1922).	
		17 (ditto 1912).	
		13 (ditto 1924).	
		22 (ditto 1925).	
		16 (ditto 1926).	
		23 (ditto 1927).	
		11 (ditto 1928).	
		14 (ditto 1929).	
		10 (ditto 1930).	
		13 (ditto 1931).	
		9 (ditto 1932).	
The Netherlands [2] (last execution in 1860 ; Abolished 1870)[3]	32 (Number of certain crimes punishable with death—*i.e.* murders, attempted murders etc. committed during 1850—1859).	53 (number of certain crimes punishable with death—*i.e.* murders, attempted murders etc. committed during 1860—1869).	*Inconclusive*
		33 (ditto for 1871-1880).	
		53 (ditto for 1881-1890).	

1. Figures taken from R.C. Report, page 344, Table 15, Fourth Column.

2. Figures taken from R.C. Report, page 357, Table 34.

3. *See* R.C. Report, page 356, paragraph 62.

Country	Before abolition	After abolition	Remarks
New Zealand .			*See* Note below.
Norway[1] . . (No execution since 1875, abolished 1905).	2·8 (Annual average number of convictions for murder —(1859-1868).	2·4 (Annual average number of convictions for murder for 1879-1888).	Deterrent effect *not proved.*
Sweden[2] . . (In abeyance since 1910. Abolished 1921; rarely used since 1865).	12·4 (Annual average number of deaths due to murder, etc. per million, for 1846 to 1860). 11·2(—ditto—for 1861-1877).	9·0 (Annual average number of deaths due to homicide etc. per million for 1878 to 1898)· 9·6 (—ditto— for 1899 1904). (9·1 (—ditto— for 1905-1909). 7·8 (—ditto— for 1910-1914). 6·5 (Annual average deaths due to homicide, etc. per million for 1915-19). 5·1 (—ditto— for 1920-1924).	Deterrent effect *not proved.*
Switzerland[3] . . (Abolished by the Federal Constitution of 1874, but in 1879, the Cantons were permitted to re-introduce it. Finaily, abolished throughout Switzerland in 1942, when the Penal Code of 1939 came into effect)[4].	*See* fourth column.	*See* fourth column.	Adequate figures not available. But the immediate result of abolition was a considerable increase and the increase wae much more pronos unced in the Cantons which subsequently restore capital punishment than in those which did not. To some extent proves the deterrent effect.

(New Zealand) *Note regarding New Zenland.*—In New Zealand, after abolition in 1941 and restoration in 1950, death sentence was abolished in 1961 (except for treason)[5].

1. *See* R.C. Report, page 357, Table 35.

2. *See* R.C. Report, page 358, paragraph 65 and page 359, Table 36, column 3.

3, Figures taken from R.C. Report, pages 360-361, paragraph 70-73, particularly paragraph 71.

4. *See* R.C. Report, page 360.

5. *See* Crimes Act, 1961 (New Zealand), section 74 and 172.

Country	Before abolition	After abolition	Remarks
Scotland [1—2] . (No executions took place between 1928 and 1945. The figures are for Glasgow only).	2·3 (Average of murders known to police for the period 1928 to 1944). 11 (Murders known to the police for 1945).	5 (Murders known to the police for 1946). 2 (—ditto— for 1947) 2 (—ditto— for 1948)	The execution which took place in 1946 is said to have deterrent effect for later years. But, as against this, it is stated that the dscrease in murders after 1945 followed a decrease in the number of crimes of violence generally, which began before any execution had taken place. The figures *may be regarded as inconclusive.*

APPENDIX XVII

Cases of cruel murder

CRUEL MURDERS

We may refer to a few cases of cruel murder.

SUPREME COURT CASES

(I) One Fahim, cruelly murdered Mrs. Nelson, wife of an American Missionary, at Handia on Varanasi-Allahabad highway. (The husband had gone to Allahabad to get repaired a damaged tyre of his car, leaving behind his wife in the Car). The Allahabad High Court confirmed the sentence of death. The Supreme Court refused leave to appeal against the High Court's judgment dated 8th Oct. 1965[3].

(2) Unni, a naval rating conspired along with 4 others to burgle the safe of the Naval Base Supply Office at Cochin, and they decoyed Lt. Commander Mendanha from his house on the pretext that he was wanted at the Naval base. In a lonely place they caught hold of him, tied his hands and legs, gagged his mouth with sticking-plaster, and plugged his nostrils with cotton soaked in chloroform and deposited him in a shallow drain. Unni was sentenced to death by the High Court of Kerala. The Supreme Court upheld the conviction and the sentence[4].

(3) In a brutal murder, the accused killed a young girl by cutting her into pieces. The Sessions Judge, Srinagar, while finding him guilty of murder sentenced him to life

1. *See* R.C. Report, pages 362-363, paragraphs 77, 78 and Table 41(*a*).

2. The dates of abolition, restoration or last execution for countries in Europe and the Commonwealth are taken from RlC. Report, page 340, Table 12, and page 360.

3. Bombay Chornicle, dated 22-3-1966.

4. Times of India/Hindustan Standard, Dated 23-4-1966.

imprisonment on the ground that the accused had become emaciated in the legs and was crawling. The High Court observed, that this was no ground for leniency in the circumstances of the case, and enhanced the sentence to one of *death*[1].

(4) Wamanrao Kasture, a clerk, sprinkled kerosene on the person of a woman and set fire, which resulted in the woman's death. Death sentence confirmed by the Nagpur High Court[2] as the crime was an atrocious one.

(5) A student—Vijai Karan Singh, stabbed his Vice-Principal, piercing through his heart, as a revenge for the victim having sponsored action against the accused for using unfair means at the examination. Death sentence was confirmed by the Allahabad High Court (Lucknow Bench[3]).

(6) Chinnaswami, a domestic servant murdered Mayyapan, his creditor by enticing him to his quarters. Death sentence was confirmed by the Punjab High Court, (Delhi Bench[4]).

(7) Anti, appellant, mercilessly struck Shanker on his head by a Kodali (a pointed digging instrument like an axe). The death sentence passed by the Sessions Judge, Santhal Parganas, was confirmed by the Patna High Court[5].

(8) The late Shri H. N. Sanyal, Solicitor-General of India, was strangled to death at night by a party of persons who entered his house at night, apparently for committing theft. The murder was a gruesome one. The death sentence was confirmed by the High Court of Punjab (at Delhi) on 25th January, 1966.

(9) The recent sadistic murder tried at the trial known as "Bodies on the moors" may be refered to[7]:—

> Sadism, sexual perversion and cruelty which motivated a young couple to the "cold blooded" killing of a girl of 10, a boy of 12 and youth of 17 and to bury their bodies on lonely moors led to their being given life sentences at the end of their trial yesterday at Chester. The case known as "bodies on the moors" trial attracted reporters and psychologists from all parts of the Western world and took up more space in the British Press than any criminal case in recent years.

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1. Case in 'Hindustan' Times, New Delhi, dated 11th June, 1965, since reported as *Akbar Shah* v. *The State*, (1965) 2 Cr. L.J. 771 (Jammu & Kashmir).
2. 'Nagpur Times' dated 23-7-1965.
3. 'National Herald,' dated 22-10-1965.
4. 'Patriot,' dated 5-11-1965.
5. 'Search Light,' Patna, dated 12-12-1965.
6. 'Hindustan Times,' 8th May, 1966
7. *See* also Calcutta Weekly Notes, (April, 1965), page 75, "Reporting Crime".

The accused who were convicted were Ian Brady, a clerk of 28, and Myra Hindley, a shorthand typist aged 23, his girl friend who worked in the same office and lived together in the same house.

Evidence at the trial brought out that the couple had a library of books on murder, sadism and perversion, including the works of Marquis de Sade. Smith had, according to his statement, been at first drawn in by them and had heard Brady boast of having killed many persons. Later when he witnessed Brady axing to death Evans who had been inveigled into the house, he broke down and ran to the police.

Other discoveries by the police included a tape recording of the frightened cries of a child identified as Lesley Ann Downey, 10, whom the accused admitted to having photographed in the nude but denied murder. The girl's body had been found burried on the moors at a spot a photograph of which was found in Brady's album. The pathetic pleadings of the child were heard by the court and the jury when the tape was played out during the trial as also the commands of Brady and Hindley to the girl.

The police also produced a diary kept by Brady in which there was the name of John Kilbride, 12, whose body also was found on the moors near the other burial. Other finds included a plan for disposal of bodies drawn up by Brady.

The contention of the prosecution was that Brady was a cold-blooded pervert who took pleasure in inflicting pain on helpless children and who killed for kicks. Hindley, it was brought out, had fallen under his spell and became a willing convert to his bestial inclinations.

A curious sidelight on the sensational Press in Britain was thrown by the evidence of Smith. He admitted that the News of the World had signed him on to give material for article on the murder after the accused were convicted. In the meanwhile they were giving a substantial weekly allowance.

APPENDIX XVIII

CASES OF APPEALS UNDER ARTICLE 134 AND 136 OF THE CONSTITUTION RELEVANT TO THE SENTENCE OF DEATH

Cases of appeals to Supreme Court

(1)	(2)	(3)	(4)
Pritam Singh v. *The State*.[1]	Appeal under article 136.	The appellant was sentenced to death on the charge of murder by the Sessions Judge, Ferozepur. The	Appeal dismissed

1. *Pritam Singh* v *The State*, (1950), S.C.R. 543; A.I.R. 1950 S.C. 169 (Fazl Al Patanjali Shastri, Mahajan, B.K. Mukherjea and S.R. Das JJ.).

(1)	(2)	(3)	(4)
		High Court of Punjab upheld the conviction, and confirmed the sentence. In appeal, the Supreme Court found that the story of prosecution was supported by not less than five witnesses, was not incredible, or improbable, and had impressed four assessors and the two lower courts. Therefore, it would be against all principles and precedents, if the Supreme Court were to constitute itself into "*a third court of facts*" and after reweighing the evidence, to come to its own conclusions. The appeal was dismissed. The court rejected the contention of the counsel for the appellant that, once an appeal had been admitted by special leave, the entire case was at large, and the appellant could contest all the findings of facts and raise every point which could be raised in the High Court or trial court. It cited the observations of the Privy Council (*Ibrahim* v. *Rex*, 1914, A.C. 599, 615; A.I.R. 1914 P.C. 155) to the effect that the Privy Council had repeatedly treated application for leave to appeal and the appeal as being upon the same footings. Different standards could not be adopted at two different stages of the same case. The Supreme Court made the following observations regarding the scope of article 136:—
		"On a careful examination of article 136 alongwith the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, and as far as possible, a more or less uniform standard should be adopted in granting special leave	

(1)	(2)	(3)	(4)
		in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those cases where special circumstances are shown to exist. The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases, which were reviewed by the Federal Court in *Kapildeo* v. *The King* (A.I.R. 37, 1950 F.C. 80 : 51 Cr. L.J. 1057). It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Since the present case does not in our opinion fulfil any of these conditions, we cannot interfere with the decision of the High Court, and the appeal must be dismissed."	

(1)	(2)	(3)	(4)
Lachhman Singh v. *The State.*[1]	Appeal under article 134(1)(c).	The appellants were tried for murder and sentenced to transportation for life. The Punjab High Court upheld the conviction and the sentence. Before the Supreme Court, the value of the evidence as to the recovery of blood-stained clothes, at the instance of the appellants, was attacked, and the inference to be drawn from the post-mortem examination by the doctor (as to the time of the offence) was also pressed. The Supreme Court, however, pointed out, that these points had been put before the lower courts, and did not prevail with the High Court and the Court of Session, and that it was not a function of the Supreme Court to re-assess the evidence and the argument on points of fact which did not prevail with the lower courts. The Supreme Court also did not find sufficient ground for interference.	Appeal disallowed
Darshan Singh v. *State of Punjab.*[2]	Appeal on a certicate granted under article 132, as the case involved a substantial question of law to the interpretation of the Constitution (validity of the East-Punjab Cotton Cloth and Yarn Order, 1947 in so far as it dealt with the export and import across the customs frontiers.	The appellant was convicted of an offence under the East-Punjab Cotton, etc., Order and sentenced to one year's rigorous imprisonment by the trying Magistrate. Appeal to the Court of Session was dismissed, but the sentence was reduced. A revision to the High Court was dismissed. On appeal to the Supreme Court, the appellant did not succeed on the constitutional point. But counsel for one of the appellants craved leave to bring to the notice of the Court an important point which had resulted in grave miscarriage of justice ; the courts below had relied on an admission alleged to have been made by the appellant that he	Appeal allowed and rehearing ordered.

1. *Lachhman Singh* v. *The State*, (1952) S.C.R. 839; AI.R. 1952 S.C. 167 (Fazl Ali and Bose JJ.).

2. *Darshan Singh* v. *State of Punjab* (1953) S.C.R. 319 ; A.I.R., 1953 S.C. 83, 135 paragraphs 20, 21 (Patanjali Shastri C. J., B. K. Mukherjea, Chandrashekher Aiyer, Bose and Ghulam Hasan JJ.).

(1)	(2)	(3)	(4)
		was present at the customs barriers at Wagha. But actually there was no such admission by the appellant. The Supreme Court considered this point, and found that the record cont ined no such admission. It, therefore, directed rehearing of the appeal by the Sessions Judge on the other evidence ; *after excluding the admission.*	
Kalawati v. *Himachal Pradesh*[1].	Appeal under 132, and also on certificate under article 134 (1)(*c*).	The appellant Kalawati and the appellant Ranjit Singh were tried for the murder of Bikram Singh, the husband of Kalawati. The prosecution case was, that the two appellant had developed illicit intimacy with each other, and wished to get rid of Bikram Singh, because he was cruel in his behaviour to appellant Kalawati. Ranjit Singh was charged under Section 302, and Kalawati was charged under that section read with section 114 of the Penal Code. The Sessions Judge found Ranjit Singh guilty and sentenced him to death; he acquitted Kalawati of the offence under section 302, but found her guilty under section 201 as she had suppressed the evidence, screened Ranjit Singh and given false information in respect of the murder. She was sentenced to five years' rigorous imprisonment. Both appealed to the Judicial Commissioner, and the State also appealed against the acquittal of Kalawati on the charge of murder. The Judicial Commissioner allowed Kalawati's appeal and set aside her conviction under section 201, but allowed the State's appeal	Appeal regarding Kalawati allowed in substance ; sentence of Ranjit Singh reduced.

1. *Kalawati* v. *State of Himachal Pradesh*, (1953) S.C.R. 546 ; A.I.R. 1953 S. C. 131 (Patanjali Shastri C.J., B. K. Mukherjea, Chandrashekher Aiyer, Bose and Ghulam Hasan JJ).,

(1)	(2)	(3)	(4)
		against her and convicted her of murder under section 302, read with section 114, and sentenced her to transportation for life. Ranjit Singh's appeal was dismissed. He, however, granted a cerficate under article 132 as a question of interpretation of article 20 (2) and (3) of the Consrtitution was involved. He also granted a certificate under article 134 (1)(c), on *the ground that*, since confirmation of a sentence of death was generally made by a Bench of two Judges. it was not fit and proper that the matter should rest with his own decision sitting singly. The Supreme Court regarded the grant of certificate under article 134 as not sound, and observed, that if there is only one Judicial Commissioner in a particular State, who is to confirm the sentence of death, the procedure laid down must be followed, and the fact that there was not a Bench of two Judges was not an adequate ground for converting the Supreme Court into an ordinary Court of appeal. But the Supreme Court heard the appeal on merits. The Supreme Court found the case not proved beyond doubt against Kalawati, and thought that the plot was finally executed without her instigation, even though she might be aware of the intentions of Ranjit Singh. The Court also hesitated to act upon her confession, in view of act certain weaknesses therein. However, the Court regarded her as guilty of the offence under section	

(1)	(2)	(3)	(4)
		201, since, after the occurrence, she gave a false version of dacoity. "The border-line between abetment of the offence and giving false information to screen the offender is rather thin in her case, but it is prudent to err on the safe side, and hold her guilty only of an offence under section 201, Penal Code, as the learned Sessions Judge did". The Court sentenced her to three years' rigorous imprisonment under section 201. As regards Ranjit Singh, the court dismissed his appeal on the merits, but substituted for the sentence of death the sentence of transportation for life, having regard to the time that had lapsed between occurrence of the offence and the decision of the Supreme Court, and also to the probable motive of prevention of cruelty to a helpless woman.	
Tulsi Ram v. *The State* [1]	Appeal under Article 134 (1)(*a*)	The appellant was tried for murder, but acquitted by Additional Sessions Judge, Bhandra. The High Court at Nagpur reversed the acquittal, and convicted him of murder and sentenced him to death. On appeal, the Supreme Court considered, that the case against the accused had not been proved beyond reasonable doubt, and observed that in an appeal under section 417, while the appellate court had full power to review the whole case, it must start wth the realisation that an experienced judicial officer, sitting with four Assessors had concluded that there was clearly reasonable doubt in respect of the guilt of the accused. The Supreme Court stated—'It, therefore, requires	Appeal Allowed.

1. *Tulsi Ram* v. *The State*, A.I.R. 1954 S.C. 1 (Kania C. J., Patanjali Shastri and S. R. Das JJ.).

(1)	(2)	(3)	(4)
		good and sufficiently cogent reasons to overcome such reasonable doubt before the appellate courts come to a different conclusion.' After examining the evidence, the Supreme Court *acquitted* the accused.	
Muthuswami v. *State of Madras.* [1]	Article not quoted in the judgment.	The appellant was convicted by the Court of Session of murder. He was sentenced to death. The High Court upheld the conviction, relying only on the confession of the accused. The Supreme Court felt, that in the circumstances of the case, the confession should not be believed. The High Court had relied upon the wealth of details in the confession as a safeguard of its truth, but the Supreme Court pointed out that, the main features of the story given in the confession, had not been tested. Further, the confession was retracted, and should ordinarily have required corroboration, which was wanting in this case. The accused was acquitted.	Appeal allowed.
Sadhu Singh v. *State of P.E.P.S.U*[2]	Appeal under article 136.	In this case, a Division Bench of the High Court of Patiala had confirmed the sentence of transportation of life passed against the appellant for murder. In the First Information Report, the version put forth was, that the gun of the accused had gone off by accident and killed the deceased. It was only later that the case was altered into one of intentional homicide. In view of this special circumstance, which the appellate court had failed to appreciate the Supreme Court felt that it should interfere, as otherwise a failure of justice would be	Appeal allowed.

1. *Muthuswami* v. *State of Madras* A.I.R. 1954 S.C. 4 (Fazl Ali, Mahajan and Bose JJ.).

2. *Sadhu Singh* v. *State of Pepsu*, A.I.R. 1954 S.C. 271 Mahajan, B. Mukherjee and Jagannath Dass JJ.).

(1)	(2)	(3)	(4)
		occasioned. The appellant was held guilty of the offence under section 304-A, and the sentence reduced to imprisonment already undergone.	
Nar Singh v. *State of Uttar Pradesh*[1].	Appeal under Article 134 (1)(*c*).	This case is important only the decision that the expression "case" under Article 134 (1)(*c*) means the case of each individual person, so that a certificate can be granted in respect of one person and refused in respect of another. On the merits, the appeal against the conviction under section 302 read with section 149 Indian Penal Code was dismissed.	Appeal dismissed.
Chamru Eudhwa v. *State of Madhya Pradesh*[2].	Appeal under Article 136.	In this case, the Supreme Court altered the conviction of the accused under section 302 into one of a conviction under section 304 Indian Penal Code and altered the sentence of transportation for life into one of seven years' rigorous imprisonment, on the ground that the case fell within Exception IV to section 300.	Appeal allowed in part.
Pandurang v. *State of Hyderabad*[3].	Appeal under Article 136.	Five persons, including the three appellants, were prosecuted for the murder of one R. Each was convicted and sentenced to death under section 302. In the appeal and in confirmation proceeding in the High Court, there was difference of opinion among the two Judges ; Ali Khan J. held that the conviction should be maintained, but the sentence should be "commuted" to imprisonment for life, while Deshpande J. held that all the accused should be acquitted. The matter was referred to a	Appeal allowed as regards *conviction* of one appellant and *sentence* of the other two.

1. *Nar Singh* v. *State of Uttar Pradesh*, (1955) S.C.R. 238 ; A.I.R. 1954 S.C. 457 (B. K. Mukherjea, Bose and Ghulam Hasan JJ.).

2. *Chamru Eudhwa* v. *State of Madhya Pradesh*, A.I.R. 1954 S.C. 652. (Mahajan C. J. and Bhagawati and Venkataraman Ayyar JJ.).

3. Pandurang *v.* State of Hyderabad, (1955) 1 S.C.R. 1083 A.I.R. 1955 S.C. 216, (B. K. Mukherjea, S. R. Das and Bose JJ.).

(1)	(2)	(3)	(4)
		third judge—P. J. Reddy J.,—who adjudged all the five to be guilty under section 302, and considered that the death sentence of the three appellants should be maintained, and those of the two other should be commuted to transportation for life. In accordance with the opinion of the third Judge, the sentences suggested by him were maintained, as well as the conviction. The High Court refused certificate for leave to appeal. The Supreme Court granted special leave.	
		The Supreme Court observed, that *ordinarily*, it would not have inquired into questions of fact ; but as three persons were sentenced to death on the opinion of the *third Judge*, despite the opinion of the one Judge that the death sentence should not be imposed, and the opinion of the other Judge that the appellant were not guilty and should be acquitted, the Supreme Court deemed it advisable to examine the evidence.	
		After examining the evidence, it held, that so far as appellant Pandurang was concerned, he was liable only under section 326, Indian Penal Code, and inference of common intention to cause death should not be made in his case. Hence, the conviction was altered from one under sections 302 to 326 and the sentence was altered from death to imprisonment for ten years. As regards the other appellants, their convictions were maintained, but the sentence was reduced to transportation for life. The Supreme Court observed, that while it did not intend to fetter	

(1)	(2)	(3)	(4)
		the discretion of the Judges in the matter of sentence, yet, when the appellate Judges, who agreed on the question of guilt, differed on that of sentence, it was usual not to impose the death penalty unless there are compelling reasons.	
Machander v. *State of Hyderabad*[1].	Appeal under Article 136.	The appellant was charged with the murder of one M and was convicted. This conviction was maintained by the High Court of Hyderabad on the facts of the case, which were very peculiar. The Supreme Court allowed his appeal and set aside the conviction and sentence (The sentence passed by the trial court is not stated in the judgment). In the opinion of the Supreme Court, the ill-will between the accused and the deceased, the suspicious conduct of the accused, and the fact that thirteen days after the murder, he knew that M had been murdered, and also knew where the murder had been committed and the body was hidden, were circumstances which could be said to point with equal suspicion at the *other members of the accused's* family. The brother of the appellant, though challaned in this case, was absconding and could not be traced. If the brother had committed the murder, it was possible that the accused, the appellant, had derived his knowledge of the murder, etc., from the brother. Soon after the arrest, the accused wanted to make a clean breast of everything, but the police waited six days before getting a confession judicially recorded. The examination of the accused under section 342, Criminal Procedure Code, had also not been satis-	**Appeal allowed.**

1. ***Machander*** v. *State of Hyderabad*, A.I.R. 1955, S.C. 792 (**Bose, Jagan Nath Das and Sinha JJ.**).

(1)	(2)	(3)	(4)
		factory. In view of all these facts, the appeal was allowed and the conviction and sentence set aside. Re-trial was not ordered, since the appellant had been on his trial for over four and a half years.	
Aher Raja Khima v. *State of Saurashtra*[1].	Appeal under Article 136.	In this case the Sessions Judge, differing with the unanimous opinion of the assessors, acquitted the appellant of the murder of one Jetha, who was married to a girl with whom the appellant was on intimate terms. The High Court of Saurashtra, in an appeal by the State, convicted the accused. The main question in the appeal before the Supreme Court was whether, in reversing the order of acquittal, the High Court had borne in mind the principles which the Supreme Court had enunciated about interference with acquittal (under section 417, Criminal Procedure Code). The majority of the Supreme Court took the view, that it was not enough for the High Court to have taken a different view of the evidence and that there must be *substantial and compelling reasons* for holding that the trial court was wrong. Applying this test the majority found, that the circumstances did not disclose strong and compelling reasons to set aside the acquittal and allowed the appeal. (The majority regarded the confession of the accused as false and involuntary). Venkataram Aiyar J. however, dissented, and in an exhaustive judgment reviewing the Privy Council and Supreme Court decisions	**Appeal allowed.**

1. *Aher Raja Khima* v. *State of Saurashtra* (1955) 2 S.C.R. 1285 ; A.I.R. 1956 S.C. 217 (Bose and Chanderasekhar Aiyar JJ, Venkatarama Aiyar J dissenting).

(1)	(2)	(3)	(4)
		as to the scope of interference in criminal appeals, expressed the view that the doctrine of compelling reasons had no justification for its existence ; that the phrase was undefined, and was dangerous, because it related to the appreciation of evidence. It put a judgment of acquittal (however recorded), "in a position of vantage", which the law did not grant to it, and such a situation must result in great mischief if the doctrine was to be regarded as imposing a restriction on the powers of court. Once that doctrine is kept apart, there was no ground for interference in this case with the finding of the High Court (Pritam Singh's case, 1950 S.C. 169 cited). The law did not provide for a further appeal on the facts against the order of *reversal*, because the present appeal was not under article 132 or article 134 (1)(*a*) (*b*), but was under Article 136. Even on the merits, the decision of the High Court was correct. Appeal was allowed by the majority, and conviction set aside.	
Surjan* v. *State of Rajasthan.[1]	Appeal under Article 136.	The facts are not important. The doctrine of "strong and compelling reasons" regarding interference by the High Court in acquittal is followed in this case, and previous cases cited.	Appeal of appellant Surjan accepted in part namely, conviction under section 304 altered into conviction under section 323.
Haripada* v. *State of Bengal[2].	Appeal under article 134 (1)(*c*) and 136.	In this case, the appellant was convicted by the Presidency Magistrate, Calcuttta of an offence under section 411, Indian Penal Code and sentenced to imprisonment for two years. His	Appeal Dismissed.

1. *Surjan* v. *State of Rajasthan* A.I.R. 1956 S.C., 425 (Bose and Jagannath Dass JJ.).

2. *Haripada v. State of West Bengal* (1956) S.C.R. 639 ; A.I.R. 1956 S.C., 757. Bhagwati, Imam and Govinda Menon JJ.).

(1)	(2)	(3)	(4)
		appeal to the High Court was dismissed by the High Court at Calcutta, but the Calcutta High Court granted a certificate for leave to appeal under Article 134 (1)(*c*) on the ground that it felt that there had not been such a full and fair trial as ought to have been held. The Supreme Court regarded such a reason for the grant of the certificate as unsound. The High Court had noted, that the question involved was one of fact, and therefore in the opinion of the Supreme Court, there could not be any justification for granting the certificate and converting the Supreme Court into a court of appeal on question of facts. For remedying a gross miscarriage of justice or departure from a legal procedure vitiating the whole trial, the Supreme Court would certainly interfere, but the High Court could not arrogate that function to itself and pass on to the Supreme Court a matter purely involving a question of fact. On the facts of the case, the Supreme Court found no reason for interference.	
Bhagwan Das **vs.** *State of Rajasthan*)[2].	Appeal under article 138.	The appellants (along with the daughter of one of the appellants) were tried for murder under section 302, Indian Penal Code but were acquitted by the Sessions Judge, Ganganagar. The High Court of Rajasthan, in appeal, reversed the order of acquittal of the appellants and convicted them under section 302 read with section 34 Indian Penal Code and sentenced them to transportation for life. This order of the High Court of Rajasthan was appealed on two grounds, (*i*) that there was no evidence against the appellants to justify con-	**Appeal allowed.**

1. Of course, it is impossible by a precise formula to indicate the limits of High Court's discretion *Babu vs. State* of U. P. (1966) 2 S.C. J. 287, 291.

2. *Bhagwan Das* v. *State of Rajasthan* A.I.R. 1957 S.C., 589. (Bhagwati and Kapur JJ.).

(1)	(2)	(3)	(4)
		viction, and (*ii*) that there were no "compelling" reasons for reversal of the acquittal. As regards tne first, the Court observed, that while the Supreme Court would not interfere with the findings of the High Court merely because the conclusions of the Supreme Court on the evidence differed with those of the High Court, yet where the evidence was such that no tribunal could legitimately infer from it that the accused was guilty, the Supreme Court would set aside the conviction. (*Stephen Seneviratne* vs. *The King*, A.I.R. 1936 Privy Council 289, 291 followed). In this case, the evidence was of such quality that no legitimate inference of guilt could properly be drawn. There were certain contradictions in the statement of important prosecution witnesses. Again, dying declarations stated to have been made by the deceased were made to witnesses whose evidence suffered from material contradictions. Ordinarily, a dying decaration of this kind would be insufficient for sustaining conviction on a charge of murder. Next, the High Court had disbelieved the evidence of the doctor, saying that his opinion was not in conformity with the books in medical jurisprudence, but this was not a satisfactory way of disposing of evidence unless the passages from the books are put to the witness (*Sunder Lal* vs. *State of Madhya Pradesh*, A.I.R. 1954 S.C. 28 followed). An acquittal should not be set aside in the absence of substantial and compelling reasons. The judgment of	

(1)	(2)	(3)	(4)
		the High Court did not disclose any such reason for interference with the findings of the trial court. The appeal was allowed and the accused acquitted.	
Jumman vs. *The State of Punjab*[1].	Appeal under article 136.	The appellants were convicted by the Additional Sessions Judge, Amritsar, for murder and sentenced to death. The convictions were confirmed and the sentence of death also confirmed by the High Court of Punjab. On appeal to the Supreme Court, the Supreme Court, while stating that in an appeal under special leave it was ordinarily bound by the finding of fact arrived at by the High Court, proceeded to hear the appeal on evidence, because the High Court had not dealt with the appeal as it should have, and did not seem to have exercised its independent judgment on the material facts. It pointed out, that in proceedings for confirmation under section 374 the High Court had to satisfy itself that the case had been proved beyond reasonable doubt. ', In fact, the proceedings before the High Court are a re-appraisal or reassessment of the entire facts and law, in order that the High Court should be satisfied on the materials about the guilt or innocence of the "accused person." The High Court should, therefore, come to an *independent* conclusion of its own on the material, it could be assisted by the opinion expressed by the Sessions Judge. After going into the evidence, the Supreme Court	Appeal allowed by altering the conviction one for lesser offence.

1. *Jumman* v. *The State of Punjab* A.I.R. . . S.C. 469, 472. (Jagannadh D. Imam and Govinda Menon JJ.).

(1)	(2)	(3)	(4)
		set aside the conviction and sentence for murder, and altered the conviction into one under section 304 (first part) Indian Penal Code.	
Sarwan Singh vs. *State of Punjab.*[1]	Appeal under article 136.	The appellants were convicted of murder and sentenced to death. They alongwith the approver were stated to have murdered one Gurdev Singh in village Sohian, Police Station Jagraon. The High Court of Punjab maintained the conviction, and confirmed the sentence. The Supreme Court in appeal stated, that ordinarily it woud not interfere with concurrent findings of fact when the appeal was by special leave, but in this case it felt bound to interfere because the judgment of the High Court suffered from a serious infirmity in that the Judges, while dealing with the evidence of the approver, had not addressed themselves to the question whether the approver was a *reliable* witness or not. In the opinion of the Supreme Court, the evidence of the approver in this case was so thoroughly discrepant that it was difficult to resist the conclusion that he was wholly unreliable. The appellants were acquitted.	Appeal allowed.
State of Delhi v. *Shri Ram Lohia*[2].	Appeal under article 136.	The appellant was convicted by the trial court of an offence under section 5(4) of the Indian Official Secrets Act. Appeal against the conviction and sentence was dismissed by the Additional Sessions Judge,	Appeal dismissed.

1. *Sarwan Singh* v. *State of Punjab* (1957) S.C.R. 953 ; A.I.R. 1957 S.C. 637. (Jagannath Das, B.P. Sinha and Gajendragadkar JJ).

2. *State of Delhi* v. *Shri Ram Lohia* A.I.R. 1960 S.C. 490.

(1)	(2)	(3)	(4)
		Delhi, but the High Court of Punjab, *in revision*, acquitted him. The *State appealed to the* Supreme Court. The High Court had acquitted him on the ground that one important prosecution witness was to be looked upon as an accomplice, and that there was no other evidence against the appellant. On the facts of the case, the Supreme Court regarded that person as utterly untrustworthy, and dismissed the appeal.	
K. Kunhahammad v. *State of Madras*.[1]	Appeal under article 136.	The appellant was convicted of a criminal conspiracy to misappropriate the property of one co-operative society; and other connected offences. The conviction was under section 409 and section 477A, Indian Penal Code. The High Court of Madras accepted the appeal regarding section 477A and confirmed the conviction under section 409. The Supreme Court observed that, the finding of the High Court that the charge under section 409 had been proved beyond reasonable doubt, was a finding of fact, and, in this conclusion, the High Court *had agreed with the view* taken by the trial Judge. This finding could not be challenged before the Supreme Court in the present appeal. (Certain procedural irregularities were also discussed, but it was held that the accused had not been prejudiced.).	**Appeal dismissed.**
Shambu v. *State of Bihar*.[2]	Appeal under article 136.	Certain persons, including the appellant were convicted by the Additional Judicial Commissioner, Chhota Nagpur, for the offence under section 302 and also for the offence under section 302 read with sections 149 and	**Appeal dismissed.**

1. *K. Kunhahammad* v. *State of Madras*, A.I.R. 1960 S.C. 661, 663 (Gajendragadkar, Sarkar and Subba Rao. JJ.).

2. *Shambhu* v. *State of Bihar*, A.I.R. 1960, S.C. 725, 727, paragraph 4 (Gajendragadkar, Subba Rao and Shah JJ.).

(1)	(2)	(3)	(4)
		148, etc., Indian Penal Code. For the offence under section 302, appellant S was sentenced to transportation for life. The other accused were convicted under section 326 read with sections 149 and 148, Indian Penal Code and sentenced to rigorous imprisonment for six years (four years in the case of some of the appellants). The High Court apparently confirmed the convictions and the sentences. The Supreme Court refused to interfere on questions of fact based on appreciation of evidence, observing: "*It is the settled practice of this Court that unless the trial is vitiated by an illegality or irregularity of procedure or the trial is held in a manner violative of the principles of natural justice resulting in an unfair trial, or unless the trial had resulted in gross miscarriage of justice, this Court in a criminnl appeal does not normally enter upon a review of the evidence on which the conclusion of the Courts below is founded.*"	
		It had been argued, that the conviction under section 326 read with section 149 was bad, as no member had been proved to have caused "grievous hurt" to *any of* the victims. It was held, that the conviction under section 326 read with section 149 was valid; the common object of the unlawful assembly, as found by the Courts below, was to cause grievous hurt, and death was caused by one of the members of the assembly. For causing the death, the other members were not found to be responsible, but the conviction for the offence of causing grievous hurt "in prosecution of the common	

(1)	(2)	(3)	(4)
		object" was maintainable as the offence of murder was in its nature an aggravated form of grievous hurt. Appeal was dismissed.	
Anant Lagu v. *State of Bombay*.[1]	Appeal under article 136.	The appellant was tried for the murder of a woman named Laxmibai Karve, the charge being that on or about the night between 12th November and 13th November, 1956, either at Poona or in railway journey between Poona and Bombay, he administered to her some unrecognized poison or drug which would act as poison, with the intention of causing her death, and that caused her death. He was sentenced to death by Shri V. N. Naik, Sessions Judge, Poona under section 302, Indian Penal Code. The conviction was maintained and the sentence confirmed by the Bombay High Court (J C. Shah J. and V. S. Desai J.). The main point was, whether the death was caused by poison or by disease, and (if by poison) whether the accused had administered the poison. The Supreme Court (S. K. Das and Hidayatulla JJ.) observed, that ordinary, it was not the practice of the Supreme Court to re-examine the findings of fact reached by the High Court, particularly in a case where there was a concurrence of opinion between the two courts, also. But, here the case was based entirely on circumstantial evidence, and there was no direct evidence that the appellant administered poison. No poison had, in fact, been detected by the doctor who performed the *post-mortem*	

1. *Anant Lagu* v. *State of Bombay*, (1960) 2 S.C.R. 460; A.I.R. 1960 S. C. 500. (S.K. Das Sarkar and Hidayatulla JJ.).

(1)	(2)	(3)	(4)
		examination or by the Chemical Analyser. The inference of guilt having been drawn on an examination of a mass of evidence during which subsidiary findings were given by the two courts below, the Supreme Court, in view of the extraordinary nature of the case felt it necessary to satisfy itself whether each conclusion on the separate aspects of the case was supported by evidence and was just and proper. According to the majority of the Supreme Court, the death had not occurred from diabetic coma, but was due to some unrecognized poison or drug acting as a poison, and that it was the accused who committed murder by administering such substance; the Court considered the circumstantial evidence so decisive, that the Court could unhesitatingly hold that the death was as a result of administration of poison and that the poison must have been administreed by the accused. The Court pointed out that there was no hard and fast rule that the poison must be isolated. Sarkar J. however, dissented as, in his opinion, the prosecution had failed to prove the guilt of the appellant. The appeal was dismissed and the sentence of death was maintained, as the Supreme Court observed that that was the only sentence that could be imposed for this planned and cold-blooded murder for gain. (The appellant in this case had, according to the prosecution case, committed the murder to get hold of the property of the deceased. The appellant was her personal physician.).

(1)	(2)	(3)	(4)
Sanwat Singh v. *State of Rajasthan*.[1]	Appeal under Article 136.	This case is important only for its discussion of the principles on which the High Court should act in hearing appeals against acquittal. The judgment notes that the expression "substantial and compelling reasons" used in earlier decisions of the Supreme Court had caused considerable difficulties to High Courts. Those words, it was stated, were not intended to add a condition to section 417 of the Criminal Procedure Code, but only to convey the idea that the appellate court must not only bear in mind the principles laid down by the Privy Council, but also give its clear reasons for coming to the conclusion that the acquittal was wrong. The Supreme Court pointed out, that the appellate court had full power to review the evidence upon which the acquittal was founded, that the principles laid down in *Sheo Swarup's* case (64 I.A. 398; A.I.R. 1934 P.C. 227) were a correct guide, and that the different phrases used in the decisions of the Supreme Court, like substantial and compelling reasons" or good and sufficiently cogent reasons" or "strong reasons" were *not* intended to curtail the power of the appellate court to review the evidence and come to its own conclusion, but to state that in doing so the appellate court should not only consider the matters on record having a bearing on the questions of fact and the reasons given by the court in appeal, but should also *express* those reasons in its own judgment in which it holds that the acquittal was not justified. The appeal was dismissed.	Appeal dismissed.

1. *Sanwat Singh* v. *State of Rajasthan*, (1961) 3 S.C.R. 120; A.I.R. 1961 S.C. 751 (Imam, Subba Rao and Raghubar Dayal JJ.).

(1)	(2)	(3)	(4)
Sawwat Singh—(contd.)		The following observations as to the scope of interference under article 136 are also interesting:— "Article 136 of the Constitution confers a wide discretionary power on this court to entertain appeals in suitable cases not otherwise provided for by the Constitution. It is implicit in the reserve power that it cannot be exhaustively defined, but decided cases do not permit interference unless "by disregard to the forms of legal process or some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done." Though article 136 is couched in widest terms, the practice of this Court is not to interfere on questions of fact except in exceptional cases when the finding is such that it shocks the conscience of the court. In the present case, the High Court has not contravened any of the principles laid down in *Sheo Swarup's* case, 64 Ind. App. 398; [A.I.R. 1934 P.C. 227(2)] and has also given reasons which led it to hold that the acquittal was not justified. In the circumstances, no case has been made out for our not accepting the said findings." On the merits of the case the Supreme Court saw no reason to interfere.	
K. M. Nanavati v. *State of Maharashtra.*[1]	Appeal under article 136.	The appellant was charged under section 302 as well as under section 304, Part I, Indian Penal Code for the murder of the paramour of his wife. The Sessions Judge, Greater	Appeal dismissed.

1. *K. M. Nanavati* v. *State of Maharashtra* A.I.R. 1962 S.C. 605 (S. K. Das, Subba Rao and Raghubar Dayal JJ.).

(1)	(2)	(3)	(4)
K. M. Nanavati —(contd.)		Bombay, sitting with a special jury, heard the case. The jury brought in a verdict of not being guilty, by a majority of eight to one, but the Sessions Judge did not agree with the verdict and submitted the case under section 307, Criminal Procedure Code, to the High Court of Bombay. In the High Court, the reference was heard by Shelat and Naik JJ. Shelat J. held that, there were misdirections to the jury, reviewed the evidence and came to the conclusion that the accused was guilty of murder. Alternatively, he expressed the view that the verdict of the jury was perverse and unreasonable, and contrary to the weight of evidence. Naik J., in a separate judgment, took the view that no reasonable body of persons could have come to the conclusion arrived at by the jury. The appellant was sentenced by the High Court to imprisonment for life under section 302. The Supreme Court, in appeal, discussed in detail the scope of section 307, Criminal Procedure Code, and after examining the evidence, upheld the conviction and sentence, passed by the High Court. In the course of judgment, observed that it found force in the argument of the Attorney General, that if under section 307, Criminal Procedure Code, the High Court could consider the evidence afresh and come to its conclusions, in view of the misdirections by the trial Judge to the jury, the Supreme Court *should not*, in the exercise of its discretionary jurisdiction, under article 136, interfere with the *findings of* the High Court. But since the Supreme Court had heard the counsel at great length, it proposed to discuss the evidence.	

(1)	(2)	(3)	(4)
Harbans Singh v. *State of Punjab*.[1]	Appeal under article 136.	Six persons including the appellants, were tried by the Additional Sessions Judge, Ferozepur, on several charges in connection with death by homicidal injuries of two brothers. They were all acquitted, but on appeal by the State, the High Court of Punjab set aside the orders of acquittal in respect of the appellants and convicted them under section 302. The appellants filed the present appeal after obtaining special leave from the Supreme Court. One of the grounds of appeal was, that the High Court had not sufficient reason for interfering with the orders of acquittal; that the High Court had mis-read the judgment of the Additional Sessions Judge and attributed to him statements not found in his judgment, etc. The Supreme Court pointed out, that in appeals against acquittal, the Court of Appeal must examine the evidence with particular care, and must also examine the reasons on which the acquittal was based, and should interfere only when the view taken by the acquitting Judge is clearly unreasonable. In earlier cases of the Supreme Court, the words "compelling reasons" had been used, and this had caused difficulty to High Courts occasionally. In later years, the Supreme Court had avoided emphasis on "compelling reasons", but, nevertheless, adhered to the view, that before interfering in an appeal, against an acquittal, the High Court must examine not only questions of law and fact in all their aspects, but also reasons which impelled the lower court to acquit the accused. If the Appellate Court came to the	Appeal accepted as regards one person, and dismissed as regards the other.

1. *Harbans Singh* v. *State of Punjab*, A.I.R. 1962 S.C. 439, 442, paragraphs 10, 11 and 12 (Gajendragadkar, Sarkar, Wanchoo and Das Gupta JJ.).

(1)	(2)	(3)	(4)
Harbans Singh —contd.		conclusion that the view taken by the lower court was *clearly unreasonable*, that itself was a compelling reason for interference. If the High Court has thus approached the matter and applied the correct principle, the Supreme Court will not ordinarily embark upon a re-appraisal of the evidence to ascertain whether the High Court was right in *its view of evidence.* But if the judgment of the High Court, while indicating the conclusion of the High Court that the view taken by the trial court was unreasonable, does not disclose a careful examination of the evidence, or if the High Court has erred on a question of law, or obviously mis-read the evidence, or mis-read the judgment of the trial court, the Supreme Court was bound to appraise the evidence *for itself* and to examine the reasons on which the lower court based the acquittal and then to decide whether the High Court's conclusion (about the lower court's view being unreasonable) is correct. In the present case, the judgment of the High Court did not contain much discussion of the evidence and the judgment also revealed that the Judges of the High Court were under some misapprehension in thinking that the Additional Sessions Judge has held that the accused Bagh Singh was not mentioned as a witness in the inquest report. The Supreme Court therefore examined the evidence in detail. It also pointed out that the view taken by the Sessions Judge, that a dying declaration mentioning as many as six accused persons could not support a conviction without corroboration, was wrong. The	

(1)	(2)	(3)	(4)
Harbans Singh —contd.		trial Judge, no doubt, had followed an earlier decision of the Supreme Court (*Ram Nath* v. *State of Madhya Pradesh*, A.I.R. 1953, S.C. 420, 423) which observed that it was not safe to convict an accused person merely on the evidence furnished by a dying declaration without further corroboration. But in a later case (*Khushal Rao* v. *State of Bombay*, (1958) S.C.R. 552, 568, A.I.R. 1958, S.C. 22, 28, 29), it was held that there was no rule of law that a dying delcaration could not from the sole basis of conviction; each case must depend on its own facts. On a consideration of the evidence, the Supreme Court was satisfied that the conclusion of the High Court regarding appellant Harbans Singh was correct. But as regards appellant Major Singh, the High Court was wrong in thinking that he gave any of the fatal blows. The evidence left scope for thinking that the dying declaration had either made a mistake about Major Singh, or had wrongly implicated him. Therefore, it could not be said that the view taken by the trial judge as regards Major Singh was clearly unreasonable. Appeal of Major Singh was accepted, and he was acquitted. Appeal of Harbans Singh was dismissed.	
Tara Chand v. *State of Maharashtra*.[1]	Appeal treated as under article 134 (1)(*a*).	The appellant was convicted of the offence of culpable homicide not amounting to murder by the Sessions Judge, Dhulia. He had killed his wife by setting fire to her clothes (There were quarrels between the parties). The Sessions Judge had convicted him	Appeal dismissed by majority.

1. *Tara Chand* v. *State of Maharashtra* (1962) 2 S.C.R. 775; A.I.R. 1962 S.C. 130 (Kapur, Subba Rao and J.C. Shah JJ., Raghubar Dayal and Hidayatulla JJ. dissenting)

(1)	(2)	(3)	(4)
Tara Chand v. *State of Maharashtra*—contd.		under section 299, Indian Penal Code, and sentenced him under section 304, Part I, to three years' rigorous imprisonment. On appeal to the High Court by the State, the High Court of Bombay convicted him under section 302, Indian Penal Code, and sentenced him to death. The appellant applied for a certificate to appeal under article 123 (1) (*c*). The certificate was refused. The Supreme Court gave special leave under article 136. After the hearing of the appeal, the Supreme Court, in its judgment, examined in detail the question whether he had a right of appeal under article 134 (1)(*a*), and held that the word "acquittal" in that clause covered a case where the High Court, on appeal, had reversed the decision of the trial court and convicted the accused of murder (instead of culpable homicide not amounting to murder). Acquittal" was not confined to complete acquittal; it meant acquittal of the offence charged (*Kishan Singh* v. *Emp.*, 55 Indian Appeals 390; A.I.R. 1928 P.C. 254, cited). The argument of the appellant, that the deceased had committed suicide, was not accepted by the Supreme Court. There was no evidence on the record which could detract from the findings fo the High Court or the trial court, regarding the correctness of the dying declaration in which the deceased had charged the appellant. Raghubar Dayal and Hidayatulla JJ., however, dissented from the view that the conviction under section 302 should be maintained; in their opinion, in an appeal under article 134	

(1)	(2)	(3)	(4)
Tara Chand v. *State of Maharashtra*—contd.		(1)(*a*), the Supreme Court must assess afresh the value of the evidence on record, and should not follow the practice of the Supreme Court under article 136 not to interfere with concurrent finding of the fact, in the absence of special circumstances. They had doubt about the truth of the dying declarations and took the view that the conviction of the appellant on the basis of that declaration should not be maintained. Appeal was dismissed according to the majority judgment.	
Rama Shanker v. *State of West Bengal*.[1]	Appeal under aricle 134(1)(*c*).	The appellants were convicted by the Extra Additional Judge, Howrah of offences under section 302 read with section 148 *and* 149, Indian Penal Code, and sentenced to death. The Sessions Judge had accepted the unanimous verdict given by the jury. The High Court of Calcutta, in proceedings for confirmation of the death sentence and in the appeal filed by the appellants, held, that the verdict of the jury was vitiated because of certain misdirections by the Sessions Judge. After an elaborate examination of the evidence, it found some of the appellants guilty of offences under section 302 read with *section* 134, Indian Penal Code and confirmed the sentences of death. On an appeal to the Supreme Court, the Supreme Court, after reviewing the evidence, maintained the conviction. As regards the sentence, it observed, that the appellants had forcibly entered the house and killed two persons and assaulted members of the	Appeal dismissed.

1. *Rama Shanker* v. *State of West Bengal*, A.I.R. 1962 Supreme Court 1239. (Wanchoo, Das Gupta and Shah JJ.).

(1)	(2)	(3)	(4)
Rama Shankar v. *State of West Bangal*—contd.		family. The assault was pre-conceived and initiated with deliberation, to slaughter a defenceless woman and her young son. Innocent persons who intervened, were also killed mercilessly and, therefore, this was pre-eminently a case for the death sentence. The Supreme Court discussed in detail the scope of the High Courts' powers in proceedings for confirmation and held (following *Abdul Rahim* v. *Emp.* 73 I.A. 77; A.I.R. 1946 P.C. 82) that the High Court was not bound to order a retrial. (The Supreme Court pointed out that the powers of the High Court under sections 374 and 376 Criminal Procedure Code were very wide and the High Court could arrive at its own conclusion after reconsideration of the evidence or order re-trial; the matter was in the discretion, of the High Court).	
Ranjit Singh v. *State of Punjab.*[1]	Article not referred to.	In this case, the Supreme Court held that the charge framed against the appellant under section 302, Indian Penal Code, had not been established *beyond a reasonable doubt*, and so the appellant was acquitted.	Appeal allowed.
Ramaotar v. *State of M.P.* [2]	Article of the constitution not referred to in the judgment.	The appellant stated that he had a dream in which the deceased told him that the murder of the deceased was committed by X. *Information* was given by the appellant, which led to recovery of the body. The appellant was convicted of murder. The High Court refused to refer to *the dream.*	Appeal allowed.

1. *Ranjit Singh* v. *State of Punjab*, (C.A. No. 31, 1963)—(1963)—S. C. N. Item 160, April 25, 1963 (Gajendragadkar, Wanchoo and Das Gupta JJ.).

2. *Ramaotar* v. *State of M.P.*,'(Cr. App. 149 of 1962) Oct. 30, 1963 (1963) S. C. N. Vol. 5, Item 316. (Das Gupta and Dayal JJ.).

(1)	(2)	(3)	(4)
Ramaotar v. *State of M.P.*—contd.		The Supreme Court observed, that the prosecution version that the accused led the party of the villagers to the place *in the river where the body was found*, was linked up with the other part of the prosecution story about the appellant having *spoken about the dream*. When that story was rejected, the evidence that the accused led the party to the particular place in the river was also considerably weakened. Taking into account all the circumstances, the Supreme Court was of the opinion that though it might be true that the accused was the first to notice the *body lying in the river*, it had not been proved that he led the party to that particular place. Appellant was acquitted.	

APPENDIX XIX

SUMMARY OF CAPITAL STATUTES IN THE 18TH CENTURY IN ENGLAND

In the 18th century in England the important capital offences were these[1]:—

(1) *High Treason*

Treason in all its manifestations was a capital offence under the Act of 1351.[2] An Act of 1796[3] incorporated several provisions inserted in the meantime by enactments orders passed between 1399 and 1547.

An Act of 1703[4] provided, that if any officer or soldier out of England or upon the sea were to correspond with any rebel or enemy or give them advice or intelligence by letters, messages, signs or otherwise or to enter into any correspondence with them without authority so to do, he shall be guilty of treason. (By the annual Acts on mutiny and desertion, offenders found guilty of these offences were to suffer death or such other punishment as the court martial should impose).

By a statute of 1792,[5] which was passed as an emergency measure, it was high treason to sell, supply or deliver to or for the use of the French Convention or the armies in their employ, during the war, any arms, etc., bank notes or provisions without a licence from the Privy Council or to buy land, etc., in France, etc.

(2) *Offences against the protestant succession*

Certain offences against the protestant succession were capital. Thus, one statute punished a person who endeavoured to deprive or hinder any person who was next in succession to the Crown according to the Act of Settlement from succeeding to the Crown, etc.[6]

A person maliciously, etc., maintaining and affirming that any other person had any right or title to the Crown otherwise than according to the Act of Settlement, was punishable with death.[7]

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1. Material contained in Radzinowicz, History of English Criminal Law 1948), Vol. 1, pages 611—659, has been mainly used in preparing this summary.

2. Treason Act, 1351 (25 Edw. 3 Statute 5, c. 2).

3. Treason Act, 1796 (36 Geo. 3 c. 7).

4. Mutiny Desertion Act, 1703 (2 and 3 Anne. c. 20).

5. Correspondence with Enemies Act, 1792 (33 Geo. 3 c. 27).

6. Criminal Procedure Evidence, etc., Act, 1702 (1 Anne. Statute, 2 c. 17) section 3.

7. Security of Her Majesty's Person Act, 1707 (6 Anne. c. 7), section 1

Persons holding correspondence in person, by letters, messages or otherwise with the pretender,[1] and persons holding such correspondence, etc., with a son of the pretender[2] were punishable with death. All such acts were regarded as high treason.

(3) *Offences against the protestant establishment*

Several statutes punished with death persons who, by writing or teaching, maintained the spiritual authority or jurisdiction of a foreign prince, or committed similar other Acts.[3-4-5-6]

Several other statutes supplemented or elaborated the Acts mentioned above.[7-8-9]

(4) *Desertion from the armed forces*

Desertion from the King's armies, whether by land or sea, was made a felony by several statutes. [10 11 12 13 14]

In 1936, an Act was passed which had the effect of imposing capital punishment on any subject of Great Britain who enlisted or entered himself to go beyond the seas to serve any foreign prince, State or potentate as a soldier without the King's consent.[15]

Under an Act of 1736,[16] as clarified by foreign Enlistment Act,[17] taking or accepting military commission or entering the military service of the French King without King's consent was similarly punishable.

Going or embarking to go to France, etc., during the war was a capital offence.[18]

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1. Correspondence with James the Pretender Act, 1700 (13 and 14 Williams 3 c. 3).
2. Treason Act, 1744 (17 Geo. 2 c. 39).
3. Act of Supremacy, 1558 (1 Eliz. c. 1), partially superseded by Supremacy of the Crown Act, 1562 (5 Eliz. c. 1).
4. Sea of Rome Act, 1570 (13 Eliz. c. 2).
5. Religion Act, 1581 (23 Eliz. c. 1).
6. Popish Recusants Act, 1605 (3 Jac. 1 c. 4).
7. Jesuits, etc., Act, 1584 (27 Eliz. c. 2).
8. Popish Recusants Act, 1605 (3 Jac. 1 c. 4).
9. Roman Catholic Relief Act, 1791 (31 Geo. 3 c. 32).
10. Soldiers Act, 1439 (18 Hen. 6 c. 19).
11. Soldiers Act, 1487 (7 Hen. 7 c. 1).
12. Soldiers Act, 1511 (3 Hen, 8 c. 5).
13. Maintenance of the Navy Act, 1562 (5 Eliz. c. 5).
14. Military Service Act, 1557 (4 and 5 Phillips and Mary c. 3).
15. Foreign Enlistment Act, 1736 (9 Geo. 2 c. 30).
16. Foreign Enlistment Act, 1736 (9 Geo. 2 c. 30).
17. Foreign Enlistment Act, 1756 (29 Geo. 2c. 11).
18. Residents in France during the War Act, 1798 (38 Geo. 3c. 79).

Many acts consisting in seducing others from their allegiance and obedience to the Crown were capital offences.[1]

Persons rescuing, etc., Napoleon Buonaparte were punishable with death.[2]

An act passed as an emergency measure after the mutiny at the Nore in 1797,[3] but continually prolonged and ultimately made permanent,[4] punished as a capital offence. A person maliciously and advisedly endeavouring to seduce any person in His Majesty's force by sea or land from his or their duty and allegiance to His Majesty, or to incite or stir up any such persons to commit any act of mutiny, or to commit any traitorous or mutinous practice whatsoever.

Remaining in communication with the crews of ships declared in a state of mutiny was a capital offence.[5]

(5) *Injuring the King's armour*

Several statutes punishable with death fall under the head 'injuring the King's armour'. An Act of 1589[6] punished a person in charge or custody of any armour, ordnance, munition, etc., or of any victuals provided for soldiers, etc., who embezzled, purloined or conveyed away any of the goods to the value of 20 shillings.

By a later Act,[7] the Judge was given power after sentence, to transport such offender, as an alternative punishment to the death penalty.

An Act of 1749[8] extended capital punishment to any person in the fleet who unlawfully burnt or set fire to any magazine, etc., or ship, etc., belonging and not at that time appertaining to an enemy or rebel.

Burning or destroying any of the King's ships, stores, dockyards, arsenals, victualling and materials there placed for the building of ships or magazines, etc., was made a capital offence by an Act of 1772.[9]

An Act of 1710 enacted that every person who shall unlawfully attempt to kill or shall unlawfully assault, strike or wound any Privy Counsellor in the execution of his office, in council or in any committee of council shall be

1. Residents in France during the War Act, 1798 (38 Geo. 3 c. 79).
2. Custody of Napoleon Buonaparte Act, 1816 (56 Geo. 3 c. 22).
3. Army and Navy Seduction Act, 1797 (37 Geo. 3 c. 70).
4. Allegiance of Sea and Land Forces Act, 1817 (57 Geo. 3 c. 7).
5. Mutinous Crews Act, 1797 (37 Geo. 3 c. 71).
6. Embezzlement Act, 1589 (31 Eliz. c. 4).
7. Benefit of Clergy Act, 1670 (22 Car. 2 c. 5).
8. Navy Act, 1749 (22 Geo. 2 c. 33).
9. Dockyards, etc., Protection Act, 1772 (12 Geo. 3 c. 24), Section 1. *See* Halsbury, 3rd Edn., Vol. 10, pages 491 and 879.

punished with death.[1] It is believed.[2] that this was passed after the stabbing of Harley by Anthony Guiscard during the latter's examination before the Privy Council.

By an Act of 1747,[3] rebels who returned from transportation without licence or went voluntarily to France or Spain, as well as those who aided such rebels or were in correspondence with them, were punishable with death.

(6) *Riotous offences*

The following offences were capital[4]:—

(a) riotously to assemble (12 persons or more) and not to disperse for an hour after the proclamation. Thus, the offence was constituted by unlawfully, riotously and tumultuously remaining or continuing together although *no specific* act had been committed;

(b) opposing the making of the proclamation and not to disperse within an hour after the making of the proclamation had been opposed;

(c) unlawfully to assemble to the disturbance of the public peace and when so assembled unlawfully and with force to demolish or pull down any church or chapel, or any building for religious worship, certified and registered, or any dwelling house, etc.

In an interesting case,[5] it was held that if a person was present at a riot and, by shouting and other expressions excited the rioters in to demolish and to pull down a dwelling house, he was, a principal in the second degree; because, though he had himself taken no part in pulling down the house, etc., or committed any offence, etc., his participation in the offence amounted to aiding the abetting.

The Act of 1714 was amplified by a later Act,[6] what provided that pulling down, etc., any mill which had been or was being erected or any works belonging thereto was also punishable with death.

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1. Attempt on the life of a Privy Counsellor Act, 1710 (9 Anne c. 16).

2. Radzinowicz, History of the English Criminal Law, (1948), Vol. 1, page 619, foot-note 38.

3. Traitors Transported Act, 1747 (20 Geo. 2c. 48).

4. The Riot Act, 1714 (1 Geo. 1 Statute 2 c. 5).

5. Royce, (1767) 4 Burr 2073.

6. Malicious Injury Act, 1769 (9 Geo. 3 c. 29).

(7) *Destroying banks, flood-gates and bridges*

Several statutes provided death penalty for destroying river banks[1-2] and wilfully and maliciously blowing up, pulling down or destroying certain Bridges.[3]

(8) *Offences against the public order*

Idle soldiers wandering about, or overstaying their leave without a testimonial or pass from a Justice of the Peace were punishable with death, if after conviction and after being retained in service by "an honest freeholder" they departed within a year without licence.[4]

"Egyptians" (Gypsies) remaining more than one month in the Kingdom, or any person, above 14, found in their company who remained one month in the Kingdom, were punishable with death.[5-6].

(9) *Offence against administration of justice*

Capital Punishment was appointed for certain offences connected with administration of justice, such as,—

(a) acknowledging fine, recovery, judgment, etc., in the name of a person not privy thereto;[7]

(b) false entry in a marriage register, or destroying such register, etc., with intent to avoid any marriage or to subject any person to any of the penalties of the Act;[8]

(c) "taking a reward to help to stolen goods."[9] This dangerous practice was "a contrivance carried to a great length of villainy in the beginning of the reign of George, the First;"[10]

(d) Avoiding justice by taking shelter in supposed privileged places (like ancient places of the Crown);[11]

1. Perpetration of Various Laws Act, 1733 (6 Geo. 2 c. 37). section 5 made permanent by Continuance of Act, 1757 (31 Geo. 2 c. 42) (river-bank or sea bank).

2. For bank, flood-gate or sluice made for Benefiting the Bedford Level, *see* the Bedford Level Act, 1754 (27 Geo. 2 c. 19).

3. For London and Westminster bridges, *see* Westminster Bridge Act, 1736 (9 Geo. 2 c. 29) and London Bridge Act, 1757 (31 Geo. 2 c. 20).

4. Vagabonds Act, 1597 (39 Eliz. c. 14).

5. Egyptians Act, 1554 (1 and 2 Ph. & M. c. 4).

6. Egyptians Act, 1562 (5 Eliz. c. 20).

7. Fines and Recoveries Act, 1623 (21 Jac. 1 c. 26).

Marriage Act, 1753 (26 Geo. 2 c. 33).

9. Piracy Act, 1717 (4 Geo. 1 c. 11), section 4.

10. Blackstone, 4 comm. 132 and *see* Radzinowicz, History of English Criminal Law, (1948), Vol. 1 page 682.

11. Dealt with in several statutes of 1697, 1722 and 1724.

(e) escape of or liberation of prisoners prison-breaking, by force, rescue of a prisoner by force, returning or being at large after transportation.[1]

(10) *Offences against public health*

Following offences were capital:—

(a) Infected person having upon him infectious uncured sores, disobeying orders to remain in his house;[2]

(b) Disobeying order prohibiting entry of vessel infected by plague; and

(c) Concealment by ship's masters of fact that their vessel had come from infected place etc.; refusal to conform with obligation to remain in quarantine; and similar offences under an Act of 1753,[3] re-enacted later.[4]

(11) *Smuggling*

Smuggling, it appears, was carried on by great gangs carrying firearms or others offensive weapons, and several officers of Customs and Excise had been "wounded, maimed, and some of them even killed in execution of their office."[5] Hence an Act of 1746[6] made it a capital offence to assemble armed, to the number of three or more, in order to assist in landing or carrying away prohibited, uncustomed or re-landed goods; to pass, masked or disguised, with prohibited, uncustomed or re-landed goods to maim or wound officers going on boards, ship within a port; to shoot at or dangerously wound officers on board such ships in execution of their duty, etc.

The Act of 1746 was supplemented by an Act of 1784,[7] making it a capital offence to shoot at or upon any ship, boat or vessel belonging to His Majesty within four leagues of the coast or to shoot at naval, customs and excise officers.

An act of 1812[8] relaxed the law, but still retained death penalty for serious offences against the public revenue.

An act of 1825[9] consolidated the law again, and made it still more lenient, but continued death penalty for certain offences of smuggling, *e.g.*, three or more persons armed with firearms assembled to assist in the illegal exportation of goods, etc., and persons shooting at a boat belonging to the navy.

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1. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 623 to to 625.,
2. Plague Act, 1604 (1 Jac. 1 c. 31).
3. Quarantine Act, 1753 (26 Geo. 2c. 6), sections 2, 3, 8, 10, 17.
4. Quarantine Act, 1800, replaced by Quarantine Act, 1805 (45 Geo. 3c. 10).
5. Preamble to Offences against the Customs Act, 1746 (19 Geo. 2 c. 34).
6. Offences against the Customs Act, 1746 (19 Geo. c. 34), sections 1,2.
7. Smuggling Act, 1784 (24 Geo. 3, sess. 2. 47) section 11.
8. Land Tax Certificates Forgery Act, 1812 (52 Geo. 3 c. 143).
9. Customs Act, 1825 (6 Geo. 4 c. 108), sections 56, 57.

(12) *Counterfeiting stamps, etc.*

Several statutes imposed capital punishment for forging or counterfeiting duty stamps on various kinds of goods, or forging debentures relating to excise duties and certain other documents executed under revenue laws.[1]

(13) *Petty treason*

Petty treason was an aggravated form of murder, and consisted in the homicide of—

(i) a master by his servant;

(ii) a husband by his wife; or

(iii) an ecclesiastical superior by his inferior.

It was a capital offence.[2-3] It had this feature in common with treason, that it amounted to a violation of the *confidence* on which the particular relationship was founded.

Men convicted of high or petty treasons were, after execution, to be disembowelled and quartered, and woman so convicted were (after execution) burnt.[4] In actual practice some leniency in execution was observed in most cases.[5]

Petty treason was abolished by a later Act.[6]

(14) *Murder*

Murder was felony at common law. The punishment for murder had been made the object of two statutes.[7-8] But the matter was definitely settled by an Act of 1547.[9] That Act excluded, the benefit of clergy, any person "attained or convicted of murder of malice prepense or of poisoning with malice prepense....." The specific mention of poisoning was due to the case of the Bishop of Rechester's Cook who had put some poison into a vessel of yeast, thereby causing the deaths of several persons.

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1. These were later embodied in—
   (*i*) Customs and Excise Act, 1787 (27 Geo. 3 c. 13).
   (*ii*) Stamps Act, 1797 (37 Geo. 3 c. 90).
2. Treason Act, 1351 (25 Edw. 3 St. 5 c. 2).
3. Benefit of Clergy Act, 1496 (12 Hen. 7 c. 7).
4. See Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 209 to 211, 220, 221.
5. Radzinowicz, History of English Criminal Law, (1948), Vol 1, pages 223—225.
6. Offences against the Person Act, 1828 (9 Geo. 4 c. 31), section 2.
7. The Benefit of Clergy Act, 1531 (23 Hen. 8 c. 1).
8. Standing Mute, etc., Act, 1533 (25 Hen. 8 c. 3).
9. Treason and Felony Act, 1547 (1 Edw. 6 c. 12) sections 10 and 13.

(15) *Bastard Child-Killing*

An Act of 1623[1] enacted (in substance) that if any woman who is delivered of any issue of her body, male or female, which would be a bastard, she endeavours privately so to conceal the death thereof that it may not come to light (*i.e.* the fact whether it was born alive or not is concealed by her action) then she shall suffer death as in the case of murder unless she could prove at least by one witness that the child was born dead. Thus, in substance, concealment of birth amounted to a presumption of murder; this is explained by the fact that in such cases it was difficult to prove that the child had been born alive.[2]

This Act evoked great controversy, particularly because it was contrary to the presumption of innocence. Courts, it appears, went to extreme limits in narrowing down its scope, *e.g.*, (i) by holding that there was no concealment if the mother had called for help or had confessed that she was about to have a child, or (ii) by requiring some sort of evidence that the child, had been born alive, or (iii) by holding that there could be no concealment if any person be present, even though that person was privy to the guilt.[3]

One of the arguments used against the Act was that it was infinitely better that ten guilty persons should escape rather than that one innocent person be hanged. This law asserted that 10 innocent persons should be hanged, so that one guilty person does not escape.[4]

The Act was replaced in 1803 by a statute which redrafted the definition of the offence of murdering the bastard children,[5] bringing it in line with the general position.

(16) *Stabbing*

In view of frequent outrages committed by person of flammable spirit and deep resentment, who, wearing short daggers under their clothes stabbed a person on slight provocation,[6] an Act was passed in 1604[7] which made it a capital offence without benefit of clergy to stab or thrust any person (who had not any weapon drawn or who had not struck the party stabbing or thrusting) so that the person stabbed or thrust died within 3 months, *although it could*

1. Concealment of Birth of Bastards Act, 1623 (21 Jac. 1 c. 27) made perpetual by the Continuance of Act, 1640 (16 Car. 1 c. 4).

2. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 629 and the preamble to the Act quoted at page 431.

3. *See* Radzinowicz, History of the English Criminal Law, (1948), Vol.1, pages 433—434.

4. *See* Radzinowicz, History of English Criminal Law, (1948), vol. 1, page 435.

5. Lord Ellenborough's Act, 1803 (43 Geo. 3 c. 58), section 3.

6. Radzinowicz, History of English Criminal Law, (1948), vol. 1, page 630, and foot-note 93.

7. Stabbing Act, 1604 (1 Jac. 1 c. 8).

not be proved that the same was done of malice aforethought.

(17) *Mayhem or maiming*

By an Act of 1670,[1] a person who on malice aforethought unlawfully cut off or disabled the tongue, put out an eye or slit the nose, lips, etc., or disabled any limb or any member of a subject of His Majesty, was to suffer death without benefit of clergy.

(18) *Shooting in dwelling house*

By an Act of 1722,[2] a person wilfully and maliciously shooting at any person in a dwelling house or other place was punishable with death, whether or not his action resulted in killing or maiming. The shooting had to be malicious, and therefore should amount to murder if death had ensued, and it must have been with a gun and other instrument so loaded as to create danger for the party aimed at, the probable consequence of which would be to kill or maim and the gun, etc., also had to be *levelled* at him, according to the Act as interpreted.[3]

The Act contained several other provisions punishing other offences with death, but these are not relevant under the present head.

(19) *Ships*

Under an Act of 1753,[4] it was a capital offence to beat or wound, with intent to kill or destroy, or otherwise wilfully to obstruct the escape of any person endeavouring to save his or her life from a ship or vessel or from the wreck thereof. (The Act was primarily designed to ensure the protection of ships in distress).

(20) *Causing of Miscarriage*

Under Lord Ellenborough's Act,[5] administering poison or any other noxious and destructive substance with intent to cause miscarriage was a capital offence.

(21) *Shooting, etc., with intent to murder, etc.*

By an Act of 1803,[6] shooting at, or attempting to shoot, stabbing or cutting any person, with intent to murder, maim, disfigure, etc., and to resist lawful apprehension, was made a capital offence.

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1. Coventry Act, 1670 (22 and 23 Car. 2c. 1), section 7.
2. The Waltham Black Act, 1722 (9 Geo. 1 c. 22).
3. Radzinowicz, History of Criminal Law, (1948), Vol. 1, pages 69-70.
4. Stealing Ship-wrecked Goods Act, 1753 (26 Geo. 2 c. 19), section 1.
5. Lord Ellenborough's Act, 1803 (43 Geo. 3 c. 58), section 1.
6. Lord Ellenborough's Act, 1803 (43 Geo. 3 c. 58), section 1.

(This Act provoked a lot of criticism).[1]

(22) *Rape*

Originally, rape was a felony punishable with death.[2] This was regarded as too harsh, and the punishment was replaced by a castration and loss of eyes.[3] The punishment was still further mitigated in 1275,[4] by an Act which reduced the offence to a trespass, and subjected the guilty party to two years' imprisonment and a fine at the King's will.[5] But this lenience was said to have been productive of terrible consequences, and it was found necessary later to pass an Act[6] which made punishable by judgment of life and member the ravishing of a woman, whether married, maid or other, where she did not consent, neither before nor after.[7]

Passed under a statute in 1576,[8] any person who feloniously committed rape and was found guilty by verdict or was outlawed, or confessed the same upon arraignment, was to suffer death. This statute was repealed and superseded in 1828.[9]

The punishment for rape in England now is imprisonment for life.[10]

(23) *Sodomy*

An Act of 1562[11] (which revived and confirmed earlier statutes) appointed capital punishment for sodomy and crimes against nature, by an Act of 1749.[12] Any person in His Majesty's fleet who committed either of these offences, as well as his aiders and abettors, were to be tried by a court-martial and sentenced to death.

In fact, in ancient times, the punishment for this offence was death, and about the time of Richard, the

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1. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 506 foot-note 39.

2. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 631, foot-note 2 ; Russell on Crime, (1964), Vol. 1, page 706.

3. Russell on Crime, (1964), Vol. 1, page 706 and foot-note 4; Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 631, foot-note 2.

4. Statute of Westminster 1 (3 Edw. 1 c. 13), (1275).

5. Russell on Crime, (1964), Vol. 1, page 706.

6. Statute of Westminster Second (13 Edw. 1 c. 35).

7. *See* Russell on Crime, (1964), Vol. 1, page 706.

8. Benefit of Clergy Act, 1576. (18 Eliz. c. 7).

9. Offences against the Person Act, 1828 (9 Geo. 4 c. 31), (for England) ; *see* Russell on Crime, (1964), Vol. 1, page 707.

10. Section 1, and second schedule Sexual Offences Act, 1956 (4 and 5 Eliz. 2 c. 69).

11. Sodomy Act, 1562 (5 Eliz. c. 17).

12. Navy Act, 1749 (22 Geo. 2 c. 33).

First, the Practice was to hang a man, and drown a woman, guilty of this offence.[1] Death sentence for sodomy was retained by the Act of 1828,[2] which was in force until 1861.[3]

The present punishment for the offence is imprisonment for life.[4]

(24) *Abduction of heiress*

Under a statute of 1486,[5] abduction of a woman who was an heiress apparent and who had substance either in goods or lands, followed by her marriage or defilement, was punishable with death.[5] This was not a purely sexual offence, the motive was economic,[6] though often accompanied by sexual offences.

The preamble to the statute[7] recited, that women—maids, widows and wives having substance in goods, etc., had been often taken by misdoers for the "lucre of such substances" and afterwards marred or defiled.

The offence of abduction of a girl under 21 years in a similar situation is now punishable with imprisonment for 14 years.[8]

(25) *Simple grand larceny*

Theft not accompanied by any aggravating circumstances was, at common law, simple larceny, if the value of the stolen goods exceeded 12 pence, it was simple grand larceny. Such larceny was originally punishable by whipping, then with transportation for 7 years, and (by later Acts) with imprisonment or fine, by death with benefit of clergy, or if the benefit was claimed, by burning in the hand, etc. But a great number of statutes excluded from the benefit of clergy offenders guilty of certain kinds of grand larceny. Of these offences, only a few may be mentioned here, such as stealing of horses, etc., feloniously driving away, or stealing sheep, cows, etc., feloniously cutting and taking cloth from the reck or tenter in the night time.[9] Theft of goods valued at 40 shillings in any ship,

1. Russell on crime, (1964), Vol. 1, page 735, foot-note 2.

2. Offences against the Person Act, 1828 (9 Geo. 4 c. 31).

3. Offences against the Person Act, 1861 (24 and 25 Vic. c. 100).

4. Sections 10 and 12 Sexual Offences Act, 1956 (4 and 5 Eliz. 2 c. 69).

5. Abduction of Women Act, 1486 (3 Hen. 7 c. 2).

6. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. I, pages 632 and 438, foot-notes 35 and 36.

7. The preamble is quoted in Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 446.

8. Section 18, Sexual Offences Act, 1956 (4 and 5 Eliz. 2 c. 69).

9. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 630-633.

etc., on any navigable river or in any port of entry or discharge was made punishable with death. One Act[1] punished with death theft of any mail from any bag of letters sent by the post or of any letter or packet conveyed by the post or out of any post office or any place used for the receipt or delivery of letters. Other Acts which deserve to be noted are Acts of 1589,[2] and of 1670,[3] under which, larceny of military and naval stores by any person in charge of such places to the value of 20 shillings at one or several different times, was punishable with death.

(26) *Burglary*

Larceny committed in a dwelling house was known as "simple compound larceny", and so was larceny from the person of another. Larceny in a dwelling house was known as burglary. At common law it was felony within the benefit of clergy, but, by statutes it was made a capital offence without benefit of clergy.[4] A number of other larcenies in houses, shops and warehouses were also made capital by statutes.[5]

These statutes are too numerous to be discussed here.

(27) *Larceny from the person*

Two classes of larceny from the person were made capital offences without benefit of clergy, namely—

(i) any person convicted of feloniously taking away any money, goods or chattels from the person of any other, privily without his knowledge, in any place whatsoever (known as larceny *calm et secrete from the* person) if the value was 12 £ or more;[6]

(ii) *Robbery*, i.e., felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence or putting him in fear. We may note only the main statute,[7] relating to a person who robbed any other person or comforted, aided, abetted, assisted, etc., any person to commit the said offence.

(28) *Larceny by servants, etc.*

While many of the statutes punishing larceny were wide enough to cover theft by a servant in the master's house, of tangible property, some difficulty survived regarding other kinds of property stolen by a servant. The

1. Post Office Offences Act, 1767 (7 Geo. 3c. 50).
2. Embezzlement Act, 1589 (31 Eliz. c. 4).
3. Benefit of Clergy Act, 1670 (22 Car. 2 c. 5).
4. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 635.
5. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 635.
6. Benefit of Clergy Act, 1565 (8 Eliz. c. 4), section 2.
7. Benefit of Clergy Act, 1691 (3 and 4 W. & M. c. 9), section 1.

doctrine that property once delivered to his servant is no longer in the master's possession, and that a servant who appropriates such goods is therefore not guilty of felony, was the cause of this difficulty, and to meet this difficulty,[1] a number of statutes had been passed punishing various acts by servants amounting to embezzlement of securities and other effects, particularly in the case of employees of banks, certain companies and the post office.[2]

(29) *Blackmail*

To send letters threatening injury to life or property in order to extort money was a high misdemeanour at common law, punishable by a fine and imprisonment. In 1722,[3] an Act was passed whereby a person who knowingly sent letters either unsigned or signed with a fictitious name, *demanding money* was guilty of a felony without benefit of clergy. A later Act passed in 1754[4] similarly punished with death any person who knowingly sent letters without a name or with a fictitious name, *threatening to kill or to burn any house, although no money or valuable effects had been demanded in it.*

The courts put a wide construction on the first Act, apparently because extorting money by sending threatening letters was a common offence in the 18th century.[5]

(30) *Ransom*

An Act of 1960[6] recited that many person within the counties of Cumberland, Northumberland, etc., had been (either in their house or while travelling) carried as prisoners and kept barbarously and cruelly until redeemed by great ransom, etc., so that many persons had been forced to pay a certain rate of money, corn, cattle or other consideration, commonly called *blackmail* in order to be freed or protected in safety from the danger of such robbery, etc. For all these offences, and for being privy, etc., thereto, capital punishment was provided for by that Act.

(31) *Offences by Bankrupts*

By an Act of 1732,[7] later made permanent,[8] death penalty without benefit of clergy was appointed for bankrupts

1. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 639.
2. As to Post Office, *see* the Post Office Offences Act, 1767 (7 Geo. 3 c. 50), section 1.
3. Waltham Back Act, 1722 (9 Geo. 1 c. 27).
4. Persons Going Armed and Disguised Act, 1754 (27 Geo. 2c 15).
5. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 75.
6. Outrages in Northern Counties Act, 1601 (43 Eliz. c. 13).
7. Bankrupts Act, 1732 (5 Geo. 2 c. 30), section 1.
8. Bankrupts Act, 1797 (37 Geo. 3 c. 124).

who failed either to surrender themselves to the Commissioners within 42 days after notice or to submit to being examined or fully to disclose their estates and effects or to deliver their estates and effects for the benefit of their creditors or who removed, concealed or embezzled any part of their estate to the value of 20 pound, etc.

Another Act[1] provided death penalty for a person who refused to deliver a schedule of his estates and effects to a creditor (apparently after an order of the court). The Act recited, that several persons who were prisoners for debt chose to continue in prison, and to spend their substances there than to discover and deliver up to their creditors their estates, etc.

(32) *Forgery*

At common law, forgery was a misdemeanour only. In 1562,[2] an Act was passed to broaden the legal concept of forgery and to establish a new system of punishment. Section 1 of the Act recited, that the "wicked, pernicious and dangerous practice of making, forging and publishing false charters, evidences, deeds, etc., had of late time been very much practised", to the High displeasure of God and the great injury of the subjects and this was due chiefly to the reason that the punishments were small and mild. After providing the punishment of cutting off ears, slitting the nostrils, etc., for certain types of forgery, the Act (section 7) punished offenders convicted for the second time of forgery with death without benefit of clergy. The Act was virtually superseded by later Acts, but formally remained in force till 1830. There were certain other capital statutes (too numerous to be mentioned here) punishing various types of forgery with death.[3] These related to forgery of deeds, bonds, bills, shares of public companies, stamps, and marks, forgery of the seal of Bank of England, bank notes, etc. It is well known that this severity of punishment for forgery induced many bankers to petition for lesser punishment,[4] as it had rendered conviction difficult.

(33) *Personation*

The offence of falsely personating another with intent to defraud was a misdemeanour at common law. But, by several statutes,[5] personation of certain classes of person, such as, proprietors of shares in stock of bodies corporate, or personation of officers, seamen, etc., or of a certain pensioner, or personating the nominees of life, annuities, etc. was made a capital offence.

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1. Insolvent Debtors Relief Act, 1755 (28 Geo. 2 c. 13), section 39 .

2. Forgery Act, (1962) (5 Eliz. c. 14).

3. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 644—650.

4. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 550, 555, 557, 592 and petition on page 730.

5. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 651-652.

(34) *Destroying ships to the prejudice of insurance companies*

By an Act of 1717,[1] superseded by a later Act,[2] if any owner or captain, master, etc., of any ship or vessel wilfully cast away, burnt or otherwise destroyed the ship, etc., with intent to prejudice the insurers, he was guilty of felony without benefit of clergy.

There were also earlier statutes under which the acts in question were feloniously punishable with death. One of these statutes recited,[3] that it often happened that masters and mariners of ships, having insured or taken upon Bottomry, greater sums of money than the value of their adventure, wilfully cast away, burnt or otherwise destroyed the ships, to the merchants and owners' great loss. The impact of the Act, of 1717 lay in its extending the offence to the owner, etc., who defrauded the insurers.

(35) *Coinage*

Many offences connected with coinage, such as counterfeiting, bringing false money into the realm, and impairing coins were made capital offences.[4]

(36) *Arson*

Several kinds of arson were made capital by statutes and it is enough to note the Act of 1722,[5] which appointed absolute capital punishment for setting fire to any house, barn or out-house, to any hovel cock, mow or corn, hay or wood. A later Act[6] punished with death setting on fire any mine, pit, or delph of coal, etc.

Still another Act[7] made it a capital offence to set on fire or otherwise destroy ships of war, on float or in process of building, arsenals, magazines, victualling offices, or any of the buildings erected therein or belonging thereto.[8]

Several statutes made it a capital offence to set on fire one's own house, or building, engine or erection used for carrying on any trade or manufacture, with intent to injure or defraud.[9]

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1. Stranded Ships Act, 1717 (4 Geo. 8 c. 12).

2. Continuance Act, 1724 (11 Geo. 1 c. 29).

3. Merchant Shipping Piracy Act, 1670 (22 and 23 Car. 2 c. 11), section 12.

4. *See* Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 652—654.

5. The Waltham Black Act, 1722 (9 Geo. 1 c. 22), section 1.

6. Offences against the Persons Act, 1737 (10 Geo. 2 c. 32), section 6.

7. Dockyards, etc., Protection Act, 1772 (12 Geo. 3 c. 24), section 1.

8. The Act of 1772 is still in force, and the offence is a capital one, but the court may abstain from pronouncing sentence of death and may order the judgment to be entered in record.

See Halsbury, 3rd Edn., Vol. 10, page 434, foot-note (*d*) and page 435, foot-note (*i*).

9. Radzinowicz, History of the English Criminal Law, (1948), Vol. 1, page 655.

(37) *Wilful destruction otherwise than by fire*

Wilful destruction otherwise than by fire of certain kinds of property, such as linen cloth, or linen yarn, etc., certain woollen textile, stocking or lace, frame machine or other machines, engines, etc., belonging to collieries and mines, building or engines used in carrying on any trade or manufacture, were punishable with death.[1]

Beside this, a captain, master, etc., who wilfully cast away, burnt or otherwise destroyed a ship, or a person who did these acts to the prejudice of the owner of the ship or any merchant whose goods were loaded thereon or who destroyed any goods in any ship in distress were punishable with death.[2]

(38) *Piracy*

In the middle ages, piracy was regarded as a kind of treason if the offender was not an alien. If the offender was an alien, it was a felony. In more recent times, piracy was held to be robbery or unauthorised depredation on the high seas.[3]

It was not a felony at common law, and the first statute made it a capital offence though not a felony, and some doubts survived as to whether the benefit of clergy was available in respect of this offence.

An Act of 1700[4] declared that the King's subject who committed an act of hostility on the high seas against any other subject of the King by commission of any foreign power or under pretended authority from any person whatsoever, should be considered guilty of piracy and punished with death, and loss of lands, etc., as pirates, felons and robbers upon the seas ought to have and suffer.

Section 9 of the same Act made a certain number of other acts of piracy liable to the same punishment. Later Acts made supplementary provisions.[5]

The law on the subject is now contained in the Act of 1837,[6] under which piracy is punishable with death where any person on or belonging to the vessel attacked is assaulted with intent to murder or wounded or has his life endangered, or with imprisonment for life or for any shorter term in other cases.[7]

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1. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, pages 655-656.
2. Randzinowicz, History of English Criminal Law, (1948), Vol. 1, page 657.
3. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 657.
4. Suppression of Piracy Act, 1700 (11 and 12, Will, 3 c. 11), section 8.
5. Radzinowicz, History of English Criminal Law, (1948), Vol. 1, page 658.
6. The Piracy Act, 1837 (7 Will. 4 and 1 Vict. c. 88).
7. *See* Halsbury, 3rd Edn., Vol. 10, page 654, paragraph 1245.

APPENDIX XX

ENGLISH LAW OF TREASON

English Law of Treason

The relevant provisions of the treason Acts of 1351 and 1795 are quoted below :—

"Treason Act, 1351 (25 Edw. 3, et. 5, c. 2)—Declaration of Treasons.

Item, whereas diverse opinions have been before this time in what case treason shall be said, and in what not; the King, at the request of the lords and of the commons, hath made a declaration in the manner as hereafter followeth; that is to say, *when a man doth compass or imagine the death of our lord the King, or of our lady his Queen, or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir; or if a man do levy war against our lord the King in his realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm, or elsewhere, and thereof be probably ('provalement') attained of open deed by the people of their condition....and if a man slea (sic) the chancellor, treasurer, of the King's justices of the one bench, or the other justices in eyre, or justices of assize, and all other justices assigned to hear and determine,* being in their places doing their offences [see Steph. Dig. Cr. L. (9th ed.) 59]. And it is to be understood, that in the cases above rehearsed, and ought to be judged treason which extends to our lord the King, and his royal majesty: ....And if precase any man of this realm ride armed covertly or secretly with men of arms against any other, to slay him, or rob him, or take him or retain him till he hath made fine or ransom for to have his deliverance, it is not in the mind of the King nor his council, that in such case it shall be judged treason, but shall be judged felony or trespass according to the laws of the land of old time used, and according as the case requireth."

"Treason Act, 1795, (36 Geo. 3 c. 1) s. 1—Plots to kill, etc., the sovereign or his or her heirs and sucessors.

If any person or persons whatsoever..... shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of His Majesty, His heirs and successors.....and such compassings, imaginations, inventions, devices, or intentions or any of them, shall express, utter, or declare, by publishing any printing or writing or by any overt act or deed; being legally convicted thereof, upon the

oaths of two lawful and credible witnesses, upon trial or otherwise convicted or attained by the course of law, then every such person and persons, so as aforesaid offending, shall be deemed, declared and adjudged to be a traitor and traitors, and *shall suffer pains of death*.....as in cases of high treason."

Certain other acts *were* declared to be felony—now "treason felony", by the Acts of 1795 and 1848. Punishment for such acts is not death. Hence, we need not discuss them in detail.[1]

It is no longer necessary to have a minimum of two witnesses to prove treason.[2]

As to treason which is not high treason, but merely a felony, the punishment for imprisonment of life is laid down by the "Treason Felony" Act.[3]

The following chart will show the comparative position regarding punishment in England and in India on the various Acts which constitute treason according to English law :—

English Law	Indian Law
Compassing or imagining the death of the King or violating the King's companion, etc. (1351 Act). Punishment Death.	Not relevant there being no King.
Levying war against the King in his realm or being adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere and thereof be provably attained of open deed by the people of their condition. (1351 Act). Punishment Death.	Waging war against the Government and abetting the waging of such war are punishable with death or imprisonment for life and also with fine. (Section 121, Indian Penal Code). Being adherent to enemies not mentioned.
Slaying the Chancellor, Treasurer or the King's justices, etc., (1351 Act). Punishment Death.	Governed by the ordinary law of culpable homicide and murder.
Compassing, imagining, inventing, devising or intending death or destruction, or any *bodily harm* tending to death or destruction, etc., of the persons of the King, etc. (1795 Act).	Not relevant, there being no King.

1, *See* Russel on Crime, (1964), Vol. 1, pages 210-211.

2. *See* section 1, Treason Act, 1945, assimilating the procedure in all treason trials to the procedure in cases of murder.

3. Section 3 of the Treason Falony Act, 1848 (11 and 12, Vic. c. 12). *See* Archbold, Criminal Pleading, etc. (1962), page 1222, paragraph 3041. (compassing the deposition of the Queen, or compelling the Queen to change her measures, etc., or overawing Parliament, etc.)

Being adherent to the King's enemies.

The above comparison of the English and the Indian provisions would show that, roughly speaking, the *only category* of treason about which there is no specific mention in the Indian Penal Code is that indicated by the words of the English Act "be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere." Under the words "adherent etc." an actual adherence must be proved.[1]

The leading cases under this head are the under-mentioned. [2-3] In one of those cases, Sir Roger David Casement was tried for treason because he went to Germany during the First World War and there actively endeavoured to persuade other British Subjects (Irish Soldiers who were prisoners in Germany) to join an Irish brigade and assist Germany. He also took part in an expedition from Germany with the object of landing arms in Ireland for supply to Irishmen for being used on behalf of Germany. He was held guilty of treason by adhering to the King's enemies elsewhere than in the King's realm.[4]

In the other case, William Joyce was tried for traitorously contriving to aid the King's enemies ("adhering" to as well as "giving aid and comfort" to the enemies in areas without the realm of England) by broadcasting to British subjects propaganda *on behalf of the enemies of the King.*

The words "giving aid etc." would cover any act done by a British subject which strengthens or tends to strengthen the enemies of the Queen in the conduct of a war against the Queen or which weakens or tends to weaken the power of the Queen and of the country to resist or attack the enemies of the Queen.[5]

Regarding transmission of intelligence, an interesting case is that of *Stone.*[6] There, Lord Kenyon C. J. observed that if the intelligence transmitted was such as was likely to prove useful to the enemies in enabling them *"to annoy us, defend themselves or shape their attacks,"* sending such intelligence with a view to its reaching the enemy was undoubtedly *high treason.*

Thus, it may be noted that under these heads there is emphasis on *enemies* being adhered to or aided.

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1. Archbold, Criminal Pleading, etc. (1962), paragraph 3031.

2. Rex. v. Casement, (1917) 1 K.B. 98, (1916-1917) 1 All. E.R. Rep. 214 (C.C.A.). Forfull facts *see* Lord Philips leading cases in constitutional law (1957), page 130.

3 .Joyce v. D.P.P. (1946) A.C. 347 ; (1946) 1 A. E. R. 186 (H.L.).

4 .Leave to appeal was refused by the Attorney General. *See* Ducann, English Treason Trials, (1964), page 243.

5. Archbold, Criminal Pleading, (1962), paragraph 3033 *et seq.*

6. R. v. Stone, 25 St. Tr. 1155, discussed in Archbold, (1962), paragraph 3034.

As to communication with enemies,[1] the following extract from Halsbury[2] would be helpful :—

> "Communications with the enemy from which he may derive information enabling him to shape his attack or defence constitute an adherence to the enemy.[3]
>
> The fact that the communications were intercepted and did not reach the enemy is immaterial[4]."

APPENDIX XXI

Death Penalty in Russia

Death penalty in Russia for economic offences.

Since the penalty of death is now permissible for certain offences in Russia, it may be useful to summarise the important provisions on the subject. The death penalty was abolished in Russia in 1917, re-introduced some months later in 1918, re-abolished in 1920 and again re-introduced in 1920, i.e. in the same year. In May, 1947, it was abolished again, but in January, 1950 it was re-introduced for certain serious crimes (enemies of the regime, traitors, spies and subversive-diversionists). In 1954, it was extended again to murder under aggravating circumstances. This position was repeated in the General Principles of Criminal Legislation laid down in 1958. Thereafter, in 1961-62, it has been extended to certain economic crimes.

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1. For an interesting discussion, *see* Prevezer, " Peace-time Espionage and the Law ". (1953) 6 Current Legal Problems 82, 85 to 88.

2. Halsbury, 3rd Edn., Vol. 10, page 562, paragraph 1034.

3. *Forst.* 217 ; *R.* v. *Grshme* (1961), 12 State Tr. 645 ; *R* . v. *Gregg* (1708) 14 State Tr. 1371 ; *R.* v. *Hensay* (1758), 19 State Tr. 1341, at page 1344 ; *R.* v. *Maclane* (1797), 26 State Tr. 721, at pages 796, 797 ; *R.* v. *Tyrie* (1782), 21 State Tr. 815 ; *R.* v. *Jackson*, (1795), 25 State Tr. 783; *R.* v. *Sheares* (1798) 27 State Tr. 255. In *R.* v. *Stone* (1796), 25 State Tr. 1155, it was contended by Erskine on behalf of the prisoner that such communications were not traitorous, if the prisoner's object and intention were not to assist the enemy but to benefit this country by dissuading the enemy from continuing the war (*ibid.*, at page 1372 *et seq*). Lord Kenyon C. J. does not appear to have ruled against this contention (*ibid* ; at pages 1432, 1434, and 1435), and the jury acquitted the prisoner, apparently upon this ground. In *R.* v. *M.* (1915), 11 Cr. App. Rep. 207, at page 214, in which a person was charged with attempting to communicate information calculated to be useful to the enemy in contravention of regulations made under the Defence of the Realm Consolidation Act, 1914 (5 and 6 Geo. 5, 8), it was held that the truth or falsity of the information supplied was immaterial except as to the possible defence of intention not to assist but to mislead the enemy. It is apprehended the same principle would apply in relation to treason.

4. R. v. *Hensey* (1758), 19 State Tr. 1341 at page 1372 ; *R.* v. *Dela Mottee* (1781), 21 State Tr. 687, at page 808 ; *R.* v. *Gregg* (1708), 14 State Tr. (1371), *R.* v. *Maclane* (1797) 26 State Tr. 721. Such cases may also it appears, be charged as compassing or imagining the death of the Sovereign ; *see* page 558, *ante*.

For convenience of reference, the present position is given offence wise in the following form[1]:—

1	2	3
Rape. . . .	Decree of February, 5, 1962.	Death penalty can be awarded for aggravated cases of rape (committed by a dangerous recidivist or a gang).
Intentional murder under aggravating circumstances.	Edict of April 10, 1954.	Aggravating circumstances are not defined. (Reasons for the drastic increase in punishment for murder are not known. In a book on Criminal Law, in 1951 it was stated that murder rate was decreasing continuously). It is also not clear whether the death sentence is mandatory.
Speculation in currency, gold or securities professionally or on a major scale and violation of currency regulations by a person who was already punished for such violation.	Decrees of March 25, 1961 and July 1, 1961.	Death sentence can be awarded.
Theft and pilfering of State and social property.	Decree of May 5, 1961.	Death sentence can be awarded.
Counterfeiting of currency and securities for sale, or sale of such counterfeit articles.	Decree of May 11, 1961.	Death sentence can be awarded.
Taking of bribes by an official personally or through intermediary in whatever form, for performing or not performing to the advantage of the persons giving the bribe, an act which the official should have performed in the course of his official duties,—when the crime is committed by a person in responsible position, or by an official who has already been sentenced for bribery, or who has taken bribe several times or has extorted bribe.	Decree of February 20, 1962.	Death sentence can be awarded.

1. Based on material contained in Gsovski and Grzybowski Government, etc., in the Soviet Union, (1960), Vol. 2, page 939, text corresponding to foot-notes 39 and 40, and pages 940 and 941 paragraph 5, and also on "Economic Crimes in the Soviet Union", Journal of the International Commision of Jurists, (Dec. 1964), 3, at pages 5, 7 and 8.

Taking of bribe was a capital offence in the Russian Criminal Code of 1922. In 1927, it was changed to imprisonment up to 10 years, which was altered in 1960 to imprisonment up to 5 years for an ordinary offence, and imprisonment up to 10 years for a second conviction or bribery with extortion. The present position is as follows:—

1	2
Bribery by minor officials. . . .	Imprisonment from 3 to 10 years.
Bribery by persons in responsible position, or by confirmed bribe-takers, or bribery with extortion.	(*i*) Imprisonment from 8 to 15 years ;
	(*ii*) Confiscation of property ;
	(*iii*) 2 to 5 years deportation can be added to imprisonment;
	(*iv*) Death sentence in serious cases.

A detailed discussion of the recent developments regarding death penalty in Russia may be quoted[1]:—

> "The death penalty—carried out by shooting—is still considered as "an exceptional punitive measure until its complete abolition" (article 23). It is useful to be reminded that the death penalty was provided in the same way "provisionally until full abolition" in the Basic Principles of 1924. In May 1947 the death penalty was abolished, but in 1950 it was re-introduced for "treason, espionage and diversion" and in April 1954 also for murder under aggravating circumstances. Now, according to article 23 of the Code, the death penalty may be imposed for treason (article 64), espionage (article 65), terrorist activities (articles 66 and 67), diversion (wrecking) (article 68), banditism and murder under the aggravating circumstances of articles 102 and 240. By a Decree of the Presidium of the Supreme Soviet of the U.S.S.R. of May 5, 1961, the death penalty has been extended to the following offences; counterfeiting, embezzlement of State or social property on a particularly large scale, terrorising fellow inmates or attacking the prison administration by especially dangerous criminals in place of detention, organising groups within these places for this purpose or active participation in such gangs. In times of war or in a warlike situation the death penalty may also be imposed for other especially serious crimes which may be prescribed by the legislation of the U.S.S.R.".

1. Lepenna, New Russian Criminal Code, (1961), 10, International and Comparative Law Quarterly 421, 437.

APPENDIX XXII

PROVISIONS IN FRENCH PENAL CODE REGARDING TREASON

Regarding disclosure of secrets, an extract of the following provisions from the French Penal Code[1] would be interesting:—

"*Article* 75

Any French national shall be guilty of treason and sentenced to death, if he:

(1) bears arms against France;

(2) has dealings with a foreign power in order to induce it to undertake hostilities against France, or provides it with the means therefor, either by facilitating the entrance of foreign forces into French territory, or by undermining the allegiance of the army, navy or air force, or by any other means whatsoever;

(3) delivers to a foreign power or to its agents, any French troops or territories, cities, fortresses, fortifications, posts, stores, arsenals, materials, ammunition, ships or aircraft belonging to France or to countries over which France exercises sovereignty;

(4) in time of war instigates soldiers or sailors to enlist in the service of a foreign power, facilitates their doing so or enlists persons to service with a power which is at war with France;

(5) in time of war has dealings with a foreign power or its agents in order to promote the actions of that power against France.

Within the meaning of this section, the nationals of countries over which France exercises sovereignty, as well as foreigners serving France as soldiers or sailors, are to be considered like French nationals.

Within the meaning of this section, the territory of countries over which France exercises sovereignty are to be considered as French territory."

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1. French Penal Code, American Series of Foreign Penal Codes (1960), pages 43 to 45.

"*Article* 76

Any French national shall be guilty of treason and sentenced to death, if he:

(1) By any means whatsoever delivers to a foreign power or its agents a secret of the national defence[1], or who acquires by any means the possession of such a secret in order to deliver it to a foreign power or to its agents;

(2) wilfully destroys or damages any ship, aircraft, material, supply, building or equipment which could be used for the national defence, or, either before or after their completion, knowingly performs bad workmanship thereon, of such a nature as to prevent their functioning or to cause an accident;

(3) knowingly has participated in an action of demoralization of the army or nation aimed at prejudicing the national defence.

However, in time of peace any French national or foreigner shall be punished by solitary confinement if he is guilty of:

(a) wilful bad workmanship in the manufacture of war material, when this bad workmanship is not of such a kind as to cause an accident;

(b) wilful damage or destruction of material or equipment destined or used for national defence;

(c) severely impeding the transportation of these materials;

(d) knowingly participating in an action of demoralization of the army, aimed at prejudicing the national defence.

The wilful participation in an action performed by a group and with open force, directed at and resulting in one of the felonies referred to in paragraphs (a), (b) and (c), of this Article, as well as the preparation of such action, shall also be punished by solitary confinement."

"*Article* 77

Any foreigner who commits one of the acts referred to in Article 75, paragraphs 2, 3, 4 and 5, and in article 76, paragraphs 1, 2 and 3, shall be guilty of espionage and sentenced to death.

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1. *See* article 78, as to "Secrets of National Defence".

Instigation or offer to commit one of the felonies referred to in Articles 75 and 76 and in this Article shall be punished like the felony itself."

"*Article* 78

Within the meaning of this Code, the following are considered *secrets of the national defense*:

(1) Military as well as diplomatic, economic or industrial information, which, by its nature, is not to be made known except to those entitled thereto, and which ought to be kept secret from anybody else in the interest of the national defense;

(2) goods, materials, documents, designs, drafts, maps, surveys, pictures or other reproductions and all other documents whatsoever which, by their nature, are not to be made known except to those who are entitled to use and to have them, and which ought to be kept secret from anybody else because they may allow the discovery of information pertaining to the categories mentioned in the foregoing paragraph;

(3) military information of any nature whatsoever not made public by the government and not included in the above list and the publication, propagation, disclosure or dissemination of which has been prohibited by law or decree of the Council of Ministers;

(4) information pertaining to measures taken for the discovery and arrest of principals and accessories of felonies and misdemeanours against the external security of the state, or to procedure, investigation or pleadings."

APPENDIX XXIII

Capital Punishment in Hindu Law

[*Detailed sub-heads—*

A. Chronology.

B. Homicide in Hindu Law.

C. Capital Punishment in Hindu Period.

D. Principles of punishment.

E. Classification of punishment in Hindu Law.

F. Different kinds of punishment in Hindu Law.

G. Arguments against capital punishment.

H. Capital punishment for various crimes.

I. References from Manu.

J. Capital punishment and Buddhist Rules.

K. Capital punishment in the Maratha Period.]

A. Choronology

Before dealing with the positionin Hindu Law, it would be convenient to state the chronology of various texts, etc., relevant to the Hindu Period, which is given below:—

1500—1000 B.C.	Vedic Samhitas and Brahmanas.
1000—800 B.C.	Principal Upnishads.
600—300 B.C.	Dharmasutras of Gautama, Apastamba Baudhayana and Vasishtha.
300—100 B.C.	Sankha-Lakhita Smriti.
400—300 B.C.	Works of Pali Buddhist Canon.
300—200 B.C.	Arthashastra of Kautilya.
200 B.C.-A.D. 200	Manu-Smriti.
300 B.C.—A.D. 200	Ramayana.
A.D. 100—300	Yajnavalka-Smriti.
A.D. 100—200	Budhocharita and Saundarananda of Asvaghosha.
A.D. 100—300	Original Panchatantra.
A.D. 100—300	Pratima-nataka and other works of Bhasa.
A.D. 100—300	Works of classical Tamil literature.
A.D. 100—300	Works of Jaina (Svetambra) Canon.
A.D. 100—400	Narada-Smriti.
A.D. 200—300	Chatushataka of Aryadeva.
A.D. 200—500	Sabara's commentary on Jaimini's Mimamsa-sutras.
A.D. 300—500	Brihaspati-Smriti.
A.D. 300—400	Abhidharmakosa of Vasubandhu.
A.D. 300—400	Jatakamala of Aryasura.
A.D. 400—500	Visuddhimagga of Buddhaghosa.
A.D. 300—600	Vayu, Vishnu and Markandeya Puranas.
A.D. 350—420	Abhijananasakuntalam and other works of Kalidasa.
A.D. 400—600	Katyayana-Smriti.
A.D. 400—600	Nitisara of Kamadaka.
A.D. 400—800	Mudrarakshasa, Bhattikavya, Kiratarjuniyam, Sisupalavadha and other works.
A.D. 650—700	Tantravartika and other works on Mimamsa by Kumarila-Bhatta.
A.D. 600—650	Kadambari of Bana.
A.D. 600—650	Dasakumaracharita of Dandin.

1. Taken from Ghoshal, A History of Indian Political Ideas, (1959), pages xxi—xxii.

A.D. 705—775	Commentaries on Avasyakasutras etc. by Haribhadra.
A.D. 800—850	Balakrida, commentary on Yajnavalkya-Smriti by Visvarupa.
A.D. 800—900	Manubhashya, commentary on Manu-Smriti by Medhatithi.
A.D. 959	Nitivakyamritam of Somadeva.
A.D. 1000—1100	Commentaries on Uvasagadasao and other works by Abhayadeva.
A.D. 1063—1081	Kathasaritagara of Somadeva.
A.D. 1082—1100	Mitakshara, commentary on Yajnavalkya-Smriti by Vijnanesvara.
A.D. 1089—1173	Alisvaracharita and other works by Hemchandra.
A.D. 1100—1130	Commentary on Yajnavalkya-Smriti by Aparkarka.
A.D. 1100—1130	Rajadharmakanda and other works belonging to the Smriti digest called Krityakalpataru of Lakshmidhara.
A.D. 1131	Manasollasa by King Somesvara III Bhulokamalla.
A.D. 1150—1160	Rajatarangini of Kalhana.
A.D. 1150—1225	Vyavaharanirnaya of Varadaraja.
A.D. 1150—1300	Commentaries on Gautama—Dharma-sastra and Apastamba—Dharma-sutra by Haradatta.
A.D. 1150—1300	Commentary on Manu-Smriti by Kulluka.
A.D. 1200—1225	Smritichandrika by Devanbhatta.

B. Homicide in Hindu Law

On the law of homicide in the Hindu period, the following observations of Dr. P. N. Sen would be of interest[1]:

Sahasa or deliberate and aggressive violence.

"*Sahasa*.—The word "Sahasa" is a generic term comprising various offences having the common characteristic of being attended with or accompanied by the use of force. In its broader sense, therefore, it included certain offences which would also come under other descriptions of offences, but in its restricted sense it was used to denote certain specific offences such as mischief, robbery, murder, etc., characterised by deliberate and aggressive violence. Understood in this way, it differentiates itself from the theft and kindred offences (*steya*) by the element of force which enters into its composition; the spring of action from which such an offence proceeds is passion or rage, whereas in cases of theft and other kinds of offences the spring of

Difference between *Sahasa* and *Steya*.

1. Dr. P. N. Sen, Hindu Jurisprudence, (T L L 1909) 1918 Edn, pages 550-351.

action is avarice; to put it shortly offences of the former kind are violent and aggressive in their character; while offences of the latter kind are generally secretive in their nature. Hence, the Mitakshara points out that although a Sahasa (or violent offence) involves either theft, or verbal abuse, or personal violence, or outrage of the modesty of a woman as an element in its constitution yet it differentiates itself from them by the adjunct of aggressive violence which gives it a peculiar shape, and this differentiation marks out that the offence should be visited with a heavier punishment. There are three different degrees of this kind of offence, of the first degree, intermediate and grave, and different degrees of punishment were prescribed as appropriate to them. It was also laid down that if several persons combined in striking another, they should be visited with double the ordinary punishment, and furthermore he who struck *at the vital* part was to receive the severest sentence. In a case of *Sahasa* in the narrower sense, as distinguished from *dandparushia* and *sthreesangrahan* difference in caste did not lead to any difference in sentence, but this must be understood as subject to the general rule, that a *Brahmin* could never be *capitally punished*, although in a proper case he might be chained or imprisoned, or banished from the country branded with marks of disgrace".

C. Capital Punishment in Hindu Period

Before we deal in detail with the position regarding capital punishment at each stage of the Hindu period, it would be convenient to emphasize, by way of a rapid survey, the fact that capital punishment was in vogue at almost every stage during the Hindu period.

The emphasis on "Danda" (coercive authority of the King) may be noticed. During the Vedic period (1500 to 600 B.C.) originated the doctrine of the Divine affinity of the temporal ruler.[1]

The authority of the King was coupled with his obligation towards his subjects,[2] and the coercive authority (*danda*) of the ruler was recognised as the cause of *Dharma*.[3]

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1. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), page 20 ; He also refers to P. S. Deshmukh, The Origin and Development of Religion in Vedic Literature, (Oxford University Press), (1933), Chapters 9 to 13.

2. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), page 24.

3. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press) (1959), page 29.

In the pre-Maurya period (600 to 325 B.C.), the obligation of the King to protect his subject was developed. In one of the earliest Smritis,[1] the list of offenders punishable with death includes those who caused injury to the seven constituents of the State, and those who forged royal edicts, etc. A King who fails to inflict punishment (*danda*[2]) on a guilty man, or who punished an innocent man, was, required to undergo a fasting. Some of the Pali Texts of that period, while emphasizing the importance of righteousness, also emphasised the duty of the King to protect his people[3].

Kautilya[4] explains, that a king who gives out just punishment does not destroy righteousness. Kautilya also emphasises that *danda* (punishment) is the surest and most universal means of ensuring public security.[5]

During the Maurya period (325 B.C. to 320 A.D.), following Kautilya,[6] the law of treason was developed. Various acts of treason attracted the death penalty.

The Smritis of Manu and Yajnavalkya emphasized the King's duty to protect his subjects. An oft-quoted text of Manu says, that *danda* rules all people, *danda* alone protects them, *danda* is awake when others are asleep, and the wise declare *danda* to be identical with the law; through fear of *danda* all creatures, movable and immovable, "yield themselves for enjoyment", and swerve not from their duties. When *danda* is applied after due consideration, it makes all people happy, but when applied without consideration, it destroys everything. If the King does not untiringly apply *danda* against the wicked, the strong would roast the weaker like fish in a spit. When *danda* walks about destroying sinners, the people are not disturbed, provided that its wielder discerns well.[7]

Manu, therefore, emphasised the obligation of the King to detect and punish all culprits, and included, among those punishable with death, even thieves caught with stolen goods and the implements of theft.[8]

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1. Vishnu, III 34 and V, 10 and 14, referred to in U. N. Ghoshal, A History of Indian Political Ideas (Oxford University Press), (1959), page 50.

2. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press, (1959), page 51.

3. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), page 68.

4. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), pages 86-87.

5. Kautilya, Book IV, 8, 9, 10 referred to in U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), pages 117-118.

6. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), pages 167-168.

7. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), page 180.

8. U. N. Ghoshal, A History of Indian Political Ideas, (Oxford University Press), (1959), page 180.

There are interesting discussions in the Mahabharata (200 B.C. to A.D. 200) about the coercive authority of the King.[1] In the dialogue between Yudhisthira and Bhishma[2] about *danda*, Bhishma states that *danda* is the means placed in the hands of the King for the smooth running of all human affairs on the path of dharma.

In the address of Kaninka Bhardvaja,[3] danda is first conceived in general terms to be a fundamental political principle and a guard of the security of person and property as well as stability of the social order. Secondly, the key to this function is the principle that fear of danda is the grand motive for the individual's obedience to authority. Then, the purpose of the Divine ordination of danda in the king's favour is stated to be the fulfilment of law. Thirdly, the qualifications required for the king's use of danda are discrimination and impartiality. At one place, Bhishma[4] asked the king to slay without hesitation a person acting against the interest of his kingdom, whoever he may be. At another place,[5] Bhishma declared the king in whose Kingdom women are forcibly abducted, to be more dead than alive. These passages are referred to in order to show the emphasis placed in those times on *protection of society*.[6]

In the Buddhist Sanskrit and late Pali texts, one finds references relating to death sentence. One work states, that the king is one who rules and guides the world; he censures, fines and executes the man who transgresses his commands; ruling in righteousness, he becomes dear to his people.[7]

In another work,[8] Asvaghosha states, that after the birth of Buddha, Buddha's follower Shuddhodhana, while not executing criminals, kept them under mild restraint, as their release would not have been good policy.[9]

Asoka does not seem to have abolished capital punishment.[10] But it is stated,[11] that the greatest king of the Satavahana dynasty, Gautamiputra Satakarni, refrained from

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1. U. N. Ghoshal, A History of Indian Political Ideas, (1959), page 206.

2. Mahabharat XXII, 121.

3. Mahabharata XII, 138 ; *see* also U. N. Ghoshal, A History of Indian Political Ideas, (1959), page 206.

4. Mahabharata XII, 57, 5—7.

5. Mahabharata XIII, 61, 31—33.

6. Nagasena, Milinda-Panha, IV, 5.27.

7. U. N. Ghoshal, A History of Indian Political, Ideas, (1959), page 265.

8. Ashvadghosha Buddhacharita II, 1—16.

9. U. N. Ghoshal, A History of Indian Political Ideas, (1959), page 267 ; citing the Buddhacharita ; *see* also E. H. Johnson, Translation of this work, page 28, note.

10. Material relating to Asoka is discussed in detail separately.

11. U. N. Ghoshal, A History of Indian Political Ideas, (1959), pages 295—296.

hurting the life even of an offending enemy, and that Rudradaman of the Saka dynasty never took life except in battle.

D. Principles of Punishment in Hindu Law

The principles of *punishment* have been well put by Kautilya.[1] Punishment, if too severe, alarm men; if too mild, it frustrates itself. Punishment, according to deserts should be encouraged. Punishment, properly determined and awarded, makes the subjects conform to *dharma* (right), *artha* (wealth) and *kama* (desire). When improperly awarded due to ignorance, under the influence of lust and anger, it enrages even hermits and (religious) mendicants, not to speak of householders. Punishment unawarded would verily foster the *regime* of the fish *i.e.* in the absence of the upholder of law the strong would swallow up the weak. Protected by the upholder they would prosper.

A good summing up of the objects of punishment as conceived in the Hindu period is found in a recent study.[2]

> 'If we analyse the implied and explicit purposes of punishment, we find that punishment was conceived, first, as a deterrent measures calculated to strike fear into the hearts of the criminally minded and to check their immoral and anti-social passions. This purpose was served particularly by disproportionately severe punishment and by "branding", "parading" and publicizing punishment. The second object was the prevention of the possibility of the culprit's repeating the crime. So, the culprit was imprisoned, fettered, killed, or exiled. Retribution may be said to be the third motive of punishment in two different senses: retaliation, and making the wrongdoer suffer the fruits of his own *karma*. The first is particularly noticed in the mutilation of that very limb by which the wrong was done (*e.g.* cutting off fingers or hand of a thief, the tongue of a defamer). Punishments, fourthly, are conceived to be an educative, and, therefore, a reformative process also. Sukra points out that, consistent with the Vedic teaching of non-injury to life, a culprit should be educated (*siksayet*) and made to work. He takes a very modern socio-psychological view when he says (4.1.110): "Such persons were corrupted by bad company. The king should punish them and always educate them back on to the right path." But punishment was thought to be, not only reformative, but also purificatory in a moral sense. This is more evident in the fact that punishment also included different forms of repentence,

1. Kautilya, cited in Dr. P. K. Sen, "Penology old and new' (Tagore Law lectures 1929), (1943 Edn.), page 104.

2. D. M. Dutta, "Political, Legal and Economic Thought in Indian Perspective", in Moore (Editor) Philosophy and Culture—East and West, University of Hawaii, 1962), pages 569, 591.

confession, prayer, penitential starvation, and long periods of penance (*e.g.* a Brahmin, while spared capital punishment, had to live even as long as twelve years in the forest in austerity and celibacy to atone for murder)'.

E. Classification of Punishment in Hindu Law

The classification of punishment in Hindu Law has been elaborately explained by Dr. P. K. Sen.[1]

'The chapter headed Dandabhedah deals with the usual four-fold classification based on the text of Brhaspati: *Vag-Danda, Dhig-danda, Dhana-danda* and *Vadha-danda.*

"Vag dhig dhanam vadhas caiva
caturdha Kathito dameh,
Purusam vibhavam dosam Jnatva
tam parikalpayet;

Brhaspati"

"Punishment is four-fold, namely, admonition, reproof, fine and corporal. It should be meted out after considering the offender, his pecuniary condition, and the crime committed by him."

The first, *Vag-danda,* may be taken to mean punishing with words *i.e.* giving a solemn warning such as "Thou hast acted most improperly." The second, *Dhig-danda,* means punishing with strong censure such as "shame on thee, thou miscreant"; it differs from the first in intensity, not in kind. The third, *Dhana-danda,* means punishing with fine which may be of two kinds, fixed and fluctuating. In certain cases the fixed fine may easily be imposed. Certain other cases do not admit of such easy handling. Allowance must be made in the latter class of cases for some elasticity in view of repeated inclinations to offence and other circumstances such as violence attending it. When the offence is accompanied by violence the punishment must be graded according to circumstances, to fit *prathama sahasa* (violence of the first order), *madhyama sahasa* (violence of the second order), and *uttam sahasa* (violence of the last or extreme kind).

Vadha-danda requires detailed treatment. *Vadha* may be of three kinds *pidana, angaccheda* and *pramapana. Pidana* (afflicting) is sub-divided into four modes: (i) *tadana* such as whipping or flogging, (ii) *avarodhana* or restraint of liberty by means of imprisonment, (iii) *bandhana,* restraint of liberty by chaining, fetters and the like, without actual

1. Dr. P. K. Sen, Penology old and new, (Tagore Law Lectures 1929) (1943 Edn.), pages 126—128.

imprisonment, and (iv) *vidambana, i.e.,* exposing to ridicule and humiliation such as by shaving the head of the offender, making him ride on an ass, branding his person with a mark denoting his offence, proclaiming his offence with beat of drum, making him patrol the city, etc.[1]

Angaccheda, mutilation, may be of different limbs and organs of the body. Manu mentions ten kinds of mutilation. Brhaspati prescribes fourteen,[2] referring to fourteen parts of the body which may be mutilated, namely, hand, leg, organ of generation, eye, tongue, ear, nose, half-tongue, half-leg, thumb and the index finger taken together, forehead, upper lip, rectum and waist.

Pramapana means capital punishment. It may be of the pure and the mixed variety *i.e.,* in the latter case mutilation or some other form of punishment may be combined with the death sentence. The pure variety again is of two kinds, ordinary (*avictram*) and extraordinary (*vicitram*). The ordinary form of execution is by means of ordinary weapons such as sword and the like; the extraordinary is by means of impaling, or other awe-inspiring methods.

It is noteworthy that according to Brhaspati *Vag-danda,* and *dhig-danda,* were within the jurisdiction of *Vipras* or *Pradvivakas,* whereas *artha-danda and Vadha-danda* were within the sole jurisdiction of the King himself.[3]

F. Different kinds of punishment in Hindu Law

The different kinds of punishment prescribed by the Hindu Law, and some of the principles on which they were directed to be administered, have been thus described by Dr. P. N. Sen.[4] "Yajnavalkya speaks of four classes of punishment, *viz.,* censure, rebuke, pecuniary punishment and corporal punishment, and says that these should be used either separately or jointly according to the nature of the crime. Of these, mere censure was the lightest form of punishment and rebuke came after it, pecuniary punishment included fine and forfeiture of property and corporal punishment included imprisonment, banishment, branding, cutting of offending limbs, and lastly death sentence. It goes without saying that the measure of punishment depended chiefly on the gravity of the offence; if the offence be not very serious, the punishment must be light, while if the offence be serious the punishment must be severe too."

1. Dandaviveka, Gaekwad's Oriental Series, Vol. 52, page 20.

2. Dandaviveka, Gaekwad's Oriental Series, Vol. 52, page 21.

3. Dandaviveka, page 12.

4. Dr. P. N. Sen, Hindu Jurisprudence, (Tagore Law Lectures, 1909), (1918 Edn.), pages 342-243.

G. Arguments against capital punishment in Hindu Law

Arguments against capital punishment are also met with. This extract from an authoritative study may be seen[1]:—

> 'It would be no exaggeration to say that the mind of the intelligentsia must have been agitated on the propriety or expediency of capital punishment. An interesting evidence of this is to be found, in the Mahabharata (Chapter CCLVII of the Santiparva) in which there is a discussion between King Dyumatsena and his son Prince Satyavan. A number of men having been brought out for execution at the Command of his father, Prince Satyavan gives vent to his thoughts thus: "Sometimes virtue assumes the form of sin and sin assumes the form of virtue. It is not possible that the destruction of individuals can ever be a virtuous act." Thereupon Dyumatsena observes, "If the sparing of those who should be killed be virtuous, if robbers be spared, O Satyavan, all distinction between virtue and vice will disappear". Satyavan rejoins, "Without destroying the body of the offender the King should punish him as ordained by the scripture. The King should not act otherwise, neglecting to reflect upon the character of the offence and upon the science of morality. By killing the wrongdoers, the King kills a large number of innocent men. Behold! By killing a single robber, his wife, mother, father and children, all are killed. When injured by wicked persons the King should, therefore, think seriously on the question of punishment. Sometimes a wicked person is seen to imbibe good conduct from a pious person. It is seen that good children spring from wicked persons. The wicked, therefore, should not be exterminated. The extermination of the wicked is not in consonance with eternal law. By punishing them gently, by depriving them of all their riches, by chains and imprisonment, by disfiguring them they may be made to expiate their offences. Their relatives should not be punished by inflicting of capital punishment on them.'

The sentiment and reasoning against capital punishment is found in Sukra,[2] according to whom, this bad practice violates the Vedic injunction against taking any life, and should be replaced by imprisonment for life, if necessary, and a natural criminal should be transported to an island, or fettered and made to repair the public roads. Fa Hsien

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1. Dr. P. K. Sen, "Penology old and new", (Tagore Law Lectures 1929, 1943 Edn.), pages 93-94.

2. Sukranitisara 4·1. 92—108, referred to in D. M. Dutta, "Political, Legal and Economic Thought in Indian Perspective", in Moore, (Editor) Philosophy and Culture—East and West (University of Hawaii), (1962), pages 569, 590.

did not find any capital punishment in India (399-400 A.D.) but fines were there, and mutilation in cases of treason.[1]

Nevertheless, it seems that, at various periods in the history of ancient India, capital punishment was one of the recognised modes of punishment.

H. Capital punishment for various crimes in Hindu Law

(According to Jolly)

Jolly's observations as to the crimes regarded as capital are interesting[2]:

> 'The punishments for theft are very heavy. In all cases of serious crimes the accused is sentenced to death: he is impaled, hanged or drowned and often his hands are hacked off and other tortures are inflicted for the purpose of aggravating the punishment. The same punishments are ordained also in the case of burglary, frequently repeated instances of picking pockets, robbery, stealing cows, horses or elephants or more than 10 Kumbhas of grains, more than 100 Palas of precious metals, particularly valuable jewels or stuffs, etc. (Y. 2, 273, M. 8, 320, f; 9,276), 280; Brh. 22, 17—19, etc.). "Forging of royal grants and even of private documents is punished by death (Vi. 5, 9f; M.9, 232); the king should have a dishonest goldsmith cut to pieces, *i.e.*, according to the commentaries, those who use false weights, touchstones, alloys and practise other kinds of frauds (M. 9, 292). In determining the magnitude of the punishment according to the value of the stolen property often three grades are distinguished. Thus Y. 2. 275 speaks about the theft of small, middling or large properties and similarly speak Nr. 14, 13; 15, 6; App. 29 and Brh. 22m 24. Enumerations of objects of about equal value are generally given along with data about the punishments for misappropriating the same, which, besides the already mentioned cases of capital punishment, consist of the hacking off of a hand or a foot and other kinds of mutilation and fines in most cases amounting to many times the value of the stolen property. No distinction is made between robbery and theft as regards punishment and moreover taking part in these crimes, abetting of every kind or refusing to render help is regarded as equally criminal (Nr. 14, 12, 19 f, Y 2, 276, etc)'.
>
> Theft.
>
> Capital punishment for other crimes.
>
> Various punishments for theft according to the value of the stolen property.

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1. D. M. Dutta, "Political, Legal and Economic Thought in Indian Perspective", in Moore, (Editor), Philosophy and Culture—East and West (University of Hawaii), (1962), pages 579, 590.

2. Jolly, Hindu Law and Custom, (1928), page 273 *et seq.*

I. References from Manu

From the Manusmriti it appears that capital punishment was awarded for theft of more than 10 "kumbhas"[1]. Rape by a man of the lower caste with a woman of the higher caste was a capital offence.[2] Brahmins were not subject to the death penalty.[3] Mutilation of the particular offending limb was also prescribed by Manu.[4]

J. Capital punishment and Buddhist rulers

It would appear, that in the fourth century B.C., capital punishment was in force, and death penalty without torture was administered for crimes accompanied with cruelty.[5]

Though, in the Buddhist period, the doctrine of *Ahimsa* (non-violence) became prominent, the Emperor Asoka does not seem to have abolished capital punishment totally. Reference to capital punishment is found in his edicts.[6]

Vincent Smith[7] observes—

> "The most pious Buddhist and Jain Kings had no hesitation about inflicting capital punishment upon their subjects, and Asoka himself continued to sanction the death penalty throughout his reign. He was content to satisfy his humanitarian feelings by a slight mitigation of the sanguinary penal code inherited from his stern grandfather in conceding to condemned persons three days' grace to prepare for death."[8]

Asoka's Pillar Edict IV has been thus translated[9]:—

> 'For as much as it is desirable that there should be uniformity in judicial procedure and uniformity in penalties, from this time forward my rule is this—
>
> > "To condemned men lying in prison under sentence of death a respite of three days is granted by me".

During this interval the relatives of some of the condemned men will invite them to deep meditation, hoping to save their lives or in order to lead to meditation *him* about to die, will themselves give alms with a view to the other

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1. Manu 8, verse 320.
2. Manu 8, verse 366.
3. Manu 8, verses 379 and 380.
4. Manu 8, verse 125.
5. *See* B. R. Ramchandra Dikshitar, Mauryan Polity, (Madras University Historical Studies), (1953), pages 167-168.
6. The edicts of Asoka are collected by D.C. Sircar, Inscriptions of Asoka, Government of India, (1957).
7. Vincent Smith, Early History of India, (4th Edn.), page 185.
8. Pillar Edict, IV.
9. *See* Vincent Smith, Asoka, (2nd Edn.), page 186.

world or undergo fasting. For my desire is that even in the time of their confinement the condemned men may gain the next world and that among the people pious practices of various kinds may grow including self-control and distribution of alms.'

There is a somewhat different version of this Edict given by some authors. Thus, Bhandarkar[1] gives the following translation:—

> "And even so far goes my order : to men who are bound with fetters, on whom sentence has been passed and who have been condemned to death, have I granted three days as something rightfully and exclusively their own. (In that interval) (their) relatives will indeed propitiate some (of the Rajukas) in order to grant their life; and to propitiate Death, they (*i.e.*, the convicts) will give alms and observe fasts pertaining to the next world[2]. For my desire is that even when the time (for their living) has expired they may win the next world and that manifold pious practices, self-restraint and liberality may thus grow among the people."

In a recent study[3], the position is thus stated:—

> "Continuing his efforts to secure greater welfare for his subjects, he orders a respite of three days before a death sentence is carried out. This is an act of grace, since he recognizes that this time may, in certain cases, be utilized to prove the innocence of the condemned person or to secure his repentence. It is curious that, despite his firm belief in Buddhism, he did not abolish capital punishment. Doubtlessly he regarded capital punishment as essential to the maintenance of law and order, and, despite his personal convictions to the contrary, felt that justice in the state must be based on recognised painful punishments or pleasurable rewards[4]."

The following translation of Pillar Edict IV of Delhi-Topra is given in a recent work[5]:—

> "And my order (reaches), even so far, (that) a respite of three days is granted by me to persons lying

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1. D.R. Bhandarkar, Ashoka, (Carmcihael Lectures, 1923), (University of Calcutta, 1932), page 342.

2. This is the most knotty passage. *See* D.R. Bhandarkar, Ashoka, page 345, annotation 7.

3. Romila Thapar, Asoka and the Decline of the Mauryas, (Oxford University Press),(1961), pages 176-177 (*See* page 263 for translation of the Edict).

4. There is an interesting passage in the Mahabharata (Santi Parva, 259), which expresses an attitude very similar to Asoka's attitude in this matter. According to the Chinese travellers, capital punishment was abolished in later centuries.

5. Saletore, Ancient Indian Political Thought and Institutions, (1963) pages 570, 670, citing E. Hultzch, Corpus Inscriptionum Indicarum Vol. I, page 125.

in prison on whom punishment has been passed; (and) who have been condemned to death. (In this way) either (their) relatives will persuade those (Rajukas) to (grant) their life, or if there is none who persuades (them), they will bestow gifts or will undergo fasts in order to (attain happiness) in the other (world). For my desire is this, that, even when the time (of respite) has expired, they should attain (happiness) in the other (world)."

This is the translation of the Edict given in that study[1]:

"Thus speaks the Beloved of the Gods, the king Piyadassi: When I had been consecrated twenty-six years I had this inscription on Dhamma engraved. My rajukas (rural officers) are appointed over many hundred thousands of people. In judgment and punishment I have given them independent authority, so that the rajukas may fulfil their functions calmly and fearlessly and may promote the welfare and happiness of the country people and benefit them. They will learn what makes for happiness and unhappiness and together with those devoted to Dhamma, they will admonish the country people that they may obtain happiness in this world and the next. The rajukas are eager to obey me and they will likewise obey my envoys who know my wishes. These likewise will admonish (the erring rajukas) so that they will be able to give me satisfaction.

Just as one entrusts his child to an experienced nurse, and is confident that the experienced nurse is able to care for the child satisfactorily, so my rajukas have been appointed for the welfare and happiness of the country people. In order that they my fulfil their functions fearlessly, confidently, and cheerfully, I have given them independent authority in judgment and punishment. But it is desirable that there should be uniformity in judicial procedure and punishment.

This is my instruction from now on: Men who are imprisoned or sentenced to death are to be given three days respite. Thus their relations may plead for their lives. or, if there is no one to plead for them, they may make donations or undertake a fast for a better rebirth in the next life. For it is my wish that they should gain the next world. And among the people various practices of Dhamma are increasing, such as self-control and the distribution of charity."

The view that Asoka abolished capital punishment is therefore a misconception[2].

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1. Romila Thapar, Asoka and the Decilne of the Mauryas, Oxford University Press, (1961), pages 263-264.

2. *See* B. R. Ramchandra Dikshitar, "Maurvan Policy", (Madras University Historical Studies), (1953), pages 167-168.

(Asoka came to the throne about 270 B.C., according to the generally accepted view[1]).

It may be noted, that when Magasthenes was in India (i.e. some time between 302 and 288 B.C.) the severest penalties were imposed, having regard to the needs of the age[2].

Kautilya advocated the death penalty, though only in specified cases[3].

One may also refer to the views of Prince Shotoku (Japan) (604 A.D.), who thought his "Seventeen-Articles Constitution" was based on the spirit of Buddhism[4], wrote:—

> "Light crimes should be embraced by our power of reforming influence, and grave crimes should be surrendered to our power of strong force".

King Harsha (seventh century) inflicted capital punishment on all who ventured to slay any living creature[5].

K. Maratha period Impaling and Trampling under Feet by Elephants:

As to the Maratha period, Jolly has observed[6]:—

> "..... Of the death sentences, impaling, which is mentioned also in the Mah., Rajatar, and in the literature of fables, was in vogue for instance in Golconda even in the 17th Century, in Kolhapur until the period of British rule[7], and the trampling down by elephants mentioned also in Mriccha, 146 and the Jatakas (Fausboll) 1, 199 ff., was universally practised in the Mahratta states[8]. Moreover under Mahratta rule, specially in Central India, the following are said to have been the customary punishments: fines, flogging, imprisonment, putting in stocks, forfeiture and sale of the whole property, amputation of hands, fingers or nose and other corporal punishments; the hands of a forger of base coins were crushed with one blow of the hammer which is apparently a symbolical

Various punishments in Marhatta period.

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1. *See* Sir Charles Elliott, Hinduism and Buddhism, (1957), Vol. I, page 266, foot-note 4.

2. *See* Saletore, Ancient Indian Political Thougnt and Institutions, (1963), (Asia Publishing House, New York), pages 536, 544.

3. Saletore, Ancient Indian Political Thought and Institutions, (1963) page 570, citing Kautilya, Book IV, Chapter XI, pages 256—258.

4. Nakamura, "Basic features of the legal political, and economic thought of Japan", in Moore, (Editor), Philosophy and Culture—East and West, (University of Hawaii), (1962), pages 631, 636, 638.

5. Encyclopaedia of Religions and Ethics, Vol. 4, page 284.

6. Jolly, Hindu Law and Custom, (1928), page 283, *et seq.*

7. B.G. 24, 267.

8. I.c.

punishment[1]. Fines were particularly in vogue in Rajputana according to Tod[2], in Mysore according to Dubois[3] and in Kolhapur according to the Gazetteer; among the Prayascittas fines still play the chief role, *cf.* article 37. In Nepal, besides the very frequent fines, sometimes amounting to the confiscation of the whole property, banishment and detracting punishment such as the shaving of the hair (article 42) as well as the horrible multilation and death-sentences of the *Smritis* are still in vogue."

Smritis followed in Nepal.

The position in Mahratta times was as follows[4]:—

"For great crimes, the Sursoobedars had the power of punishing capitally; Mamlitdars in such cases required the Peishwa's authority. The great Jagherdars had power of life and death within their respective territories. Bramins could not be executed; but state prisoners were poisoned, or destroyed by deleterious food, such as equal parts of flour and salt. Women were mutilated, but rarely put to death. There was no prescribed form of trial; torture to extort confession was very common; and confession was generally thought necessary to capital punishment. The chief authority, in doubtful cases, commonly took the opinion of his officers; and some Mamlitdars in the Satara country, under both the Pritee Needhee and Peishwa, employed Punchayets to pronounce on the innocence or guilt of the accused; but this system can only be traced to the time of Shao; and though so well worthy of imitation was by no means general, nor are its benefits understood or appreciated in the present day."

An interesting incident may be referred to in this connection[5]. Soon after the death of Madhavrao I, it was suspected that Ragunathrao was privy to the murder, and he asked Ram Sastri (the celebrated Chief Justice of Poona) what was the penalty for the act. Ram Shastri not only declared that *capital punishment* was the only penalty for the offence, but declined to serve any longer under a Peshwa who had murdered his own nephew. This was roundabout the year 1774. Later on, in 1779, he was induced to return to Poona to resume his work, with an annual salary of Rs. 2,000 and an allowance of Rs. 1,000 for his palankeen.

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1. Grant, C. P. Gazetteer 70 f.; Malcolm, A Memoir of Central India, 2nd Edn.,I, 558.

2. Annals of Rajasthan, 1, 142 f.

3. People of India, 499 f.

4. James Grant Duff, History of the Mahrattas, (1912), Vol. 2, pages 236—237.

5. *See* D. B. Parasnis, Note in Appendix II, Kincaid and Parasnis, A History of the Maratha People, (1931), pages 475-476.

Dr. Coates, Residency Surgeon in Poona, contributed in 1819, some valuable notes on the administration of justice in Poona to the Bombay Literary Society, quoted below[1]:—

> "The criminal court was composed of a Brahmin president, some Brahmin clerks, and a *shastri*. Its mode of proceeding, if the accused were professed thieves or old offenders, was summary, and had something of a sanguinary character. It was always essential to conviction that the offender should confess his guilt, and the investigation turned much on this. The facts and evidence were all taken down in writing by *karkuna* (clerks), and persuasion and threats were used from time to time to obtain confession. If this failed, and when from the evidence recorded there appeared little doubt of the fault of the accused, torture was employed and he was flogged, and chilli bag was put to his nose, etc. If he persevered in his declaration of innocence, he was sent back to prison, put in the stocks, and allowed only a very scanty subsistence; and after an interval was brought forward again and again to try to get him to confess. This refers chiefly to Ramoosis, Mangs, and persons of bad character. In other cases the proceedings were conducted with more deliberation and forbearance; and there were probably few instances where those entirely innocent were made to suffer. Persons accused of robbery and theft were readily admitted to bail, if the bondsman made himself responsible for the lost property in cases of conviction. Murder was not bailable, unless a compromise was made with the friends of the deceased. The accused might summon what evidence they pleased, but were not allowed to have any intercourse with them. When the offender had been convicted on his own confession, the president, the *shastri*, and the Brahmins of the court, in ordinary cases, awarded the sentence; and in intricate cases this was done by a body of learned shastris, sometimes in the presence of the Peshwa. No severe punishment was inflicted till the case had been submitted to the Peshwa for his approval. Brahmins, of course, whatever their crimes, were never put to death, or subjected to any punishment considered ignominious. For small crimes they were often merely reproved, ordered to dispense charities, and perform religious penances; or were subjected to slight fines, imprisonment, or flogging; those of a deeper die were heavily fined, or confined in hill forts, sometimes in irons, where the climate and their scanty and unwholesome food commonly soon put an end to them; and their property was sequestrated, and their sins visited on the children. Gangs committing

1. D. B. Parasnis, Note in Appendix II, Kincaid and Parasnis, A History of the Maratha People, (1931), page 476.

murder, highway robbery, and house-breaking, were punished *by death*, and their bodies hung up on the sides of roads; other professed incorrigible thieves were punished, according to the extent of their crimes, by the cutting off of a finger, or hand, or foot, or both, and left to their fate. Perjury was punished by the perjurer being made to make good the loss that depended on his false oath, and paying a fine to Government. Forgery, by the Hindu Law, ought to have been punished by the cutting off of the right hand; but this, like almost every crime at Poona, was commutable for money. *Women were never punished by death for* any crime. Turning them out of their castes, parading them on an ass with their heads shaved, cutting off their noses, etc., were the usual punishments."

APPENDIX XXIV

CAPITAL PUNISHMENT IN INDIA DURING THE MUSLIM PERIOD

I.—INTRODUCTORY

During the Muslim times (Mughal times) the main system of criminal law administered was the Quranic one. The system had originated and grown outside India. Its main sources were the Quran as supplemented and interpreted by case-law and opinions of jurists. Since all the three sources were "trans-Indian",[1] it became necessary for Indian Qazis to have a digest of Islamic law. The last such digest was the Fatawa-i-Alamgiri compiled by a syndicate of theologians under the orders of Aurangzeb[2].

That portion of the Islamic Criminal Law which constituted the crimes in the estimation of all nations, was applied to Muslims and non-Muslims alike, e.g. adultery, murder, theft, etc[3].

In the Mughal period, Muslim sovereigns used to administer justice in person. Thus, Sultan Muhammad Tughlaq constituted himself the Supreme Court of Appeal and used to keep four Muftis, to whom he used to say that they should be careful in speaking that which they considered right, because if any one should be put to death wrongfully the blood of that man would be upon their head. If they convicted the prisoner after long discussion, he would pass orders for the execution of the prisoner[4].

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1. Jadunath Sarkar, Mughal Administration, (1952), page 100.

2. Jadunath Sarkar, Mughal Administration, (1952), page 21.

3. Wahed Husain, Administration of Justice during the Muslim Rule in India, (University of Calcutta), (1934), page 15.

4. Wahed Husain, Administration of Justice during the Muslim Rule in India, (University of Calcutta), (1934), pages 20-21.

Akbar's idea of justice may be gathered from his instructions to the Governor of Gujarat that he should not take away life till after the most mature deliberations[1]. The Emperor himself was the final Court of Appeal, and when he appeared in front of his window every morning, it was open to any one to demand justice personally—though the demand was seldom made[2].

Akbar was keen to lay down, that capital punishment was not to be accompanied with mutilation or other cruelty, and that, except in cases of dangerous sedition, the Governor should not inflict capital punishment until the proceedings were sent to the Emperor and confirmed by him[3].

In the time of Jehangir, no sentence of death could be carried out without the confirmation of the Emperor[4].

It has been stated that the lands of the Moghuls were, on the whole, well policed[5].

Capital punishment, it is stated, was almost totally unknown under Aurangzeb[6].

Under the dictates of anger and passion he never issued orders of death[7].

The Farmans issued by Emperor Aurangzeb to the Diwan of Gujarat on the 16th June, 1772 gives a small Code of offences.[8]

The first Indian Law Commission first prepared the draft of Penal Code before Macaulay's departure for England in 1837. But the Penal Code could actually be passed only in 1860. It was based on the draft proposed by Macaulay's commission and revised by Bethune, the legal member of council, and Sir Barness Peacock[9].

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1. Wahed Hussain, Administration of Justice during the Muslim Rule in India, (University of Calcutta), (1934), page 33, citing Ayin-i-Akbari, Vol. I, page 254.

2. Pringle Kennedy, History of the Great Mughals, (1905), Vol. I, page 308.

3. Wahed Husain, Administration of Justice during the Muslim Rule in India, (University of Calcutta), (1934), page 33, citing Elphinstone, History of India, pages 532-533, Letter of Instructions to the Governor of Gujarat.

4. Wahed Hussain, Administration of Justice during the Muslim Rule in India. (University of Calcutta), (1934), page 41.

5. Pringle Kennedy, History of the Great Moghuls, (Thacker Spink & Co., Calcutta), (1905), Vol. 2, page 3.

6. Wahed Hussain, Administration of Justice during the Muslim Rule in India, (University of Calcutta), (1934), page 53, referring to Alexander Dow, History of India.

7. Pringle Kennedy, A History of the Great Mughals, (1905), (Thacker Spink & Co., Calcutta), Vol. 2, page 77.

8. Full discussion will be found in J. N. Sarkar, Mughal Administration, (1952), pages 122—130.

9. Cambridge History of India, (1958), Vol. VI, page 384. Also *See* page 8.

The Indian Penal Code was, it is said, influenced by the French Penal Code and the Code of Louisiana[1]; but the foundation was the English law divested of technicalities. Until it was enacted for a long time, the *substantive law of the criminal courts consisted of the Muslim law*, with modification made in some respects by the Regulations[2].

The general criminal law enforced in the Upper Provinces also (until the Indian Penal Code was enacted) was the Muhammadan law as altered by British regulations and judicial decisions[3].

Even in Madras, "for want of anything better" the Muhammadan criminal law as interpreted by law officers and modified by enactment was applied until the Penal Code came into force[4-5].

It was only in Bombay that an attempt had been made to codify the criminal law in 1827 by a Regulation[6].

In view of this position, it is desirable to study briefly the Muslim criminal law.

The position regarding the criminal law applicable before Indian Penal Code is thus stated[7]:—

> "By Warren Hastings' plan in 1772, the Muhammadan Criminal Law was retained in the Criminal courts subject to the interpretation of Government, or of the subordinate English functionaries, where its provisions were manifestly unjust. In 1790, when the Governor-General accepted the Nizamut of Bengal, the Criminal Courts then established were directed to pronounce sentence according to the Muhammadan law; and in cases of murder according to the doctrines of Yusuf and Muhammad[8], as has been already noticed. The Muhammadan law was further ordered to be continued in the like manner in the Criminal Courts established in 1793[9]."
>
> "In 1832, it was enacted in Bengal that all persons, not professing the Muhammadan faith, might claim to be exempt from trial under the provisions of

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1. Cambridge History of India, (1958), Vol. VI, page 387.

2. *See* Field, The Regulations of the Bengal Code, (1875), (Thacker Spink & Co.), page 175, paragraph 240.

3. Cambridge History of India, (1958), Vol. VI, page 79.

4. Cambridge History of India, (1958), Vol. VI, page 43, middle.

5. For example, *see* Madras Regulation 7 of 1802 (section 15), Madras Regulation 8 of 1802 (section 9 to 11), Madras Regulation 15 of 1803 (Preamble).

6. Bombay Regulation 14 of 1827.

7. William H. Morley, Administration of Justice in British India, (1858), pages 185—186.

8. Bengal Regulation XXVI, 1790, sections 32-33.

9. Bengal Regulation IX, 1793, sections 47, 50, 74, 75.

the Muhammadan Criminal Code for offences cognizable under the general Regulations[1].

At Madras, in the year 1802, provisions were made respecting the administration of the Muhammadan Criminal law in the Courts of the East-India Company, similar to those enacted in Bengal by Regulation 9 of 1703[2].

The Criminal law administered in the Company's Courts at Bombay previous to 1827, was ordered to be regulated by the law of the accused party: Christians and Parsis to be judged on the principles of the English law, and Muhammadans and Hindus according to their own particular laws[3]. The Muhammadan law was to be regulated by the Fatwa of the law officers, which was directed to be given according to the doctrine of Yusuf and Muhammad; respect which, and the law of the Hindus, the Judges were enjoined to refer to the translation of the Hidayah by Hamilton, and of the Hindu laws by Halhed and Sir William Jones; as likewise to a tract entitled "Observations", which then constituted part of the criminal Code for the province of Malabar and Salsette; etc.[4] In 1819, the Hindu Criminal Law was directed to be administered to Hindus in the special Court[5]. The Native Criminal Laws were abolished in the Bombay Presidency in 1827, and a regular Code substituted in their place.

The Muhammadan Criminal Law, even when first reserved to the natives of the British territories in India, was subjected to many important restrictions in its application; and it has been so modified by the subsequent Regulations in the Presidencies of Bengal and Madras as to present no vestiges of its sanguinary character, and but few of its original imperfections[6]."

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1. Bengal Regulation VI, 1832, section 5.

2. Madras Regulation VII, 1802, sections 15, 16,

3. Madras Regulation VII, 1802, sections 9, 10, 11;

Bombay Regulation V of 1799, section 36; Bombay Regulation III, of 1800, section 36; Bombay Regulation VII of 1820, section 17.

4. Bombay Regulation of 1799, sections 36, 39; Bombay Regulation III, of 1800, sections 36—39; Bombay Regulation VII, 1820, sectionss 17—20.

5. Bombay Regulation X of 1819.

6. The right existing in the Government to alter the Muhammadan law appears to have been virtually recognised by the 13th Geo. III, C. 63, section 7, vesting in it authority for the ordering, managing, and governing, "in like manner (as the Act recites), to all intents and purposes whatever, as the same now are, or at any time heretofore might have been exercised by the President and Council in Select Committee" because it was then before the Legislature that the President and Council had interposed, and altered the Criminal Law of the Province in 1772. Such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned. *See* Fifth Report from the Select Committee of the House of Commons, 1812, page 40.

II.—Muslim Law as in force at the Advent of British Rule

General picture

For the present purpose it is unnecessary to give a detailed discussion of the theory of *punishment* in Muslim Law. But the following brief extracts from an authoritative book will suffice[1], to give a general picture:—

Classification of Crimes

According to Muslim ideas of jurisprudence crimes fall into three groups, namely:—

(a) offences against God,

(b) offences against the State, and

(c) offences against private individuals.

Punishment for the first of these classes is "the right of God (Haqq Allah)", while for the other two classes of offences the injured party may forgive or compound with the wrong-doer. Thus, curiously enough, manslaughter is not a violation of God's law nor of the king's peace, but only a damage to the family of the murdered man, which can be settled by paying money compensation (called "the price of blood") to the next of kin of the victim, without the Executive Head of the State or the Judge of Canon Law having to take any further notice of it. It was only when the relatives of the murdered man refused to accept money damages and insisted on retaliation, that the quazi had to pronounce the sentence of death and the executive to enforce it.

The Institute of Timur puts the matter with great clearness and force. He writes:—

> "Robbers and thieves, in whatever place they might be found, or by whomsoever detected, I commanded to be put to death." (Note: This, however, was not in exact accordance with Quranic law.)
>
> And I ordained that, if any one seized by violence the property of another, the value of that property should be taken from the oppressor, and be restored to the oppressed.

Concerning other crimes—the breaking of teeth, the putting out of eyes, the slitting and cutting off of the ears and nose, wine drinking and adultery,—I ordained that whoever should be guilty of these, or other crimes, they should be brought into the courts of the ecclesiastical and lay judges—(the exact terms being Qazi-i-Islam and Qazi-i-Ahdas,—ahdas meaning

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1. Jadunath Sarkar, Mughal Administration, (1952), pages 101 to 109.

"ritual impurity"); that the ecclesiatical judge should decide on those causes which are determinable by the sacred laws (Shara), and that those which did not fall under his cognizance (urfi bashad, i.e., pertain to the customary or secular law) should be investigated and laid before me by the lay judge." (Davy's Institutes of Timur, pages 251 and 253, corrected by reference to the Persian text).

Description of punishments allowed by Muhammadan law

The punishments for crimes were of four classes:—

(a) Hadd.

(b) Tazir.

(c) Qisas.

(d) Tashhir.

Hadd (its plural being hadud), means a punishment prescribed by Canon Law and considered as 'the right of God', which, therefore, no human judge can alter.

Hadd must take certain prescribed forms of punishment, *viz.*:—

(i) Stoning to death for adultery; scourging for fornication [100 stripes].

(ii) Scourging for falsely accusing a married woman of adultery [80 stripes].

(iii) Scourging for drinking wine and other intoxicating liquors. For a free man the punishment was 80 stripes for wine drinking.

(iv) Cutting off the right hand for theft.

(v) For simple robbery on the highway, the loss of hands and feet; for robbery with murder, death either by the sword or by crucifixion.

Tazir is punishment intended to reform culprit..... tazir is inflicted for such transgressions as have no hadd punishment and no expiation prescribed for them. The kind and amount of tazir is left entirely to the discretion of the judges.....The Judge can completely remit the tazir. The process of trial is simple in contrast to that for hadd. Hence attempt was often made to escape tazir by bribery [Ency. Islam iv. 710].

It was not the "right of God". It could take one of these four forms:—

(i) Public reprimand (tadib).

(ii) Jirr, or dragging the offender to the door [of the court house?] and exposing him to public scorn; somewhat like putting a man in the pillory.

(iii) Imprisonment or exile.

(iv) Boxing on the ear; scourging. The stripes must not be less than 3, nor more than 39 (or 75 according to the Hanafi School, as in Abu Yusuf).

We are told in the Hedaya, a Persian compilation of Islamic law according to the Hanafi school of jurists drawn up by Mulla Tajuddin, Mir Muhammad Hussain, and Mulla Shariatullah about 1780, that the above punishments should be inflicted according to the offender's rank, and that imprisonment and scourging were to be confined to the third and fourth grades of the people, the petty traders and common labourers, respectively, (or as Manu would have put it, the Vaishyas and Shudras),—while the lighter forms of punishment were reserved for the nobility and gentry; (Hedaya, 203-204; full details in Hughes, 632—634).

As for tazir-bil-mal or 'chastisement in property' *i.e.* fine, only Abu Hanifa pronounces it to be legal, but all other learned men reject it as opposed to the Quranic law. (Hedaya, 203) Aurangzeb, who was a strict Hanafi and himself well-read in Canon Law and the literature of precedents (fatawa), issued an order to the diwan of Gujarat and also of other subahs, in 1679, to the effect that as fine was not permitted by Canon Law, every civil official (amal), zamindar or other person found guilty of an offence, should, according to the nature of his act, be imprisoned or dismissed or banished, but not punished with fine, (Mirat-i-Ahmadi, i. 293).

Private vengeance, public degradation, etc.

Qisas or retaliation: This was the personal right of the victim or his next of kin, in the case of certain crimes notably murder. If he demanded the legal punishment, the qazi was bound to inflict it, and neither he nor the king could exercise the royal clemency by modification or abrogation of the sentence. If, on the other hand, the next of kin of the deceased was satisfied with the money damages, called "price of blood" (Arabic diya) offered by the murderer, or pardoned him unconditionally, it was his look-out, and neither the qazi nor the king was to take any further notice of the crime. For minor offence, the retaliation was, as laid down by the Mosaic law, "a tooth for a tooth and an eye for an eye", with certain exceptions. (Hughes, 481, Encyc. Ist. ii. 1038).

Tashhr or public degradation was a popularly devised punishment of universal currency throughout the Muslim world and even Hindu India and Medieval Europe. It is neither recognised nor condemned in the law-books of Islam, but was inflicted by all Muslim qazis and kings, and even by the lay public, as it was a mild form of lynching: In India, the offender's head was shaven, and he was mounted on an ass with his face turned towards its tail, covered with dust, sometimes with a garland of old shoes

placed round his neck, paraded through the streets with noisy music, and turned out of the city. "The judge may blacken the face of the culprit, cut his hair or have him led through the streets, etc." [Encyclo, Islam, i. 132.]. This last refers to the Arabian practice.

As for offences against the State, such as rebellion, peculation and default in the payment of revenue, the sovereign inflicted punishment at his pleasure, because the Quranic law gives no guidance here. Among the prevalent modes of putting an offender to death were having him trodden to death [the last being also sanctioned by medieval English law]. Tortures of various degrees of ingenuity were resorted to. Theft (sarqa) is punishable with the cutting off of one hand one foot. But if the offender has robbed and killed, he is to be put to death....and his body publicly exposed for three days on a cross or in some other way. The punishment of death is here considered a haqq Allah and blood-money is out of the question. All accomplices are punished in the same way. The judge can inflict the above punishments, as hadd, only when all the legal conditions are fulfilled. The legal inquiry has to be conducted, witnesses are necessary, or a confession. If the thief has given back the article stolen before the charge is made, he is immune from punishment [Ency. 1st, iv. 173-174].

The capital sentence (qatl) is inflicted, after the offence has been legally proved, in the following cases:—

(i) When the next of kin of a murdered person demands the life of the murderer (qisas) and refuses to accept the alternative of money compensation (diya or 'price of blood');

(ii) in certain cases of immorality; the woman sinner is stoned to death by the public (Ency. 1st, s. v. zina, iv. 1227);

(iii) on highway robbers.....
.....

The Muslim Criminal Law compared more favourably with the English Criminal law as it was in force at that time. The English law still prescribed barbarous punishments and contained some glaring anomalies, while, as Hastings had declared, the Muslim law was founded 'on the most lenient principle and an abhorrence of bloodshed'[1].

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1. Monckton Jones, Hastings in Bengal, page 331, cited by Aspinall, Cornwallis in Bengal, (Manchester University Press), (1931), page 61.

A brief summary of Muslim law of homicide is quoted below from one study[1]:—

The law of murder, for example, needed radical alteration if life was to be made secure. Abu Hanifa, whose opinions were generally accepted by the Bengal Judges, had drawn a sharp distinction between the two kinds of homicide known by the terms *Amd* (wilful murder) and *Shabih-amd* (culpable homicide not amounting to murder), although such distinction was not recognised by the Quran. The distinction was based on the method by which the crime was committed. If a man killed another by striking him with his fists, throwing him from the upper floors of a house, throwing him down a well or into a river, strangling him, or with a stick, stone, club, or any other weapon on which there was no iron and which would not draw blood, he was guilty only of shabih-amd, not of murder, and he could not be capitally punished[2]. A man was guilty of murder only if he used a *dah* (knife) or some other blood-drawing instrument, and was liable to be sentenced to death[3]. Persons guilty of shabih-amd were merely sentenced to pay the blood-fine to their victims' relatives if those relatives chose to accept it. Abu Hanifa, however, had declared that if a man repeatedly committed murder by strangling, he might be executed[4]. Abu Hanifa, who was born in the eightieth year of the Jejira, had never taken part in the administration of justice, though he had been greatly revered as a virtuous and scholarly theologian. It was said of him that he left his writings and opinions open to the correction of his disciples in so far as those opinions might be found to differ from the Holy Tradition; but although these disciples, Abu Yusuf and Muhammad, the former being Chief Justice at Baghdad, did, it was said, help to bring their master's doctrines into great renown, yet nevertheless they entirely differed with him regarding the punishment of homicide, laying down the more rational doctrine that if the intention of murder be proved, no distinction should be drawn with regard to the method employed[5]. Abu Yusuf's opinion, however, never came to supersede that of Abu Hanifa, and the important point we have to notice is that

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1. Aspinall, Cornwallis in Bengal, (1931), pages 53-56.

2. Bengal Rev. Cons., 28 Nov. 1788; 30-12-1789.

3. Bengal Rev. Cons., 28 Nov. 1788; 30-12-1789.

4. Bengal Rev. Cons., 21 July, 1790.

5. Bengal Rev. Cons., 19 Aug. 1789; 15 July 1791. This information was given to Jonathan Duncan, the Company's Resident at Benares, by the Muhammadan Judges of the Benares Courts.

the latter's view was generally accepted and acted upon in Bengal at this time[1].

In several other cases the Muhammadan Law which was administered in Bengal did not permit murderers to be executed. Provided they were Muslims, neither fathers nor mothers suffered death for the murder of their children, but were fined; they were liable to be hanged only for murdering other people's children. Grandfathers and grandmothers enjoyed a similar immunity with respect to their grandchildren; so did a Master for the murder of his slave, or a man for the murder of his son-in-law, provided that his daughter was actually living with her husband at the time. Patricide or matricide, however, might be punished with death[2].

Homicide was justifiable in the following cases: A woman might kill a man who persisted in carrying on an indecent conversation "with violence and ill-will"; a man using a dangerous weapon in the streets of a town during the night, or outside the town during the day, might legally be killed[2]. Under certain circumstances a man might kill his wife if he caught her in the act of adultery, and also her paramour; and he might slay a man who attempted to rape his wife or his slave girl. The authorities who were followed in the Courts of Justice in Bengal differed somewhat on this matter. One law Book laid down that a man might kill another who attempted to rape his wife or slave-girl. Another authority maintained that an adulterer might be slain provided that, if he "made a noise" to give the offender a chance to desist; second, the adulterer neither fled nor desisted on hearing the noise; third, the offender was a Mussulman; and fourth, the offender was seen in the very act. A third authority stated: "A man finding another with his wife, it is lawful for him to kill him; should he know that the fornicator will cease his attempt at his crying out, or frightening him with weapon not mortal, he is not to slay him. Should he know that his death only wil restrain him, it is permitted to slay him". A fourth authority emphasises the necessity of producing witnesses to prove the act of fornication. "If a murderer shall state that he has slain anyone on account of fornication, and the heirs of the slain shall deny his allegation, the murderer having no witnesses, his assertion being

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1. Bengal Rev. Con., 28 Nov. 1788; 30 Dec. 1789. In a written communication the Ghazipur Judge refers to the "Hanifan legal writings, which are most prevalent, or in use, for the guidance of the rulers of the country of Hindostan."

2. Bengal Rev. Cons., 30 Dec. 1789; 29 June 1792

without testimony, shall be deemed inadmissible[1]". A man might slay a person caught in the act of robbing his house[2].

But by far the most important reason why murderers frequently escaped the death penalty was that provision of the Muhammadan Law which gave to the sons or next of kin the privilege of pardoning the murderer of their parents or kinsmen. This misplaced power of life and death made the fate of a murdered largely depend on the caprice, venality, or indifference of the deceased man's relatives.

Detailed Analysis

A.—*Homicide*

The Muslim law of homicide (as administered at the advent of the British rule) seems to have been elaborate. Centain types of homicide were regarded as lawful and justified. Further, "retaliation" for the murder was allowed in certain cases. Homicide in self-defence or in the prevention of adultery, rape or other serious offences or at the express desire of the person killed was excusable, and so was homicide committed under threat of death[3]. Apart from these, and apart from specified cases, homicide was an offence and "wilful homicide"—Qatl-i-Amd[4]—was punishable with death or retaliation where permissible. The other types of illegal homicide were punishable with "fine of blood" (Diyut), and, in certain cases, by expiation and exclusion from the inheritance[5].

This brings us to the question of what was "wilful homicide", and what were the other types of "illegal homicide".

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1. Bengal Rev. Cons., 18 Feb. 1789; 30 Dec. 1789. A Tradition from Muammad says: Someone asked him, 'Oh, Prophet of God! Should I find anyone with my wife, shall I leave him till I can get four witnesses, The Prophet answered, 'Let them alone till you can get the four witnesses'.

2. Bengal Rev. Cons., 30 Dec. 1789.

3. Hamilton: Translation of the Hedaya, (London) (1791) Vol. 4, pages 290 to 293 and 316, may be seen.

4. Harigton's Analysis of Bengal, Regulations, (1821), Vol. 1, page 251.

.5 Harrington's Analysis of Bengal Regulations, (1821), Vol. 1, pages 251 to 256.

B—*Types of illegal homicide under Muslim Law*

For the purpose of punishment, Muslim Law classified illegal homicide into 5 types, which were as follows:—

Type of homicide	Punishment
1. *Wilful homicide*—It implied intention to kill followed by a voluatary act.[1] It was defined as "homicide committed by a responsible person (*i.e.* a sane and adult person) wilfully striking another person, with a mortal weapon, or something that serves as such, like a sharp piece of wood, a sharp stone or fire.[2]" Proof of intention was material, but once it was proved, there was no distinction between sudden and provoked homicide and cold-blooded murder.[3-4] Mention of the instrument actually used was regarded as singnificant in finding out the intention. Use of some blood-drawing instrument and the consequential death of the victim was regarded as wilful homicide.[5] There was much difference of opinion regarding the instruments considered as mortal.[6] But, generally speaking, killing by biting, drowning, successive blows with a whip or a stich, exposure to cold or to the sun, throwing from the roof or top of a hill or into a well or strangling or poisoning was not considered wilful homicide. And confining the victim till the victim died from hunger, was	(*a*) Death sentence; (*b*) Retaliation by the family of the victims was permissible also*, subject to certain restrictions**; (*c*) Exclusion from inheritance to property of person slain. Qatl-i-Amd.

1-2. Harrington's Analysis of Bengal Laws and Regulations, (1821), Vol. 1, page 251.

3. Printed Reports of the Sadr Nizamat Adalat Trials, No. 65 of 1805 and 1 of 1806.

4. Harrinanton's Analysis of Bengal Laws of Regulations, (1821), Vol. 1, pagg 251, f.n. 3.

5. Bengal Revenue Consultations dated December 30, 1789, cited in Bnnerjee, Background to Indian Criminal Law, (1963), page 39, top; Harrington, Vol. 1, page 252, f.u. 1, and 253.

6. Banerjee, Background to Indian Criminal Law, (1963), page 39, top, citing Bengal Revenue Consultatinns dated November, 28 1788 and December, 30, 1789; Harrington, Vol. 1, page 253.

* Harrington, page 257.

** For details of "retaliation", *see* Harrington, Analysis, (1821), pages 263—266.

	Type of homicide	Punishment
	not wilful homicide. Nor was putting the victim alive into a grave or killing with a beast, etc.[1]	
Shabah-Amd.	2. *Quasi-deliberate homicide*—Here the act was voluntary, but the instrument was not considered as one *endangering* life, so that the *intention to kill* could not be presumed. Intention to kill is the factor which distinguished wilful homicide from Quasi-deliberate homicide.[2]	Punishable by blood money (Diyut) and also by expiation and exclusion from inheritance*.
Qatl-i-Khata.	3. *Erroneous homicide* i.e. where there was an error in the act or in the intention. Illustration of the former error is an arrow shot at a mark, but actually hitting a man. Illustration of the latter is an arrow shot at an object mistaken to be an animal, and actually a human being.[3]	Punishable with Diyut (blood money) and also by expiation or exclusion from inheritance.*
Qatl-i-Qaim. Maqam-al-el Khata.	4. *Involuntary homicide*—Example given is a sleeping person's falling on another and killing him thereby, or death occasioned by the accidental fall of a brick or a piece of wood from the hand of a person.[4]	Punishable with blood money (Diyut), and also by expiation or exclusion from inheritance.
Qatl-ba-Sahub.	5. *Accidental homicide*—Example given is a person digging a well or setting up a stone, in ground not belonging to him, where another is killed by falling into the well or over the stone.[5]-[6]	Punishable with blood money *only*.** (Expiation is not incumbent, and exclusion is not incurred. Fine is, however, payable in view of illegality of the act).

1. Harrington, Analysis, etc. (1821), Vol. 1, pages 253-256.

2. Harrington, pages 251, 255, 256. *Harrington, page 258.

3. Harrington, Analysis, etc., (1821), Vol. I, page 252 and Hamilton, Hidaya, Vol. 4, pages 307-309.

4. Hamilton's Hidaya, Vol. 4, page 277, (London) (1791), and Harrington's Analysis, etc. (1821), Vol. I, page 252. **Harrington, Vol. 1, page 259.

5. Harrington, page 253.

6. Reference to the Fatawai-i-Alam giri, IV, 503 to 553 are cited in S. P. Sangar, "Murder and its punishment during the reigns of Shahjehan and Aurangzeb", (1945) 8 Indian History Congress Proceedings 289.

C.—*Other Capital Offences under Muslim Law*

Other offences punishable with death under Muslim Law at the advent of the British rule were as follows:—

Type of homicide	Punishment
1. Zina (Unlawful conjunction of the sexes).[1]	*Death penalty*—Lapidation or stoning to death (Stoning to be commenced by witnesses)*—if the offence is committed by a man of sound understanding and mature age and married, with a woman of the same description. (In the case of non-Muslims or unmarried persons, punishment was 100 stripes and in the case of a slave, 50 stripes).* There were detailed provisions to ensure avoidance of any cruelty or breach of decency in carrying out the punishment.* But death sentence was imposed only when four honourable witnesses saw the guilty persons actually in the act.* In fact, even whipping was often remitted during British times.**
2. Repeated commission of the offence of larceny (Sariqa) if the value is not less than 10 dirhms (2 to 3 rupees).[2]	As an exemplary punishment, death could be inflicted.†
3. Highway robbery (Sariqa-i-Kubra)—Where murder had been committed (without robbery), or both robbery and murder had been committed.[3]	Death sentence was permissible.‡

1. Harrington, Vol. 1, page 266.

2. Hamilton's Hidaya, (1791), Vol. 1, pages 82-84.

3. *See* Hamilton's Hidaya, (1791), Vol. 2, pages 124 to 130, and Harrington, Analysis, (1821), Vol. 2, pages 281, 283, discussing the four descriptions of robbery.

*Harrington, Vol. 1, pages 267, 268.

***See* Aspinall, Cornwallis in Bengal, (1931), page 62, foot-note 2.

† Harrington, Vol. 1, page 275. In the foot-note, the Fatwa Alamgiri is quoted as directing "The man may put the thief to death for the purpose of seeasut or exemplary punishment as he is a practised disturber of the peace."

‡Harrignton, Vol. 1, page 282, discussing the third and fourth types of robbery.

APPENDIX XXV

III. Capital Punishment under the British rule but before the enactment of the Indian Penal Code

Capital Punishment under the British rule, but before the enactment of the Indian Penal Code.

III—Capital Punishment under the British rule but before the enactment of the Indian Penal Code.

We may now consider the statutory modifications made in the Muslim Criminal law during British times, in the period before the commencement of Indian Penal Code. The policy of the British being to interfere as little as possible with the Muslim Penal law, only such modifications were made as were required to remove its glaring defects.

In 1772, for suppressing robbery, a provision was made that dacoits were to be executed in their villages, the villagers were to be fined and the families of the dacoits were to become the slaves of the State[1]-[2]. The provision penalising the villagers and the family, however, very shortly ceased to be enforced[3].

The letter of Warren Hastings, President of the Council dated 10th July, 1773 recorded on the proceedings of Council dated 3rd August, 1773[4], discussed in detail the principles of Muslim Criminal Law as expounded in theory and as applied in practice, and made several suggestions as to severe punishment and for dacoits, irrelevance of instrument used for committing homicide, the requirement of two witnesses in the case of positive capital offence, etc. It also throws considerable light as to the origin of sentence of transportation of life in respect of "every convicted felon and murder" not condemned to death by the sentence of the Adawlat[5].

The Regulation dated 3rd December, 1790[6] made several changes.

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1. Article 35 of the plan for the administration of justice in Bengal framed by the Committee of Circuit presided over by Hastings; proceedings of the meeting held on 15 August, 1772 and adopted on 21 August 1772 (Judicial Regulations); *see* Harrington, Vol. 1, page 299.

2. Aspinall, Cornwallis in Bengal, (1931), page 65 f.n. 4, citing Bengal letter to Court dated Nov. 3, 1772.

3. Bengal Revenue Consultations, December 29, 1785.

4. *See* Colebrooke, Digest, Supplement, Calcutta, (1807), pages 114 *et seq.*

5. Colebrooke, Digest, Supplement, Calcutta, (1807), page 115.

6. Colebrooke, Digest, Supplement, Calcutta, (1807), pages 141, 143 155, 156. (Regulation for the Administration of Justice in the Criminal Courts in Bengal, etc.).

Regarding homicide, by a Bengal Regulation of 1793 (sections 50, 52, 55, 76, Bengal Regulations 9, 1793 substituted by Regulation 4, 1797)—

(a) nature of the instrument as signifiying the intention was made immaterial in homicide; the intention was to be gathered from the general circumstances and the evidence; and

(b) the discretion left to the next of kin of the murdered person to remit the penalty of death was taken away[1-2].

Thus, the motive, not the method, should determine the sentence[3]. In 1791, the punishment of mutilation was abolished. All criminals adjudged in accordance with the Fativa of law officers to lose two limbs were to suffer, instead of it, imprisonment with hard labour for 7 years[4-5].

Cornwallis, introduced a number of changes in criminal law by the "Cornwallis Code".

(The Cornwallis Code, 1793 really comprised 48 regulations dealing with various aspects of revenue, civil and judicial administration, including jurisdiction and procedure of Civil and Criminal Codes).

Cornwallis also deprived the relatives of a murdered men of their power to pardon the criminal, and the law was to take its course[6].

A Bengal Regulation of 1797 provided that in cases of wilful murder, judgment was to be given on the assumption that "retaliation" had been claimed. The sentence could extend to death if that was the prescribed sentence under Mahommedan Law. As regards "fine of blood", the Judges were directed to commute the punishment to imprisonment—which could extend to life imprisonment[7-8].

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1. Bengal Regulation 9 of 1793. A Regulation for re-enacting with alterations and modifications, the regulations passed by the Governoer General-in-Council on the 3rd December, 1790, etc. This very comprehensive Regulatio , contains the fundamental rules for administration of criminal law.

2. Harrington, Vol. 1, pages 312,313.

3. Aspinall, Cornwallis in Bengal, (1931), page 69.

4. Resolution of the Governor-General in Council of 15 April, 1791, cited in Aspinall, Cornwallis in Bengal, (1931), page 74, and foot-note 3 on that page. This was replaced by section 51, Regulation 9 of 1793; Harrington pages 310, 322.

5. *See* also Colebrook's Digest, (Calcutta 1807), Supplement, page 159.

6. Aspinall, Cornwallis in Bengal, (Manchester University Press), (1931), page 69, citing Bengal Revenue Consultations dated 3-12-1790.

7. Bengal Regulation 4 of 1797 (13th March, 1797), section 3.

8. Barrington, Vol. 1, page 313.

By the same Regulation of 1797, offenders guilty of putting to death "any person on the ground of his or her being versed in and practising sorcery or any other ground such person or persons" were declared to be guilty of murder on being convicted of the crime, and punishable accordingly[1].

By sections 1 to 5, Bengal Regulation 4 of 1799, elaborate provisions were made for the trial of persons charged with Treason and other crimes against the State[2].

Certain homicides which were regarded as justifiable homicides under the Muslim Law, were considered as opposed to public justice, and by Bengal Regulation 8 of 1799, such cases were declared liable to capital punishment. These included such cases as the prisoners being one of ancestors of the slain, or being the master of the deceased, or the consent of the deceased[3-4]. Death sentence could be passed provided if the court saw no circumstance which may render the prisoner a proper object of mercy.

By the same Regulation (section 5), it was made clear, that wilful homicide by poisoning or by drowning when the intention of drowning, etc., was evident was included in the rule[5] that it is the intention which is material and not the manner and instrument of perpetration.

Dacoity.

It would appear, that the crime of dacoity was rampant in the beginning of the 19th century[6]—Sir Henry Strachey (while he was Judge of Circuit in the district of Calcutta, in his report in the year 1802) said[7], "The crime of dacoity, has, I believe, increased greatly since the British administration of justice. The number of convicts confined at the six stations of this division.....is about 4,000. Of them probably *nine-tenths are dacoits.*"

Mr. Doweleswell[7] (Secretary to Government) in a report on the general state of police in Bengal, said. "Robbery, rape and even murder itself are not the worst figures in this horrid and disgusting picture. An expedient of common occurrence with the dacoits merely to induce confession of property, supposed to be concealed, is to burn the proprietor with straw or troches, until he discloses the property; or perishes in the flames..... If the information obtained is not extremely erroneous, the

1. Bengal Regulation 4 of 1797, section 6.

2. Bengal Regulation 4 of 1799, sections 1 to 5.

3. Bengal Regulation 8 of 1799, sections 2 and 3.

4. Harrington, page 314, and foot-note 1.

5. This rule had also been enacted by Bengal Regulation 9 of 1793, section 75.

6. Sir Henry Strachey's Report of 1802, Quoted in B. S. Sinha, The Legal History of India, (1953), page 71.

7. Mr. Doweleswell's Report of 1809, quoted in B. S. Sinha, The Legal History of India, (1953), pages 171-172.

offender, hereafter noticed, himself committed fifteen murders in nineteen days.....and volumes might be filled with the atrocities of the dacoits every line of which would make the blood run cold with terror."

Death sentence was prescribed by Bengal Regulation VIII of 1801 for accidental homicide (as known to Muslim law) occurring in the prosecution of unlawful murderous intention, *e.g.*, shooting at A with intention to kill A and by accident killing B[1].

Certain other changes were made, not relevant to capital punishment.

By Regulation XXI of 1795 (as extended in its territorial application, by Bengal Regulation III of 1804) infanticide among "Rajkumars" was declared to be murder[2-3].

By Bengal Regulation VI of 1802, the whole practice of infanticide by drowning was declared to be wilful murder punishable with death[4]. It was stated that the practice of killing female children had been widely prevalent in India, and the object was to stop that practice[5]. The Regulation, however, punished the throwing into sea, river, etc. of "any infant or person not arrived at the age of maturity".

Regarding robbery, by Bengal Regulation 53 of 1803, death sentence was provided for all cases of murder committed in the prosecution of robbery, or aiding, or abetting the same, etc. The Nizamat Adalat was empowered to inflict the capital sentence on habitual and notorious robbers[6].

Regarding escape by convicts, by Bengal Regulation 53 of 1803, convicts escaping from their places of transportation, if apprehended, were directed to be tried, and on conviction, were to be sentenced to death[7], "if no circumstances appear to the Court to render such convict an object of mercy".

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1. Harrington, pages 317-318; sections 1 to 6, Bengal Regulation 8 of 1801, may be seen. These sections modify the Muslim law. They require, however, that there must be an intention to murder one person and in prosecution of such intention an actual homicide of another by accident.

2. Cambridge History of India, (1958), Vol. VI, page 129, bottom.

3. *See* Bengal Regulation 21 of 1795, section 13 (as extended by Bengal Regulation 3 of 1804, section 11).

4. Bengal Regulation 6 of 1802 (20th August, 1802), section 2. The Regulation states that the criminal and inhuman practice of sacrificing children by exposing them to be drowned or devoured by sharks was reported to be prevalent at Saugor and other places. It asserts that this is an offence.

5. Cambridge History of India, (1958), Vol. VI, page 129.

6. Bengal Regulation 53 of 1803, section 3, clause Second.

7. Bengal Regulation 53 of 1803, section 9, clause Second.

Regarding *hostility* to Government open hostility to the British Government, or actual commission of any overt act of rebellion against the authority of the same, or the act of openly aiding and abetting the enemies of the British Government were, in 1804, declared to be liable to the immediate punishment of *death* and to the forfeiture of the property, etc., of the convict[1]. The regulation provided for trial by courts martial and was applicable during times of war or open rebellion, but did not preclude[2] the Government from causing the persons to be charged under Regulations 4 of 1799 and 20 of 1803.

Regarding robbery, Bengal Regulation 3 of 1805 made special provisions[3]. It had been brought to light that many village watchmen and some police officers were concerned in the preparation of robbery, or connived at the commission of robbery. Hence the Regulation laid down that any police officer convicted of robbery by open violence or of murder, wounding, maiming or any other aggravating act, in the prosecution of robbery or an attempt to rob was to be sentenced to *death*. Any direct or indirect connivance at any of these crimes on the part of any police officer was to be considered as its actual commission and punishable accordingly[4].

By Bengal Regulation XVII of 1817, persons convicted of murder in prosecution of robbery, burglary or theft were made liable to the sentence of death[5-6]. By section 15 of the same Regulation, exemption of Brahmins of Benaras from capital punishment was abolished[7].

Regarding *insane* persons, Act 4 of 1849 provided as follows:—

> "1. No person, who does an act which, if done by a person of sound mind is an offence, shall be acquitted of such offence for unsoundness of mind, unless the court or jury, as the case may be, in which according to the Constitution of the Court the power of conviction or acquittal is vested shall find, that by reason of unsoundness of mind not wilfully caused by himself, he was unconscious and capable of knowing, at the time of doing the said act, that he was doing an act forbidden by the law of the land." (But even in such

1. *See* Bengal Regulation 10 of 1804, section 3 read with section 2.

2. Bengal Regulation 10 of 1804, section 2.

3. Bengal Regulation 3 of 1805, sections 2 to 6.

4. Bengal Regulation 3 of 1805, sections 2 to 6; Harrington, pages 326 to 329.

5. Harrington, page 328.

6. In 1812, Regulation 15, (Section 2) made certain special provisions for punishment of burglary particularly between sun-set and sun-rise; Harrington, pages 329-330.

7. Field, Regulations of the Bengal Code (1875), page 175, foot-note 2. Bengal Regulation 17 of 1817, section 15.

acquittals, the court was to order him to be kept in safe custody until the orders of the Government were received)[1].

Regarding *waging war*, in the year of the Indian Mutiny, waging war and other offences against the State or instigation of the same was made punishable with death or transportation for life or rigorous imprisonment up to 14 years in addition to forefeiture of property, etc[2].

Regarding Mutiny, an earlier Act[3] had provided that every person who "maliciously and advisedly" endeavoured to seduce any person or persons, in the military or naval.....Forces of the East India Company from allegiance to Her Majesty or duty to the said Company, or endeavoured to stir up any person or persons to commit mutiny, etc., was on conviction to be transported for life or imprisoned up to 7 years.

In 1857[4], the offence of intentionally seducing or endeavouring to seduce any officer or soldier from his allegiance to British Government or duty to East India Company, exciting or causing others to excite mutiny or sedition in the army was made liable to the punishment of death or transportation for life or imprisonment with hard labour up to 14 years, besides forefeiture, etc.

Later, the 1858 an Act[5] was passed to deal with persons who had escaped from jails during the mutiny. Punishment was transportation for life—sections 1 and 2.

The offence of waging war was dealt with by Act 11 of 1857, preamble and section 1 of which may be quoted:[6]

"WHEREAS it is necessary to make due provision for the prevention, trial, and punishment of offences against the State; it is enacted as follows:— Preamble.

1. All persons owing allegiance to the British Government who, after the passing of this Act, shall rebel, or wage war against the Queen or the Government of the East India Company, or shall attempt to wage such war, or shall instigate or abet any such rebellion or the waging of such war, or shall conspire Punishment for rebellion or waging war against the Government.

1. An Act for the safe custody of criminal lunatics, Act 4 of 1849, sections 1 and 3.

2. Act 11 of 1857.—An Act for the prevention, trial and punishment of offences, against the State. (30 May, 1857).

3. Act 14 of 1849. An Act to punish tampering with the Army or Navy (25th August 1849), section 1.

4. Act 14 of 1857, Section 1 (Duration was for one year, *see* section 14).

5. Act 5 of 1858—An Act for the punishment of certain offenders who have escaped from jail and of persons who shall knowingly harbour such offenders.

6. Act 11 of 1957, an Act for the prevention, trial and punishment of offences against the State (30th May, 1857).

so to rebel or wage war, shall be liable, upon conviction, to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labour for any term not exceeding fourteen years; and shall also forfeit all their property and effects of every description.

Proviso.

Provided that nothing contained in this section shall extend to any place subject to Regulation 14 of 1827 of the Bombay Code".

Regarding the offence of *preparing to wage war*, we may refer to Act 26 of 1858 (corresponding to section 122 of the Indian Penal Code), under which the collection of man, arms, ammunition or otherwise preparing to levy war against the Queen or the East India Company or instigating any other person to commit such offence, was punishable with death or transportation for life or imprisonment for life or imprisonment with hard labour up to 14 years, and also forfeiture of all property and effects of every description[1].

An Act[2] of 1857 should also be referred to, which made provisions for trial of *heinous* offences[3] in certain districts in which martial law had been established[4].

Sections 1 and 2 of Act 16 of 1857 may be quoted:—

Punishment for any heinous offence in Districts or place subject to Martial law or to which this Act is extended.

"I. Whoever shall commit or attempt to commit any heinous offence in any District or place in which Martial Law hath been or shall be established, or in any District or place to which this Act shall be extended by order of the Governor General of India in Council. shall be liable, on conviction to the punishment of death, or to the punishment of transportation for life, or imprisonment with hard labour for any term not exceeding fourteen years; and shall forfeit all his property and effects of every description.

Interpretation of the words "heinous offence".

II. The words "heinous offence" shall be deemed to include an attempt to murder, rape, maiming, dacoity robbery, burglary, knowingly receiving property obtained by dacoity, robbery or burglary, breaking and entering a dwelling house and stealing therein, intentionally setting fire to a village, house, or any public building, stealing or destroying any property provided for the conveyance or subsistance of Troops, and all crimes against person or property attended with

1. Act 26 of 1858, (section 1) (Temporary).

2. Act 16 of 1857. An Act to make temporary provision for the trial and punishment of heinous offences in certain districts (13 June 1857).

3. The expression, "heinous offences" was defined by an inclusive definition—section 2, Act 16 of 1857.

4. Court-Martial could be established under Act 14 of 1857.

great personal violence, and all crimes committed with the intention of assisting those who are waging war against the State or forwarding their designs."

The broad features of the Muslim Criminal law, as altered by Regulations on the subject, before the Indian Penal Code was enacted, may be indicated.

Regarding sentences, it was felt[1-2] that the discretion which the Muslim criminal law left for henious crimes was rather unlimited, and its administration became arbitrary and uncertain. In the adjudiciation of punishment under the discretion thus allowed, the position regarding sentence (it was stated) was often governed by a consideration of the degree of proof rather than the degree of guilt and criminality of the act established against the accused. It was considered necessary to amend the law on these points, and that was done by a Bengal Regulation[3].

Before this, the position was that the sentences of the court were to be regulated by Muslim law except in cases in which a deviation from it was expressly directed by any Regulation[4].

The operation of the law may be illustrated with reference to an actual case. Four persons were charged with murder. The principal was sentenced to death, one convicted of being an accessory before the fact and of bringing a false accusation of murder against an innocent person was sentenced to imprisonment for life; the remaining two convicted of privity of crime after the fact and concealing their knowledge thereof, were sentenced to imprisonment for three years[5].

The rule of the Muslim law, that if any one of the gang of robbers commits murder, the prescribed punishment is inflicted on the whole, was maintained[6].

In cases of murder, wounding or other personal injury, a description of the weapon or other instrument said to have been used in the perpetration of the act was to be recorded in the papers including such particulars as are available to fix the intent of the prisoner, the length of the *instrument*, its general form, if not one in common use, etc[7].

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1. Beaufort, Digest of Criminal Law, (1846), page 16, paragraph 43.

2. Section 1, Bengal Regulation 53 of 1803.

3. Bengal Regulation 53 of 1803, section 2, paragraphs first to fifth.

4. Beaufort, Digest of Criminal Law, (1846) page 19, paragraph 59. Bengal Regulation 9 of 1793, sections 54 and 74.

5. Beaufort, Digest of Criminal Law, (1846), page 38, paragraph 135 referring to Nazamut Adawlut Report, Vol. 4, page 235.

6. Beaufort, Digest of Criminal Law (1846), page 37, paragraph 139.

7. Beaufort, Digest of Criminal Law (1846), page 143, paragraph 769 citing C.O. No. 54 of Vol. 2, page 4.

It was recognised that there was a great difference between an offence entered upon with deliberation and a criminal intent and one committed with premediation and unprovoked by previous enmity and malice. Intoxication was considered as a ground of mitigation for punishment in certain cases, unless wilful[1].

In all cases where the Sessions Court condemns a prisoner to suffer death penalty or imprisonment for life, it was to transmit a copy of the sentence to the Nizamut Adawlut, and not to execute the sentence till the final sentence of that court[2-3] (the Nizamut Adawlut).

There seems to have been some controversy as to whether a person who is compelled by another by a menace of death to murder a third person, could be excused for the murder. One view was, that in such cases the person compelled, as the "instrument" rather than the author of the homicide, and therefore, subject to discretionary punishment only if the circumstances of the case so required. Another view was, that both the parties were liable to murder.[4]

British subjects.

Special mention must be made of the law applicable to "British" subjects (*i.e.*, those who were not "natives"). From the Report No. 31 of the Indian Law Commissioners to the Governor General, dated 4th November, 1843[5], it would appear, that they were regarded as governed by the English law. Act 31 of 1838 embodying the provisions of criminal law passed in the first year of Queen Victoria amended the law on the subject. Its principal object was to take away capital punishment in certain cases, and to mitigate the rigour of the law in other respects.

Briefly speaking, the following offences were removed from the category of capital offences; (in respect of "British" subjects):—

(1) Malicious injuries;

(2) Burglary;

(3) Robbery;

(4) Burning and destroying ships.

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1. Beaufort, Digest of Criminal Law, (1846), page 33, paragraph 117.

2. Bengal Regulation 9 of 1793, section 47.

3. Beaufort, Digest of Criminal law, (1846), page 147, paragraph 199, and page 157, paragraph 850.

4. *See* Beaufort, Digest of Criminal Law, (1846), page 29, paragraph 93, and page 33, paragraph 118.

5. Report No. 31, of the Indian Law Commissioners to the Governor General, dated 4-11-1843, printed in copies of the Special Reports of the Indian Law Commissioners, (1844), page 335, at pages 338 and 339, *see* paragraphs 20-22.

As enumerated in that report of 1843[1], offences (in respect of British subjects) which remained capital after Act 31 of 1838[2] (an Act of the Government of India) and the Statute 9 Geo. 4, c. 74[3] (passed earlier to remove certain offences from the category of capital offences) were twelve, namely:—

(1) Return from transportation;

(2) Murder;

(3) Attempt to murder, when injury inflicted;

(4) Sodomy;

(5) Rape;

(6) Abuse of female children under eight years of age;

(7) Robbery with wounding;

(8) Burglary with assault (with intent to murder);

(9) Arson, where person within house, and life endangered;

(10) Riotously destroying buildings;

(11) Destroying ships, and life endangered;

(12) Exhibiting false lights.

The Report recommended that it was not expedient to give the "provincial tribunals" jurisdiction over British-born subject in capital cases.

APPENDIX XXVI

LIST OF CAPITAL OFFENCES UNDER BOMBAY REGULATION XIV OF 1827, AND PROVISIONS THEREIN REGARDING OFFENCES WHICH ARE NOW CAPITAL.

IIIA—LIST OF CAPITAL OFFENCES UNDER BOMBAY REGULATION XIV OF 1827 AND PROVISIONS THEREIN REGARDING OFFENCES WHICH ARE NOW CAPITAL.

The Bombay Regulation of 1827 (XIV of 1827), "a Regulation for defining crimes and offences and specifying the punishments to be inflicted for the same" was passed by the Governor-in-Council on 1st January, 1827. Its important provisions of interest in connection with capital punishment are noted below:—

Section 1—clause 2d.—*Attempts*—"An attempt to commit any of the above acts[4] shall be punished according to the Court's judgment founded on a combined consideration

1. Report No. 31 of the Indian Law Commissioners, etc.

2. Act 31 of 1838.

3. Statute 9 Geo. 4, c. 74.

4. Section 1, clause 1st covered all sections punishable under the Code.

of the measure of guilt attempted and committed, but the punishment for such attempt shall in no case *exceed* that prescribed for the actual commission of the offence attempted."

Section 1—clause 3d.—*Negligence*—"The unintentional commission of any of the above acts shall be punished according to the Court's judgment of the culpable disregard of injury to others evinced by the person committing the said act, but the punishment for such unintentional commission shall not exceed that prescribed for the offence committed."

Section 1—clause 5th—*Instigation and abetment*—"Instigating or aiding in any of the above offences committed or attempted, shall be punishable as the respective offences; and *in treason, rebellion, murder,* or gang *robbery, concealment whether before* or *after the fact, shall be* punishable equally with instigation or aid."

Section III—clause 1st—(Table item First) authorised the *punishment of death in* accordance with the rules prescribed in the succeeding section.

Section IV dealt with the *mode of inflicting punishment* of death. Under clause 1st, hanging the criminal by the neck was the mode of carrying out the sentence, and it was also stressed that the time should be between sunrise and sunset, and the spot should be selected in such a way as may afford the greatest possible publicity to the execution. Under clause 2d., it directed that the executions should be conducted in a manner calculated to impress the spectators with awe and to increase the impression on the spectators. Under clause 5th, death was not to be inflicted *on Brahmins* or on *females* in districts, where the religious feelings of the native community would be shocked thereby, unless in cases of such deep atrocity as may be expected to counteract the effect of those feelings.

Section XII—clause 1st—defines *"treason"* and under clause 2d. the punishment of treason shall be death and confiscation of property.

[*Note*:—Under Regulation I of 1827, sections VIII and IX, in case of war or rebellion, the Governor-in-Council by proclamation could suspend the civil and criminal law for public safety and during such suspension the Governor-in-Council could order acts of treason, or rebellion against the British Government committed by persons owing by birth or residence allegiance to the said Government to be tried by *court martial* and the immediate punishment of death was authorised.]

Under section XVI, clause 2d. the offence of *perjury* was fined with imprisonment, flogging or public disgrace, etc.

Section XXVI, clauses 1st, 2nd, 3rd and 4th dealt with *murder*, as follows:—

Clause 1st—"Any person who shall purposely, and without justifiable or extenuating cause deprive a human being of life, or who shall commit or assist in any unlawful act, the perpetration of which is accompanied with the death of human being, shall be liable to the punishment of murder, provided always that death take place within six months after the act was committed." Murder defined.

Clause 2d.—"The belief that sorcery was practised by the deceased shall not be admitted as a justifiable cause for putting him or her to death, nor shall the deceased's own request be so admitted; by assisting at any *rites of self-immolation*, as directed by the religious law of the person performing such immolation, shall not subject any one to the penalty of murder." The belief that the deceased was sorcerer not admitted without justification, provision regarding self-immolation prescribed by the sufferer.

Clause 3d.—"Deprivation of life may be considered justifiable as a means of resistance (provided it be the only evident and efficient one) to violence offered to the person or property of any one, or as the only evident and efficient means of securing a person who has committed robbery or murder, or any other atrocious offence." Certain causes may justify the taking away of life.

Clause 4th—"The punishment of murder shall be *death*, transportation, imprisonment for life, or solitary imprisonment with flogging." Punishment of murder.

Under Section XXVII, *culpable homicide* was defined as follows:—

> "Any person who shall, by committing or assisting in any unlawful act, occasion the death of a human being, provided, as before, that death ensue within six months after the act was committed, under circumstances which the Court, in judging of the act, intention and cause, considers though not justifiable under the preceding section, yet sufficiently extenuating to divest the act of so much criminality as would constitute murder, shall be deemed guilty of culpable homicide, and shall be punishable with fine, or imprisonment not exceeding ten years, or both combined."

Under section XXXVII, clause 1st, gang robbery committed by day or night, when accompanied with force, was punishable in *any of the modes* specified in section III, except confiscation. This included the punishment of *death*.

APPENDIX XXVII

RECOMMENDATIONS OF THE INDIAN LAW COMMISSIONERS

Draft Penal Code, 1837

The Draft Penal Code (First Report) was prepared by the Indian Law Commissioners and submitted in 1837. After stating the reasons for proposing the enactment of a uniform Penal Code to take the place of the rules of Muslim laws and the various Regulations modifying it or in Bombay codifying the Penal Law[1] and explaining the scheme of the proposed Code[2], they proceeded to set out the recommendations in the form of a Bill. Under clause 40, one of the punishments to which offenders were liable was death. The next was transportation[3]. Clause 41 gave power to commute the sentence of death to the Government of the Presidency without the offender's consent. The offences which were made *capital* seem to be the following:—

Clause 109—*waging war etc.*—(death or transportation for life or imprisonment of either description for life and also forfeiture of all property).

(Clauses 116 and 117—abetting *mutiny etc.*—only transportation for life etc.)

(Clause 191—Giving, etc., *false evidence* with the intention, etc., that any person may be convicted of capital offence—transportation for life or rigorous imprisonment not less than 7 years, etc. But where innocent person was *executed*, it was regarded as culpable homicide.—see clause 294, illustration (d).

Clauses 294, 295 *and* 300—*murder*—death or transportation for life or rigorous imprisonment for life and also fine.

(There were lesser punishments for manslaughter, voluntary culpable homicide with consent or in defence and for causing death by rash or negligent act.)

Perjury—illustration (d) to clause 294 ran as follows:—

> "(d) A with the intention or knowledge aforesaid falsely deposes before a Court of Justice that he saw Z commits a capital crime. Z is convicted and executed in consequence. A has committed the offence of *voluntary culpable homicide.*".

Clause 306—*previously abetting* by aiding the commission of *suicide* by any child under 12 years of age, any

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1. Penal Code prepared by the Indian Law Commissioners, 1837, pages 1-4.

2. 837 Draft, pages 6-11 (preface).

3. Other punishments need not be enumerated here.

insane person, any delirious person, any idiot or any person in the state of intoxication-death or transportation for life, or rigorous imprisonment for life and also fine.

(Clauses 308, 309 read with clause 320—voluntary causing hurt in an attempt to commit murder—transportation for life, or rigorous imprisonment for a term which may extend to life but not less than 7 years and also fine).

Clause 380—*Dacoity with murder*—If any one of *six* or more persons who are conjunctly committing dacoity commits murder in so committing dacoity, every one of those persons shall be punished with death or transportation for life, or rigorous imprisonment for a term which may extend to life and must not *be less* than 7 *years* and shall also be liable for fine.

General Principle for death sentence.

We now come to the reasons given by the framers of the 1837 Draft in support of the various provisions relating to the death sentence suggested by them. As regards death sentence *generally,* their observations were as follows[1]:—

> "First among the punishments provided for offences by this Code stands *death.* No argument that has been brought to our notice has satisfied us that it would be desirable wholly to dispense with this punishment. But we are convinced that it ought to be very sparingly inflicted, and we propose to employ it only in cases where *either murder or the highest offence against the State has been committed.*".

Robbery and rape in 1837 Dfraft.

They were not apprehensive that they would be thought to have resorted too frequently to capital punishment. Rather they were afraid that people might criticise the Code as erring on the other side. In this context, they discussed the question whether gang robbery, cruel mutilation of the person and rapes should be punishable with death. "These are doubtless offences which, if we looked only at their enormity, at the evil which they produce, at the terror which they spread through society, at the depravity.... which they indicate, we might be included to punish capitally. But atrocities as they are, they cannot, as it appears to us, be placed in the same class with murder." "To the great majority of mankind, nothing is so dear as life. And we are of opinion that to put robbers ravishers, and mutilators on the same footing with murderers is an arrangement which diminishes the security of life[2]."

They observed, that there was a close connection in practice between murder and most of those offences which came nearest to murder in enormity. The offender in

1. 1837 Draft, Note A, page 1, top.
2. 1837 Draft, Note A, page 1, middle.

those offences had always in his power to add murder to his guilt. The same opportunities, etc., which enabled a man to rob, to mangle, or to ravish, would enable him to go further and to despatch his victim. By doing so, he would remove the only witness of the crime. If the punishment of the crime which he has already committed be exactly the same with the punishment of murder, the offender would have no restraining motive. "A law which imprisons for rape and robbery, and hangs for murder, holds out to ravishers and robbers a strong inducement to spare the lives of those whom they have injured. A law which hangs for rape and robbery, and which also hangs for murder, holds out, indeed if it be rigorously carried into effect, a strong motive to deter men from rape and robbery, but as soon as a man has ravished, or robbed, it holds out to him a strong motive to follow up his crime with a murder[1]."

Offence against property.

Regarding crimes against property, the framers of the draft observed[2], that a great shock would be caused to public feeling if, while the most atrocious personal outrages (short of murder) were exempted from punishment or death, that punishment was to be inflicted even in the worst cases of theft, cheating or mischief.

Commutation.

Regarding the power of *commutation* it was observed that it was evidently fit that the Government should be empowered to commute the sentence of death (without consent of the offender) for any other punishment.

Compensation.

Of some interest are the observations regarding compensation for crime[3]. The framers recognised that this was a matter of the law of procedure, and of civil rights. But they were decidedly of the opinion that "every person who was injured by an offence ought to be legally entitled to a compensation for the injury" and recommended that in every case in which fine was part of the punishment of and offence, it ought to be competent to the tribunal which has tried the offender (acting under proper checks) to award the whole or part of the fine to the sufferer, provided that the sufferer signifies his willingness to receive what is so awarded in full satisfaction on his civil claim for reparation. They thought it likely that[4] this plan would be in great majority of cases render a civil proceeding unnecessary.

We may now refer to their discussion relating to specific crimes.

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1. 1837 Draft, Note A, page 1, middle.
2. 1837 Draft, Note A, page 2, top.
3. 1837, Draft, Note A, page 9, middle and bottom.
4. 1837 Draft, Note A, page 10, top.

Homicide.—The question of illegal omissions was elaborately considered[1]. The expression "causing death" in the definition of voluntary culpable homicide was explained, and the view was expressed that acts or illegal omissions which did not ordinarily cause death, or caused death very remotely, need not be excepted. There was undoubtedly a great difference between acts causing death immediately and those causing a death remotely, or between acts certain to cause death and those which cause death only under very extraordinary circumstances. But the difference was one to be considered by the tribunal when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It would require strong evidence, they said to prove that an act of a kind which very seldom causes death, or an act which caused death very remotely, has *actually* caused death in a particular case. It will require still stronger evidence to prove that such an act was *contemplated* as likely to cause death. But if satisfactory evidence proved that death was so caused voluntarily, it need not in their opinion, be excluded from the punishment for voluntary culpable homicide.[2]

The case of homicide by words was considered. A verbally directs Z to swallow a poisonous drug. Z swallows it and dies. This should be homicide in A and for the purpose, speaking should be considered as an act[3].

Regarding the case of a person who died of a slight wound which, from neglect or from the application of improper remedies, has proved mortal, the framers saw no reason in excluding it from the general rule. They noted, that in India, fear, neglect and bad treatment were far more common than good medical treatment[4].

The scheme of the proposed section relating to homicide was that voluntary, culpable homicide was murder unless it fell within three mitigated forms, namely, (1) grave and sudden provocation (in which case it was "manslaughter"), or (ii) committed by consent or (iii) committed in defence[5].

Regarding provocation, the framers agreed that homicide in such cases ought to be punished, in order to teach men to entertain respect for human life and give them a motive for governing their passions; but homicide committed in violent passion on provocation should not be visited with the *highest* penalties of the law. To treat such a person in the same way as the law treated a murderer

Provocation.

1. 1837 Draft, Note M, pages 53-56.
2. 1837 Draft, Note M, page 57, top.
3. 1837 Draft, Note M, page 57, middle.
4. 1837 Draft, Note M, page 58.
5. 1837 Draft, Clauses 295, 297, 298 and 299.

would be highly inexpedient, would shock the universal feeling of mankind and would engage the public sympathy on the side of the offender against the law[1].

Provocation by words was also considered, and the rule of the English law not recognising the effect of anger excited by words alone was criticised[2]. If a man felt an insult more than a wound, it did not show that he was a man of peculiarly bad heart.

Homicide by consent.

Homicide by consent was treated as a mitigated form. Such an act should be punishable, of course, because a wise law-giver would desire to prevent such death, if it were only for the purpose of making human life more sacred to the multitude. Consent ought not therefore be a justification for the intentional causing of death[3]. But they felt that it should not be punished as *severely* as murder, for these reasons:—

(i) The motives which prompt man to the commission of the offence were generally far more respectable than those which prompted men to commit murder;

Reasons fo punishing murder severely.

(ii) Such crime was by no means productive of so much evil to the community as murder. It did not produce general insecurity or spread terror through society. When the law punished murder with severity, it *had two ends.* One end was that people may not be murdered, and another that people may not live in constant dread of being murdered; and the second was perhaps more important that the first. This "property" of the offence of murder was not found in homicide by consent[4].

It was also noted, that the burning of a Hindu widow by consent was not (even under the law then in force) punished as murder, though it was an *offence* under the Regulations in force in the Presidencies.

Regarding homicide in self defence, the framers admitted that they were "forced to leave the law on the subject of private defence in an unsatisfactory state". They expressed the fear, that it must always continue to be one of the least precise parts of every system of jurisprudence. The portion of the law relating to *homicide* in defence must necessarily partake of the imperfections (of law of self-defence). The reason for treating this kind of homicide as less than murder was, that *law itself invited* men to the very verge of the crime designated as voluntary culpable homicide. The law authorised acts which were

1. 1837 Draft, Note M, page 59, second to fourth paragraph.
2. 1837 Draft, Note M, page 59, last two paragraphs.
3. 1837 Draft, Note B, page 16, bottom and page 17, top.
4. 1837 Draft, Note M, page 61, bottom.

very near to homicide, and this circumstance greatly mitigated the guilt[1].

Rash negligent homicide.

The topic of causing death by say, rashness or negligence as to indicate want of due regard for human life does not seem to have been separately dealt with in the *notes*, though clause 304 made it punishable with imprisonment up to two years or fine, etc.

But death in cause of felony—i.e. the situation where a person engaged in the commission *of an offence* causes death by *rashness or negligence* (without any intention to cause death or knowledge that it is likely to cause death, etc.) was elaborately discussed, along with the situation where a person engaged in the commission of an offence caused death by pure accident[2].

Attempts to commit murder and attempt to commit the "mitigated forms" of a voluntary culpable homicide were explained, and illustrated. An interesting example given was,—A sets poisoned food before Z. Z does not swallow enough of the poisoned food to disorder him A should be treated as guilty of a Crime of a most atrocious description[3]. It was emphasised that such an act (*i.e.* attempt to commit murder) should be punishable notwithstanding that it does not amount by itself to assault, trespass or hurt. If hurt was caused in an attempt to commit murder, it would be punishable (under clause 320) with transportation for life, etc., where *murderous intention* is made out *severity* of *hurt* should not be a circumstance to be considered in apportioning punishment though it may be important as evidence.

Treason.

Treason was discussed in detail. It was noted, that there was some doubt as to whether the statute law of England (regarding Treason) was binding on natives. Apart from the Bombay Regulation 14 of 1827 (wherein there was a sweeping clause empowering the courts to award punishment in any case in which they conceived *that* morality and social order required protection), treason was not an offence under any other Regulation. "The Mahomedan law might possibly be so violently strained as to reach it in Bengal and in the Madras Presidency." But those provisions could not be retained. That is why a specific section was proposed on the subject. Regarding the Royal person, it was felt that it was improbable that any English King would visit the Indian dominions, and therefore specific provision was not necessary. But levying of war against the British Crown should, it was observed[4] be made punishable. The framers of the 1837

1. 1837 Draft Note M, page 62, middle.

2. 1837 Draft Note M, pages 63, bottom, 64 and 65, middle, and clause 305.

3. 1837 Draft, Note M, page 66, top and middle.

4. 1873 Draft of the Indian Penal Code, Page Note M, page 69, second paragraph.

Code also explained[1] why the anomalous position regarding treason prevailed. The British Rulers in India, in the beginning, disguised their real power "under the forms of vassalage", and left "the Mogul and his Viceroys the empty honours of a Sovereignty which was really held by the Company". This policy was abandoned only slowly and by degrees. Hence it was impossible to point out the particular time when the "natives" became British subjects.

Reasons for making abetment of hostilities against the Government in certain cases a separate offence (instead of leaving it to general abetment) were also explained[2].

Firstly, the general rules of abetment would not reach a person who, while residing in the British territories abetted the waging of war by a foreign prince against the British Government. (The foreign prince himself would not be guilty of an offence by waging such war). Secondly, though in general, a person who is a party to the Criminal design which has not been carried into effect ought not to be punished as if the design had been carried into effect, yet an exception should be made with respect of High offences against the State. Crimes against the State had this peculiarity that if they were successfully committed, the criminal was "almost always secure from punishment." After murder, the murderer is in greater danger than before murder. "But the rebel is out of danger as soon as he has subverted the Government." Hence the Penal law "should be made strong and sharp against the first beginning of rebellion, against treasonable designs, which have to be carried no further than plots and preparations." For this reason, such plots and preparations should not be left to the ordinary law of abetment.

Mutiny—Detailed reasons for punishing abetment of mutiny were given.[3] A person who, not being himself subject to Military law, extorts or assists those who being subject to Military law, commit breach of discipline would "be a proper subject of punishment". But the general law respecting the abetting of offences will not reach him, because the Military delinquency which he has abetted would not be punishable *by this Code*, and therefore would not constitute an "offence". Explaining their approach regarding punishment for such abetment, the framers of the 1837 Report stated that while the general rule which they had adopted was that the punishment of the abetter should be equal or proportional to the punishment of the person committing the offence, yet in this case they had departed, for these reasons :—

"But the Military penal law is, and must necessarily be, far more severe than that under which the body of the

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1. 1837 Draft of the Indian Penal Code, Note C, page 27, bottom, and page 28, top.

2. 1837 Draft, Note C, page 28, middle.

3. 1837 Draft, Note D, page 30, bottom.

people live. The severity of the Military law can be justified only by reasons drawn from the peculiar habits and duties of soldiers, and from the peculiar relation in which they stand to the Government. The extension of such severity to persons not members of the Military profession appears to us altogether unwarrantable." They also added that if a person "not in Military" who abetted a breach of Military discipline was made liable to a punishment regulated "according to our general rule by the punishment to which such a breach of discipline renders a soldier liable, the whole symmetry of the penal law would be destroyed." A person who induces a soldier to disobey any order of a commanding officer would be liable to be punished more severely than a dacoit, ravisher, etc.

Perjury—The framers of the 1837 Draft expressed this view :—

> "If such false evidence actually causes death, the person who has given or fabricated it falls under the definition of murder, and is liable to capital punishment. In this last point, the law, as we have framed it, agrees with the old law of England, which, though in our opinion, just and reasonable, has become obsolete[1]".

Dacoity—The following observations are interesting[2]:—

> "His Lordship in Council will perceive that we have provided punishment of exemplary severity for that atrocious crime, which is designated in the Regulations of Bengal and Madras by the name of Dacoity. This *name* we have thought it convenient to retain for the purpose of denoting, not only actual gang robbery, but the attempting to rob when such an attempt is made or aided by a gang."

General view of criminal law as prevailing in 1837.

A picture in brief of the position regarding criminal law as obtaining in 1837 will be found in the Law Commissioners' Report of that year.[3]

The printed draft of the Indian Penal Code was submitted to the Government of India on 14th October, 1837. Thereafter, Government requested the Indian Law Commissioners to examine the opinions received on the 1837 draft and also to study the draft Act contained in the seventh Report of the Commissioners on Criminal Law of England and to give their Report accordingly. The

1. 1837 Draft, Note G, page 42, bottom.
2. 1837 Draft, Note N, page 79, middle.
3. 1837 Report, main Report, pages 1 to 4.

Indian Law Commissioners submitted in 1846 their Report[1] (First Report) of the draft Penal Code. Later, in 1847, they submitted their Second and concluding Report[2] (Second Report on the Indian Penal Code) on 24th June, 1847. After this, Sir Lawrence Peel, Chief Justice of the Supreme Court at Fort Williams (previously Advocate-General), having received from the Government the Report of the Law Commissioners, studied it and gave his observations to the Government in 1848[3].

It is not necessary to state each point dealt with by the Law Commissioners in 1846; but a few points which are still of interest may be noted:—

(a) *Homicide*—Death caused by words was specifically dealt with in the discussion in the 1837 draft, and the 1846 Commissioners also dealt with it in detail and came to the conclusion[4] that if death is certainly caused by words deliberately used by a person with intention to cause that result, or with the knowledge that in the condition of the party to whom the words are spoken it is likely that the words will make such an impression on him as to cause death, and without any such excuse as it admissible under "General Exceptions", such person should suffer the penalty of culpable homicide:—

Here is the wilful doing of that which is known to be likely to produce evil, manifesting the *mens rea* essential to criminal responsibility, the evil produced is death, the efficient cause,—the words spoken. It is scarcely agreeable to reason, that having traced the effect to its cause, the law should refuse to acknowledge it as an effective cause; or that the Judge should be obliged to say, it is true that the effect was produced by the operation of the words, but words in law are not an act, therefore the speaker is not criminally responsible.

Death resulting from a slight wound which from neglect or from the application of improper remedies has proved fatal was considered in detail[5].

Provocation by words was specifically considered, and the proposal in the original Code to cover such provocation *i.e.* not to recognise any distinction between provocation by mere words or gestures and other provocation, was approved[6].

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1. Report dated 23-7-1846, of the Indian Law Commissioners, on the Draft Indian Penal Code.

2. Report dated 24-6-1847 (Second Report of the Indian Law Commissioners, on the Draft Indian Penal Code).

3. Observations of Sir Lawrence, Peel, on the Draft Indian Penal Code (1848).

4. 1846 Reort, page 77, paragraph 249.

5. 1846 Report, pages 77-80, paragraphs 250 to 257.

6. 1846 Report, pages 83-84, paragraphs 269 to 273.

Other points relating to provocation were considered[1].

The topic of voluntary culpable homicide by *consent* was considered and the proposed provision that such homicide should not amount to *murder* was approved, with a slight modification, namely, the consent should have been given not only by a person above 12 years of age but by a person capable of making an intelligent choice[2].

Voluntary culpable homicide in defence—the provision reducing it to manslaughter—was approved in principle[3].

Mitigating circumstances.

Regarding punishment for murder, a comment on the 1837 draft had been received from Mr. Hudleston, a Judge of the Sudder Court of Madras,[4] stated[5]—"I prefer the provisions of our Regulations, which define the grounds for mitigating the capital punishment." On this comment, the 1846 Report noted[6], that Mr. Hudleston had not specified the provisions which he had in mind. "In the general law relating to murder in the Madras Regulations, which Mr. Hudleston must be understood to refer to, there is no such definition. But a discretion is given to the Judges not to pass sentence of death, if there appear to them to be "alleviating circumstances" in the case—a discretion sufficiently arbitrary."

The topic of rash or negligent homicide—clause 304 of the 1837 draft—was approved after discussion.[7]

Rape.

The case of a man attempting to commit a rape on a woman and in the attempt involuntarily causing her death—clause 305, illustration in the 1837 draft—was considered, and the proposal in the draft approved[8]. [The illustration was to the effect that in such a case, the homicide was culpable but not voluntary, because death was an effect wholly unexpected and unconnected with the intention and act of the party, except by accident. Mr. Pyrne (Judge Sudder Court Bombay) had stated that it was possible that rape of delicate woman may cause death for example, rape was committed on an infant of 6 or 7 years of age; death ensues therefrom]. (He had stated that a recent case

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1. 1846 Report, pages 85-86, paragraphs 274-279.
2. 1846 Report, page 92, paragraph 294.
3. 1846 Report, pages 93-95, paragraphs 296-302.
4. *See* 1846 Report, page 2, last paragraph and side note.
5. 1846 Report, page 95, paragraph 303.
6. 1846 Report, page 95, paragraph 303.
7. 1846 Report, pages 96-100, paragraphs 309 to 314.
8. 1846 Report, page 100, paragraphs 315 to 317.

had come before the courts). As to this, the Report pointed out that it was voluntary culpable homicide death being likely.

(b) *Abetment of suicide*—Clause 306 of the 1837 Report had proposed the punishment of death (apart from other alternative punishment) for abetment of suicide of a child under 12 years, any insane person etc. A comment from Mr. J. F. Thomas had been received to the effect that the inducement to commit such crimes must in the ordinary course of events be so exceedingly slight that it scarcely seemed necessary to place the offence on a level with the most atrocious murder, and annex the penalty of death. In his opinion, a lesser penalty would suffice to check the commission of the crime. Mr. Thomas particularly referred to the definition that "acts" included an illegal omissions and pointed out that instances of suicides which could be prevented by persons were numerous and "at present they have not the most remote idea that they are acting criminally" and that they should not be held liable to the heavy penalties. As to this, the 1846 Report[1] observed that clause 306 was based on the same principles as clause 298, second proviso of the 1837 draft (homicide with consent of such persons to be murdered), in as much as the offence of causing death of persons concerned (*i.e.* persons under age or under disability) was regarded as murder even though death was caused with their consent and, therefore, clause 306—abetment of suicide—attached the penalty of murder to the offence described therein, when committed in respect of a person under age or disability. The clause was approved subject to modifications regarding age of 12 years being replaced by an age where a person could form an intelligent judgment. It was also observed (regarding illegal omissions) that the rule would fail to be applied under these clauses chiefly in cases where a person bound to take care of the person of another had, by an illegal omission of his duty, *intentionally* given him the opportunity of killing himself or permitted him to obtain the means of killing himself, or (secondly) also in the case where one person, seeing another person preparing to destroy himself, (say by hanging) allowed him to accomplish his purpose without any attempt to prevent him, if, (as may be expected), the law of procedure makes it a common duty incumbent upon all men to assist in preventing offences about to be committed in their presence. The intention here in the second case would be inferable from the circumstances.

(c) *Attempt to commit murder*—Attempt to commit voluntary culpable homicide was, under clause 309

1. 1846 Report, pages 101-102, paragraphs 321—324.

of the 1837 draft, punishable with imprisonment up to 3 years. The framers of the 1846 Report considered, that this caluse was meant to apply to attempts to cause death under circumstances which, if death ensued, would make the offence to be voluntary culpable homicide of one of the *mitigated* descriptions; because attempt to commit *murder* was expressly provided for by another clause 303. They therefore recommended the necessary clarification[1]. As regards attempt to commit *murder*, clauses 308 and 320 had this effect, that where hurt was caused, the offence would be punishable with transportation for life or rigorous imprisonment for life but not less than 7 years and also fine. No change was recommended on that clause[2].

(d) *Perjury*—In the 1837 draft, clause 294, dealing with voluntary culpable homicide read with illustration (d) thereto had this effect, that if A falsely deposed before a Court of Justice that he saw another person commit a capital crime and the other person was convicted and executed in consequence, A was guilty of the offence of *voluntary culpable homicide,* (If A had the intention to cause death or knowledge of likelihood of his causing death, etc.). This proposal was discussed in the 1846 Report. It stated[3] that "the offence in question falls naturally within the definition of voluntary culpable homicide, which could not be expressed properly in terms that did not cover it" But, it went on to say,—"and but that we think it desirable to *restrict rather* than to extend capital punishment, and that it would be in effect an extension of it to make the perjurer liable to the convicted of homicide, which would be murder under Clause 295, when his false swearing has caused the condemnation and execution of an innocent person, we would not hesitate to recommend that this part of the Code be left untouched. For the reason last stated, however, we would advise that the illustration (d) be omitted under clause 294, and that Clause 191 in the Chapter of offences against public justice be declared applicable generally to the offence of giving false evidence.... with the intention of causing a person to be convicted of a capital crime, whether the object intended be effected or not. The punishment which may be awarded under this Clause is transportation for life, or rigorous imprisonment for life or for a term not less than seven years, and fine.".

(e) *Dacoity with murder*—By Clause 380 of the 1837 Draft, where a murder was committed by any one of a gang of the dacoits, every one of the gang was

1. 1846 Report, pages 104—106, paragraph 337.
2. 1846 Report, page 105, paragraph 339-340.
3. 1846 Report, page 82, paragraph 266.

liable to be punished with death. The 1846 Report noted, that by the Regulations in force in Bengal and Madras, a *single person* going forth with an offensive weapon with intent to rob and perpetrating etc. a robbery, was also guilty of dacoity, and that by those Regulations "leaders of gangs or other heinous offenders convicted of a repetition of the crime or without such repetition of a degree of cruelty, violence, or other aggravating criminality, which under the discretion allowed by the Mahammadan Law were punishable with death....." were liable to the sentence of death if the case appeared to the Nizamut Adawlut to render such heinous offenders liable to such punishment. It also noted, that by the Bombay Regulation 14 of 1827, section 37, gang robbery accompanied with force was punishable in any of the modes specified in section 3 (which included death). The 1846 Report however did not consider it advisable to extend the punishment of death to any case other than that already given in clause 380 of the 1837 Draft[1].

It also noted the suggestion[2] that heads of gangs of dacoits should be sentenced to death, because in such cases death was desirable "as an example" to the country. This was a suggestion by Mr. Giberne[3], a Judge of the Sudder Court at Bombay. The Report did not consider it advisable to extend the punishment of death to any case besides that dealt with in clause 380. But it did express agreement with the suggestion of Mr. J. F. Thomas that there ought to be a great distinction in adjudging punishment between persons proved to be leaders, or regular or habitual members of a gang following robbery as a profession on the one hand, and poor coolies enticed to swell the number on the other hand. (Mr. Thomas had suggested[4] transportation etc. In the case of every leader, regular member of the gang, every person armed with weapon capable of inflicting death, etc.).

For the present purpose, it is unnecessary to deal in detail with the later discussions relating to the draft Indian Penal Code[5]. On the 30th May, 1851, the revised edition of the Code was circulated to Judges for comments. Later, in 1854, a Committee consisting of Barnes, Peacock, Sir James Colville, J.P. Grant, D. Elliot etc. was asked to consider the revised Code. That committee did not recommend any substantial alterations in the original Code. The Code

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1. 1846 Report, page 155, paragraph 542 read with paragraphs 54 and 541.
2. 1846 Report, page 155, paragraph 542, read with paragraph 535.
3. *See* 1846 Report, page 2, last paragraph and side note.
4. 1846 Report paragraph 533 and 542.
5. The relevant material is also not easily available. *See* Rust, Hurt & Homicide (1958), page 45.

was read for the first time on the 28th December, 1856 and for the second time on the 3rd January, 1857, and referred to a Select Committee.[1] It was then passed by the Legislative Council of India; it received the assent of the Governor-General on the 6th October, 1860.

APPENDIX XXVIII

AMENDMENTS RELEVANT TO CAPITAL PUNISHMENT, AFTER THE PASSING OF THE INDIAN PENAL CODE (1860).

Amendments to Indian Penal Code after it was passed may be noted:—

Sections 302, 303, 121, 132, 194, 194, 305, 307, Indian Penal Code.	"Imprisonment for life" has been substitued for 'transportation for life", (Act 26 of 1955, section 117 and Schedule), with effect from 1-1-1956.
Section 121	Sentence of forfeiture was replaced by fine, by Act 16 of 1921, section 2.

In gang-robbery attended with murder.

The position according to the Hedaya[2] was this—if any one of a gang of robbers commits murder, the prescribed punishment is inflicted upon the whole; because the punishment in this instance is considered as a penalty for the assault of the whole, which is established by each of them being aiding and abetting to the other.[3]

304A Indian Penal Code Inserted).

Causing death by negligence—"whoever caused the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

(Inserted by Act 27 of 1870 section 12).

307, 2nd paragraph Indian Penal Code	"Imprisonment for life" has been substituted for "transportation for life." [Act 26 of 1955, section 117 and Schedule (w.e.f. 1-1-1956)]	307, 2nd paragraph Indian Penal Code.
367(5), Criminal Procedure Code .	Reasons for lesser sentence need not be given (1955 amendment).	367 (5), Criminal Procedure Code.
Verbal amendments, in Indian Penal Code and Criminal Procedure Code.	Verbal charges made by Adaptation of laws orders made from time to time, and by Act 36 of 1957.	Verbal amendments in Indian Penal Code and Criminal Procedure Code.
Sections 60-61, Criminal Procedure Code, (Forfeiture).	Omitted by Act 16 of 1921.	Sections 60-61, Criminal Procedure Code, (Forfeiture).

1. *Cf.* Rust, Hurt and Homicide (1958), page 45.
2. *See* Beaufort Digest of Criminal Law (1846) page 37, para-graph 129.
3. Hed. Trans., Vol. 2, page 133.

APPENDIX XXIX

INDIA—PROPORTION OF MURDERS TO ONE MILLION INHABITANTS (1953—1962)

INDIA—*No. of murders proportionate*[1] *to one million inhabitants*

1953—1962.

1953	27·1
1954	26·9
1955	26·7
1956	27·8
1957	28·9
1958	29·6
1959	29·8
1960	25
1961	26
1962	26

APPENDIX XXX

INDIA—MERCY PETITIONI—PERCENTAGE OF PETITIONS IN WHICH DEATH SENTENCE WAS COMMUTED

Year	(Rough percentage[2])
1945	7
1946	3
1947	2·5
1948	4
1949	20
1950	25
1951	39
1952	25
1953	22
1954	25
1955	22
1956	35
1957	40
1958	27
1959	21
1960	18
1961	34

1. Figures are taken from "Crime in India" for the years 1960—1962, and from the Home Ministry's note sent to the Law Commission, for earlier years.

2. Worked out on the basis of figures supplied by Ministry of Home Affairs.

The figures for later years are as follows :—

Year	Number of mercy petitions received from convicts under sentence of death	Number of cases in which death sentence was commuted by the President to		Number of petitions rejected
		Imprisonment for life	10 years R. I.	
1962 . . .	188	61	1	126
1963 . . .	153	41	..	112
1964 . . .	194	66	..	128

APPENDIX XXXI

SUPREME COURT

STATEMENT OF CRIMINAL APPEALS AND SPECIAL LEAVE PETITIONS INVOLVING CAPITAL SENTENCES (1957 TO 30TH SEPTEMBER, 1963).

SUPREME COURT

Statement of Special Leave Petitions involving capital sentence in respect of the period from 1-1-1957 *to* 31-3-1962.

Year	No. filed	Granted	Dismissed in Limine
1	2	3	4
1957	162	25	137
1958	196	16	180
1959	229	15	214
1960	210	17	193
1961	195	16	179
1962 (Upto 31-3-1962)	66	8	55
TOTAL	1058	97	958 plus 3 pending on 31-3-1962.

Statement of criminal appeals involving capital sentence in respect of the period from 1-1-1957 to 31-3-1962.

Year	No. filed	Appeals by Certificate etc.		Appeals by Special Leave		Pending at the end of the year	
		Granted	Dismissed	Granted	Dismissed		
1957	32	..	1	9@	20	2	
1958	17	..	2	2(*a*)	12	3	
1959	27	2	2	2%	14	10	
1960	20	..	4	4£	6	16	
1961	20	2*	4	2	16	12	
1962 (Upto 31-3-1962)	10	..	1	..	33	18	(2 Appeals by certificate and 16 by Special Leave pending on 31-3-1962).
TOTAL	126	4	14	19	71	18	Pending on 31-3-1962.

*Reduced to Life Imprisonment.

@ Out of 9 matters in 3 matters Capital Sentence has been reduced to life, in one matter sentence has been reduced to 7 years, in one the case was remanded for retrial.

(*a*) Out of 2 matters in 1 matter Capital Sentence has been reduced to life.

%Out of 2 matters in one sentence has been reduced to that of life.

£Out of 4 matters, in one sentence has been reduced to that of life.

Statement of criminal appeals involving capital sentence in respect of the period from 1-1-1962 to 30-9-1963.

Year	No. filed	Appeals by Certificate etc.		Appeals by Special Leave		Pending at the end of the year	
		Granted	Dismissed	Granted	Dismissed		
1962	28	1	2	10*	22	5	12 Pending at the end of 1961.
1963 (Upto 30-9-1963).	11	1	1	8@	5	1	By Special Leave.
TOTAL	39	2	3	18	27	1	Pending on 30-9-1963.

*Out of 10 matters in 3 matters Capital Sentence has been *reduced* to life imprisonment.

@Out of 8 matters in 1 matter Capitl sentence has been *reduced* to 3 years' Rigorous imprisonment and in 1 matter State Government commuted the sentence to life, out was acquitted by this Court.

Statement of Special Leave Petitions involving capital sentence in respect of the period from 1-1-1962 *to* 30-9-1963.

Year	No. filed.	Granted.	Dismissed in limine.
1962	215	25	190
1963(Up to 30-9-1963).	172	9	162 plus one pending as as on 30-9-1963.
TOTAL	387	34	352 plus one pending on 30-9-1963.

Statement of criminal appeals involving capital sentence in respect of the period from 1-1-1963 *to* 31-12-1963.

Year	No. filed.	Appeals under Art. 134(1)(A)		Appeals by Special Leave		Pending at the end of the year.
		Granted	Dismissed	Granted.	Dismissed.	
1963	21	1	1	9†	7	9*

*Out of 9 matters pending at the end of the year one was appeal under Article 134(1)(*a*).

†Out of 9 matters granted in Appeals by Special Leave in 3 matters Capital sentence has been reduced.

Statement of Special Leave Petitions involving capital sentence in respect of the period from 1-1-1963 *to* 31-12-1963

Year	No. filed	Granted	Dismissed in limine
1963	237	17	200 plus 30 pending as on 1-1-1964.

APPENDIX XXXII

HIGH COURTS—STATEMENTS RELATING TO CASES INVOLVING CAPITAL PUNISHMENT

(1957 *to* 1962)

Index to High Court Figures.

Allahabad	Based on Sl. No. 49 in the file.
Andhra Pradesh	Based on Sl. No. 45 in the file.
Assam	Based on Sl. No. 20 in the file.
Bombay	Based on Sl. No. 46 in the file.
Calcutta	Based on Sl. No. 28 in the file.
Gujarat	Based on Sl. No. 191 in the file.
Kerala	Based on Sl. No. 26 in the file.
Madras	Based on Sl. No. 21 in the file and Sl. No. 110 in the file.
Madhya Pradesh	Based on Sl. No. 29 in the file.
Mysore	Based on Sl. No. 48 in the file
Orissa	Based on Sl. No. 43 in the file.
Patna	Based on Sl. No. 32 in the file.
Punjab	Based on Sl. No. 95 which replaces Sl. No. 74.
Rajasthan	Based on Sl No. 21 in the file.

ALLAHABAD HIGH COURT

Statement showing Criminal Cases under appellate jurisdiction

Year	Pending from the the previous year	Institutions during the year	Total	Sentences passed		Pending at the end of the year.
				Altered	Confirmed	
1957	3,727	2,547	6,274	979	1,234	4,061
1958	4,061	3,102	7,163	1,417	1,739	4,007
1959	4,007	3,225	7,232	2,309	2,464	2,459
1960	2,459	2,826	5,285	2,147	2,032	1,016
1961	1,106	2,723	3,829	1,434	1,269	1,216

ALLAHABAD HIGH COURT

Statement showing Criminal Cases under revisional jurisdiction

Year	Pending from the previous year	Institution during the year	Total	Sentence Passed		Pending at the end of the year
				Altered	Confirmed	
1957	2,532	2,498	5,030	1,273	1,217	2,540
1958	2,540	3,033	5,573	1,464	1,917	2,192
1959	2,192	2,680	4,872	1,274	2,382	1,216
1960	1,216	2,918	4,134	1,367	1,885	882
1961	882	2,788	3,670	871	1,929	870

ALLAHABAD HIGH COURT

Statement showing Criminal Cases under confirming jurisdiction

Year	Pending from the previous year	Institution during the year	Total	Sentence Passed		Pending at the end of the year
				Altered	Confirmed	
1957	70	197		120	87	60
1958	60	248		169	96	43
1959	43	235		134	93	51
1960	51	216		127	96	44
1961	44	202		124	78	44

ANDHRA PRADESH

Statement showing the particulars of cases of Capital Punishment during the period from 1-1-1957 *to* 31-12-1961.

CONFIRMING JURISDICTION :	
No. of cases referred to the High Court for confirmation of death Sentences	242
Out of these cases	
1. The number of cases in which sentence of death was confirmed	69
2. The number of cases in which sentence of death was modified	123
3. The number of cases in which sentence of death was set aside	50
APPELLATE JURISDICTION :	
No. of Appeals against the orders of acquittal u/s 302, I.P.C. filed in the High Court	256
Out of these appeals	
1. Number of appeals in which sentence of death was passed	2
2. The number of appeals in which the orders of acquittal were modified	70
3. The number of appeals in which the orders of acquittal were confirmed	184
REVISIONAL JURISDICTION :	
No. of Revision Cases filed for enhancement of sentence of death	3
No. of Revision Cases in which death sentence was passed	Nil

ASSAM HIGH COURT

Statement showing the number of capital punishment cases which came to Assam High Court from 1957 to 1961

Year	No. of cases which came to Assam High Court in appellate or confirming jurisdiction	Sentence altered by Assam High Court	Sentences confirmed by Assam High Court	Remarks
1957	1	x	1	
1958	4	1	2	In one case accused died during the pendency of the case.
1959	4	2	2	
1960	1	1	x	
1961	x	x	x	

Statement showing the number of cases relating to offences punishable with sentence of death filed in the High Court of Judicature at Bombay, during the period from 1-1-1957 *to* 31-12-1961.

Year	Appeals against acquittals under section 302, I.P.C.					Revision for enhancement of life Imprisonment u/s 3302 of I.P.C.				Jury Reference				Confirmation cases			
1	2					3				4				5			
	Total number of cases filed.	Number of cases dismissed.	No. of cases allowed.	No. of cases in which death sentence awarded.	No. of cases in which sentence other than death sentence awarded	Total number of case filed	No of cases dismissed.	No. of cases allowed.	No. of cases in which death sentence awarded	Total number of case filed.	No. of cases rejected.	No. of cases accepted	No. of cases in which death sentence awarded	No. of cases in which sentence other than death sentence awarded.	Total number of cases filed.	Number of cases in which accused acquitted.	No. of cases in which sentence reduced to imprisonment for life or for lesser term.	No. of cases in which sentence of Death confirmed.
	(a)	(b)	(c)	(d)	(e)	(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)	(e)	(a)	(b)	(c)	(d)
1957																		
Bom.	29	27	..	..	..	..	..	..	..	5	2	3	1*	..	..	16	14	6	6
Nag.	..	..	..	..	..	1	1	..	..	..	..	..		..	..	7	..	7	..

	(a)	(b)	(c)	(d)	(e)	(a)	(b)	(c)	(d)	(a)	(b)	(c)	(d)	(e)	(a)	(b)	(c)	(d)
(1)	(2)					(3)				(4)					(5)			
1958																		
Bom. . . .	73	40	12	..	12	3	3	..	..	5	3	2	5	5	27	6	11	11
Nag. . . .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	5	..	4	1
1959																		
Bom. . . .	62	41	12	..	12	1	1	..	..	6	2	4	..	..	34	6	24	9
Nag. . . .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	3	1	2	..
1960																		
Bom. . . .	43	34	18	..	18	..	..	..	..	4	2	1	..	..	32	6	18	21
Nag. . . .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	7	1	5	1
1961																		
Bom. . . .	52	39	16	..	16	..	..	..	..	3	2	2	..	4	28	4	19	10
Nag. . . .	..	..	..	..	..	..	..	..	..	..	..	..	..	..	5	..	5	..
TOTAL .	259	181	58	..	58	5	5	..	..	23	11	13	..	9	164	38	101	57

EXPLANATORY NOTES :

(1) This High Court does not exercise Original Jurisdiction in Criminal matters.

(2) Figures of Institutions for a particular year may not tally exactly with the figures of disposals during the same year as some of the matters disposed of during a particular year would include cases instituted in the last few months of the previous year also, and some of the cases instituted during the year may be disposed of in the following year.

(3) *Jury Reference* : The result of a Jury Reference will depend upon the nature of the Reference and therefore there may be conviction both when it is accepted and also when it is rejected. Similarly there may not be any conviction depending upon the nature of the Reference even when it is accepted or rejected.

(4) The figures shown in sub column (*c*) of Column 5 may not be exclusive of the figures in sub-column (*b*) of the same column as the accused acquitted in Confirmation cases in respect of the charge u/s 302 of the Indian Penal Code might have been convicted and sentenced for a lesser offence e.g. Section 326, Indian Penal Code.

(5) This statement does not include the number of cases instituted and disposed of in the Saurashtra and Kutch Regions, as the record of those cases is not available here, the same having been transferred to the Gujarat High Court, after the bifurcation of the Bombay State on 1-5-60.

*Remanded.

High Court, Appellate side, Bombay, 18th July, 1962.

CALCUTTA HIGH COURT

Statement of Capital Punishment coming before the High Court at Calcutta in its Appellate and Original Jurisdiction and sentences passed by the High Court in its Appellate and Original Jurisdiction during the years 1957 *to* 1961.

PART I (*Appellate side.*)

Years	(*a*) Cases of Capital punishment coming before the High Court in its Appellate jurisdiction for confirmation. (Total persons involved)	(*b*) Sentences passed by the High Court in its Appellate Jurisdiction.		
		Total number of sentences passed in respect of persons.	Out of the total sentence passed	
			Altered in respect of persons.	Confirmed in respect of persons.
1957	13	16	7	9
1958	5	9	4	5
1959	13	5	5	Nil
1960	11	11	9	2
1961	22	26	17	9*

*Besides, the High Court awarded death sentence in a Jury, Ref. involving one accused, as the Sessions Judge, referred the case to the High Court owing to his difference with the Jury.

PART II (*Original side*)

Period	(*a*) Cases relating to offences punishable by law, which came to the High Court in its Ordinary Original Criminal Jurisdiction.	(*b*) Sentences passed by the High Court in its Original Criminal Jurisdiction (Sessions Court)	(*c*) Sentences altered by the High Court in its Criminal Appellate Jurisdiction U/Sec. 411A Criminal Procedure Code only.
1957	10	3	Nil
1958	10	3	Nil
1959	15	2	One sentence of death modified to imprisonment for life.
1960	9	Nil	Nil
1961	8	2	Pending
From 1-1-57 to 31-12-61.	52	10	1

GUJARAT HIGH COURT

Statement showing the number of cases relating to offences punishable with death by law which came to the High Court in its appellate revisional or confirming jurisdiction during the years 1960 and 1961.

	Total number of cases	
	1960 (From 1-5-1960)	1961
1. Total number of murder cases in the State comitted for trial	582	568
2. Out of the cases in column (1) above, in how many cases sentence of—		
(*i*) death was imposed by the trial Court .	4	7
(*ii*) Life imprisonment was imposed by the trial Court	138	124
(*iii*) Sentence lesser than the life imprisonment was imposed by the trial courts .	136	139
(*iv*) The accused were acquitted . . .	316	312
3. Out of the figures in column 2 (*i*) above, in how many cases the High Court—		
(*a*) confirmed the conviction and sentence of death ;	3	4
(*b*) reduced the sentence and/or acquitted the accused	1	2
4. Out of the figures in columns 2 (*ii*), 2 (*iii*) and 2 (*iv*) above, in how many cases the High Court on appeal against the conviction—		
(*i*) (*a*) Confirmed the sentence . . .	94	85
(*b*) reduced the sentence . . .	16	17
(*c*) acquitted the accused . . .	33	29
and		
(*ii*) On appeal against acquittal—		
(*a*) confirmed the acquittal . . .	52	53
(*b*) reversed the order of acquittal and imposed the sentence of		
(1) death	..	..
(2) Imprisonment for life . .	7	4
(3) Imprisonment for a lesser period .	8	4
5. The total number of cases where the High Court enhanced the sentence from imprisonment of life to a sentence of death . . .	..	..

KERALA HIGH COURT

Statement of cases in which sentences of capital punishment are altered, confirmed, etc., by the High Court of Kerala during the period from 1-1-1957 to 31-12-1961.

Particulars regarding the order of this High Court	Total number of cases and year.				
	1957	1958	1959	1960	1961
Death sentence confirmed	7	19	19	8	7
Death sentence modified	4	7	14	11	6
Death sentence set aside and acquitted	6	7	5	3	5
Life sentence confirmed	46	73	65	63	38
Life sentence modified	2	11	11	8	5
Life sentence set aside and acquitted	7	25	20	15	5
Life sentence enhanced to death	1	..	..	..	..
R. I. for 10 years under S. 304 (1) enhanced to life under section 302	1	..	..	..	1
Sentence of acquittal altered to R. I. for life	..	2	..	1	..
Sentence of acquittal altered to death	..	3	..	..	..
TOTAL	73	147	134	109	67

MADRAS HIGH COURT

Statement showing the number of cases punishable with death by Law which came to the High Court, Madras from the District and Sessions Courts of the Madras State for the Period from 1-1-1957 to 31-12-1961

Period	Appellate Jurisdiction				Revisional Jurisdiction			Confirming Jurisdiction		
	No. of cases	Sentence passed	Sentence altered	Sentence confirmed	No. of cases	Sentence altered	Sentence confirmed	No. of cases	Sentence altered	Sentence confirmed
From 1-1-1957 to 31-12-1957 . . .	120	120	38	82	8	2	6	101	51	50
From 1-1-1958 to 31-12-1958 . . .	123	123	44	79	7	1	6	118	62	56
From 1-1-1959 to 31-12-1959 . . .	135	135	48	87	9	2	7	139	63	76
From 1-1-1960 to 31-12-1960 . . .	134	134	57	77	10	2	8	117	66	51
From 1-1-1961 to 31-12-1961 . . .	138	138	61	77	10	2	8	129	68	61
TOTAL . .	650	650	248*	402	44	9*	35	604	310*	294

The particulars under the head 'Ordinary Criminal Jurisdiction of the High Court, Madras' are nil, as the City of Madras has been constituted into a sessions Division.

*Includes acquittal also.

Statement for the period 1-1-1957 *to* 31-12-1962

(1)	(2)	(3)	(4)	(5)				
				Of Column No. 4 number of cases in which				
	Number of cases received, for consideration of the High Court under Section 374, I.P.C. punishable with death	Number of persons involved in the cases in column No. 2	Of Column No. 2 total number of cases disposed of	(a) death sentence was confirmed	(b) death sentence was modified	(c) death sentence was reversed (*i.e.* acquitted)	(d) Retrial was ordered	(e) disposed of by the death of accused
1957 . . .	151	165	113	60	29	24	..	..
1958 . . .	149	174	127	57	59	11	..	..
1959 . . .	172	198	140	73	46	20	..	1
1960 . . .	149	172	119	62	43	13	1	..
1961 . . .	154	173	106	46	43	17	..	..
1962 . . .	175	236	128	49	48	31	..	..

MADHYA PRADESH

Information in respect of "Capital Punishment" for the period 1-1-1957 *to* 31-12-1961 *in the High Court of Madhya Pradesh*

Class of cases	No. of cases	Dismissed	Altered	Death confirmed
1. Criminal Appeals with Criminal References	260	..	183	77
2. Criminal Appeals by State against acquittal by the Lower Court in cases punishable with sentences of death . . .	130	106	24	..
3. Criminal Revisions filed by State or party for enhancement of sentence to death .	19	19	..	..

MYSORE HIGH COURT

Statement showing the number of confirmation cases (Death sentence) on the Appellate and confirming Jurisdiction received: sentences passed altered or confirmed in the High Court of Mysore at Bangalore during the period from 1-1-1957 *to* 31-12-1961

Year	No. of Death Sentence cases received during the year	Altered during the year	Confirmed during the year	Retrial ordered during the year	Remarks
1957	18	15	1	2	No Original Jurisdiction in respect of these cases.
1958	23	17	6	Nil	
1959	22	16	6	..	
1960	15	12	2	1	
1961	14	9	4	1	
TOTAL . .	92	69	19	4	

ORISSA HIGH COURT

Statement showing the cases of Capital Punishment received in the High Court of Orissa in its original, appellate, revisional or confirming jurisdiction and the sentences passed, altered or confirmed therein during the period from 1-1-1957 *to* 31-12-1961.

1. Cases received in the Original, appellate and revisional jurisdiction . . . . . Nil

2. Cases received in the confirming jurisdiction :

Year	No. of cases received during the year	Sentence passed	No. of cases in which sentences were altered	No. of cases in which sentences were reversed and accused acquitted	No. of cases in which sentences were confirmed
1	2	3	4	5	6
1957	D. R. 1/57	Reference discharged and accused persons are acquitted	..	1	..
			..	..	1
1958	D. R. 1/58	Reference accepted and sentence confirmed	..	..	1
	D. R. 2/58	Do.			
1959	D. R. 1/59	Reference discharged and sentence altered to imprisonment for life	1	..	..
1960	D. R. 1/60	Reference discharged and accused acquitted	..	..	..
	D. R. 2/60	Reference discharged and the sentence altered imprisonment for life	1	..	..
	D.R. 3/60	Reference discharged and accused acquitted	..	..	..
1961	..	..	..	..	..

PATNA HIGH COURT

Capital Punishment

Year	ORIGINAL			APPELLATE			REVISION			CONFIRMING JURISDICTION		
	Confirmed	Modified	Set aside	Confirmed	Modified	Set aside	Confirmed	Modified	Set aside	Confirmed	Modified	Set aside
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1957	..	..	..	..	1 Death Sentence	..	..	..	..	6	9	4
1958	..	..	..	..	.	..	..	..	..	8	12	6
1959	..	..	..	..	..	..	..	..	..	6	16	7
1960	..	..	..	..	..	..	..	..	..	8	6	5
1961	..	..	..	..	..	..	..	..	..	13	9	8

PUNJAB HIGH COURT

Statement showing the cases in which DEATH sentence was imposed by the Sessions Judge and which came to the High Court during the period 1st January, 1957 to 31st December, 1962 (1-1-1957 to 31-12-1962)

Year	No. of the Murder Reference	No. of persons sentenced to death	No. of persons whose death sentence was confirmed by the High Court	No. of persons whose death sentence was modified by the High Court	No. of persons acquitted by the High Court	No. of persons in whose cases re-trial ordered
1	2	3	4	5	6	7
1957	96	112	28	35	49	..
1958	96	139	45	30	64	..
1959	74	97	41	26	30	..
1960	83	118	32	43	43	..
1961	99	138	55	31	51	1
1962	85	109	47	32	30	..

RAJASTHAN HIGH COURT

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

Particulars of capital punishment cases for the period 1-1-1957 *to* 31-12-1961

Year	Opening balance	Institution	Disposal	Sentence altered	Sentence confirmed	Balance
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1957	5	9	11	8	3	3
1958	3	6	8	5	3	1
1959	1	16	14	11	3	3
1960	3	8	10	7	3	1
1961	1	8	8	6	2	1

APPENDIX XXXIII

INDIA—NUMBER OF MURDER CASES (1953—1962) REPORTED TO THE POLICE.

INDIA

Number of murder cases reported to police.

(1953—1962)

Year	Number of murder cases reported to the police.
1953 . . .	9802
1954 . . .	9765
1955 . . .	9700
1956 . . .	10025
1957 . . .	10419
1958 . . .	10661
1959 . . .	10712
1960 . . .	10910
1961 . . .	11188
1962 . . .	11586

1. Based on Crime in India (1953), pages 2 and 10 ; (1954), pages 3 and 17 ; (1955), pages 2 and 15 ; (1956), pages 2 and 21 ; (1957), pages 3 and 25 ; (1958), pages 3 and 19 ; (1959), pages 4 and 21 ; (1960), pages 4 and 21 ; (1961), pages 6 and 23 ; and (1962), pages 6, 7 and 24.

APPENDIX XXXIV

INDIA—STATE-WISE FIGURES OF HOMICIDE CASES (WITH FIGURES OF TWO NOTORIOUSLY CRIMINAL DISTRICTS) (1953 TO 1962).

Index to State Governments and Administrations' Figures.

Andaman and Nicobar Islands	Based on Sl. No. 30 in the file.
Andhra Pradesh	Based on Sl. No. 203 in the file.
Bihar	Based on Sl. No. 66 in the file.
Gujarat	Based on Sl. No. 207 in the file.
Himachal Pradesh	Based on Sl. No. 53 in the file.
Kerala	Based on Sl. No. 75 in the file.
Madhya Pradesh	Based on Sl. No. 65 in the file.
Madras	Based on Sl. No. 206 in the file.
Maharashtra	Based on Sl. No. 46 in the file.
Manipur	Based on Sl. No. 204 in the file.
Mysore	Based on Sl. No. 25 in the file.
Orissa	Based on Sl. No. 74 in the file.
Punjab	Based on Sl. No. 205 in the file.
Tripura	Based on Sl. No. 29 in the file.
U.P.	Based on Sl. No. 98 in the file.
West Bengal	Based on Sl. No. 63 in the file.

Particulars regarding murder cases during last ten years

Year	No. of murders reported to the police.	No. of cases of murder prosecuted.	No. of cases of murder convicted in Sessions Court	No. of murder cases in which sentences of death were passed by the Sessions Judge.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge.	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court	No. of cases in which sentence of death commuted	Net number of cases of murder in which the sentences of death was executed.	Remarks in respect of each case.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1953 . . .	4	3	4	Nil	Nil	Nil	Nil	Nil	(1) Convicted and sentenced to 6 months' R.I. on 18-6-1953. (2) Convicted and sentenced to 10 years' R.I. on 31st Dec. 1953. (3)(*a*) Convicted and sentenced to 5 years' R.I. on 14-11-1953. (*b*) Convicted and sentenced to 7 years' R.I. on 14-11-1953. (4) Accused not known.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1954 . . .	4	3	2	Nil	1	Nil	Nil	Nil	(1) Convicted and sentenced to 9 years' R.I. and also to pay a fine of Rs. 500/- payable to heirs of the deceased in default to suffer R.I. for a further period of one year more on 14-9-1954. (2) Convicted and sentenced to transportation for life on 4-6-1954. (3) One case was not committed to Sessions Court. (4) Accused not known.
1955 . . .	5	5	4	1	Nil	Nil	Nil	Nil	(1) Convicted and sentenced to 5 years' R.I. and one years R.I. under two different sections of I.P.C. on 23-6-1955. Sentences to run concurrently. (2) Case was dropped and filed as the sole accused died on 23-9-1955. (3) Convicted and sentenced to death on 6-12-1956 Pending in High Court. (4) Convicted and sentenced to 6 months' R.I. on 18-4-1956.

										(5) Convicted and sentenced to 7 years' R.I. and 1 year's R.I. under two different sections of I.P.C. Sentences to run concurrently.
1956	.	5	4	3	2	Nil	Nil	Nil	2	(1) All the accused acquitted on 22-5-1957. (2) Accused not known. (3) Convicted and sentenced to death on 8-10-1956. Sentence of death executed on 20-12-57. (4) Convicted and sentenced to 5 years' R.I on 28-3-1956. (5) Convicted and sentenced to death on 13-8-1957. Sentence of death executed on 8-11-1958.
1957	. . .	3	3	1	Nil	Nil	Nil	Nil	Nil	(1) Accused acquitted on 5-8-1958. (2) (*a*) Convicted and sentenced to 10 years' R. I. on 1-5-1958. (*b*) Convicted and sentenced to 10 years' R. I. on 2-5-1958. (*c*) Convicted and sentenced to 5 years' R. I. on 2-5-1958. (*d*) Acquited on 2-5-1958. (*e*) Do.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
									(3) One case was not committed to Sessions Court.
1958 . . .	4	4	2	Nil	Nil	Nil	Nil	Nil	(1) One case was not committed to Sessions Court. (2) Accused acquitted on 25-7-1959. (3) Convicted and sentenced to 2 years' R. I. on 10-9-1958. (4) Convicted and sentenced to 1 year's R. I. and to pay a fine of Rs. 200 in default further 3 months' R. I. on 19-5-1959.
1959 . . .	3	2	2	1	Nil	Nil	Nil	Nil	(1) Convicted and sentenced to death on 12-9-1959. Sentence of death reduced to imprisonment for life by High Court on 25-3-1960. (2) (*a*) Convicted and sentenced to 4 years' R. I. on 9-6-1960. (*b*) (1) and (3) Acquitted on 9-6-1960. (*c*) The accuseed was not committed to Sessions Court. (3) Accused not known.

1960 . . .	1	1	1	Nil	Nil	Nil	Nil	Nil	(1) Convicted and sentenced to 1 year's R. I. and to pay a fine of Rs. 100 in default futher R. I. of 3 months on 10-10-1960.
1961 . . .	3	3	2	2	Nil	Nil	1	Nil	(1) Not committed to Session Court. (2) Convicted and sentenced to death on 30-9-1961. Sentence of death reduced to imprisonment for life by High Court on 9--1-1963. (3) Convicted and sentenced to 2 years' R. I. and also to death under three different sections of I.P.C. on 21-3-1963. Sentences set aside by High Court and case directed to be retried.
1962 . . .	10	10	8	3	2	Nil	Nil	Nil	(1) Convicted and sentenced to death on 18-7-1963. Sentence confirmed by High Court on 20-3-1964. (2) Convicted and sentenced to R. I. for life on 18-3-1964. (3) Pending in Sessions Court. (4) Convicted and sentenced to death on 17-8-1963. Pending in High Court.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
									(5) Convicted and sentenced to 6 months' R. I. and 3 months R.I. under two different sections of I.P.C. on 28-10-1963 Sentences to run concurrently.
									(6) Convicted and sentenced to 4 years' R.I. on 17-4-69.
									(7) (1) and (2) convicted and sentenced to 7 years' R. I. each on 29-6-1963.
									(8) Convicted and sentenced to death on 15-4-1963. Pending in High Court.
									(9) Convicted and sentenced to imprisonment for life on 23-1-63.
									(10) Accused persons acquitted on 29-2-1964.

ANDHRA PRADESH

Statistics of cases of murders for the last 10 years (i.e., from 1953 to 1962) in Andhra Pradesh State

Subject	(1953)	(1954)	(1955)	(1956)	(1957)	(1958)	(1959)	(1960)	(1961)	(1962)
1. Number of murders reported to the police . . .	699	692	665	727	902	855	763	871	842	864
2. No. of cases of murders prosecuted	538	478	490	476	635	583	553	613	625	605
3. Number of cases of murder convicted in Sessions Court	245	209	240	202	263	266	276	326	316	323
4. No. of murder cases in which sentences of death were passed by the Sessions Court .	36	26	35	37	31	26	49	48	42	30
5. No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge . .	85	75	80	53	86	112	121	125	155	140
6. No. of cases of murders acquitted or in which sentence reduced by High Court or Supreme Court. .	195	157	154	152	169	205	182	205	180	163
7. No. of cases in which sentence of death commuted.	10	4	8	6	7	2	13	13	11	1
8. Net number of cases of murder in which the sentence of death was executed. .	20	3	15	12	13	8	20	16	9	3

ANDHRA PRADESH

STATEMENT—2

Statistics of cases of murders for the last ten years (from 1953 to 1962) in the two notorious criminal Districts of Guntur and Kurnool in Andhra Pradesh.

Sl. No.	Subject.	1953		1954		1955		1956		1957		1958		1959		1960		1961		1962	
		Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.	Gun.	Kur.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
1.	Number of murders reported to the police.	63	89	53	93	56	89	56	93	90	117	87	84	74	69	100	99	75	8	70	104
2.	Number of cases of murders prosecuted.	50	78	41	78	47	78	32	74	63	94	58	70	51	64	74	77	63	68	54	92
3.	Number of cases of murders convicted in Sessions Court.	24	30	15	31	28	44	11	24	34	38	27	34	19	40	48	43	42	34	30	44
4.	Number of murder cases in which sentences of death were passed by the Sessions Court.	—	2	—	1	4	5	2	—	6	1	3	3	1	6	8	5	4	5	1	2
5.	Number of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge.	6	3	2	12	8	11	6	4	14	8	13	13	7	26	15	20	19	13	13	23

6. Number of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court.	18	11	17	14	12	8	17	5	21	13	22	7	20	10	26	15	15	11	1	8
7. Number of cases in which sentence of death commuted.	..	..	..	..	1	1	1	..	1	..	..	1	..	1	1	3	1	..	..	..
8. Net number of cases of murder in which the sentence of death was executed.	..	2	..	..	1	2	..	..	2	1	..	..	..	1	3	2	1	1	..	..

BIHAR STATE

Statement regarding capital punishment in murder cases Bihar State

District or State	Year	Number of murders reported to the police	Number of cases of murder prosecuted	Number of cases of murder convicted in Sessions Court	Number of murder cases in which sentences of death were passed by the Sessions Court	Number of murder cases in sentences of imprisonment for life were passed by the Sessions Judge.	Number of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court	No. of cases in which sentence of death commuted	Net No. of cases of murder in which the sentence of death was executed.	Remarks
1	2	3	4	5	6	7	8	9	10	11
Ranchi District .	1954 . .	96	54	23	2	17	28	..	..	Figures in column (8) also indicate some previous pending cases but disposed during year mentioned in column No. (2). It also applies to some other columns as well.
	1955 . .	105	69	21	4	16	42	2	..	
	1956 . .	101	46	18	2	9	26	..	..	
	1957 . .	135	71	31	3	23	34	1	..	
	1958 . .	108	58	28	..	21	28	..	..	
	1959 . .	94	59	23	1	15	32	..	..	
	1960 . .	117	83	24	..	18	48	..	..	
	1961 . .	114	88	34	2	17	41	..	..	
	1962 . .	121	75	23	..	15	31	..	..	
	1963 . .	96	59	4	..	4	1	..	..	

Santhal Parganas District.	1954	79	33	26	1	6	13	..	..
	1955	91	43	18	..	9	20	..	..
	1956	73	33	21	2	13	10	..	..
	1957	77	30	14	..	6	13	..	..
	1958	106	48	26	..	15	21	..	..
	1959	68	32	15	..	10	14	..	..
	1960	96	47	28	..	13	8	..	..
	1961	87	46	25	1	12	15	..	..
	1962	92	53	22	2	11	19	1	..
	1963	60	36	4	1	2	10	..	..
Bihar State	1954	756	356	149	35	61	142	12	6
	1955	754	365	142	24	63	166	7	3
	1956	801	340	130	25	62	134	3	7
	1957	842	411	147	21	84	152	5	3
	1958	891	457	201	32	92	145	13	5
	1959	810	413	162	29	95	150	4	2
	1960	859	486	206	31	117	174	6	4
	1961	838	497	88	30	07	153	11	4
	1962	863	454	47	27	98	152	4	2
	1963	826	379	51	12	33	56	1	..

GUJARAT STATE

Statement showing number of murders in the Gujarat State during last 10 years i.e. *from* 1954 *to* 1963

Sl. No.	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
(1)	Number of murders reported to the Police	551	631	621	807	749	751	782	775	781	690	7138
(2)	Number of cases of murders prosecuted	407	433	438	565	546	582	622	614	618	528	5353
(3)	Number of cases of murder convicted in Sessions Court	164	208	204	400	273		284	281	282	132	2515
(4)	Number of murder cases in which sentences of death were passed by the Sessions Court	4	3	2	4	5	8	18	12	7	3	66
(5)	Number of murder cases in which sentences of imprisonment for life were passed by Sessions Judge	36	50	47	73	79	85	101	101	91	50	713
(6)	Number of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court	44	68	70	100	99	100	130	122	156	70	959
(7)	Number of cases in which sentence of death commuted	29	3	3	1	1	3	2	6	..	6	54
(8)	Net number of cases of murder in which the sentence of death was executed.	2	1	2	1	..	3	4	1	2	5	21

Statement showing the information of figures of murders in Baroda District (Gujarat State) from years 1954 to 1963.

Sl. No.	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	No. of murders reported to the police	43	55	44	71	85	74	96	85	76	74	703
2.	No. of cases of murder prosecuted .	28	37	34	52	61	54	77	67	66	63	539
3.	No. of cases of murder convicted in Sessions Court	5	18	17	30	34	35	46	35	38	20	278
4.	No. of murder cases in which sentences of death were passed by the Sessions Court	..	..	..	1	1	1	5	3	4	1	16
5.	Numoer of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge . .	..	1	2	6	9	13	22	18	12	10	93
6.	Number of cases of murder acquitted or in which sentence reduced by High Court ot Supreme Court . .	16	15	14	18	19	15	28	34	22	21	202
7.	Number of cases in which sentence of death commuted	1	..	..	..	1	2	..	1	1	1	7
8.	Net number of cases of murder in which the sentence of death was executed .	..	..	..	..	1	1	..	1	1	1	5
	TOTAL : . .	93	126	111	178	211	195	274	244	220	191	1843

GUJARAT STATE

Statement showing the information of figures of murders in Surat District Gujarat State fromyears 1954 to 1963.

Sl. No	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	Number of murders reported to the Police	58	53	60	117	93	86	79	74	102	87	809
2.	Number of cases of murder prosecuted	49	40	42	93	75	64	69	63	82	69	646
3.	Number of cases of murder convicted in Sessions Court	20	10	15	46	39	39	32	38	37	19	295
4.	Number of murder cases in which sentences of death were passed by the Sessions Court	..	..	..	..	..	..	..	..	..	..	..
5.	Number of murder cases in which sentences of imprisonment for life passed by the Sessions Judge	4	4	4	10	9	12	10	12	5	3	73
6.	Number of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court	29	30	27	47	36	25	37	25	44	13	313
7.	Number of cases in which sentence of death commuted	..	..	..	..	..	..	..	..	..	..	..
8.	Net number of cases of murder in which the sentence of death was executed	..	..	..	..	..	..	..	..	..	..	..
	TOTAL :	160	137	148	313	252	226	227	212	270	191	2136

HIMACHAL PRADESH

Statement Showing the Figures of murder cases in Himachal Pradesh for the last 10 years

Year	No. of murders reported of the police.	No. of cases of murder prosecuted.	No. of cases convicted in Sessions Court	No. of murder cases in which sentences of death were passed by the Sessions Court.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge.	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court.	No. of cases in which sentence of death commuted.	Net No. of cases of murder in which the sentence of death was executed.
1954 . . .	10	8	6	..	6	1	..	..
1955 . . .	15	10	7	..	7	1	..	..
1956 . . .	9	8	4	..	4	2	..	..
1957 . . .	17	13	6	..	6	..	..	..
1958 . . .	13	11	8	..	8	..	..	..
1959 . . .	18	14	4	..	4	..	..	..
1960 . . .	16	10	4	2	2	..	1	1
1961 . . .	20	15	7	1	6	1	..	..
1962 . . .	20	15	5	..	5	..	..	..
1963 . . .	16	10	1	1	..	..	..	..

NOTE : 2 cases reported in 1963 are pending investigation and 6 pending trial.
4 cases reported in 1962 are pending trial.

KERALA

Statement of murder cases—Capital punishment for the year from 1954 to 1963 for Kerala

Sl. No.	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1	2	3	4	5	6	7	8	9	10	11	12
(1)	No. of murders reported to the Police . . .	172	177	153	220	264	277	235	253	214	199
(2)	No. of cases of murder prosecuted	160	156	139	197	235	252	208	236	199	177
(3)	No. of cases of murder convicted in Sessions Court .	106	103	82	111	151	164	133	144	122	123
(4)	No. of murder cases in which sentences of death were passed by the Sessions Court	11	10	12	15	22	23	18	24	28	30
(5)	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Court . .	44	48	45	50	70	79	69	78	55	57
(6)	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court . .	35	52	40	63	75	62	59	71	53	40
(7)	No. of cases in which sentence of death commuted .	4	1	2	4	7	8	9	7	12	6
(8)	No. of cases of murder in which the sentence of death was executed . . .	11	9	2	Nil	5	10	16	9	7	15

Year	No. of murder cases reported to the Police.	No. of murders prosecuted	No. of murders convicted in Sessions Court	No. of murders in which death sentences were passed.	No. of murders in which life imprisonment were passed.	No. of cases of murders acquitted or in which sentence reduced by High Court or Supreme Court.	No. of cases in which sentences of death were commuted	Net No. of cases of murders in whcih sentence of death was executed.
1	2	3	4	5	6	7	8	9
1956 . . .	1130	868	255	49	86	7	37	6
1957 . . .	1166	1037	253	57	80	6	41	10
1958 . . .	1203	1090	245	44	97	6	31	7
1959 . . .	1326	1062	299	61	96	15	41	5
1960 . . .	1396	1091	328	43	116	9	27	7
1961 . . .	1378	1063	320	30	102	4	25	1
1962 . . .	1440	1051	304	18	142	6	15	3
1963 . . .	1330	1088	261	16	131	5	..	..

MADHYA PRADESH

JHABUA

Statement showing the figures of murders in the District of Jhabua (Madhya Pradesh) Period from 1954 to 1964 ending june, 1964

Year	No. of murder reported to the Police	No. of cases of murder prosecuted	No. of cases of murder convicted in Sessions Court	No. of murder cases in which sentences of death were passed by the Sessions Court.	No. of murder cases in which sentences of imprisonment of life were passed by the Sessions Judge	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court	No. of cases in which sentence of death commuted.	No. of cases of murder in which the sentence of death was executed.	Remarks
1	2	3	4	5	6	7	8	9	10
1954 . . .	79	56	22	1	12	4	1	..	Rest of the cases were either acquitted by the Sessions Court or were pending at the end of the year.
1955 . . .	77	54	21	..	8	3	..	..	Do.
1956 . . .	94	80	35	2	23	3	1	..	Do.
1957 . . .	109	50	22	*5	9	9	..	..	Do.
1958 . . .	71	53	15	..	5	2	..	..	Do.
1959 . . .	101	71	53	..	21	2	..	..	Do.

Statement showing the figures of murders in the District of Jhabua (Madhya Pradesh) peiord from 1954 to 1964 ending June, 1964—(Contd.)

1	2	3	4	5	6	7	8	9	10
1960 . . .	76	67	30	..	20	..	..	..	Do.
1961 . . .	99	65	29	..	18	..	..	..	Do.
1962 . . .	138	67	40	..	21	12	..	..	Do.
1963 . . .	103	97	66	..	43	15	..	..	Do.
1964 . . . (Upto the end of June, 1964).	59	41	30	..	20	..	..	..	Do.

*NOTE : Out of the 5 cases in which sentences of death were passed (in 1957):

(*a*) 3 cases were acquitted by High Court;

(*b*) the accused of one case died in imprisonment;

(*c*) there is no record available with the police as to whether the Capital Punishment was carried out in the remaining one case

MADHYA PRADESH

Statement showing the figures of murders in the District of BASTAR (Madhya Pradesh) for the period from 1954 *to* 1964 *ending June* 1064

Year	No. of murders reported to the Police	No. of cases of murder prosecuted	No. of cases of murder convicted in Sessions Court.	No. of murder cases in which sentences of death were passed by the Sessions Court.	No. of murder cases in which sentences of imprisonment for life were passed by Sessions Judge.	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court.	No. of cases in which sentence of death commuted.	No. of of cases of murder in which the sentence of death was executed.	Remarks.
1	2	3	4	5	6	7	8	9	10
1954 . . .	78	56	37	1	17	..	..	1	
1955 . . .	52	47	33	3	12	1	3	..	
1956 . . .	83	63	49	1	22	1	1	--	
1957 . . .	65	67	47	..	13	5	--	--	
1958 . . .	86	75	35	..	13	3	--	..	
1959 . . .	115	84	45	..	17	5	..	..	
1960 . . .	91	97	48	..	11	2	..	--	
1961 . . .	105	88	58	3	16	4	..	3	
1962 . . .	97	82	27	1	15	5	..	..	
1963 . . .	72	58	31	..	11	..	..	..	

MADRAS STATE

Statement showing particulars regarding cases of Murders in Madras State

Sl. No.	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1	2	3	4	5	6	7	8	9	10	11	12
1.	No. of murders reported to the Police . .	689	734	734	721	736	757	710	734	677	665
2.	No. of cases of murder prosecuted . .	520	631	545	554	604	617	588	626	578	560
3.	No. of cases of murder convicted in Sessions Court . . .	290	334	329	336	355	362	370	435	373	287
4.	No. of murder cases in which sentences of death were passed by the Sessions Court .	73	104	117	110	115	119	107	130	106	90
5.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge . . .	112	134	115	144	150	143	145	174	163	98
6.	No. of Cases of murder acquitted or in which sentences reduced by High Court or Supreme Court . .	188	184	189	166	176	162	181	196	172	102
7.	No. of cases in which sentences of death commuted . .	16	30	24	34	29	36	37	32	34	29
8.	Net number of cases of murder in which the sentence of death was executed . . .	44	53	56	50	59	71	45	51	33	23

MADRAS STATE

SALEM DISTRICT

Capital Punishment—Particulars regarding cases of murder for ten years for SALEM DISTRICT (Madras).

Sl. No.	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1	2	3	4	5	6	7	8	9	10	11	12
1.	No. of murders reported to the Police . .	98	104	116	111	111	96	127	115	100	95
2.	No. of cases of murder prosecuted . .	88	85	80	84	81	76	98	91	84	84
3.	No. of cases of murder convicted in Sessions Court . . .	59	44	56	62	48	50	53	51	53	53
	No. of murder cases in which sentences of death were passed by the Sessions Court .	17	16	24	14	24	28	26	24	22	19
5.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge . . .	27	18	13	15	13	7	13	16	23	17
6.	No. of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court .	22	33	21	20	20	23	22	26	20	14
7.	No. of cases in which sentences of death commuted . . .	4	6	4	2	3	4	10	6	7	6
8.	Net number of cases of murder in which the sentence of death was executed . . .	14	13	14	8	15	17	15	8	7	6

MADRAS STATE

COIMBATORE DISTRICT

Capital Punishment—Particulars regarding cases of murder for ten years.

Sl. No.	Heads	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1.	No. of murders reported to the Pollce . .	122	117	133	177	120	118	111	108	122	99
2.	No. of cases of murder prosecuted . .	73	105	95	75	99	98	91	87	102	60
3.	No. of cases of murder convicted in Sessions Court . . .	46	68	51	43	62	51	62	63	65	30
4.	No. of murder cases in which sentences of death passed by the Sessions Court . . .	14	26	26	18	23	13	17	16	19	9
5.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge .	27	35	18	25	23	13	20	18	19	9
6.	No. of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court . .	33	32	25	18	25	22	28	32	21	10
7.	No. of cases in which sentence of death commuted . . .	7	13	6	7	6	8	112	6	9	8
8.	Net number of cases of murder in which the sentence of death was executed . . .	10	11	13	14	11	14	14	9	8	7

MAHARASHTRA

Statement showing figures of murders for the State of Maharashtra for the last ten years

Year	No. of murders reported to the Police.	No. of cases of murder prosecuted.	No. of cases of murder convicted in Sessions Court.	No. of murder cases in which sentences of death were passed by the Sessions Court.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge.	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court.	No. of cases in which sentence of death was commuted.	No. of cases of murder in which sentence of death was executed.
1	2	3	4	5	6	7	8	9
1954	1035	672	289	29	107	203	16	4
1955	1141	757	310	40	115	224	17	4
1956	1168	789	310	29	120	277	24	5
1957	1215	824	357	17	140	250	20	4
1958	1227	871	390	31	176	267	11	4
1959	1177	845	404	25	186	242	21	6
1960	1199	798	466	35	208	234	20	8
1961	1103	825	407	28	214	233	23	10
1962	1164	861	487	31	247	202	17	7
1963	1054	689	212	13	128	107	12	4

* From 1954 to 30-4-1960, the figures are for the former Bombay State.

Statement showing figures of murders for two notoriously criminal Districts

Year	No. of murder reported to the Police.	No. of cases of murder prosecuted.	No. of cases of murder convicted in Sessions Court.	No. of murder cases in which sentences of death were passed by the Sessions Court.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge.	No. of cases of murder acquitted or in which sentence reduced by High Court or Supreme Court.
1	2	3	4	5	6	7
			Thana District			
1954	80	55	11	..	2	43
1955	122	81	26	2	3	53
1956	101	71	21	1	4	69
1957	109	90	30	1	10	60
1958	102—1	87	35	3	9	50
1959	93	75	33	1	17	42
1960	11	93	45	2	18	44
1961	88	77	39	3	20	38
1962	84	65	46	6	17	17
1963	59	49	30	1	3	12

1	2	3	4	5	6	7
			Sholapur District			
1954	67	47	18	..	6	22
1955	62	36	10	..	6	17
1956	75	45	17	1	12	16
1957	104	65	27	..	16	25
1958	82	64	25	2	17	28
1959	68	45	21	1	12	15
1960	84	67	27	..	17	21
1961	80	59	21	3	6	20
1962	86	67	26	2	18	28
1963	70	45	12	..	7	2

MANIPUR

Murder Cases reported in the last 10 years

Sl. No.	Year	No. of murders reported to the Police	No. of cases of murders prosecuted	No. of cases of murders convicted in Sessions Court	No. of murder cases in which sentences of death were passed by the Sessions Court	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	No. of cases of murder acquitted or in which sentences reduced by High Court or Supreme Court	No. of cases in which sentence of death commuted.	Net number of cases of murder in which the sentence was executed.	Remarks
1	2	3	4	5	6	7	8	9	10	11
1.	1953 . .	10	7	1	..	..	6	..	..	(18 months R.I. & a fine of Rs. 100/- in default 3 months' R.I.).
2.	1954 . .	8	7	2	..	..	5	..	..	
3.	1955 . .	8	2	..	..	..	2	..	..	(Two years' R.I. in each case).
4.	1956 . .	12	10	3 for other Offences*. 2 for murder.	..	2	5	..	..	*[(*i*)-I. 7 years' R.I. (*ii*)-I. a fine of Rs. 600/- in default 6 months' R.I. (*iii*)-I. a fine of Rs. 450/- in default 6 months' R.I.]

1	2	3	4	5	6	7	8	9	10	11
5.	1957 . .	19	11	2 for murder 1 for other Offences*	..	2	8	..	..	*(Ten years' R.I.).
6.	1958 . .	9	7	4	..	4	3	..	..	
7.	1959 . .	14	12	1 for other offences.* 3 for murder	1	2	8	1	..	*(5 years' R.I.).
8.	1960 . .	31	14	3 for other offences.* 4 for murder.	2	2	7	1	1	*[(*i*)—1-10 years' R.I.] (*ii*)—1-8 years' R.I.] (*iii*)—1-5 years' R.I.]
9.	1961 . .	25	12	4 for other offences.* 3 for murder	1	2	5	1	..	*[(*i*) 1—3 years' R.I. (*ii*) 2—2 years' R.I. each. (*iii*) 1—1 years' R.I.]
10.	1962 . .	17	1	1 for other offences.*	..	..	..	..	..	*(5 years' R.I.).

STATEMENT No. 1

Details of Murder cases for last ten years

Sl. No.	Particulars	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	No. of murders reported to the Police . . .	652	658	694	574	645	633	642	744	707	724	
2.	No of murder cases prosecuted	455	452	438	399	486	525	485	496	548	439	
3.	No. of murder cases convicted in Sessions Court .	170	180	197	159	225	208	221	199	197	232	
4.	No. of murder cases in which sentences of death were passed by the Sessions Court . . .	3	7	8	5	11	14	8	12	8	8	
5.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	42	79	66	71	77	84	91	74	82	94	
6.	No. of murder cases Acquitted	239	231	206	207	220	247	237	276	295	240	
	(*a*) No. of murder cases in which sentence was redued by High Court .	2	5	6	3	6	10	7	7	5	4	

1	2	3	4	5	6	7	8	9	10	11	12	13
	(*b*) No. of murder cases in which sentence was reduced by Supreme Court	..	..	..	..	..	..	..	..	..	..	..
7.	No. of cases in which sentences of death were commuted	2	..	8	3	6	2	1	5	3	5	
8.	Net No. of murder cases in which the sentences of death were executed .	1	1	4	1	2	1	3	3	..	..	Two notoriously Criminal Districts— (*i*) Belgaum; (*ii*) Bijapur.
	TOTAL : .	1516	1613	1527	1422	1678	1724	1695	1816	1843	1746	

MYSORE STATE

STATEMENT No. 2.

Details of murder cases for last ten years in respect of Belgaum and Bijapur District.

Sl. No.	Particulars	Belgaum District									
		1953	1954	1955	1956	1957	1958	1959	1960	1961	1962
1.	No. of murders reported to the Police	141	128	146	122	119	114	128	115	112	134
2.	No. of murder cases prosecuted	83	72	111	90	91	84	95	90	88	102
3.	No. of murder cases convicted in Sessions Court	30	31	50	40	57	44	42	45	32	49
4.	No. of murder cases in which sentences of death were passed by the Sessions Court	1	4	3	1	2	5	3	5	1	3
5.	The murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	12	23	26	28	29	35	33	20	17	25
6.	No. of murder cases Acquitted	30	25	36	28	17	25	41	38	43	36
	(*a*) No. of murder cases in which sentence was reduced by High Court	..	..	..	2	3	..	2	2	..	2
	(*b*) No. of murder cases in which sentence was reduced by Supreme Court	..	..	..	..	..	..	..	..	..	..
7.	No. of cases in which sentences of death commuted	..	..	1	1	..	..	..	2	..	1
8.	Net No. of murder cases in which the sentence of death was executed	..	1	2	..	..	..	..	..	..	..

MYSORE STATE

STATEMENT No. 2.

Details of murders cases for last ten years in respect of Belgaum and Bijapur District

Sl. No.	Particulars	Bijapur District									
		1953	1954	1955	1956	1957	1958	1959	1960	1961	1962
1.	No. of murders reportd to the Police	105	102	74	71	81	85	71	84	103	82
2.	No. of murder cases prosecuted	78	52	55	48	60	62	58	57	74	61
3.	No. of murder cases convicted in Sessions Court	27	21	23	21	28	29	24	18	18	26
4.	No. of murder cases in which sentences of death were passed by the Sessions Court	..	..	3	..	2	..	..	..	..	2
5.	The murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	3	8	7	9	10	6	7	6	7	10
6.	No. of murder cases Acquitted	51	31	32	27	32	33	34	39	56	35
	(*a*) No. of murder cases in which sentence was reduced by High Court	..	1	1	..	1	..	1	1	..	..
	(*b*) No. of murder cases in which sentence was reduced by Supreme Court	..	..	..	..	..	..	..	..	..	..
7.	No. of cases in which sentences of death commuted	..	..	..	..	..	..	..	..	..	..
8.	Net No. of murder cases in which the sentence of death was executed	..	..	2	..	1	..	1	..	..	..

ORISSA STATE

FIGURES OF MURDER FROM 1954 TO 1963.

Year	No. of murders reported to Police	No. of cases of murder prosecuted	No. of cases of murders convicted in Sessions Court	No. of murders cases in which sentences of death were passed by Sessions Court	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	No. of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court	No. of cases in which sentence of death commuted	Net No. of murder cases in which the sentence of death was executed
1	2	3	4	5	6	7	8	9
1954 . . .	273	180	103	6	100	25	5	2
1955 . . .	275	98	149	3	147	31	..	3
1956 . . .	279	189	131	5	125	34	3	1
1957 . . .	262	191	129	..	110	32	..	..
1958 . . .	269	206	148	2	145	30	1	..
1959 . . .	313	235	92	1	91	10	..	1
1960 . . .	346	259	160	1	150	30	1	..
1961 . . .	267	207	176	..	176	47	..	..
1962 . . .	325	269	163	9	154	35	9	..
1963 . . .	333	253	175	1	174	29	..	3

NOTE —Koraput and Mayurbhonj are the two notoriously criminal districts of the Orissa State according to the State Government.

PUNJAB STATE

Year	No. of murders reported to the Police	No. of cases of murder prosecuted	No. of cases of murder convicted in Sessions Court	No.of murder cases in which sentences of death were passed by the Sessions Court	No. of murder cases in which sentences of imprisonment of life were passed by the Sessions Judge	No. of cases of murder acquitted or in which sentence reduced by the High Court or Sureme Court	No. of cases in which sentence of death commuted	Net number of cases of murder in which the sentence of death was executed
1	2	3	4	5	6	7	8	9
1954 . . .	642	495	269	79	124	157	10	10
1955 . . .	614	496	282	85	125	146	6	11
1956 . . .	590	474	223	67	99	175	14	16
1957 . . .	604	483	236	79	116	176	15	11
1958 . . .	598	497	251	73	127	162	29	12
1959 . . .	596	487	242	67	153	151	15	12
1960 . . .	543	470	248	69	140	132	21	20
1961 . . .	523	450	273	79	163	150	17	21
1962 . . .	571	480	272	57	174	143	16	11
1963 . . .	533	430	191	56	138	73	11	4
	5814	4762	2487	711	1359	1465	154	128

1	2	3	4	5	6	7	8	9
				FEROZEPUR DISTRICT				
1954 . . .	90	64	34	12	21	29	1	..
1955 . . .	116	88	51	22	22	37	..	3
1956 . . .	109	89	36	23	7	54	7	7
1957 . . .	94	83	45	14	25	40	1	2
1958 . . .	94	73	34	13	16	40	8	4
1959 . . .	91	84	36	13	16	48	..	4
1960 . . .	83	71	38	14	19	33	4	9
1961 . . .	98	82	44	15	26	38	..	10
1962 . . .	86	74	44	8	34	39	..	3
1963 . . .	79	63	23	3	20	4	..	..
	940	771	385	137	206	362	21	42
				BHATINDA DISTRICT				
1954 . . .	58	54	28	6	22	11	3	3
1955 . . .	40	36	17	3	14	8	2	1
1956 . . .	36	32	20	6	14	8	3	3
1957 . . .	46	42	14	4	10	5	2	2
1958 . . .	41	39	24	8	16	8	4	4
1959 . . .	69	62	24	4	29	10	1	3
1960 . . .	61	58	33	12	21	11	7	5
1961 . . .	45	42	23	4	19	9	2	2
1962 . . .	51	47	23	5	18	7	3	2
1963 . . .	83	75	32	15	17	6	3	2
	530	487	238	67	180	83	30	27

TRIPURA STATE

Statement of Capital Cases from 1954 to 1963.

Year	No. of murders reported to the Police.	No. of cases of murder prosecuted.	No. of cases of murder convicted in Sessions Court.	No. of murder cases in which sentences of death were passed by the Sessions Court.	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge.	No. of cases of murder acqitted.	No. of cases in which sentence reduced by High Court or Supreme Court.	No. of cases in which sentence of death commuted.	Net No. of cases of murder in which the sentence of death was executed.	No. of cases pending trial in Sessions Court.
1	2	3	4	5	6 (*a*)	6 (*b*)	7	8	9	10
1954	8	5	1	..	..	4	1	..	..	..
1955	13	11	7	..	1	4	2	..	..	..
1956	10	8	3	..	..	5	1	..	..	..
1957	20	7	3	..	1	4	1	..	..	..
1958	15	12	7	..	3	5	1	..	..	..
1959	25	11	7	..	1	4	2	..	..	..
1960	30	17	8	..	3	9	..	..	..	..
1961	22	12	5	..	1	7	1	..	..	..
1962	31	12	4	..	1	8	2	..	..	..
1963	21	15	5	..	2	8	..	..	..	2

U.P. STATE

Figures of murder etc. for the State of U.P. for the years 1954 to 1963

	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1. Number of murders reported to the Police .	1344	1283	1477	1362	1554	1613	1624	2135	2245	2164
2. Number of cases of murder prosecuted . .	973	919	1046	1002	1112	1194	1248	1338	1442	1385
3. Number of cases of murder convicted in Sessions Court	354	389	415	398	435	438	439	502	590	420
4. Number of murder cases in which the sentences of death were passed by the Sessions Court . .	139	169	154	138	158	167	165	172	193	143
5. Number of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	180	170	222	210	233	247	262	323	355	251
6. Number of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court	237	233	237	254	261	254	346	359	355	278
7. Number of cases in which sentence of death commuted	29	31	36	28	46	44	52	62	41	21
8. Net number of cases of murder in which the sentence of death was executed	24	46	41	54	41	47	47	44	36	17

Figures of Murder etc. for the two notoriously criminal districts (in respect of Unnao) for years 1954 to 1963

	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1. Number of murders reported to the Police .	65	35	64	45	56	43	37	70	80	69
2. Number of cases of murder prosecuted . .	28	19	38	39	32	31	43	38	50	37
3. Number of cases of murder convicted in Sessions Court	14	8	17	16	9	13	22	18	15	7
4. Number of murder cases in which the sentences of death were passed by the Sessions Court . .	6	2	6	4	4	7	5	11	5	1
5. Number of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	5	4	8	7	1	5	13	4	7	4
6. Number of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court	..	..	..	..	..	9	2	4	3	1
7. Number of cases in which sentence of death commuted	..	..	..	..	..	5	1	13	3	..
8. Net number of cases of murder in which the sentence of death was executed	2	2	..	3	..	..	..	1	1	..

Figures of Murder etc. for the two notoriously criminal district (in respect of District Hardoi) for the years 1954 to 1963

	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1. Number of murders reported to the Police .	56	62	52	45	52	42	42	50	68	46
2. Number of cases of murder prosecuted . .	56	44	42	39	44	34	34	23	45	34
3. Number of cases of murder convicted in Sessions Court	18	32	15	26	32	25	16	22	14	5
4. Number of murder cases in which the sentences of death were passed by the Sessions Court . .	3	3	2	3	4	6	3	5	1	1
5. Number of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	5	8	6	5	11	10	13	9	10	4
6. Number of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court	2	..	4	3	1	5	1	1	..	2
7. Number of cases in which sentence of death commuted	1	3	2	..	3	3	2	4	..	..
8. Net number of cases of murder in which the sentence of death was executed	..	..	..	..	1	3	1	1	..	..

WEST BENGAL

Statement of murder cases of West Eegal for the years from 1954 to 1963

Year	No. of murder cases reported to the Police.	No. of cases of murder prosecuted.	No. of cases of murder convicted in Sessions Court.	No. of murder cases in which sentences of death were passed by the Sessions Court	No. of murder cases in which sentences of imprisonment for life were passed by the Sessions Judge	No. of cases of murder acquitted or in which sentences reduced by the High Court or Supreme Court	No. of cases in which sentence of death was commuted	Net number of cases of murders in which sentence of death executed.
1	2	3	4	5	6	7	8	9
1954 . . .	410	159	47	2	8	26	1	1
1955 . . .	447	138	46	3	24	29	1	1
1956 . . .	464	176	68	9	16	28	7	2
1957 . . .	496	199	79	7	28	36	3	4
1958 . . .	464	235	96	5	35	46	4	1
1959 . . .	450	220	82	6	35	35	2	1
1960 . . .	461	232	111	9	47	33	6	2
1961 . . .	452	247	102	9	48	32	1	..
1962 . . .	473	238	97	10	41	26	4	3
1963 . . .	470	231	83	7	46	14	2	..

The statement for two notoriously criminal Districts of West Bengal in respect of murder cases for the years 1954 to 1963

Year	Two notorious criminal districts	No. of murder cases reported to the Police.	No. of cases of murder prosecuted	No. of cases of murder convicted in Sessions Court	No. of murder cases in which sentences of death were passed by the Sessions Court	No. of murder cases in which sentences of imprisonment for life were passed by the Session Judge	No. of cases of murder acquitted or in which sentence reduced by the High Court or Supreme Court	No. of cases in which sentence of death commuted	Net number of cases of murder in which sentence of death was executed.
1	2	3	4	5	6	7	8	9	10
1954 . .	24-Parganas . .	76	30	11	..	1	..	..	..
	Burdwan . .	35	11	1	1	..	10	1	..
1955 . .	24-Parganas . .	92	16	4	..	3	..	..	..
	Burdwan . .	36	6	3	..	3	3	..	..
1956 . .	24-Parganas . .	88	32	8	..	1	..	..	..
	Burdwan . .	37	7	1	1	1	6	1	..
1957 . .	24-Parganas . .	90	28	10	..	4	..	..	..
	Burdwan . .	34	15	3	1	3	12	1	..
1958 . .	24-Parganas . .	96	40	16	..	3	..	..	..
	Burdwan . .	41	25	1	..	1	24	..	..

1	2	3	4	5	6	7	8	9	10
1959 . .	24-Parganas . .	93	42	16	1	4	1	..	..
	Burdwan . .	38	19	1	..	1	18	..	..
1960 . .	24-Parganas . .	86	40	18	1	5	1	..	..
	Burdwan . .	38	18	2	1	2	16	1	..
1961 . .	24-Parganas . .	77	41	27	4	12	1	..	..
	Burdwan . .	51	22	4	1	4	17	..	..
1962 . .	24-Parganas . .	96	44	18	2(Pending)	1	..	..	..
	Burdwan . .	41	11	3	2	3	7	1	..
1963 . .	24-Parganas . .	90	54	27	2(Pending)	13	..	..	..
	Burdwan . .	50	16	..	..	..	2	..	..

APPENDIX XXXV

INDIA—TABLE[1] SHOWING NOTICEABLE INCREASE IN THE CRIME OF MURDER IN CERTAIN STATES AND CITIES.

(1958—1962)

Increase in States

Year	Increase in States
1958	*Orissa*, Jammu and Kashmir, Kerala, *U.P.*, Madras and Bihar.
	Union Territories of Himachal Pradesh, Manipur, Tripura and Naga Hills etc.
1959	*Madhya Pradesh*, *U. P.*, Rajasthan, *Orissa* and West Bengal.
1960	Assam, Andhra Pradesh, *Madhya Pradesh*, *Orissa*, Maharashtra and Manipur.
1961	*U. P.*, Bihar, Mysore, Kerala, Madras and Nagaland.
1962	U. P., Rajasthan, Maharashtra, *Madhya Pradesh*, *Orissa*, Tripura and Andamans and Nicobar Islands.

INDIA—TABLE SHOWING NOTICEABLE INCREASE IN THE CRIME OF MURDERS IN CERTAIN CITIES[1].

Increase in particular cities

Year	Increase in cities
1958	*Bangalore and Delhi.*
1959	*Bombay.*
1960	Calcutta and *Bombay.*
1961	Kanpur and Hyderabad.
1962	*Bangalore*, Ahmedabad and Madras.

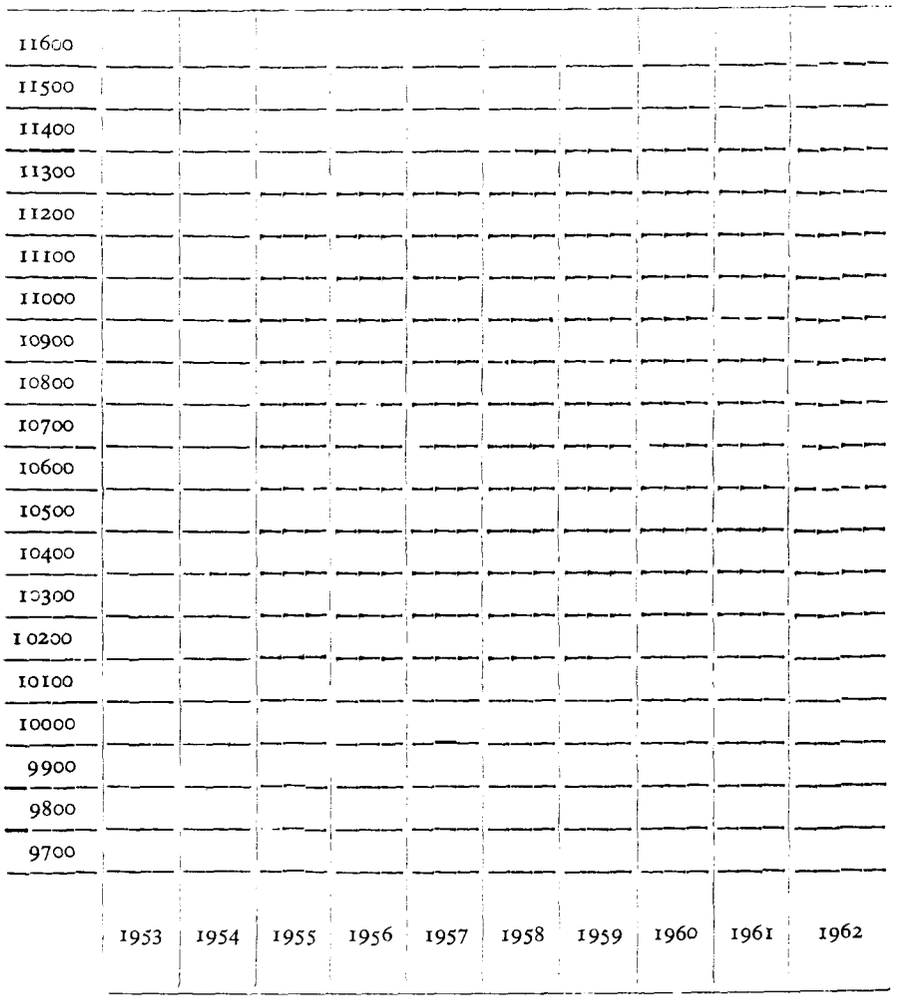
1. Based on Crime in India (1958), page 3 ; (1959), page 4 ; (1960), page 4 ; (1961), page 6 and (1962), page 6.

APPENDIX XXXVI

INDIA—GRAPH OF MURDER CASES

(1953 TO 1962)

(Cases reported to the Police)[1]



1. Based on Crime in India (1953), (1954) and subsequent years.

APPENDIX XXXVII

INDIA—DETAILED ANALYSIS OF MURDERS IN INDIA (1951—1961)

(i) *Causes of Murders;*
(ii) *Means employed to commit murder.*

MURDERS IN INDIA IN 1951

Detailed Analysis of Causes of Murders in India

S.No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	81	101	110	61	8	54	5	281
2.	Assam	25	95	42	4	..	40	2	..
3.	Bihar	60	19	27	1	..	114	..	448
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu & Kashmir	6	9	2	..	..	10	..	24
6.	Kerala	3	52	28	7	..	17	..	65
7.	Madhya Pradesh	104	169	43	11	3	123	4	449
8.	Madras	47	75	78	4	4	162	18	283
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	40	68	58	5	4	69	1	334
11.	Orissa	17	39	1	..	..	27	..	114

1	2	3	4	5	6	7	8	9	10
12.	Punjab	62	194	46	44	5	162	..	458
13.	Rajasthan	38	78	45	10	6	41	7	205
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	22	101	48	..	..	79	..	139
15A.	Calcutta	10	35	8	..	..	..	..	3
16.	A. & N. Islands	..	1	..	..	..	..	..	1
17.	Delhi	..	..	..	..	..	..	..	..
18.	Himachal Pradesh	5	3	..	..	..	2	..	3
19.	Manipur	..	2	1	..	..	1	..	2
20.	Nagaland	..	..	..	..	..	1	..	..
21.	Pondicherry	..	..	..	..	..	..	..	..
22.	Tripura	2	2	..	..	..	1	..	3

1. Based on figures supplied by Home Ministry.

S.No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	65	119	106	16	16	58	4	363
2.	Assam	33	90	56	5	..	61	..	..
3.	Bihar	74	12	28	1	..	148	..	504
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu & Kashmir	6	7	6	..	..	3	..	19
6.	Kerala	9	62	23	6	1	16	..	86
7.	Madhya Pradesh	103	142	48	21	1	142	1	444
8.	Madras	57	76	82	13	1	205	14	352
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	44	54	65	7	1	105	1	357
11.	Orissa	23	31	..	2	..	37	..	147
12.	Punjab	49	219	55	30	2	158	1	414
13.	Rajasthan	51	87	58	18	7	44	5	218
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	24	101	66	..	1	88	8	112
15A.	Calcutta	9	27	7	..	..	..	..	2
16.	A&N Islands	..	1	..	..	..	..	..	1
17.	Delhi	..	..	..	..	..	..	..	..
18.	Himachal Pradesh	6	..	1	..	..	3	..	7
19.	Manipur	..	1	..	..	..	1	..	5
20.	Nagaland	1	..	..	..	..	..	..	..
21.	Pondicherry	..	..	..	..	..	..	..	..
22.	Tripura	3	2	1	..	..	1	..	13

S.No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	73	108	99	11	4	74	6	348
2.	Assam	26	95	59	6	1	42	..	..
3.	Bihar	68	18	17	2	..	112	1	463
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu & Kashmir	13	9	5	..	..	4	..	12
6.	Kerala	7	45	21	9	..	19	3	104
7.	Madhya Pradesh	94	148	58	16	7	144	9	516
8.	Madras	54	90	71	9	3	183	17	359
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	53	46	57	5	5	84	..	350
11.	Orissa	13	38	..	..	..	27	..	146
12.	Punjab	45	112	31	10	3	134	..	409
13.	Rajasthan	40	69	36	7	6	45	3	191
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	31	83	63	1	..	82	..	114
15A.	Calcutta	12	32	10	..	..	..	..	3
16.	A&N Islands	..	3	..	..	..	..	..	1
17.	Delhi	..	..	..	..	..	..	..	..
18.	Himachal Pradesh	1	3	..	..	..	3	..	8
19.	Manipur	..	2	..	..	..	..	..	5
20.	Nagaland	..	2	1	..	..	..	..	4
21.	Pondicherry	..	..	..	..	..	..	..	..
22.	Tripura	5	3	2	..	..	1	..	5

S. No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during petty feuds and riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	54	113	84	8	7	80	9	356
2.	Assam	20	116	64	3	..	40	..	..
3.	Bihar	73	25	17	..	..	122	..	489
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu and Kashmir	7	9	4	1	1	1	..	14
6.	Kerala	3	62	19	7	..	14	1	68
7.	Madhya Pradesh	87	169	37	25	11	157	8	508
8.	Madras	34	106	67	6	4	162	13	298
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	43	63	56	3	1	87	11	345
11.	Orissa	14	58	2	..	..	27	..	162
12.	Punjab	28	122	29	8	3	114	..	325
13.	Rajasthan	31	75	36	5	3	38	9	175
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	23	83	59	..	1	71	..	105
15A.	Calcutta	12	39	7	..	1	..	..	4
16.	A. & N. Islands	..	2	..	..	2	..	..	..
17.	Delhi	..	..	..	..	..	..	..	..
18.	Himachal Pradesh	..	1	..	..	..	2	..	7
19.	Manipur	..	..	..	..	..	..	..	8
20.	Nagaland	..	1	..	..	..	..	..	3
21.	Pondicherry	..	..	..	..	..	..	..	2
22.	Tripura	1	3	..	..	..	2	..	2

S.No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	46	102	86	19	6	58	11	317
2.	Assam	23	107	62	6	2	47	..	..
3.	Bihar	91	28	21	2	..	127	..	468
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu & Kashmir	12	12	5	..	..	16	1	21
6.	Kerala	3	68	27	9	1	16	2	93
7.	Madhya Pradesh	74	167	55	23	5	161	7	525
8.	Madras	39	84	64	3	8	189	20	333
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	31	69	50	3	3	85	5	336
11.	Orissa	12	42	..	2	..	23	..	176
12.	Punjab	30	131	29	11	5	101	..	311
13.	Rajasthan	32	83	47	5	4	46	4	181
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	26	95	65	..	..	71	..	137
15A.	Calcutta	6	27	2	..	..	..	..	7
16.	A&N Islands	..	4	..	..	..	..	..	1
17.	Delhi	..	..	..	..	..	..	..	..
18.	Himachal Pradesh	1	..	2	2	..	..	..	6
19.	Manipur	..	..	..	..	..	..	..	6
20.	Nagaland	..	1	..	2	..	..	..	1
21.	Pondicherry	..	..	..	..	..	..	..	1
22.	Tripura	4	-	3	..	..	..	..	5

S.No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	64	110	73	20	5	56	11	388
2.	Assam	24	100	51	7	..	54	..	..
3.	Bihar	97	28	18	1	..	106	..	502
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu & Kashmir	12	8	5	..	..	2	..	17
6.	Kerala	..	54	20	8	..	16	1	71
7.	Madhya Pradesh	104	170	49	32	7	134	7	614
8.	Madras	45	95	86	8	5	159	22	276
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	33	63	46	3	3	81	8	327
11.	Orissa	16	41	..	1	..	23	..	185
12.	Punjab	27	83	39	7	5	73	1	341
13.	Rajasthan	32	83	33	11	9	25	8	180
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	30	92	67	1	..	81	2	136
15A.	Calcutta	4	24	5	..	..	..	..	10
16.	A&N Islands	1	3	..	..	..	..	..	1
17.	Delhi	..	..	..	..	..	..	..	..
18.	Himachal Pradesh	1	3	..	..	..	..	..	7
19.	Manipur	..	..	1	..	..	2	..	9
20.	Nagaland	..	..	2	40	6	..	..	3
21.	Pondicherry	..	..	..	..	..	..	..	3
22.	Tripura	1	4	1	..	..	..	..	4

S. No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds and riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	60	104	111	29	6	73	12	507
2.	Assam	41	108	53	6	1	44	..	..
3.	Bihar	82	37	27	..	3	108	1	540
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu and Kashmir	13	17	4	..	..	4	2	25
6.	Kerala	1	81	32	6	..	28	6	88
7.	Madhya Pradesh	109	183	49	33	8	164	6	644
8.	Madras	37	97	75	7	7	184	35	278
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	39	70	47	3	2	81	4	375
11.	Orissa	9	45	..	..	..	35	..	158
12.	Punjab	27	74	26	5	4	79	..	388
13.	Rajasthan	28	70	34	10	6	51	6	209
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	26	107	74	1	2	99	..	125
15A.	Calcutta	5	30	7	..	1	..	..	3
16.	A. & N. Islands	..	2	1	..	..	..	..	..
17.	Delhi	9	13	9	..	..	..	..	20
18.	Himachal Pradesh	1	1	..	..	..	6	..	10
19.	Manipur	..	2	..	..	..	1	..	16
20.	Nagaland	..	..	1	10	2	..	..	..
21.	Pondicherry	2	..	..	..	..	..	..	8
22.	Tripura	3	8	1	..	..	1	..	7

S. No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds and riots as a result of altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	60	134	97	11	5	77	5	469
2.	Assam	23	117	58	6	1	51	..	..
3.	Bihar	93	30	35	1	..	121	..	571
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu and Kashmir	6	15	4	2	1	8	..	31
6.	Kerala	3	79	26	8	4	30	4	107
7.	Madhya Pradesh	116	203	58	37	12	131	7	616
8.	Madras	31	104	70	13	9	144	26	297
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	35	57	56	3	2	79	2	410
11.	Orissa	14	9	..	..	..	40	..	197
12.	Punjab	20	102	26	6	5	110	..	331
13.	Rajasthan	37	91	47	8	3	37	13	192
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	37	107	64	1	..	76	..	124
15A.	Calcutta	1	29	2	..	..	..	..	4
16.	A. & N. Islands	..	..	..	..	..	..	..	4
17.	Delhi	13	15	19	..	..	..	..	17
18.	Himachal Pradesh	..	3	1	..	..	3	..	6
19.	Manipur	1	..	2	..	..	..	..	6
20.	Nagaland	1	1	..	2	..	..	..	3
21.	Pondicherry	..	..	..	..	..	..	..	4
22.	Tripura	2	3	4	..	..	2	..	3

S. No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	69	132	80	9	3	71	9	390
2.	Assam	29	111	55	6	4	49	..	..
3.	Bihar	86	20	26	..	2	123	4	548
4.	Gujarat	..	..	..	..	..	..	..	..
5.	Jammu & Kashmir	8	12	5	..	..	6	..	30
6.	Kerala	4	82	35	10	1	31	5	110
7	Madhya Pradesh	118	215	57	41	7	171	11	674
8.	Madras	33	80	96	5	1	159	31	303
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	39	62	70	1	5	92	..	377
11.	Orissa	21	29	..	..	1	16	..	234
12.	Punjab	24	100	38	8	6	116	..	310
13.	Rajasthan	45	82	33	6	8	46	7	227
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	22	92	70	2	..	87	..	140
15A.	Calcutta	4	23	5	..	..	..	..	2
16.	A&N Islands	..	1	..	..	..	..	..	2
17.	Delhi	21	18	10	..	..	..	..	24
18.	Himachal Pradesh	4	1	1	..	..	5	..	9
19.	Manipur	..	3	2	..	2	..	2	5
20.	Nagaland	..	..	1	2	..	..	..	3
21.	Pondicherry	..	2	..	..	1	..	..	2
22.	Tripura	5	6	3	1	..	2	..	8

S. No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	73	167	90	10	6	66	10	450
2.	Assam	41	129	70	8	..	50	26	..
3.	Bihar	76	21	36	..	..	136	1	550
4.	Gujarat	45	138	11	..	11	53	1	638
5.	Jammu & Kashmir	9	9	6	4	..	5	..	23
6.	Kerala	2	74	33	13	1	21	3	85
7.	Madhya Pradesh	112	86	51	53	14	190	1	672
8.	Madras	33	95	65	8	1	164	28	284
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	36	71	71	..	2	89	..	391
11.	Orissa	14	13	..	..	1	15	..	282
12.	Punjab	23	90	33	6	8	82	..	299
13.	Rajasthan	28	81	48	7	3	57	3	225
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal	31	93	61	..	1	84	1	117
15/	Calcutta	4	32	6	..	..	..	..	9
16.	A&N Islands	..	..	..	..	..	..	..	1
17.	Delhi	8	17	10	..	..	..	..	21
18.	Himachal Pradesh	3	2	..	..	..	1	..	10
19.	Manipur	..	4	1	..	1	1	6	18
20.	Nagaland	..	1	..	7	1	..	..	1
21.	Pondicherry	..	..	..	..	..	..	..	5
22.	Tripura	4	15	2	..	..	2	..	7

S. No.	State	Causes of Murders							
		Murders for gain	Deliberate murders in revenge	Murders committed during party feuds & riots as a result of sudden altercation	Murders for purposes of terrorisation	Murders of public servants or persons assisting them for doing their duty	Murders in land disputes	Murders in communal disturbances	Miscellaneous
1	2	3	4	5	6	7	8	9	10
1.	Andhra Pradesh	78	163	104	11	5	64	11	406
2.	Assam	34	126	57	5	..	66	3	..
3.	Bihar	87	15	27	3	2	145	..	574
4.	Gujarat	44	79	42	..	13	48	..	642
5.	Jammu & Kashmir	3	10	5	..	1	6	1	20
6.	Kerala	5	74	18	12	1	38	2	99
7.	Madhya Pradesh	134	204	58	47	12	186	33	704
8.	Madras	38	109	42	9	4	162	6	330
9.	Maharashtra	..	..	..	..	..	..	..	..
10.	Mysore	38	79	63	2	1	85	3	402
11.	Orissa	13	22	..	..	..	22	..	213
12.	Punjab	23	89	26	8	8	77	..	314
13.	Rajasthan	31	77	34	11	6	58	5	217
14.	Uttar Pradesh	..	..	..	..	..	..	..	..
15.	West Bengal.	31	92	63	..	1	80	..	157
15A.	Calcutta	4	26	3	..	..	..	..	2
16.	A&N Islands	1	..	..	..	..	..	..	2
17.	Delhi	8	16	7	..	..	..	..	21
18.	Himachal Pradesh	2	4	1	..	..	2	..	11
19.	Manipur	1	2	3	..	..	1	4	14
20.	Nagaland	..	1	..	7	5	..	..	4
21.	Pondicherry	..	..	..	..	..	..	..	7
22.	Tripura	4	5	3	..	..	1	..	9

Detailed Analysis of means of causing murders

S. No.	State	Means employed to commit murder							
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	Remarks, if any
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	25	8	35	195	180	66	192	
2.	Assam	1	20	5	45	112	2	23	
3.	Bihar	22	8	46	187	320	3	83	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	3	2	4	17	11	..	14	
6.	Kerala	..	..	1	30	98	5	38	
7.	Madhya Pradesh	20	12	60	206	307	59	162	
8.	Madras	4	14	20	110	346	5	172	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	7	11	25	124	227	31	154	
11.	Orissa	11	1	11	56	72	1	46	
12.	Punjab	6	3	29	83	440	226	184	
13.	Rajasthan	7	4	18	124	108	36	133	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	3	..	11	97	183	4	91	
15A.	Calcutta	1	..	8	11	36	..	..	
16.	A. & N. Islands	..	..	..	..	2	..	..	
17.	Delhi	..	..	..	..	..	..	..	
18.	Himachal Pradesh	1	..	1	3	4	1	3	
19.	Manipur	..	..	..	1	5	..	..	
20.	Nagaland	..	..	..	..	1	..	..	
21.	Pondicherry	..	..	..	..	..	..	..	
22.	Tripura	..	..	1	..	1	..	6	

1. Based on figures supplied by Ministry of Home Affairs.

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathis, sticks, etc.	By sharp edged weapons	By the use of fire-arms	Mis-cellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	16	8	39	203	178	26	277	
2.	Assam	5	14	4	72	120	4	26	
3.	Bihar	14	16	38	187	369	6	137	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	2	1	3	5	10	5	15	
6.	Kerala	1	..	3	20	137	..	42	
7.	Madhya Pradesh	25	4	61	289	275	80	168	
8.	Madras	7	17	15	144	408	9	200	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	5	10	31	118	261	24	185	
11.	Orissa	12	5	14	75	82	2	50	
12.	Punjab	13	2	44	89	416	223	141	
13.	Rajasthan	11	9	21	137	120	53	137	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	1	..	7	115	194	6	77	
15A.	Calcutta	1	..	4	12	25	3	..	
16.	A. & N. Islands	..	..	..	..	2	..	..	
17.	Delhi	..	..	..	..	..	..	..	
18.	Himachal Pradesh	1	..	1	4	5	3	3	
19.	Manipur	..	..	..	1	6	..	..	
20.	Nagaland	..	..	..	1	..	..	..	
21.	Pondicherry	..	..	..	..	..	..	..	
22.	Tripura	..	..	..	2	5	..	13	

S. No.	State	Means employed to commit murder. By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Mis-cellaneous	Remarks, if any
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	14	6	54	215	218	4	211	
2.	Assam	2	24	3	29	147	1	23	
3.	Bihar	12	7	50	145	340	12	115	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	1	..	5	10	9	4	14	
6.	Kerala	..	..	4	34	116	6	48	
7.	Madhya Pradesh	21	8	50	312	339	71	191	
8.	Madras	4	21	19	122	392	6	222	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	12	6	34	118	213	18	199	
11.	Orissa	..	3	16	55	90	4	56	
12.	Punjab	14	2	47	62	345	165	118	
13.	Rajasthan	11	6	17	118	113	35	102	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	2	3	3	108	190	4	64	
15A.	Calcutta	..	..	8	10	38	1	..	
16.	A. & N. Islands	..	..	..	3	1	..	..	
17.	Delhi	..	..	..	..	..	..	..	
18.	Himachal Pradesh	..	..	1	4	4	4	2	
19.	Manipur	..	..	..	4	5	1	..	
20.	Nagaland	..	..	..	1	6	..	..	
21.	Pondicherry	..	..	..	..	..	..	..	
22.	Tripura	..	..	..	1	10	..	5	

S. No.	State	Means employed to commit murder							Remarks, if any,
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous.	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	18	8	36	206	190	7	246	
2.	Assam	..	14	6	48	139	1	35	
3.	Bihar	12	7	59	203	335	18	92	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	..	..	3	10	4	3	17	
6.	Kerala	1	..	3	16	118	1	35	
7.	Madhya Pradesh	15	10	68	327	339	78	165	
8.	Madras	3	26	12	100	334	2	213	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	3	7	31	116	251	28	173	
11.	Orissa	10	4	18	80	85	..	66	
12.	Punjab	16	2	66	44	359	95	77	
13.	Rajasthan	10	5	17	105	110	27	98	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	4	..	6	86	165	4	77	
15A.	Calcutta	2	..	5	9	42	2	3	
16.	A. & N. Islands	..	..	..	2	2	..	..	
17.	Delhi	..	..	..	..	..	..	..	
18.	Himachal Pradesh	2	1	2	2	2	..	1	
19.	Manipur	..	..	..	1	6	1	..	
20.	Nagaland	..	..	..	4	..	..	..	
21.	Pondicherry	..	..	..	..	..	..	2	
22.	Tripura	..	..	..	2	4	..	2	

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	11	9	31	159	219	15	201	
2.	Assam	..	17	4	43	142	5	26	
3.	Bihar	12	14	35	177	372	12	115	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	..	..	2	18	13	18	16	
6.	Kerala	..	..	..	32	141	1	45	
7.	Madhya Pradesh	13	13	68	332	348	85	158	
8.	Madras	5	23	13	116	346	8	229	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	7	8	37	98	233	27	172	
11.	Orissa	4	..	26	89	43	..	98	
12.	Punjab	5	2	42	39	343	79	108	
13.	Rajasthan	13	1	18	109	112	36	113	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	4	..	14	102	202	4	68	
15A.	Calcutta	3	..	7	6	24	1	1	
16.	A. & N. Islands	..	..	..	1	4	..	..	
17.	Delhi	..	..	..	..	..	..	..	
18.	Himachal Pradesh	..	1	1	5	3	1	4	
19.	Manipur	1	..	..	1	3	1	..	
20.	Nagaland	..	..	..	1	2	1	..	
21.	Pondicherry	..	..	..	..	..	..	1	
22.	Tripura	..	..	..	2	3	1	7	

S. No.	State	Means employed to commit murder: By poisoning	By hanging	By throttling or stone throwing.	By blunt weapons, lathi sticks, etc.	By sharp weapons	By the use of fire-arms	Miscellaneous	Remarks, if any
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	18	11	41	154	181	9	313	
2.	Assam	1	15	6	47	136	3	28	
3.	Bihar	22	6	59	185	358	9	113	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	4	..	3	11	16	..	10	
6.	Kerala	..	..	..	16	120	7	27	
7.	Madhya Pradesh	15	14	81	336	373	122	176	
8.	Madras	13	34	13	126	309	11	190	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	7	9	30	111	227	20	160	
11.	Orissa	5	..	21	88	39	..	113	
12.	Punjab	14	..	39	48	349	67	59	
13.	Rajasthan	4	4	22	120	119	35	77	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	..	2	16	106	195	5	85	
15A.	Calcutta	..	..	7	4	31	1	..	
16.	A. & N. Islands	..	..	..	..	5	..	..	
17.	Delhi	..	..	..	..	..	..	..	
18.	Himachal Pradesh	1	..	1	3	4	1	1	
19.	Manipur	..	..	..	2	7	1	2	
20.	Nagaland	..	..	..	4	5	42	..	
21.	Pondicherry	..	..	1	..	2	..	..	
22.	Tripura	..	..	..	2	4	..	4	

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	22	13	41	201	208	9	408	
2.	Assam	..	23	6	47	122	7	38	
3.	Bihar	14	11	46	200	375	8	144	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	3	2	5	18	13	10	14	
6.	Kerala	..	..	4	37	155	4	42	
7.	Madhya Pradesh	22	12	56	354	434	145	173	
8.	Madras	8	34	13	120	237	14	194	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	7	11	29	107	268	13	185	
11.	Orissa	3	..	19	75	37	..	113	
12.	Punjab	16	..	36	39	352	61	99	
13.	Rajasthan	9	8	15	114	145	45	78	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	6	4	17	111	191	6	99	
15A.	Calcutta	1	..	5	5	30	1	4	
16.	A. & N. Islands	..	1	..	2	..	..	..	
17.	Delhi	3	1	9	2	24	1	11	
18.	Himachal Pradesh	3	..	3	5	4	1	2	
19.	Manipur	..	..	..	3	12	2	2	
20.	Nagaland	..	..	..	..	1	12	..	
21.	Pondicherry	..	..	3	3	3	..	1	
22.	Tripura	..	..	1	3	8	1	7	

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	17	11	51	236	234	9	297	
2.	Assam	..	26	3	23	134	17	43	
3.	Bihar	14	11	53	231	420	15	107	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	2	2	5	21	16	3	18	
6.	Kerala	1	..	6	14	186	4	50	
7.	Madhya Pradesh	19	9	61	355	434	118	184	
8.	Madras	8	40	13	116	344	6	167	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	10	14	29	124	245	31	191	
11.	Orissa	4	..	25	77	33	..	121	
12.	Punjab	9	2	26	35	391	63	74	
13.	Rajasthan	14	8	23	128	134	55	66	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	1	..	12	105	205	7	79	
15A.	Calcutta	..	..	3	5	24	..	4	
16.	A. & N. Islands	..	..	..	3	1	..	..	
17.	Delhi	6	..	8	3	37	3	7	
18.	Himachal Pradesh	..	..	1	6	4	1	1	
19.	Manipur	..	..	..	3	3	3	..	
20.	Nagaland	..	..	..	2	2	3	..	
21.	Pondicherry	..	..	..	1	..	..	3	
22.	Tripura	..	..	..	2	5	4	3	

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	17	13	52	168	223	7	283	
2.	Assam	1	29	6	25	137	9	47	
3.	Bihar	14	13	53	198	370	16	145	
4.	Gujarat	..	..	..	..	..	..	..	
5.	Jammu and Kashmir	3	3	4	21	9	7	14	
6.	Kerala	..	..	8	22	191	8	49	
7.	Madhya Pradesh	24	12	82	354	508	123	191	
8.	Madras	9	28	23	124	358	5	161	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	13	16	46	113	253	27	178	
11.	Orissa	4	..	29	83	32	1	152	
12.	Punjab	7	..	34	48	343	96	74	
13.	Rajasthan	8	8	20	156	123	48	91	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	7	1	18	91	209	4	83	
15A.	Calcutta	..	..	3	5	23	1	2	
16.	A. & N. Islands	..	..	..	..	3	..	..	
17.	Delhi	3	..	6	5	52	1	6	
18.	Himachal Pradesh	1	..	4	3	4	2	6	
19.	Manipur	..	..	..	3	8	3	..	
20.	Nagaland	..	..	..	..	1	..	2	
21.	Pondicherry	..	..	..	..	6	2	..	
22.	Tripura	1	..	..	4	9	2	9	

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	23	17	65	214	253	12	288	
2.	Assam	..	13	9	60	178	14	50	
3.	Bihar	13	14	61	202	372	14	144	
4.	Gujarat	7	..	100	211	486	69	24	
5.	Jammu and Kashmir	3	..	5	16	18	6	13	
6.	Kerala	..	..	2	24	166	3	37	
7.	Madhya Pradesh	19	14	76	339	490	103	238	
8.	Madras	17	34	17	118	339	6	147	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	7	5	28	129	270	28	192	
11.	Orissa	3	..	37	96	35	1	153	
12.	Punjab	8	1	31	26	320	93	62	
13.	Rajasthan	8	11	34	139	117	43	100	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	2	3	22	102	179	9	72	
15A.	Calcutta	1	..	5	8	34	1	2	
16.	A. & N. Islands	..	..	..	1	..	..	..	
17.	Delhi	4	..	6	6	33	2	5	
18.	Himachal Pradesh	1	..	..	3	7	2	3	
19.	Manipur	1	..	..	5	23	1	1	
20.	Nagaland	..	..	..	..	1	9	..	
21.	Pondicherry	..	..	1	1	1	..	2	
22.	Tripura	..	..	1	4	17	1	7	

S. No.	State	Means employed to commit murder							Remarks, if any
		By poisoning	By hanging	By throttling or stone throwing	By blunt weapons, lathi sticks, etc.	By sharp edged weapons	By the use of fire-arms	Miscellaneous	
		11	12	13	14	15	16	17	18
1.	Andhra Pradesh	22	7	65	201	262	10	275	
2.	Assam	3	18	17	25	169	9	50	
3.	Bihar	24	9	72	195	401	15	137	
4.	Gujarat	11	5	82	193	484	46	47	
5.	Jammu and Kashmir	1	..	6	6	16	3	13	
6.	Kerala	2	..	4	33	175	1	34	
7.	Madhya Pradesh	10	5	88	385	527	150	213	
8.	Madras	7	25	27	146	348	6	132	
9.	Maharashtra	..	..	..	..	..	..	..	
10.	Mysore	16	14	43	136	281	21	162	
11.	Orissa	3	..	23	69	34	1	140	
12.	Punjab	8	..	38	42	341	64	52	
13	Rajasthan	10	7	34	133	133	30	92	
14.	Uttar Pradesh	..	..	..	..	..	..	..	
15.	West Bengal	5	1	29	113	203	5	68	
15A.	Calcutta	1	..	4	6	23	1	..	
16.	A. & N. Islands	..	..	..	..	2	1	..	
17.	Delhi	3	..	7	6	31	2	3	
18.	Himachal Pradesh	..	..	..	8	6	..	6	
19.	Manipur	1	..	..	2	18	1	3	
20.	Nagaland	..	..	..	2	5	10	..	
21.	Pondicherry	..	..	1	2	2	1	1	
22	Tripura	1	..	1	5	7	2	6	

APPENDIX XXXVIII

INDIA—NUMBER OF KIDNAPPING AND ABDUCTION CASES

(1953-1962)[1]

Year	No. of cases reported to the Police	Whether increase or decrease compared with previous year
1953	5,261	Increase
1954	5,514	Increase
1955	5,529	Increase
1956	5,905	Increase
1957	5,821	Decrease
1958	6,043	Increase
1959	6,459	Increase
1960	6,024	Decrease
1961	6,698	Increase
1962	7,119	Increase

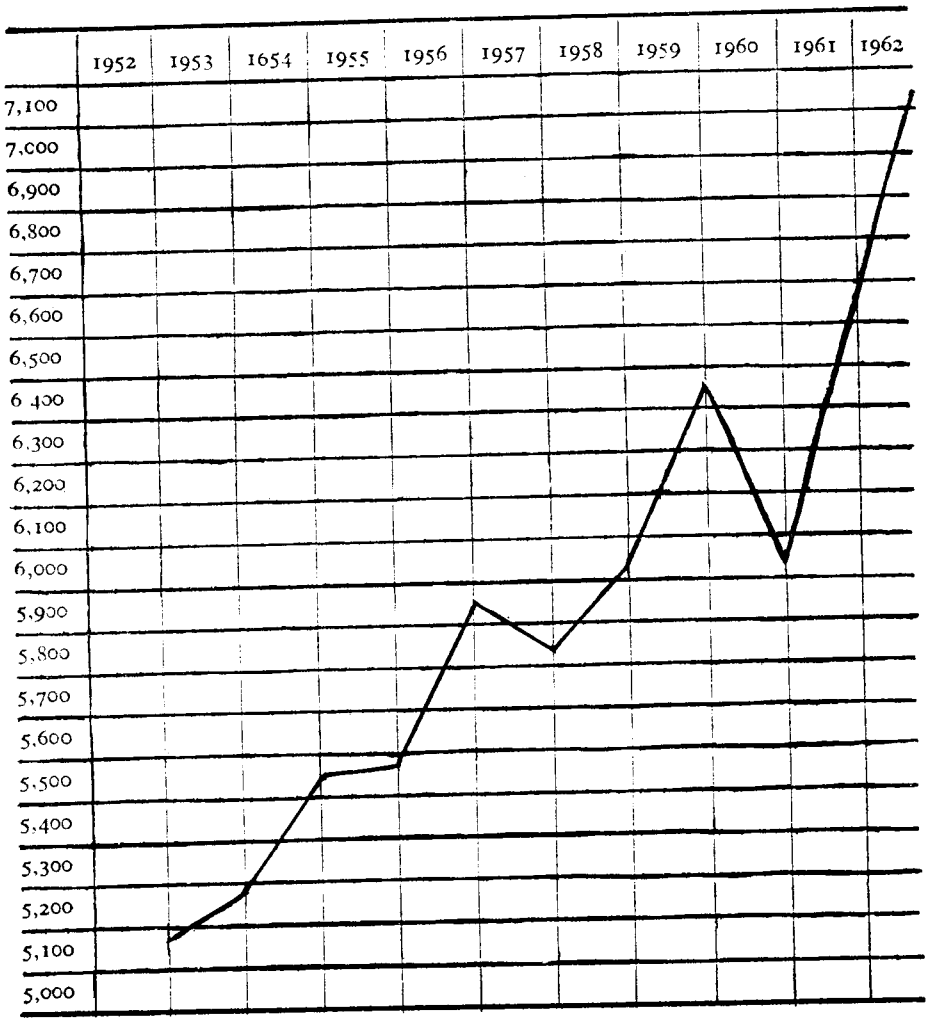
1 *See* Crime in India, (1953) page 2, bottom; (1954) page 3, bottom ; (1955) page 3, top; (1956) page 3, middle; (1957) page 4, middle; (1958) page 4, middle; (1959) page 5, middle; (1961) page 7, top; (1962) pages 2 and 7.

APPENDIX XXXIX

INDIA—GRAPH OF KIDNAPPING AND ABDUCTION CASES [1]

(REPORTED TO THE POLICE)

(1952 to 1962)



1. Based on Crime in India (1952), (1953) and subsequent years.

APPENDIX XL

INDIA—NUMBER OF JUVENILE OFFENDERS APPREHENDED FOR MURDERS, ETC.

(1958 to 1962)

India—Number of Juvenile Offenders apprehended for murder etc. under Age Groups[1]

(1958-1962)

Head of Crime	*7—12		*12—17		*17—21	
Murder, attempt to commit murder and culpable homicide not amounting to murder.	Boys	Girls	Boys	Girls	Boys	Girls
Year						
1958	9	2	64	12	251	30
1959	13	2	83	9	425	27
1960	16	..	151	1	477	13
1961	17	3	112	6	454	11
1962*	25	..	99	11	435	11

1. Based on Crime in India, (1958), page 11; (1959), page 13; (1960), page 11; (1961), page 13 and (1962), page 15.

*Figures for the year 1962 are for the age groups of 7-12, 12-16 and 16-21 respectively.

APPENDIX XLI

ABOLITIONIST AND RETENTIONIST COUNTRIES, AND RATES OF HOMICIDE, 1962 (ALPHABETICALLY ARRANGED)

Abolitionist and retentionist[1] *countries, and homicide rates* 1962 (*Note—Abolitionist countries whose rates for* 1962 *were higher than India are underlined*)

NOTE :—(1) The rates are the number of deaths per 1,00,000 of the population, and taken from U.N. Demographic Year Book, 1962, and are subject to the observations made in the U.N. Publication.[2] They include deaths from war as well as deaths from homicide.

NOTE :—(2) The rates are, in most cases, for the year 1960, or 1961.

Homicide rates in various countries

Explanations of symbols

A J — Abolitionist *De jure*

A F —Abolitionist *De facto*

A C — Almost completely abolitionist

R — Retentionist

Abolitionist and Retentionist countries

		Rate
Afghanistan	R	
Arab Republic	*See* U.A.R.	
Argentina (1922) . . . . . (includes accidents, suicides also)	A J	46·1
Australia (except two States) . . .	R	1·5 (for whole country)
Australia (Queensland)	A J	
Australia (New South Wales) . . .	A C	
Austria (1945) except in the event of proclamation of a state of emergency .	A J	1·1
Belgium (1867)	A F	0·7
Brazil (1889)	A J	10·8

1 Rates are compiled from figures given in U.N. Publication—Demographic Year Book, 1962, pages 554—572.

2 U. N. Demographic Year Book, (1962), pages 554—572.

		Rate
Burma	R	1·5
Cambodia	R	
Canada	R	1.2
Central African Republic	R	
Ceylon	R	3·3
Chile	R	4·0
China (Taiwan)	R	0·7
Colombia (1910)	A J	36·4
Costa Rica (1882)	A J	3·0
Cuba	R	
Czechoslovakia	R	58·5
Dahomey	R	
Denmark (1930)	A J	0·5
Dominican Republic (1924)	A J	2·1
Ecuador (1897) (includes accidents, suicides also)	A J	65·9
El Salvador	R	
Federal Republic of Germany	*See* 'Germany'	
Finland (1949)	A J	2·5
France	R	2·3
Gambia	R	
Germany (Federal Republic) (1949)	A J	1·2
Ghana	R	
Gibraltar	R	
Greece	R	1·5
Greenland (1954)	A J	
Guatemala	R	11·0
Hong Kong	R	0·9
Iceland (1940)	A J	0·6
India	R	2·6 (Based on "Crime in India" 1962).

		Rate
Indonesia	R	
Iran	R	
Iraq	R	
Ireland	R	0·2
Italy (1944)	A J	1·5
Ivory Coast	R	
Japan	R	1·7
Laos	R	
Lebanon	R	
Liberia	R	
Liechtenstein (1798)	A F	
Luxembourg	A F	0·9
Malaya	R	
Mauritius	R	0·9
Mexico (four States out of 29 *i.e.* the States of Morelos, Oaxaca, San Luis Potosi and Tabasco)	R	33·2 for whole country
Mexico (25 States out of 29 and the federal territory) Constitution, 1931.	A J	
Morocco	R	
Netherlands (1870)	A J	0·4
Netherlands (Antilles) (1957)	A J	
Netherland New Guinea	R	
New Zealand (retains for treason only. *See* Crimes Act, 1961, sections 74 and 172).	A C	1·1
Nicaragua	A C	21·9
Nigeria	R	3·3 (Nigeria Re-Union) 4·4 Nigeria (Lagos Federal Territory)
Northern Rhodesia	R	
Norway (1905)	A J	0·4
Nyasaland	R	
Pakistan	R	

		Rate
Philippines	R	2·1
Poland	R	1·4
Portugal (1867)	A J	1·4
San Marino (1865)	A J	
Senegal	R	
Seychelles	R	
Somalia (Northern)	R	
Somalia (Central and Southern)	R	
South Africa	R	
Spain	R	0·8
Sudan	R	
Surinam	R	
Sweden (1921)	A J	0·6
Switzerland (1937)	A J	0·6
Tanganyika	R	
Thailand	R	
Togo	R	
Turkey	R	
United Arab Republic	R	3·1
United Kingdom (for capital murder)	R	7·0 United Kingdom—England & Wales. 0·8 United Kingdom—Northern Ireland. 0·5 Scotland.
United States of America Alaska (1957), Delaware (1958), Hawaii (1957), Maine (1887), Minnesota (1911), Wisconsin (1853).	A J	
United States of America Michigan (1847), North Dakota (1915), Rhode Island (1852)	A C	4·7 *for whole country.*
United States of America (in principle 42 States out of 50, District of Columbia and the Federal System).	R	
Union of Soviet Socialist Republics	R	
Uruguay (1907)	A J	4·5

		Rate
Vatican City State	A F	1
Venezuela (1863)	A I	
Vietnam	R	
Western Pacific Islands	R	
Yugoslavia	R	
Zanzibar	R	

APPENDIX XLII

COUNTRY-WISE RATES OF HOMICIDE, 1962[1] (COUNTRIES ARRANGED CONTINENT-WISE)

(Rates includes *deaths from war* also)

(*Rate per* 100,000)

	Rate per 100,000 of population
Africa	
Mauritius	0·9
Nigeria (Lagos Federal Territory)	4·4
Nigeria (Re-Union)	3·3
Rhodesia—Southern Rhodesia	0·9
South Africa—Asiatic Population	5·5
South Africa—Coloured Population	14·2
South Africa—White Population	2·1
United Arab Republic	3·1
America	
Canada	1·2
U.S.A.	4·7
Barbados	1·7
Costa Rica	3·0
Dominican Republic	2·1
Grenada	1·1
Guatemala	11·0
Mexico	33·2
Nicaragua	21·9
Panama	3·7
Puerto Rico	6·2
St. Lucia (includes accidents, suicides also)	29·9
Trinidad-Tobago	4·8
Argentina (includes accidents, suicides also)	46·1
Brazil	10·8
British Guiana	1·5

1. Based mainly on U.N. Demographic Survey (1962).

	Rate per 1,00,000 of population
America—contd.	
Chile	4·0
Colombia	36·4
Ecuador (includes accidents, suicides also)	65·9
Uruguay	4·6
Asia	
Aden	9·9
Burma	1·5
Ceylon	3·3
China (Taiwan)	0·7
Hong Kong	0·9
India	2·6 (based on 'Crime in India' 1962, page 23).
Israel (includes accidents, suicides also)	36·9
Japan	1·7
Jordan	1·2
Korea	2·2
North Borneo	2·6
Philippines	2·1
Ryukyu Islands	2·3
Singapore	2·7
Europe	
Austria ¶	1·1
Belgium	0·7
Bulgaria	1·7
Channel Islands	14·9
Czechoslovakia	58·5
Denmark	0·5
Finland	2·5
France ¶	2·3
Germany—Federal Republic of Germany	1·2
Greece	1·5
Hungary	2·1

Europe—contd.	*Rate per 1,000,000 of population*
Iceland	0·6
Ireland	0·2
Italy	1·5
Luxemburg	0·9
Netherlands	0·4
Norway	0·4
Poland	1·4
Portugal	1·4
Spain	0·8
Sweden	0·6
Switzerland	0·6
United Kingdom—England and Wales	0·7
United Kingdom—Northern Ireland	0·8
United Kingdom—Scotland	0·5
Yuugoslavia	62·6
Australia and New Zealand	
Australia	1·5
New Zealand	1·1

APPENDIX XLIII

INDIA—ANALYSIS OF SENTENCES PASSED BY SESSIONS JUDGES IN CAPITAL CASES (IN CERTAIN STATES) (BASED ON SELECTED DECISIONS)

Analysis for the period from 1957 to 1960 in respect of Death Sentence, or Life Imprisonment passed by the Sessions Courts in certain States and the decisions of the respective High Courts on appeal etc.

(Prepared on the basis of certain reported decisions, and illustrative only)

	State	*Sessions Court*	*High Court*
1.	Andhra Pradesh	Death Sentence	14 — 2 acquitted; 3 life imp.; 9 reduction of sentence
		Life Imprisonment	8 — 5 acquitted; 1 confirmed; 2 reduction of sentence
2.	Assam	Life Imprisonment	1 — 1 confirmed
3.	Bihar (Patna)	Death Sentence	2 — 1 confirmed; *1 altered to life imprisonment
		Life Imprisonment	5 — 2 confirmed; 3 reduction of sentence
4.	Bombay (Maharashtra)	Death Sentence	2 — 2 changed to life imprisonment
		Life Imprisonment	4 — 3 confirmed; 1 acquitted
	Gujarat (1960)	Nil.	
5.	Kerala	Death Sentence	4 — 3 confirmed; 1 changed to life imprisonment
		Life Imprisonment	7 — 5 confirmed; 1 reduction of sentence; 1 acquitted
6.	Madras	Death Sentence	8 — 2 confirmed; 1 acquitted; 5 changed to life imprisonment
		Life Imprisonment	4 — 1 confirmed; 1 reduction of sentence; 2 acquitted

State	*Sessions Court*		*High Court*	
7. Orissa	Life Imprisonment .	3	2 acquitted 1 reduction of sentence	
8. Punjab	Death Sentence .	1	1 altered to Imp.	
	Life Imprisonment .	1	1 confirmed.	
9. Rajasthan . . .	Life Imprisonment .	4	4 confirmed.	
	Acquitted . . .	2	2 Life Imprisonment	
10. Uttar Pradesh . .	Death Sentence .	17	8 confirmed. 5 altered to Life Imp. 4 acquitted.	
	Life Imprisonment .	22	19 confirmed. 1 reduction of sentence. 2 acquitted.	
11. West Bengal . . .	Nil.			

	Sentence by Sessions Court		*Sentence by High Court*		
	Death sentence	Life Imprisonment	Death sentence	Life Imprisonment	
		ANDHRA PRADESH			
C. A. 468/54	..	1	..	Acquitted	A.I.R. 1957 A.P. 213.
C. A. 93/55	..	1	..	Altered to 3 years—R.I.	A.I.R. 1957 A. P. 611
R. T. 31 and C.A. 289 to 291/56.	2	2	..	Acquitted	A.I.R. 1957 A. P. 758.
C. A. 499/54	..	1	..	1	A.I.R. 1957 A. P. 899.
C. A. 22/57	1	..	..	R.I. for 3 years	A.I.R. 1958 A. P. 37.
R. T. 16/57 . .		..	..	Reduced to 10 years R.I.	A.I.R. 1958 A.P. 235.
R. T. 1/57 . .		..	..	2 Altered to L.I.	A.I.R. 1958 A.P. 255.
R. T. 22/57		1	..	Altered to 7 years R.I.	A.I.R. 1958 A.P. 380.
R. T. 14/57		..	..	Changed to 3 years R.I.	A.I.R. 1958 A.P. 273.
R. T. 22/56 . . .	1	..	..	Altered to L.I.	A.I.R. 1958 A.P. 203.

	Sentence by Sessions Court		*Sentence by High Court*		
	Death Sentence	Life Imprisonment	Death Sentence	Life Imprisonment	
C. A. 409/58	..	1	..	Acquitted	A.I.R. 1960 A. P. 153.
C. A. 665/58	..	1	..	Acquitted	A.I.R. 1960 A.P. 490.
Death sentence: 14—2 acquitted 3 L.I. 9 reduction of sentence		Life Imp.—9		5 acquitted 1 confirmed 2 reduction of sentence	
		ASSAM			
C. A. 99/54	..	1	..	1	A.I.R. 1957 Assam 45.
	Life Imprisonment	1	1 confirmed		
		PATNA			
Death Ref. 9/56 . . .	1	..	..	Altered to Life Imprisonment.	A.I.R. 1957 Pat. 52.
Death Ref. 18/55 . . .	1	..	..	1	A.I.R. 1957 Pat. 462.
C. A. 56/56	..	1	..	Reduced to 5 years R.I.	A.I.R. 1958 Pat. 190.
C. A. 362/54	..	2 Transportation for life.	..	Altered to 10 years R.I.	A.I.R. 1958 Pat. 12.
C. A. 35/56	..	1	..	1	A.I.R. 1959 Pat. 66.

C. A. 463/57	..	1	..	1	A.I.R. 1960 Pat. 62.
		Death Sentence 2— { 1 confirmed, 1 altered to L.I.			
		Life Imp. 5 { 2 confirmed, 3 reduction of sentence			
		BOMBAY			
Conf. case 2/56 with C.A. 996/56 etd.	2	2	..	4	A.I.R. 1957 Bom. 226.
C. A. 459/56	..	1	..	Acquitted	A.I.R. 1958 Bom. 439
C. A. 65/58	..	1	..	1	A.I.R. 1959 Bom. 463.
		Death Sentence 2 { 2 changed to L.I. Life Imprisonment 4 { 3 confirmed, 1 acquitted			
		GUJARAT			
		Nil.			
		KERALA			
C. A. 99/56	..	1 (R.I.)	..	Reduced to 10 years R.I.	A.I.R. 1957 Ker. 53.
C. A. 637/56 . . .	1	..	1	..	A.I.R. 1957 Ker. 65.
C. A. 120/56	..	1	..	1	A.I.R. 1957 Ker. 102.
C. A. 415/56 . . .	..	1	..	1	A.I.R. 1957 Ker. 166.
C. A. 250/57 . . .	1	..	1	..	A.I.R. 1958 Ker. 207.

	Sentence by Sessions Court		*Sentence by High Court*		
	Death Sentence	Life Imprisonment	Death Sentence	Life Imprisonment	
C. A. 138/58 R.T. 9/58	1	1	1	1	A.I.R. 1959 Ker. 46.
C. A. 411/58	..	1	..	Acquitted	A. I. R. 1960 Ker. 24.
R. T. 2/59	1	..	..	Altered to L.I,	A. I. R. 1960 Ker. 149.
C.A. 207/59	..	1 (R.I.)	..	R.I. for 5 years under sec. 326	A.I.R. 1960 Ker 301.
C.A. 311/58	..	1	..	1	A.I.R. 1960 Ker. 120.
		Death sentence 4	{ 3 confirmed 1 R.I. for life		
		Life Imprisonment 7	{ 4 confirmed 1 acquitted 2 reduction of sentence		
		MADRAS			
C.A. 577 and 638/55 . .	..	2 (Tr. for life)	..	Acquitted	A.I.R. 1957 Mad. 505.
C.A. 528/56	..	1		Reduced to 5 years R.I.	A.I.R. 1957 Mad. 541.
R.T. 123/56	1	..	1		A.I.R. 1957 Mad. 727.

T. 128/59	4	..	..	Altered to L.I.	A.I.R. 1960 Mad. 362.
R.T. 12/60	1	..	..	Altered to L.I.	A.I.R. 1960 Mad. 533.
C.A. 281/59	..	1	..	1	A.I.R. 1960 Mad. 218.
R.T. 138/59	1	..	..	acquitted	A.I.R. 1960 Mad. 370.
R.T.	1	..	1		A.I.R. 1960 Mad. 443.

Death Sentence 8 — 2 confirmed; 1 acquitted; 3 changed to L.I.

Life Imprisonment 4 — 1 confirmed; 1 reduction of sentence; 2 acquitted

ORISSA

C.A. 103/55	..	1		Acquitted	A.I.R. 1957 Orissa 216
C.A. 133/55	..	1		Acquitted	A.I.R. 1958 Orissa 69.
C.A. 44/56	..	1		Reduced to 7 years R.I.	A.I.R. 1958 Orissa 113.

Life Imp. 3 — 2 acquitted; 1 reduction of sentence

PUNJAB

C.A. 385/57	1	..		Altered to L.I.	A.I.R. 1958 Punjab 104.

	Sentence by Sessions Court		*Sentence by High Court*		
	Death Sentence	Life Imprisonment	Death Sentence	Life Imprisonment	
C.A. 539/58	1			1	A.I R 1959 Punjab 332.
		Death Sentence 1	(altered to L I)		
		L.I. 1	(confirmed)		
		RAJASTHAN			
C.A. 43/56	4		..	4	A.I.R. 1968 Raj. 226.
C.A. 63/54	..		(State appeal against acquittal)	(Transportation)	A.I.R. 1958 Raj. 338.
C.A. 40/58	..		(State appeal against acquittal)	1	A.I.R. 1960 Raj. 101.
		ALLAHABAD			
C.A. 1164/51 } 300/52 } ..	2		..	2	A.I.R. 1957 All. 50.
C.A. 917/56 } 916/56 } . . . 1	1		..	2	A.I.R. 1957 All. 177.
C.A. 1139/56 1	..		..	Acquitted	A.I.R 1957 All. 184.
C.A. 677/56 1	..		..	Acquitted	A.I.R. 1957 All. 197.

C.A. 1546/56 1	..	1		A.I.R. 1957 All. 377.
C.A. 1487/56 1	..	..	Acquitted	A.I.R. 1957 All. 466.
C.A. 1424/56 2	3	2	1 Life Imp. 2 Acquitted	A.I.R. 1957 All. 809.
C.A. 293/55	4	..	4	A.I.R. 1957 All. 764.
C.A. 873/56	6	..	6	A.I.R. 1958 All. 348.
C.A. 1389/56 1	..	..	Acquitted	A.I.R. 1958 All. 255.
C.A. 1375/57 1	..	1	..	A.I.R. 1958 All. 791.
C.A. 424/57 2	..	..	Altered to L.I.	AI.R. 1958 All. 514.
C.A. 496/57 1	..	..	Altered to L.I.	A.I.R. 1958 All. 746.
C.A. 687/58 1	..	..	Altered to L.I.	A.I.R. 1959 All. 255.
C.A. 864/58 2	5	2	5	A.I.R. 1959 All. 453.
C.A. 1010/56	5	..	5	A.I.R. 1959 All. 690.
C.A. 541/58	1	..	Reduced to 5 years R.I. under s. 304	A.I.R. 1960 All. 223.
C.A. 666/60 2	..	2	..	A.I.R. 1960 All. 748.

Death sentence 17 — 8 confirmed; 5 altered to Life Imp.; 4 acquitted

Life Imprisonment 27 — 24 confirmed; 1 reduction of sentence; 2 acquitted

WEST BENGAL

Nil.

APPENDIX XLIV

RECOMMENDATIONS FOR AMENDMENTS IN CERTAIN CENTRAL ACTS.

(1) *The Code of Criminal Procedure*, 1898.—A provision requiring reasons for imposing either sentence (of death or imprisonment for life) for an offence which is punishable with death or imprisonment for life in the alternative, should be inserted in the Code.[1]

(2) *Indian Penal Code.*—Persons below 18 years of age at the time of commission of the offence should not be sentenced to death.[2]

1. Paragraphs 820-822 of the body of the Report.
2. Paragraphs 878 and 887 of the body of the Report.

GMGIPND—TSS—122 M. of Law—3-9-1971—18,00.