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‘LAW COMMISSION OF INDIA  
  
THIRTY-FIFTH REPORT  
VOLUME 1-1  
  
(CAPITAL PUNISHMENT)  
  
SEPTEMBER, 1967  
  
‘GOVERNMENT OF INDIA @ MINISTRY OF LAW  
  
  
Page 2:  
CHAIRMAN,  
Law Commission,  
5, Jor Bagh, New Delhi-3,  
  
December 19, 1967.  
Shri P, Govinda Menon,  
Minister of Law,  
New Delhi.  
‘My pear Moster,  
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Courts, Members of Parliament, Members of ‘State  
Legislatures, High Court Bar Associations, District  
Bar Associations, District and Sessions Judges, Zilla  
Panchayats and other interested persons and bodies.  
A Press Communique was also issued, informing mem-  
bers of the public about the Questionnaire and invit-  
ing them to express their view in the matter.  
  
  
  
Page 3:  
ay  
  
(At the srst meeting of the Commission held on the  
44th November, 1963, it was decided that evidence may  
be taken on the subject. But, having regard to the  
voluminous replies received to the Questionnaire and  
dso on a perusal of the studies made in the Commis.  
Sint Bas bom considered wanecesry to take orl  
evidence).  
  
4, A draft Report on the subject was prepared ard  
circulated to the Members.  
  
‘The studies made on the subject and the replies  
received to the Questionnaire (as tabulated) were also  
Erculated to tbe Nerebers. At the zand meeting. of  
the Commission, a programme for the consideration  
‘of the circulated materials was chalked out  
  
‘The circulated materials included a discussion of  
the existing position, consideration of the arguments  
for abolition o retention ax formulated in varios quar  
ters, including academic literature, precis of 6  
in Barliament, Reports of Committees ox Commissions  
‘appointed in various countries, historical. ave  
dnd statistical studies, as well as tabulations of replies  
fo the Questionnaire, extending over thousands of  
  
ages.  
  
The above mentioned materials, including the  
draft Report, were. considered at the following Toeet-  
ings of the Commission, and certain additions, dele-  
tions, and modifications were directed to be made  
  
73rd meeting .. oth to rrth February, 1946.  
  
‘ath meeting .. 22nd to 26th March, 10f6.  
  
meeting .. 11th, rath, rgth, 15th and  
75th meting TEN Apr Te  
meeting .. sth to 7th and oth and roth  
  
76 een eb.  
  
‘7th meeting .. 8th to rath August, 1966  
  
‘78th meeting .. 5th to 7th September, 1966.  
  
At the 78th, meeting already mentioned above, it  
was further decided (on the 7th September, 1966), that  
the draft Report may be revised in accordance with  
the discussions that had been held up to that date.  
  
  
  
Page 4:  
it)  
  
6. Accordingly, the draft Report was revised. The  
revised draft was taken up, page by page, for consi  
deration at the 86th meeting of the Commission on  
Sth, roth, 20th, 22nd ‘and 23rd May, 1067 and ap-  
  
@ summary of conch  
  
with modifications at the same meeting  
(07 23rd May, 1967. Further, at the same meeting, on  
the 78th May, 1087. it yas cided that important  
points made in replies to the Questionnaire which could  
not be dealt with in the draft Report owing to their  
late receipt, etc. may be dealt with, so far as prac-  
ticable, while farther revising the draft Report.  
  
(Copies or tabulations of these later replies were  
separately circulated to the Members),  
  
7. The draft Report was farther revised, in accord-  
ance with the decisions taken at the 86th meeting re-  
  
Pin Gewing up the Report Ihave to acnowge  
in drawing up the ve 10 acknow  
help the Commision reeived from its Secretary  
hhad to devote a great deal of time and energy in  
collecting the materials and then putting them in  
  
ape for discussion by the Commission and  
pope shape for dee by the Commis and  
tions.  
  
ee.  
  
‘Yours sincerely,  
J.L. KAPOR.  
  
  
Page 5:  
REPORT ON CAPITAL PUNISHMENT  
EXPLANATION OF ABBREVIATION  
  
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REPORT ON CAPITAL PUNISHMENT  
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‘whit urgent as compared with othee ‘opies arising under  
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alto, this subject has been treated as one for separate and  
4full-hedged study.  
  
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‘Note’ on those proposal  
  
5. Or: the materials available at that time, and as then  
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presence of many stomalous features In the stusl scheme  
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fensotable clasidestion. which ould sland the test of  
Siele Th ofthe Constitution  
  
1 ere gente ent cee bw  
Ee ed  
Beene sta, t ohich the note was decane ™  
  
3 Paap 4. ape,  
  
  
  
Page 27:  
3  
‘The Commiscicn, therefore, after, emphasising that it  
  
would have preferred to offer its opinion on the 1s  
after collecting material on the large question of abolition,  
‘Cepressed itsel ngainst the acceptance of the scheme of  
‘calegoristion:  
  
‘Tore Novem 4  
Procedure followed  
  
{6 The procedure which the Commission followed in its  
eiibersions on this abject may be act Out Biel. elm  
anc aI ot the copy ofthe debate in the Tak Sabha  
Teceaury materia for a preliminary study were cal~  
Tecad. Te was decided that b quegtonnaire sbouls be  
  
2 The qumioaate is ien span.  
Bipot of the Rays Common Capt! Pulsar ish Cd  
  
Renee maine ofthe Sete a Howe of Commons  
Siti Reta ess neste id Soon  
  
  
Page 28:  
4  
  
the Ceylon Commission on the sujet! brought out seve-  
al aspects ‘which might "otherwise have boea missed.  
‘The Commission had also before it the debater that took  
place In our Parliament on the subject at various times, 30  
Eonnection with Bills or reschitiors for the abolition of the  
‘death penalty. and the discussions in Parliament, beari0g.  
‘on varlous aspects of the problem, have been instructive.  
  
{The (Brglch) Homicide, Act, 18573, she discusions  
that took place in the House ot Commons’ aa the Huge of  
Keres btn ping of the Aa tsa ht ave  
ublisied ns egarde the working of the Act, and the  
se fw perisining “o several egal questions that ar0s0  
Under the!Act were aloo gave inta In 10S, relevant pro-  
itions of the Homicide Act wore temporarily repeated  
by the Murder (Abolition of Death Penalty) Act, 1903+ and  
Meine comlned the svabe material rlaiing tthe  
latter Act also.  
  
10, The replies reotived to the Questionnaire issued by  
the Commission a the subject” nat enly furnished gue  
“hea many Posty fat supplied ck materia, he Sle  
cf Sich as enbanced because of the practical experience  
Possesced ‘by many of the persons who sent the Feplien  
  
ect ieratare om the subject which i abundant, as  
jone theough Avaliable staistial material, conta  
  
4° oes! pullaters vas bore the Comission: an  
fewest sapects ave tea gtaind fom” the  
  
me, Court, ours, Stats ate  
‘Ang, lastly, the excellent brochure brought out by the  
United Nations on Capital Punishment has been of great  
use to the Commission,  
  
CHAPTER It  
MOVE FOR ABOLITION  
‘Torte Nusteen 6  
History of the abolition move in India  
1% The question of abolition of death sentence was  
raised in the old Legislative Assembly in 1981, when Shri  
  
{Gaye Prasad Singh sought to node «Bit to aboleh  
the punishment of death for offences under the Tndlan  
  
ee  
oe a ae  
1965 (Chapter 71 "  
ere  
  
ci ules Berne of Homie al Scie Athisi6a)  
cbse Hos SSO pal an  
  
= Gol Tanita ion  
os  
  
  
  
Page 29:  
Penal Cods. ‘The Bll was introduced on the 27th January,  
1964, and cu the Wth Februmry, 1901 « motion for clr  
lation was made. ‘The motion was'negatived afer the  
‘ey of the ten Hoe, Miner it dss ret” The  
‘over, in support. of his motion, nang)  
felating out tbat 'ihe regain of deh pelt had tok  
inking out i ty had nol  
Rinded mam sociey int choe sa angie thot apa  
isnt had deneraising eto the hutan hd  
imiery chase ts the wile sel chitin of the condensed  
‘an, were alo Gwelt upon Me following poust was made  
in thie connection:  
  
“Beery human judgment is lable to be mi  
wan err and the trae of knowing hat 8am  
‘een hanged thugh what he bellowed waa's blunder  
  
Gemned to death, and the sixth to be transported for  
fof inurder in a cave whieh was got up by » Sablns-  
  
pector of Police, Subsequently. owing to the atitude  
Raken Uy the local pubis, whose ganasience was anock:  
eka elaborate official inquiry é  
  
18, The Home Member, however, ix his reply pointed’  
cut, fist that in many countries dexth sentence had been  
eslored ofter obolition (He cited the examples of France  
  
EP'he had gained with bowicdes Sroaghoa the ngs  
‘ith nomic wagon  
  
Sed ets Stinnett roe ee Rae sean  
  
Sse aaa ae et te te cet  
  
Sery justin whether in cabs of thet ind  
paniabeent Saker’ than “cpl ptnihient could on Say  
itary of crime be sogarded asthe proper punisimnent”  
  
1 Lagaive Aseniy Deis Gi) Val age 5  
  
  
Page 30:  
Fourthly, he also stated that the Indian’ law was more  
clastic than the English law, ag IL empowered the Courts  
fo'pass an alternative sentesce: In" talg connection, he  
Stated \* ‘tis my experience, both 35 an official in  
4 Lazal Goverament and ‘san oficiat and a Member of  
‘the Gaverarment of India, that that diseretion is very fre  
quently, and 1 think on the whole, very wisely and Jud  
Sloutly ‘exereised  
  
14, We may now briefly trace here the history of the  
abolition move in India tn fecent times,  
  
15. We may frst refer tothe Bil troduced by She  
Mulund Lat Agra in the it Lok Sabha  
  
‘The first reading of the Bill was moved on the 24th  
‘August, 1968, and the discussion was resumed and conclud-  
ed tn the 23rd November, 1958, when the Bill was reject  
‘21 on the opposition of the Government  
  
Numerous points wore put forth ia the speech of the  
mover of the Bult, which included a review of the position  
[prevailing in other countries, and emphasised the fuulity  
Bt cpptal punishment a deterrent and ts primitive:  
  
16. Thereafter, Shri Prithvi Ral Kapur moved a Reso-  
lution for the abelition of eapital punishment in the Rajya  
Sabla tn 5H. "Tae Resoluign Pwar “withdrew, afer  
  
‘over observing, “The purpose of my esol  
tlon is served; the ripples are crested and it ly in the alt.  
By votes such delicate things are not decided. Let thai  
tomorrow be there which T  
  
Ee sxe ota Vi  
  
Fer tae, Aarura “Capcal Poment ston noe  
aR Ga Sa, Spee  
  
4 Si M.L. Aerts  
  
5 Sra camps i  
arg ig  
  
so SH Pa Sth Det, 258 Ao 9 Oe at a8 al ne  
  
ta  
  
Report ier “Argues Alta”  
  
  
Page 31:  
1  
  
17. A Resolution for the abolition of capital punishment  
‘yas moved in 196] in the Rajya Sabha. be Smt. Savitry  
Devi Nigam, but that was negatived after discussion,  
  
18, After this, Shri Raghunath Singh's, Resolution for  
the abolition of capital punishment was discussed in the  
Lok Sobha, in 1962" The Hesolution was withdrawn after  
discussion.” Shei Horith Chandra Mathur had moved” an  
famendment that the matier may be referred to the Law  
Commission, "The Government gave an assurance that 9  
copy’ of the discussion that took Place in the House would  
be forwarded to the Law Commission, which wes seized  
2f the question of examining the Code of Criminal Prove:  
‘dure and the Indian Penal Code, with 2 view to consider  
ing as to Whether any changer are necessary therein,  
  
Thereafter, im 1968, 2 question was put in the Rajya  
Sabha on she subject” In the answers to the supplemen-  
{aries on the question, Goveroment gave an asarance that  
scopy” of the debates that Pad taken place in the Rais  
Saba in 1961 on the resolution of Smt Savery Devi Nigam  
‘Wosld be forwarded fo the Law Commision  
  
‘Tone Nosnen 7  
History of abolition move ix England  
  
12, We may trace the history of the mov> for abolition Mita ot  
in, England. The number of capital offences in England ter  
sv the HBth centuty was very large’, It ig said”. that the allies of  
Susade agen ‘iota "punishment, ‘ay. (Go tar ab the Sa  
‘modern period is concerned), be traced to the year 1764, prices  
‘When Bessa rote his taty tm Ghine ood Paichment, Ba  
His poin’ of wievr, Was" that since man was hot his own  
  
creator, he did not have the right t0 destroy human lite,  
‘individually or colletively.. Capital punishment. he said,  
  
‘Would be justified only if the executton would prevent  
evolution against 2 popularly established government. of  
  
‘war the only way to deter others {rom commiting a crime  
  
1, Se ya aha Dee 196s Co 6886  
  
sy Septet can ste fang 1 me and  
2 ae Stu Do  
  
ate fe 8  
  
rs Apt a1, 988, Cl 207 9 965, tay  
  
2 The copy andy Frvardd (0 this Come.  
4. Ser Roa Subba Debut, dated 10h Deedes, 1963  
5 The cope wt dul Greate this Commision.  
  
6 $e aintnle, Mice of Balch Canina Law (ih, Vek +  
page sy  
  
J, Si ited “De, \*The Coe agno Capta Panama”  
og6th Dae  
  
3-122 M of Law.  
  
  
Page 32:  
Spree  
  
Ronit.  
  
20, tn 1750, the Howse of Commons appainted u Conn.  
mittee tb Inguive into the state of the celminal isws witb  
2 view to theic repeal er amerdmant, One of the recom-  
‘mendations which the Committee made was to replace (he  
unishment of death for certain offences by "some other  
  
juste punishments” ‘The Bill implementing the re-  
commendations of the Committee sbout death penalty was  
Introduced and passed ty the House of Commons, but  
rejected by the ‘Lords.  
  
21, tn 1770, on the motion of Sir Willian Meredith in  
the House af Commons, a Committee Was appointed to  
Consider the criminal laws #0 far as they related to capital  
fences, and the Commie, in dan cote, recommended  
the’ abit of he death, penalty provided under ght  
Statutes then in force. Of these, two may be  
  
drat one statute wien declared tat the: concealment of  
the birth of « bastard child by the mother. constituted &  
presumption of the guilt of the mother having murdered  
fhe child, (unless the mother could prove that the chil w  
‘born dead). ‘There was also another statute in fores at  
{hat lve hereunder. ble careying aay wornen of  
property against her will and marrying or dedllng her  
  
2 capita offence’  
  
Some of the proposals were rejected by the House of  
Commons, including the proposals relating to the two  
statutes specifically mentioned above. The others "were  
‘embodied in 2 "Penal Laws Bil” which Was passed by the  
‘Gezons but was Toxin the Lords by the prorogation of  
  
arliament  
  
RASS Sn mae  
  
inSain  
  
«Side ae Seema TaN Masa  
Po. Bb a  
  
5 Regia inal ne Gah VoL Beet  
  
2 Conemimees of Bath of Bata Act, 1993 (4 Ties 6 2  
2 Abdcion of Wane Act U86 Q Fen 3, © 2)  
4, Yard ato, Macy Eh Cal Lay,  
Pag eae  
dell LEIA EDs gegen: cia any  
fn Ea Gea Vat ge Sos oa soe  
may of a  
  
‘ores  
  
aes es cnet ems  
‘coins Lie ise, Wak, aps 5d 350  
  
  
  
Page 33:  
His argument was, that if the law was much less se  
juries Would be mote wllng fo conc. icra  
ever, succeed In get tence abrogated oal  
  
jn three types of cases. The camphign was carried on by  
Sir James Mackin after Romilly death, and in March,  
  
1819 hig motion for a committee 1g study capital punish:  
‘Bent Was cazHed assist the adver of at BY 8  
tajorty of  
  
24 Accordingly, fm 819, « Selek Comune of thes Gam  
  
‘House of Commons to. Study the criminal law mites,  
‘gy Scrat cece “ne ee a  
Ste RAGS eS oe Coe  
Seer nae ms  
fares a ae  
Eee icra, States SS  
15 Tra ae om tai et  
ea a See ec  
  
Gian hls steed"  
St punihment wad more ipa onan seventy,  
  
eo vere math  
Soom 2 power ‘bal “Another  
Kater vement was io beat the fends Bou.  
ing sivocate inthe Howse 4f Compe of the thalton of  
capital punishment  
28. In, 1838, Sve was fo  
appolcted, whieh sehr oe" concur  
‘ae, that the punishment tio be condined 0  
BG eae, Geih sod exept) ene wh  
consist ner are aggravated Wolence to  
Son oF which tend We. tn 1007, « Bal  
is inlodured in the Mowe of fons by Lord ohn  
Rasoell, forthe removal af ‘rom 21 of the 31  
cllences which were ca  
‘Bat im th debates, thece  
af complete abaition af  
2. Tn 1884, on move ms  
  
fon Capital Pursshment ws  
Sd 10 consider the laws  
‘Shether any changes were  
  
Saco md! a tome  
cal evidence also The  
  
  
  
Page 34:  
pe exe.  
  
oe ao.  
ie  
  
for  
Bots,  
  
1546 Com  
  
com  
  
rane  
  
we  
  
and concluded that death penalty should be  
{or murders in the frat Segree, tht It ay,  
) murder deliberately committed with expeess  
malice aforesthought, such mace tobe foued 68 @ fact  
Uy the Jury, and  
  
said, MERGE commited no with view to par  
petation ol spec armel, tute, 820,  
  
ape, burglar. robbery and piracy  
  
28, After the Report of the 1868 Commission, some pro-  
porais to divide murder were introduced, but. without  
Bucceis'” Only, public executions. were abolished, es re  
‘Commended by the 1866 Commission. Bills were introduc.  
ed in. 1890, 1872, 1873, 1877, 1978 and 106) “without  
Success, for the abolition of capital punishment. [tis not  
‘neceastry to go into details of the efforts made during these  
{Years in this connection, In 1086, 2 Select Commitee of  
the House of Lords touched on, the subject, but did not  
onsider the feasibly of nbolitcn?.  
  
2S tro 208 play ee fr  
ipgindeei tat 29 SRD Set a  
Ui eo ES eR ac  
BSS pa rea eet Wee ae war's  
Re eaten Aa” Te  
AGS Macrae ond ase Ge et, Mh  
Baplycborn child, wag to be punished for manslaughter  
Boel a alts he alate ae  
iets Bb hada Cae Ras oe  
emery Siac iy Sheela Saat  
Tpke ATUPABE seth ssn  
feed aes”  
  
30, Roy Calvert's book “Capital Purishment in ihe  
‘Twentieth Century" (1987) was the major tctor in leading  
{o the appeintmest of the House of Commons Select Core  
{tiltee ou Capital Pankshment (1900). The Report ofthat  
Serine C9) te, he pa panies old be  
Stolihed withowt endarigering hfe ce ‘or impair:  
Ing ecu Socty atl recommended at for fe  
Years capital punishient should be abolished as an expert-  
Monel measure Tt also mode muber of recommends:  
  
TRE tn ran amt  
} ncn ToS pata.  
mt  
  
a seomec (ef eh on Pn  
a a Se aaa en  
1 mr ne a 3.  
  
4 Bor devin seprieg te Commis of 199 See Bane Ta,  
vernd EQS Resi Cal Pentima G90, pm fe  
  
  
Page 35:  
n  
  
tions (Wo be implemented if the main recommendation to  
avoid death penalty was not implemented), regarding te  
IeNaghten fates, relating to. the defence of insanity)  
‘death penalty for women and the restriction of death  
penalty to those Who were 21 yeare or elder. Government  
Uid not take any action on dhe Feport.. Vewyan Adimas  
‘moved a Tesolution In November, 1038, in the House of  
Commons, fr abolition "ot capital, panuhment for an  
experimental period of five years, which was carried by a  
frejorty of 114 to €9, But Government did not undertake  
‘Say legislation on the subject  
  
431, So far as the periad 1980 to 1080 Is concerned, the  
following exerac from an. artle! gives an exelent  
Secount of the history of the moverhent for sbliion of  
‘Spits! punishment in Englané.  
  
1m 1048, «clause was added to the Criminal Justice Bul,  
Ba Suet gO ae deus penal foe ve Sear On ay  
we aa - Wve yeart. On an  
Fair of portance tp the Goveramest ot the  
Ein the Party “Whips” are put on, bli rs  
{Srvote in actordance with the decson of the Party” Cape  
{ai punishment however, as nearly always been Fegar  
$3 Eutslde party pales, and Wt has been the custom 0  
‘ave any vote on the subject to the wete of all the meme  
Ste, Ga the voto on thie laut, the then Latour Govern:  
‘hent advised members to vote against butt was Carried  
“n'a free vote of the House. ‘The Howse of Lords, while  
‘Ueling "he Seth Pansy fo the wort genes ogee  
tieting malty to the =  
sf anuters sjected the clause, “On the \*earn of he BA  
{the en of Commons that Hor subst 9 iaine  
Sis iting eapitel punishment to certain specie  
SIurdor, but the" House of Lords theretpon slo’ rejected  
{hat clause. The Government then absndoved the clause,  
Bat dppoinied a strong Royal Commission not to adving  
‘ebelber capital ent should be retained of abolish:  
SEIU ait should be mie or mie  
  
‘The Royal Commission sat for four years, heard innu-  
‘merable witnesses and themselves visited Norway, Sweden.  
Denmark, Belgium, Hollond and the United States to hear  
further evidence tn those countries In 1988 they reported.  
‘They sold in thelr Report that "whether the death penalty  
is led of not, and whether executions are frequent or not,  
both death penalty States and abolition States show rater  
  
peor  
Steere  
  
2 Gander, “Capt Panihnane in Brain,  
mata fafa 3 4280 43 Aerie Bae  
  
  
  
Page 36:  
2  
  
ish gn nt ar ond yah  
ae  
“seen wih web cd  
Waren et ei Pat te  
EeREncata cn Me eae cae  
Se aca ne le ee  
Ss eee See etl ke  
Feo, So Sa ae  
BSS iether ta  
Eee nL aco ak ee  
TES ice acta a  
Sey cre opted ian  
hn Walch:  
  
Bo ego eal Comino el =a  
wider knowledge in this cou of the relevant facts and  
eg et Maat Sea  
Sen teal! She  
ROSES An Rk aac as  
vclan Sat arnz compl  
Some akin Seth ol ai ach  
irianhett milan eth  
cuenta, et Sed i  
Seg Shel ie ae aa  
  
The aah Pty etn) Ba  
Sopesion of cpt punishment wes fared i fhe Howe  
Sesatgchmgeteee nates  
oe et as  
STG Ces ms BRT  
SOLES ae Gene le ae  
eevee wate mie er ere fe  
onsets Ma sete  
peace iaeee na Ranier  
gamed ae alte Bale,  
WS cet Teag ale te  
pice atin oe mips  
Setting Wc cs ae ae he  
ge Ra tv Sn Stand  
Bat holy oR gi  
fan ie ove daa eae ne  
SOPRN CaEISA! s  
Spor  
  
  
  
Page 37:  
ry  
  
22 Subsequent history of abolition in Englands well- agit  
knuven, and feed not be given in detail” On tre dth Bees At ot es.  
frter, 1064, the Murder (Avolition of Desth Pensity) Act  
  
Bl Was introduced by Mrs Sydney Silverman: after 4 long  
isan te Bl wa paid ey ath the Howes pe  
  
Seived the Royel acer Gn the th November, 198. Ui  
  
the Act no person shall suffer desth for raurder, anda  
  
berson convicted of murder sell be snienca fo tnprsem:  
  
ent for it's where. the Sonvicied of murder  
  
{ppears tothe court ts have been der the age of eighteen  
  
[eats atthe ime when the offence was commited, Be isto  
kertentonced fo be “ceticed during Her Masts pleas.  
  
‘Stre", anit 80 sentenced he iz lable to be detained  
  
uch place and under such conditions asthe Secretary of  
  
State may diesel  
  
38, On sentencing any person convicted of murder 40  
  
isotment for life, the court may, at the same time,  
deviate the petted which it recommends #9 the ‘Secretary  
of State as the menimum period whieh (in is View) shoud  
elapse before the Secretary of State may order the release  
‘of that person on cence under section 2 ef Prison Act  
1952, ete  
  
34, The Act® also provides, that a person convicted of  
murder shall not be foteaed’ on Hcenee under section 37  
‘tie Prison Act, 192, ete, unless the Secretary of State  
Has prior to sth release, conated the Lard Chef Justice  
eC Ehgland’ or the Lord ste Generel a3 the cos0 may  
be, together sith the teal judge Hf available  
  
3. Te Ack shall continve in force until the st ly  
10rd and‘shoil then Sxpie unas Paine oy stn  
ve resaluions of both Houses otherwise determines Upat  
{he expltaion of the" Act ihe lw existing ansedately  
Dior tb the posing ofthis Act shal, ao fara iris repeals  
eam patced, andar the sal epee and cosentens  
  
an passed, an ae he ib and’ amencmeats  
had’ not been enact”  
  
‘There are certsin other detalled provisions, which are  
‘not relevant for the present purpose,  
  
The Murer (Abotvo of Desh Pony) Act 96s (Chipter +  
2 Seon £0,  
  
Sesion 1) amenling seston 53 of the Cire ant You Pees  
ee iad  
  
4 Seti 1,  
J Tes Marten (Abttion of Death Pony) Ast, 968 90.  
6 Seon ®  
1 Selon  
  
  
  
Page 38:  
bsitin  
UR!  
  
Tone Nusa &  
  
Abolition move in United States of America and Central  
and South America  
  
35. There es been @ uctuating tendency towards  
avoution in the United Staten, Most of the Siates have  
‘elained i, but in some States it has been abolished, clthor  
totuily or for al offences except for treason  
  
37. The following extract from one work shows the  
position in detail in the United States of America, in 1600  
“he States where death ond death alone is the  
pally for ‘murder are Connecticut, Massuchusetts,  
Nebraska, New Mexico, and’ “Pennsylvania.” Among  
other erimes punishable by death alone are: treason in  
Delaware’, Maryland and New York: arson in Dela.  
ware’, Maryland, and North Carolina, rape in Florida,  
etal, North Craina and Tennesie and boracy  
in Delasare and North Carolina. It is to be obser  
‘that the death penalty ts rarely, fever,  
cted Tor these crimes. Death or imprisonment are  
fltcmaiey nieimanis fr murder in." Alsbama,  
‘Arizona, Calfornis, Colorado, Idaho, lino, Indian,  
lowe. entucky, Louisiana, Meo," Mica,  
Montana, Nevado, New Harapshire, New Jersey, Ohio.  
‘Stlahoms, South Carolina, Texas, Utah, Virginie, West  
Virginia, “and Wyoming!” for. treason in. Alabama,  
Arizona’ Georgia, ‘Monians, New Jersey.  
apd West Vigne: for aon in Alabina, Loui  
Misssippi, South corona, Vermont, Virgie  
‘West “Virginia; for” rape | in Alabama, "Delaware,  
  
het ema a ing ate  
  
Tree ze cite eves unde, dea Iw  
Sa “sdnapping. ‘treason,  
  
cepionage) and some thirty under stata law oars  
  
ailing's bullde"tn' Arkona or burl  
  
indge iGeorie), Dut practice the death penalty  
  
12 seldom carricd it In the United Sttes for ofenees  
  
Sher than (1) murder and (@) sape commitied by 2  
  
1 Sea, Hiscey of Copal Pais, Gps), ae Te  
4 ug UN ete Tae  
we Se Curate BP,  
  
Kee a et ete Time  
  
  
Page 39:  
6  
  
Nopro.in the South, Of the 97 men executed in the  
Unite Sates in 1.8 under Sate laws, "were  
convicted of murder. 18 of rape (14 Negroes, one white,  
il in Souther states), and one of armed robbery (@  
‘Negro, in Texss).”.  
  
29, The overall poston regarding coptal punishment  
tn the Daioh las Wat atrimarsed “i ome  
Sead Shaan  
re death pecaley may ow (Feary, 150), be  
  
amperes ey fre io Sate the att of Calbia  
  
nk'the Feder Goverment“ Of these Surtiee  
iserite when ths denth penalty to be impor,  
{cor Bie rote that the ry may recommend the  
‘cate pengiy bot the Jagr not bound bythe  
recommendation and apes States reqs capital  
Punsiment Tena ofthe tit Ave Sates fend  
the Federal Government) ft ail the “fury  
‘llr puntipene ede murder It Saget and  
Siw the death ply oy inthe case of Soy  
fuer Nw Sty sshd the death pray  
Tater rsored i with fe imprisonment a anal  
hate "Gne. Sit, tne aoane, renova  
‘again abolished the'death penalty.  
  
40. The deliberations of the Royal Commission in  
England also led to a renewed move for abolition in the  
United States, “The Society of Friends and the League to  
abolish Capital Punishment led toa number of interested  
{troupe which began to press for legislative action’  
  
41 In the year 1958, abolition Bills were introduced  
in 18 Stator of the USA. andthe State of Delaware  
abolished capital punishment on 24th Mareh, 1958. "That  
twas az the rosult of the recommendation of Committee  
  
of the Delaware Legislature, which Tecommended abol-  
Son  
  
42, In the State of Massachusetts. 2 Coramission of the  
Legisiature was appointed in 1067 to study. the subject.  
  
Byla majory report We urped abobiion\* But” the  
posal for abolition seems to have been rejected. Pe  
  
1 Samer cGptalleihaa A Sharp Maine Recniere.”  
eonlted Me McSi, Cpt Patent pons page nk  
2 Baia, Deuh Peay Today”, Christan Cerury, March 18, 1959  
ol cis Ep askin Gast ae oo  
3 MeGllan, Canal Pasian (6) gage 37- Rewan gen bye  
Dat ieee rommaroad Spay SAB  
  
4, Bet <Davts Peray Tol Cnt Cory Ma 6,  
sede A ST a Oa ae oe ice  
Seed page a Cnn ee  
  
veka SGP RAE St Mt em  
  
  
  
Page 40:  
42,1" ihe Slate ot Oregon, the Logiature pasted an  
abolition Bil “which. was" endorsed by the” Governor  
Under the Consstaton. public referendum was required  
belo abeition could be efeted and the Bil wes Plast  
the ballot tn the November 1088 election, but the proc  
fest dened ty 10500 voterabot ¥ pr foe ot  
  
44. In the State of New Jersey, Bills were introduced  
to abollah capital panichmert in 1056, 1997 and 1088, but  
“died in Committee” by adjournment of the Legslature®  
  
45, In the State of California, a spectal Commission was  
‘established for investigating) and ig the abolition  
‘of the death penalty in capital cases". Interest in the sul  
Ject was accentuated by the famous ease of Caryl Chess  
an, whose execution was for I yeras before he  
‘was finally executed on 2nd May, 1900,  
  
46. The Judiciary Committee of the House of Represen-  
tatives, California, It i stated®, held a hearing of the  
‘witnesues for and against capital punishment for 16 hours  
‘The proposal of the Governor of California (Me. Brown)  
to abolish the death penalty” was rejected by eight votes  
‘against seven.  
  
47 In 1963, Michigan abolished the death penalty’  
48, In 1959 or 1960, besides the States mentioned above,  
  
the States of Connecticut, Florida, New York, and ONO  
‘also seem to have considered moves for abolition”  
  
Bete Daih Remit, Tad” Cian Cary. Mach 1, 959  
epriuddicCican, Cop “ga, ae  
  
slat ersten Sing ove Ws  
SSE ae eet Pecan Sey  
SSR Sian opt ae  
  
being Been rey Ta cen Cen  
coded Bist Sink tt a et  
  
1 tone Ro Ne 37 (oa.  
  
Ji ae 2k Ba of, “Jace Cowmn  
aga etter Mec, ani Baton, Cs ew TS  
Stee ah la  
  
1s 0 Le om  
1 Pecan Moth osha  
sage es SS top al capa et  
1 feces ten, “The Sno plik  
vworg agatha betebet igh Jo" local of Conta tn Ge  
Sab e. Se i Sem  
  
3 ent ee ya >  
sw tha East Psat et pe te”  
  
ed  
  
  
  
Page 41:  
"  
  
49, I is understood, that recently the States of Oregon,  
ows, West Virginia, | Vermend, and” New York have  
abolished or limited the death penalty!  
  
80, While eversl countries in. Central, ard South Cer nd  
  
‘America belied capital Punishment towards the end of Sh  
  
the 19th century, 8 few returned to it in the present Spcie\* “™  
  
century “  
‘Thus, Mexico, after abolition in 1928, reintroduced the  
  
death penaity 1918 for\_crime arising from highway  
  
Sandi" Pera stn ater bolton entroduced it  
  
131, for crimes arising fom highway Bancery”  
  
51, Amongst the other countries in Central and South  
‘Anerica which abolished the death penalty. (except or  
‘military offences or Very unusual crimes) are Argentina  
{1022),” Deminican Republic (1924), Brasil (1048),  
Colombia (1863, Venezuela (1868), end’ Uruguay (1877)  
  
‘Tone Nusenes 9  
  
Copia! Punishment—Abolition in Europe, Australia and  
‘New Zealand  
  
52, The move for reform of the law relating to capital Ci  
punishment in Burepe may be regarded as having started Fasubneat:  
Sith Beccaria, who published his famous Resay on erimes  
{nation in the later hail of the 0th Auta  
entury. His main argument was, that man had no right  
{o\dispose of 2 life which he had aot granted to another,  
‘and that Wis ‘right did not Belong even to society as  
‘whole. ‘Death penalty amounted to'a war declared by one  
‘man aver the whole nation, and if the penalty was neither  
Useful nor meesssary, as he sought to prove, then it must  
‘be abolished. “Every” act of authority of one man over  
another, for which there is not an absolute necessity,  
‘rannicel"”.”" When he wrote, the modes of execution  
Which were prevalent in Europe were many and various,  
‘nd the main effect of his writings was to humanise those  
‘modes. ‘The move for abolition gathered momentum by  
the efforts of de’ Sellon, 2 Swiss who pleaded before the  
Geneva Grand Council to set\_an example to Europe bY  
Sbolohlgdeuth penalty. He also invited essays onthe  
Subject. The essays submitted in response to his invita:  
  
1 Gingoe HL Pui “The Sp of Capi Pantene A wand  
Exes igs Dicer fecal ef Smo Ln Grlnenoy  
fj, Right £9 Lae (195), pas 16. 78 and 75  
  
3 aad on Joie Right Life 960, 4g 76 78 and 79  
  
4, Becta, quoted in Soot, The bitory of Capital Punishment  
osha  
  
5 Hoje, Rig 19 fe (980, pages 70 and 7.  
  
  
  
Page 42:  
B  
  
tion were numerous,of which those of Lucas (a future  
Inspector General of French Prisons) ‘and of Lamarune  
deserve mention. ‘The former regarded abolition as the  
fesgential point of departure for ‘any scheme of criminal  
Feform. while. the lafter put this question “Must society  
dnd a criminal watch each other for ever t0 see which will  
bbe the frst to cease to shed blood?” Considerable itera=  
Nge ‘was published in ‘ly, Prance end Sweden on the  
Subject” 2p the French Conntaon of 148, death penalty  
Wee abolished for political cases, and ta the  
Criminal Code of 1882 the number of capital crimes was  
eluced and other reforms made. Reforms followed 30  
soiae Swiss Cantons alga,  
  
59, The 19th century may perhaps be described ax an  
cera of great strides in the dicection of abolition. "The fol-  
Towing quotation from Joyee® gives « full pleture of what  
‘took place in that century.  
  
This movement cotinaed steadily unt the end of the  
century.” Portugal, it mey be” surprising 10 discover,  
appears to have carried aut no executions since 1642 end  
legally abolished Capital Punishment in 186%. ‘This lead  
was iollowed by Saxiny in 1868, the Netherlands in 1870,  
Maine (USA) "in 1881, ‘Costa’ Rica in 1080, Teal  
‘Guatemala in 1838, Brazi in'1600, Miearegua in 1092 and  
‘Honduras in 1804. :  
  
‘The Swiss will reosive specific mention  
later, but it can bere be recorded in the general sequence  
that the death penalty was sboliahod in Neuchatel in 1694,  
Zurieh in 1969, Tessin and Geneva in 1871, Basie in 1872  
and Soleure ix 1874. “Moreover, by a declaration of prin  
Ciple in the revised Federal Consttation of 1874 (Article  
£5, eth pena oe abled, exept tn malieey  
law in'time of har vests i ent  
thet fa entries sil retaining the death is  
sals were for Its aboliticn  
ke practice, spplied leas and less For instance, while  
Germany if was sl retained tn the penal cove of 1072, the  
prcoation of executlons belore the First Word War tee  
  
veers of th etary. nary 9 per on. of center  
{ees of the proent century realy pe ent. of extener  
‘rere commitea. Profesor dean Graven somment on these  
Xdoubind advances ae follows. “it might  
‘Testion wor simst cloned and that he guiletne nd the  
file would som be geegaed to the museum. Toe  
  
ath penalty, even fo Ui toe trocloe minder das  
d'to Be revealing belore te novance of Slaton  
  
The movernent was slo guining ground in the Nordic  
counter where there ha een no execauens for men  
‘ears. "The abolition af the penalty in Norway, bere  
  
TS, Rigs to Die Geta) pt  
2 eye ig 1 Le igh, paps 3619 7  
  
  
  
Page 43:  
Fa  
  
had not been used for over a century, cecurred in 1008,  
and was followed in Swsden in 1951; Denmark in 1090,  
iceland in 1944 and Finland tn 1049" Zneldeatally. there  
is mo record of any condemned persou: having been execut-  
‘edn Finland since 1098, though the situstion was radically  
henged of courae, during the coutoe of Rasen inah War  
fn 1840. What happened in. Norway, st a consequence  
Of the Sacond\_ World War, i reserved tor comment below.  
In the case of Denmark, however, the death penalty. was  
recently recntroduced for treason,  
  
1K nood hardly be strosed thatthe Second World War  
nd is aftermath of “tetibation® played havoc with these  
Kesithy "trends, “On, that aceount, no sonspectas of such  
developments covering the exprficnce of 20 tany coun  
{ries, could possibly be presented in ney Iogieal or consist  
Seinen ao en ie aiampted, ihe Table nn  
pends! attempts bird's eye view of Ue pontion a  
Bien tine, but i eject Yo explanations ithe main  
  
For instance, the Netherlands, gave up the peralty 12  
47d, bat reintroduced it st the en of the Second World  
‘Wat; and, botwoun 1045 and 10i@, one hundred and twenty  
death “Sentences were. pronounced. ‘Belgium bas. carted  
‘out. no non-military death sentences since 108, bat the  
i fay aot beet Ingally abolishes by eny Act of Pare  
tment. "Portugal. as already mentioned, renounced the  
zat pea oily in Tot snd Sin dd ese Ia  
182 But wouta any conszentious Goserver care to Sop"  
Inatise onthe practice of these two now-perlamentary  
lcatorabipeetpesally in he Iter casein vee ot tht  
Serio ivoads into personal freedom, aatocated with both  
these States, which have’ been the subject of frequent  
Intemational concern of actusl interventions?  
  
1 Talythe birthplace and for many years the ome  
a the moder scene ef sr insogy Selous eres  
ol Grime wae seported uring the years from 1000 fe 1026  
When the death ponelty. wat abolished, fe-wan reintro  
Uidcea ty the Faden reglne, amd bolle. ogni’ Gecresd  
in 1944 and embedied in the Repubienn. Cotstituton of  
{iat where Atlee 3 daclaren that tho purpose of panale  
lies impored by the cutis shall be the reedustion Sf the  
codernnedpevscn ad that ha treatment shall be humane  
‘The death pelt "mat not be epee, econ under  
military law in tine of war  
  
54, Te would sopesr, thet in Russa, death penalty was  
abolished in the miceighteenth contary except for polities!  
SMience. and was allowed ana are teasaré (Ne pena  
odes of 122 nd 1008" Te wae abotened gain a 10d? for  
  
1 The Appendix im Joy's Bosk Wm reproduced bere  
  
ome  
fee  
  
  
Page 44:  
ove  
  
common Jaw offences except brigandage, but retalned for  
  
grave politcal and military offences; it was replaced in  
  
1847 daring peace time by temporary Internment. In 1850,  
  
tealtors pis and sabotturs were” exespicd trom this  
ieney"  
  
55. The broad poli on the subject can be ascertaized  
trom the Prive of Ponithmene  
In accordance withthe federal legislation enacted  
in 1986 and. now tn fotee, Capital Panishmentby  
means’ of shooting-—is. permitted ‘ax an exceptions!  
tmecsurs, Gt punishment before “being ‘completely  
Ubollsed, for the following crimes! tteason to the  
country, spYing, “diversion terrorist activities, burg  
fry, premeditdied murder wlth aggravating creams  
tance, ae these crimes are referred fo inthe provisions  
i). penal iw of O58 ana the Republi ot  
nion which doteriine responsibility for premed  
  
ruse, wartioe orn rari ed  
  
for other particularly grave nes,  
Provided for bythe legislation of USSR. Persoas  
{iho have not reached, Gator commiting tele crime,  
The age of 18 years, eannot be put to death, nor women  
who tre” with “child. during thelr crime or atthe  
Tener of the aderent or on the day of the exces  
  
es bh are Bn ba  
  
457, Capital punishment has been abolished in | New  
Zealand. except for treason’. "The abolition came after 3  
“chequered history" of abalition and restoration®. “Tt has  
been enforced and suspended and abalished, and reinstated  
land suspended again—a weather cock varying with ever?  
change of Goverement since 1835."  
  
‘Torte Nuassen 10  
Abolition Move in Canada  
  
58, The history of the move for abolition in Canada and  
the ressons for the recent decision of the Government sre  
es se  
  
2 Se tanto of sation 23, Pci of Punishment ee (1938in  
  
Set Rahn Lie Gea poe 9 oa  
  
43. Se aso Appenits rating vo Deh Pesay i Russa  
  
4 Joret, Right to Lie (1963), page 78  
  
5 Servi 74 (1) and 192, Grime Ach 1968 ew Zelan  
  
&, Dacia “iscosion about New Zend wil De found i in  
Aegrt ore naar Deeret lt  
  
“ght anvan, Minter of Jake in New Zand HR. Debts, att  
saa seperti, Col 8  
  
  
Page 45:  
a  
  
well set out by Hon. E. D. Pulton, Minister of Justice, in  
his speech on the second reading of Bill No, C-92, to amend  
the Criminal Code’. The relevant portion is quoted  
below: —  
  
“in Canada attempts to alter the death penalty for  
murder began at least as far back as 1914, when Mr.  
Robert Bickerdike introduced Bills to abolish capital  
punishment in several sessions of the House of Com-  
mons beginning in that year. Although they were  
debated at length, none of them resulted in legislation.  
In 1924, Mr. William Irvine introduced a similar Bill  
which also failed of passage. In 1937 a Bill was intro-  
duced by Mr. Blair to provide that the sentence of  
death be executed in a lethal chamber rather than by  
hanging. This Bill was referred to a special com-  
mittee which reported unfavourably on the proposal.  
In 1947 and again ir. 1958 the Canadian Institute of  
Public Opinion made two inquiries with almost identi-  
cal results, 68 per cent. in favour of retaining capital  
punishment against 23 per cent. in favour of life  
imprisonment,”  
  
in 1950 and again in 1952 Mr. Ross Thatcher introduced  
a Bill to abolish capital punishment. On the latter occa-  
sion he withdrew it on the undertaking from the then  
Minister of Justice that at the next session Parliament  
would be asked to set up a committee to go into the matter  
‘ully.  
  
“The most authoritative recent exposition in  
Canada has been report of the joint committee of the  
Senate and House of Commons on capital punishment,  
corporal punishment and lotteries which was set up  
pursuant to the undertaking referred to. This Com-  
mittze, which studied these matters for two years, in  
1954 and 1955, recommended the retention of capital  
punishment, and in this respect the Bill before the  
house meets the recommendation of the committee.  
‘The committee also recommended that there be no  
degrees of murder. In this respect the Bill does not  
follow the recommendation of the joint committee.”.  
  
‘The deep and contizuing concern of Hon. members with  
this subject is shown by the debates that took place  
both fast year and this year on certain private members’  
Bills, Although these debates took place on one Bill only,  
a Bill for the abolition of capital punishment for murder,  
the fact is that last year at least three Bills were intro-  
duced all differing in their proposals. While these Bills  
approached the subject from different directions, they did  
have in common an assumption of dissatisfaction with the-  
  
t Canadian House of Commons, Debates, Session 1960-61, Vol. 5,  
Ages 5220, $232 ef seg. (23rd May, 1961)-  
  
  
Page 46:  
2  
  
present position and a desire to bring the law in this con-  
Trection fn closer conformity with present day concepts of  
crime snd punishment.  
  
“I believe we owe much to the members arho spon  
sored os Bille the hon member for” theca  
  
rough (is. McGee), the hon member for Burnaby-  
Richmond (Mt. Drysdale) and the hon. member for  
Vancouver Bax (ME Winch quite apart from the  
  
question whether of not we agreed with their speciic  
  
Broporals. {believe the ensuing debate ofthis Bil  
i'n the better forthe thinking and formulation  
  
js about this subject "whieh howe Bis pla  
  
r  
Siseuslons, with those ‘whe, did ot pacpate, show  
te cleoriy tht the mary of members ihe howe  
favour retention of capital punishment. “Tt became  
  
‘equally ‘obvious, however, that’ even among those  
‘sprese to ablion there arelsrius misses a8  
{othe present law and practice governing the death  
penalty, It therefore seems proper and’ desirable to  
Bring about some modifcetion of the law and prectice.  
“There is another thing which, in my submission,  
  
‘a review of these debates, at well apa stody of all that  
fap beets sald and written, elsewhere, makes. quite  
clear. It is that while the authorities are. of some  
‘sistance and the debates have been of help, never-  
  
Aepth of fooling that “they pre never going to. be  
hinged by mefe weight of stgument or static.  
Tnaeed, on the question of the deterrent eect expec  
1y, satisties cannot give a. sallfactory answer? there  
Sterno slailce of ourders tot committed "But eo in  
fai respon has 1 be taban anda decion  
iy, resp ms =  
‘hae to be made, and this the Government hse dope  
  
“Raton gute acne rt  
odin "pete awe ts erty  
soit eee ie  
Shoat DA ies  
  
“Second, we have taken eccount of the fact that  
the country, ‘as reflected by opinion: in this house,  
favours Tetontion of ea "Third,  
  
Kite sus Secaguion feat cen ome Gee” whe  
Ear estos tte inn geal fel he the a  
‘Socid Be'modited "Pinal we have ken stout  
  
  
  
Page 47:  
“  
  
wes can la  
Eh ais ct aks  
Se Re, pttae  
oi 05 somal Ww un a  
i Sena ai Ga  
Soe ee ee eee nce  
Sopaed waennee tear ant  
SELES oatirie ue aie at  
Schreiner ea ecco  
imeem Gade dank dats  
Eerie a Gee sara  
Ee ey  
He Met le Se ead  
See (outs meniecnand Sno  
Paya  
sodas “PEG ans Maho  
wien  
cig Stiat taaee aoa Pe  
SESE (eh os Ste rs  
sty tiie dencrea ees ae  
Lae co isea tate ieae os a  
Pave Wie ee ae ee  
Fete SG ch eee  
  
Ihost of te manor Phe Mowe. af  
st tr ye werdict of the House  
  
Beate owe tae Government ns Alfitty te 18  
Sut of 38 membere™ielading Mr. Pearson and hs  
  
1 i ons mio mde te Colina  
 Cwmalan Reon Ronee de a7 of fe, eet Cae  
nied Peace Cae ed Hai ot Sots on Cap  
BS eh et  
“pee Round Tae (Toe, Commoeith Qua) aly  
Nunbtt Sana yaad 8  
Te Mottaw.  
  
  
  
Page 48:  
‘belin to  
fi  
  
Solictor-Genersl, Mc. Pennel, a fervent sbolitiotet  
who advises the Cabinet about appeals for commuter  
tons—voted in favour of abolition, There are 18 mut~  
devers avalting Cabinet decision,  
  
‘Toric Nuss 11  
Abolition in Asia  
  
6, In a few countries of Asis, the abolition or  
tion of capital pumahiment has ben formally, cosldered  
  
G1, In Ceylon, capital punishment was ted  
the Suspension ot Capital Punianent “Ae Go 198)  
  
for 3 years Ihe paid ot rospenton ae UR te  
ther extension by resolution). ‘  
  
(09 May, 1986, death pecalty\_ was ete  
cited for Sern offence pers. The quer  
  
tion of restoration was considered’ bya Commission of  
Tnguity  
  
I» Jupon, ite understood, propceals are under ean  
sideraton Yo lim: the death penalty t» 8 leser number  
St offences than at present”  
  
63, In Burma, the Penal Code (ie the Indian Pena  
Code’ which is stil in force there) has been amended #0 a  
to limit the death penalty (so far 05 homicide is concern  
ed) t0 only certain categories of murders  
  
The Paap Tie, Cpe Conmonneah  
‘Number Bs eer “Coa pape be tad 3.  
  
2 Regrt of te Coot Comic of nary on Cala Punshnent  
Ssevsion Bape 1p pablo Tah rem  
  
query) Guy. ee  
  
4 ‘The Commiion we gained of Profesor Noval Mari  
saan! SPR Wane RSE GSP alana Nite  
Bidabont  
  
1 become oe, Oe Ra  
sec anommarbaite cpt tng ete  
featons Tok, Te, 18 .  
  
6 Su compe satel  
  
  
  
Page 49:  
%  
‘Tone Nusown 12  
Abolition move in United Nations  
64, The subject of Copital Punishment attracted atten- Abotton!=  
  
tion inthe United Nation als, towards the end of 1907, Samet N=  
‘when ‘the Third Commatiee of the Twelft W.-H General  
‘Assembly opened discusion on "Arteie 6 of the. Draft  
Govenant on Civil and Police Rights: "The drafts uot  
  
rel  
  
‘below  
“1. No one shall be arbitrarily deprived of his lite,  
Everyone's right to his life shall be Protected by law,  
  
“2, In countries where capital punishment exists,  
sentence of death may be tmpaved only ay m penalty  
for the most serious erimes pursuant 10 the seatence  
‘fa competent court and in accordance with the law”.  
  
65, The delegate or Uruguay moved an  
  
amendment,  
the effect of whieh was to prolibit the taking of life under  
any ‘circumstances whatsoever, and this was supported by  
the dolegate for Colombia. -A'Tot of diacursion took place  
fon the drafting of the clause, and the Colombia-Uraguay  
lamendment to the effect that “The desth penalty shall not  
  
be  
  
“imposed on any’ persoa’” was voted down on 25th Nov-  
  
‘ember, 1967 with nine in favour (Brazil, Colombia, Domi-  
  
‘lean, Repub  
  
‘Beuador, Finland, Italy, Panama, Ureguay  
  
and Venezuela} and S51 against, with 12 absentions®  
  
86. The Article as finally approved by the Cornmittee  
  
read ag follows":  
  
“Article 6  
  
12 In countries which have not abolished the  
death penalty, sentence of death maybe I  
foaly for the inost serious erimes ia  
  
‘with law in foree at the time of dhe commis  
of the crime and. aot ‘0 the provisions  
ff thie Covenant and to the Convention on. the  
Prevention and Punishment of the Crime of Geno  
cide, This penalty can oaly be carried out pursu-  
Sint to a final judgment rendered by a competent  
Cour,  
  
3. When deprivation of life constitutes the  
  
crime of Genocide, i ie understood "that nothing  
fm this article shall authorise any State Party {0  
  
“YS pes Rien vo Lie GW) pe  
  
> Hoje, Right Life 960), age 8  
  
  
Page 50:  
Eaiie  
  
poe ot  
  
Py  
  
derogate in any way from any cbligaion asumed  
under the provisions of the Convention ‘on he  
  
Prevention and Punishment ie Crime of  
ent tof the Crime of  
  
“Anyone sentenced to death sail ave  
nae ec pas Guan of ‘eae  
ee barn or commacen sf the  
senet Of dats Snap be esta ea  
  
5. Sentence of death sell net be imped for  
xen commited ‘by persone below "ephece  
Yen oe and shal nd be aed oto ee  
  
1. Nothing in this aree shal be invoked.  
deat orn prtvort te sian af Copia pt  
tent Gy ‘ny Ste Pac we he Cowan  
  
This was approved by 88 votes to none, wth 17 absen-  
sont "india itt aba Te voted Sn fav)  
  
7, wo years intr, the sane Third Committe dass  
2 att Fesuton on Capi! Punishment the an  
Sitec't eth ast oil te Boones an Sel  
oan ores te Commision op Haman Right 0  
Sree a ody of the qtr. thes "rellon wat  
Rotel Gy Austra, elon ude, aly, Sweden: Vee:  
Riis and Grogany ‘The restatln war acepsd inset  
Eien on ie inp a the Beno ad Sat  
Ea ded one 5 seve of fe varous emer  
or thi questo.  
  
CHAPTER TH  
EXISTING LAW.  
‘Tore Nexen 13  
Existing provisions of the Indian Penal Code regord  
™ ‘Capital offences ‘se  
  
68. So far as the Indian Penal Code &s concerned, the  
sentence of death can be avearded for certain. off  
  
Ei est  
FeuGth, Under the Code. In most of these cases, the sentence of  
  
Sede  
  
‘death is permissive, and the court has a diseretion to  
‘award the Teaser sentence of imprisonment for life. It Is  
‘nly in one case, namely, murder committed by a person  
der tentenoe of imprisonment for lf, that the sentence  
of death is obligatory.  
  
oe sy ha  
gent Bree tes Ness  
Rew York Gay, Docament Ne STSOAISDI  
1 Su urea ra.  
4 Sect 0 Than Peal Cale  
  
  
Page 51:  
2  
  
©, The relevant sections of the Indian Penal Code aid seaiags  
the silences concemed are a3 follows: wont  
  
Wagga cy sett the Goveaent  
Secon 133 Abcmant of giny by + member of he  
al a  
  
Stalog 194, So part Tae erence ening 40 coniion of  
oa “aod pase and bie Suter  
  
Section 999 Maer by & Meco  
  
Sesion 205... Abement of pide of kd or insane  
=n  
  
Seta 307 - Aueapt t2 mane by lieseont  
  
Secon 396 + ae with mae,  
  
10, The cfence of murder may bedealt wit sn deta  
‘The offence is defined in section SOO “of the Indian Penal  
Code. That section provides, that “except in the. chase  
hereinafter excepted, “culpable bomicide is murder 1 the  
act by which the death is cain is done with the inten:  
fon Or knowledge set out in the section, The definition of  
‘caipabe homiotde” fs given In section 298 The sections  
fre bet cut below, orliing the ilustration:=—  
  
“Section 298—Whoever causes death by doing an  
‘act with the intention of causing death, Or with the  
Intention of causing such Sodily snjury ‘a is key to  
cause death, or with the lenowiedge that be le Hey  
Dyrsuich act to cause death, commits. the offence of  
culpable homie.  
  
Explanation 1—A person who causes bodily in  
jury 1 another who is labouring under a disorder,  
‘disease or boaily infirmity, and thereby "accelerates  
the death of that other shall be deemed to have caus  
‘ed his death,  
  
Explanation 2—Where death is caused by  
  
Inyury, the person who sauces such bodily ajtry shall  
beamed No have’ caused the deat allhough "ty  
Fesorting to proper remedies and skilful trestment  
the death might have been prevented  
  
Explanation 3—The causing of the death of a  
child in the mother's womb is not homicide, But it  
‘may amount fo culpable homicide to cause the death  
ha eng el iP any part of that child "hes been  
‘brought forth, though ‘may not have breath-  
ed of been completely born.  
  
TTS ip wat on Tnaia Peat Gata  
  
  
Page 52:  
ey  
Section 300—Except in the eases hereinafter ex-  
cepted, culpable homicide is murder, if the act by  
Which the death is caused is done with the intention  
of causing death, or—  
Andy If it is dove with the intention of causing  
‘such ody injury a the offender kaows to be likely  
  
salts! done wid he ateston of eng  
r on injury soe  
tended be Inficed i muicient inthe ordi  
course of nature to cause death, o¢—  
that 90 amity dangorns tft i ots al  
iis 99 “ms,  
robabilty. cause death, or such bodily injury’ ea fs  
ay "tase aah ad St eh at tat  
‘xcise for i on or  
‘such injury 5 afore ‘ing  
  
Exception 1. Domieide is not murder if  
the offender, whilst deprived of the power of self  
control by grave and sudden, provocation, causes the  
‘death of the person who gave the  
{fhe death of ay othet person  
  
‘The above exception is subject to the following  
  
Te be eran at on  
se at ia  
peepee  
  
Sed ste pry te  
trie DRT! Se  
ei  
me  
  
oop amen wo,  
pita rains  
nant  
  
sorter e\_poresiy  
  
eS Ae  
Sua cenar aoa  
  
ete cae el tte  
yoeie agrani tes ais  
  
  
  
Page 53:  
Exception 8—Culpable homicide is not murder  
if the offender, being a Public eerrant or alding “a  
Dublie Servant seting foF the advancement of public  
Zar dest by doing an act which her'in oo Zit,  
Pauses death by doing an act whieh he, in :  
believes to be lawful and necesary for the’ due sy  
harge of his duty such pubie servant and without  
‘swat towards the person’ whoeo death caused  
  
Exception 4—Culpable homicide is not murder if  
5t is committed without presmeditation in a sudden  
‘ight in the heat of passion upon a sudden quarrel and  
ithout the offenders having taken undue advantage  
‘OF acted fn a cruel oe unusual manner.  
  
Ezplonation—It\_ is immaterial in such casos  
SLBAGY ses he provoation or "commits the  
tans  
  
Exception 5—Culpable homicide is not murder  
  
‘when the person whose death is caused, being above  
  
The age of eighteen years, sufers death or takes the  
  
Fisk of death seth his own consent”  
  
7. 1 nt negsary, for the prevent parpove, center Den  
into any lenglay discussion of, the ingredients of each of berm  
the affénces Broadly stated, the Alstiaction between the mag, 4  
two offences has been very well put by Melville J, in a GOR.  
‘Bombay case’. Tn that cage, the accused knocked his wife  
Gown, "put one Knee on het chest and struck her two. oF  
three’ velent blows on the face with, the closed ft. pro:  
fhucing extravasation of blood op the brain. The wite  
{nveonsequence. The. court held, that since there was  
Intention to esuse death and the bodily injury was  
Sufficient in the “ordinary course of nature” to cause  
lent, the offence consaltied was not murder, but culpa:  
ble homicide. "The following analysis of the two sections  
Is contained nthe judement:—  
  
‘See 209 Sesion 300  
  
A genom commits Sub 1 cerain peo, apt  
SENS ARES Giich “hie i mate Pane a  
SOMES Cah net eine”  
  
  
  
Page 54:  
30  
  
(© with the knowledge that (4) with the knowledge that the act is 30  
  
the act is likely to case immminentiy’ dangetous tha: te ‘putt in  
death ai probably ae acy, ce wach  
injury’ as Is. ‘likely "to" cause  
  
death, 8 Iely v0  
  
“I have underlined here the words which appear to  
me to mark the differences between the two offences.  
  
“(a) and (1) show that where there is an inten-  
tion to kill, the offence is always murder.  
  
“(c) and (4) appear to me intended to apply (L  
do not say that they are necessarily limited) to cases  
in which there is no intention to cause death or bodily  
injury. Furious driving, firing at a mark near a pub-  
lic road, would be cases of this description. Whether  
the offence is culpable homicide or murder, depends  
upon the degree of risk to human life. If death is a  
likely result, it is culpable homicide; if it is the most  
probable result’, it is murder.  
  
“The essence of (2) appears to me to be found in  
the words which T have underlined here. The offence  
is murder, if the offender knows that the particular  
person injured is likely, either from peculiarity of  
constitution, or immature age, or other special circums-  
tances to be killed by an injury which would not ordi-  
narily cause deoth. The illustration given in the sec-  
tion is the following.  
  
‘A knowing that Z is labouring under such disease  
that a blow is likely to cause his death, strikes him  
with the intention of causing bodily injury. Z dies in  
consequence of the blow. A is guilty of murder, al-  
though the blow might not have been sufficient in the  
ordinary course of nature to cause the death of a  
person in a sound state of health’  
  
“There remains to be considered (b) and (3),  
and it is on a comparison of these two clauses that  
the decision of doubtful cases must generally depend.  
‘The offence is culpable homicide, if the bodily injury  
intended to be inflicted is likely to cause death; it is  
murder, if such injury is sufficient in the ordinary  
course of nature to cause death. The distinction is  
fine, but appreciable. It is much the same distinction  
as that between (c) and (4), already noticed. It is a  
question of degree of probability. Practically, I think,  
it will generally resolve itself into a consideration of  
the nature of the weapon used. A blow from the fist  
  
These observat should be taken as referring only to clause fourth:  
Ir thy tenet so taken, the criticism in Flot Kiude v. Emp, ATR. 1939  
Sind 57, 60 (per Davis C.J.) that they may mislead, may be valid.  
  
  
  
Page 55:  
a  
  
or « stick on a vital port may be ikely to cause deh;  
{wound from & sword ina-visspar is sucent tk  
the crdinary course of nature to cause death,  
  
12 Certain propositions, though they may sppesr to be Some  
semmenary, are wal worih an eaphass in his Sonex =>  
1) Culpable homicide ie a generic offence, 1s will  
‘mount to murder Ifthe conditions isd down in eo  
‘Hon’ 300 ate sated.  
(Gi, "1 docs not foliow that case of culpable  
onl sre: eee dow 0% fal wit  
of the Exceptions in section 900. To render calpal  
omleide murder, the case must come wihia’ the  
fons" of clases (1), (2), (@) and (§) of section  
  
(il) Culpable homicide may, therefore, not be  
  
(a) where, notwithstanding that the mental  
state 12 culicient to constitute fourder, one of the  
Exceptions to section 300 applies, oF  
  
(®) where the mental state, though within  
the description of section 200, is not of the special  
degree of criminality required by section  
  
(Gx) Even where the cate clearly falls undor so  
tion $00, Indian Penal Code, and does not fall within  
the exceptions to that section, the sentence "of death,  
innot mandatory; it {ope of the alternative sens  
ences!  
  
78, For the present purpose, it unnecessary to dis,  
us the sti under the old section 35718), "Cade ot  
Griminat Procedure, 1998 (as it stood before the Amend  
Iment of 1955) whereunder, In the case of a capital offence,  
{tthe court tentenced he accused to” any Punishment  
ther than death, st had to state its reasons for not passing  
the entnce of dnth, ‘That proviton bw tow enn re:  
peated  
  
7A. The four stages to be observed in an approsch to  
the question of culpable homicide and murder, were Point- mS ia  
fed out ina Rangoon case ‘The discussion there is 8 use-  
fi one, and may be surnmarised ag follows:— Sep  
(, The accused must have done an act by doing  
which be has caused the death of another person.  
  
ery  
2 Seton 925, Indian Penal Cade  
  
‘san exo o he sourveey whch was mn yh ron  
see Bap i nt i 8 aman "ATR: ote Ca 98  
  
Nes Okt Tin ¥, The King, AA. 199 Rangoon 235 (Sharpe  
  
  
  
Page 56:  
Ey  
  
Ud) His set must amount to culpable homicide  
  
(i) Tt must farther be established, that the act  
was done with one of the three intentions or with the  
Knowledge set out in section 300  
  
(Gv) Tt must then be considered whether on the  
acts of the particular case, It is brought down from.  
the higher plane of murder to which it hag been Tais-  
fed, t0 the lower plane of culpable homicide “not  
Smounting 9 murder, by reason of the act falling  
‘within any of the Exceptions to section 200  
  
to culpable homicide and  
  
7B, The sections relat  
smarder were Uhus anal  
  
“Stage 1: The frst stage requires that it shall be  
‘established to the satisfaction of the Court, that the  
‘Secused person has done an act by doing which he has  
Geused the death of another person. There is, of  
eure, no itil fn appreciating, that that isthe  
‘Starting point, but Ut (e almost the only stepin such  
‘Sauce which i Snvariably taken correctly. Even this  
first stage may give tise to difculties, and such canes  
a5 1997 LL.B 386-1 refer to the Full Bench decision—  
nay have to be considered But diffculties at this  
  
woent From the very next stage  
jeities frequently appear | 10  
  
aaj  
bal  
HE  
i  
ey  
4 ieee  
ie  
ie  
  
wl  
  
1 Nga Gab Thaw The Ki ATR. 19 Ta 25,  
  
4 Tike, Abr Ard (2997) 4 AIR Rang 3065 LG. 74  
ak Dy So TT  
  
  
Page 57:  
question of murder can arise, Theretore 1 will at  
‘nce make clesr what eulpable homicide ie.  
  
‘Section 299 enacts that the doing of an act which  
‘causes death i culpable homicide if it is done either  
(G) with one of two inventions, that is to ay, with the  
Imtention of causing either (a) death or (b) euch  
Bodily injury as is likely to cause death, or (A) with  
the Enowledee thet death i Ike Yo Be cated by  
  
“Stage 3: Section 300 now, and only now, comes  
tion. If itis established that an act which  
  
Set was eo imminently dangerous that (¢ must in all  
probability, cause either (a) death. oF (b) such bodily  
Snjary ae was Mikely to cause death, and (B) without  
‘any exeuse for incurring the risk of causing "either  
(Gent og) such Boy Injry as as ety. $0  
  
  
Page 58:  
EN  
  
26. The judgment’ then proceeds to anaiyse the  
tl, TR Jidument! then proceeds to anayse the sngre  
“will have been cbserved that an Intention to  
  
suas death s'a part both of secuen 238 and  
‘sctin 900.Thtalore if in the earir” part Of the  
itgury, under secton 29% which I bave‘caied\_ the  
Second stage, it appears Ghat the act "was done with  
ie iatenten of cutsing deat, then sage 9 wi pre:  
sent no dificult, fort at once amounts to mer,  
‘ier section 300; unless the cave comes wishin one  
‘the exceptions inthe latter Section "hut the ace  
tot done’ with the intention of caning “death but  
Alone either with whet may be called the alterna  
  
ot  
&  
  
Se intentions swmen Shave marked" ()"(0) sn  
G6 per section 800, or with the tat  
‘rithout the exease, mentioned in that seen, Hence,  
Te'wit bo seen that intention fs ot w necemary gre:  
fedge that death hike to be caused erty, is  
  
a death eel bet ts  
aipele homicides and it fo dom arith the further  
‘Enowledge thatthe ack was oo imminently. dangerovs  
‘Snei masy n al probably, come either deeth or  
ch tity injury ae wes Ike t case death, then  
{at calpebe homicide fe murder ‘Thus knowledge te  
Saficient to etablish murder tabout "any intention  
SShatover being proved  
  
‘7h. The principle behind existing capital offences ma  
  
EBT ye Considered Rt tt sight Me capital offences ‘ated  
  
ci  
  
‘above’ may not show any common element: but a close  
‘Inalysie reveals that there fea thread linking all, these  
frences, marely he pines thatthe sey of human  
fife must be protected, It fe the “wilful exposure” of life  
fo peril Bat seems to constitute the basis of a provision  
for the sentence of death?  
  
‘78 This principle 's evident inthe case of offences  
under sections 202 and. 913, and is reflected in the other  
Sffences siso, Thus the offence urder section 181 is 2  
Gipitl one, because It thenatena the Very existence of an  
Srganised Government, which is essential for the protec~  
{ion of human life. ‘The offence under section 132 is, again,  
  
  
  
Page 59:  
38  
  
‘capital one, because it sims at th> destruction of the very  
{forees which ave intended ta protest the machinery of the  
Slaten the ta rosort”Agtn the offence under section  
  
, second paragraph Is punishable with death, on the logic  
‘that tho person concerned gave false evidence with the  
Intention of, or knowledge of Ukelihood of. deprivation  
‘innocent human life. fn the ease of the offence under  
Section 308, the erime i really one of homiciae, but come  
fitted indirectly; the offender does not take the life wath  
his own hands, but encourages & person who carmot Took  
‘alter his own interests to end his Ife. The hand that does  
the actual act of killing js merely a tool in the hands of  
another, The perton killing himself \s one around whom  
the Taw is compelled to throw ite special losis of protec:  
‘ion  
  
78. The offence urder section 307, Indian, Penal Code  
4s one Where the attempt fs not successful; the dice  
  
of the sanctity of human lite i, however, apparent  
  
also, ay ls reinforced by the requirement that the act must  
bbe suca that if the offender by that act caused death, the  
Gifendor would be guilty of murder (est paragraph of  
Stetlon 302). ‘The sentence of death, however. canbe  
‘uvarded only where hurt is csased and the person offend  
ing is alrendy ‘under sentence of imprisonment for lite  
Gecond paragraph, section 307). This last requirement is  
‘merely gn illustration of the proposition that the fav bas  
‘hot ruled gut s consideration of the “individual” ‘Thus,  
WAC after fouding a gun. fires it at Z. intending to murder  
2,’ ‘has committed the offence of an atlempt to murder;  
if, by such fring, A wounds Z then hurt has been caused;  
ahd if A le a person under sentence of imprisonment for  
Iife, he may be punished with death  
  
80. The ingredient that the offender should be under  
sentence of Imprisonment for life is common to sections  
4503 end S07, a'specal feuture im section 308 being that the  
act of murder compete and the sentenes of death is  
Srandstors  
  
1. By local amendment in Bengal, an\_ offence under Besa  
  
sect 37a Pana Code ea Satan iS  
runshable with death” Sections €(1) and 7 of the faust,  
Berea! “Cena “Law Arendient” Act “Se gueted  
  
°8(2) "Dae Commissioners may pass, wpon ewe ot  
sen corticted by them any contenee authorised by iw Cami  
{or the punishment of the eftence of which auch person ®===™  
{5 comeeted  
  
a = ie ome  
veal 6  
  
haga Amana ra  
od Lon a a  
  
  
Page 60:  
Provided thst where the Commissioners con-  
vlcted any’ person of any offence punishable under  
ibe fea poraraph of section 307 ofthe Taran «0 0  
Benal Code, committe aftr the commencement of  
{he Bengal Criminal Law Second Amendment Act x of 52,  
1092, they tay” paas on sch Person a nentence of  
death or of transportation for lie.  
1. The provislons of the Code, so far only as they  
seg sg ace wh ie olny of ie  
Special procedure: pres ‘under, this  
SRali“topiy. to the proceedings “of” Comimissioners  
Sppointed under thie "Act, and sich Commissioners  
{SEDI Rave all the powers ‘sonlered by the Code’ on 8  
Court of Sessions evercising, orginal jurissition™  
  
82. The offence under section 206, Indien Penal Code  
special case of vicarious Habslity 4a. respect of the  
  
sentence of death, but even here it would not be dificult  
to discern. the principle of protection of humen life; the  
‘seetion requires’ that there must be five or more persons,  
who are conjointly commiting. “dacoity™ (as defined In  
Section S01 read. with section. $90), and that one of such  
sone must commit murder in ap ‘committing daca  
ihe Hability ‘onder this section docs not arise wnless. all  
the persons are eonjotntly committing “dacoity ‘and the  
‘murder was committed In so committing a dacoity™  
  
®, The distinction between culpable homicide (s2c-  
  
Sea a  
  
Pc ta thee ace eh  
eeu thas acy  
Sue et de ne  
TESTA he dea le,  
Gretion 300), the court is not bound to impose the  
intended to leave rote: for he cremcicn the discretion of  
  
the sertence of death, which is  
  
:  
{Ser pomaty can be imponta hs oy  
  
of the case  
  
24 The various Exceptions to section 300, Indian Penal  
  
Code’ take out cases which would othertise fall within the  
tego of murder fram tt eet. an put the back  
  
ategors of culpable homicide not smounting’ 10  
  
Tn tie pow Maths Tok, Gont) 6 CW.  
  
nnd 51 Son at ots ys pnt 3  
  
3 Pangan 75 pre.  
  
  
Page 61:  
Fa  
  
murder. ‘They also svem to illustrate the concern of the  
Taw fo ansure, that death sentence is imposed only where  
ike disregard of human lite iy evident. ta Exception 1 to  
Section 900, this principle fe shown by the ingredients of  
Geprivation of the power of selfoorol. by “grave sand  
Sudden provocation’ In Exception 2, it manifests sel In  
the requirement that the oer iat have ate in god  
{Jah and in private defence, and the death mast have been  
used without pre-meditation and without any swtenton  
gf doing more harm than tz necetnary for such dotence,  
Exceprom i the requzement i tha the offender must be  
4 public servant or 4 person aiding s pubie servant acting  
{oP 'the sdvancemers of public Janice, an death mist have  
been caused while the act was done in good fith and in the  
eg that ir wos lowland "neeestany "forthe de  
rae of the duty of the pub servant Sd wtoat  
Aiiwill "Trough this may be treated as » special cae,  
requirements! ot good faith and absence of ill-will show,  
fat regard for human life je stil an Important eiteriont  
Exception 4, in each of Sts Angredents exit ths pete  
ple the reatiemends of () sacne of remediation  
Sudden ght, (i) the Neato thom a sudden  
Guarrel and iv) the absence of undue advantage: et are  
Sitende to ning down, the pnishment in view" of these  
Special features. :  
  
Exception Murder of a person shove the age of 18  
years, who suffers death of takes the risk of death with his  
‘With the general propestian vated abwve: t equires  
with the peneral ps above; it reqeir  
Consent of the victim, and the consent must be a full and  
free consent of » normal human being (ina being &  
Son Feulng fom sectan 0). the const a,  
  
re, oF Inger: by 9 person who ‘age or other.  
‘wie atnormal the Epon would net be sisked, and  
{he case. would continue to fall under main section 300.  
‘The sentence of death would then be peraissibie, and the  
station ‘would be analogous that dealt with in sex  
tion 308, though rot Mlentcal with ie  
  
1s Some eotrton of hese of diy ws ys  
aula etn of hone of drt, wt ey  
wae ce, hae ee  
Eating ed eve eo  
2 Wa Ga remain aes a  
Fegan a  
ind tn a Sere  
  
Sn  
ok Sym? Banat Digs Cri Law (84) page 3 pare  
  
  
Page 62:  
06. The crime of Sariga (larceny) was, under Muslim  
law, ‘sugravated into highway robbery (Seriqe--kubra),  
and highway robbers were classified ito four entegoriee-  
first, those’ who were selzed before they had robbed oF  
muriered any person. “Secondly, those who had committ-  
‘ed robbery’ only. Thirdly. thase who had eomenitied misr-  
‘der without robbery, and lastly, those who had committed  
both robbery’ and murder. obbers of the fst class were  
{0 be imprisoned until they showed repentence, robbers  
of the second class were to suller amputation of the Tight  
hhand'and lett foot, the share of each robbers amounted.  
to ten dithms, Robbers of the third clast were fo sulle?  
Punishment of death with or without amputation, Regards  
Ing robbers "of the fourth "clas, the Ruler couid order  
smputation and death, or death immediately, or crucifea-  
tion. If any one among a gang of robbers committed.  
‘urd, all were Mable to the penalty (of death), subject  
{0 certain exceptions,  
  
Tone Nuss 14  
Vicarious or constructive lability  
87. Liability to death sentence mai  
situations though, the netual set of Il  
another person ‘Those cases may be  
of “vicarious” or “constructive Habilit  
{erms may not be strietly accurate). Such  
two categories; the first comprises thore where “A be-  
comes liable for the offence committed by B, when A ims  
selbst commited any fubtanie enc the peo  
Comprises those where, fre gully of some  
‘substantive offence. but, by reason of some Special feature  
in the actor of B, A becomes lable for the higher sentence  
f death, In the Yormer case, the substantive offence ts  
attributed to A. while in the latter case, the liability for  
the rentence of death travels to A.  
  
88. The important cases of such Tiability’ under the  
Tadiaa Penal Code teem to be these  
  
‘Sesion 44 Indian Pent Act ne by sveal person in farthrace  
"Sis Ba ten Sty ee  
  
Panishnet of emia comin.  
  
sexi Pap pene of wi ety ety  
“Sue, Toten Peal Bip ees sori im proweation of  
Some ie et Pa a a  
it poh th atin  
es  
one re  
  
  
  
Page 63:  
80. The vicarious liability i all these cases is justified  
‘the ground thot the person concerned is 8 party t0,the  
‘iit though his physi! posttption i indreceTwe  
sens ve tn this contest. if represented by the require:  
ten? of oman tenn faa cospieny te  
ton which constitutes “abetment™ er of. goaspracy  
Enplicten or of "common ebjeet™  
‘Bor ofa dacoty  
  
90. There ie one section® whereunder vicarious Mabitity  
arises n'a cose of house-breaking, ete, because another co-  
‘tfender hs caused death, ete.” But’ here the person #0  
viearouslylicble is not sentenced to death  
  
81, Some discussion of two special cass of constructive  
tabi seem 20 be called for, in view of tele importance,  
‘The hes ie tat under secuon 3, Ivars Penal Code, which  
reads 98 flows  
“Section 3M--When a criminal act is done by seve:  
rat persone in furtherance of the common intention sf  
5iooch ot such personae lable for ‘hat act the  
‘ime manner az iP were dare by him alone.”  
“Te question may be raised whether the aplication af  
{his setlonIn"relation to murder lads to any hardship Of  
injustice. ‘Seeton 34 does not come into operation, unless  
thre js a common intention acd a eriminal actin done by  
Several persons in fartherance of that common intention.  
Teint aiity, under becton, io, Getefore, the, abi  
wh what hay been called “the unity ot etm  
"The causing of death of one-person at the  
indo several by blows and by stabs under cccuma.  
{Shes in heh it cen ever be known which blow or Blade  
Scluniy extinguished life Is commen in ermine expert  
he 26 has been pointed” out. by. the, Privy. Counc  
‘Though the section, a9 oighally goscted, did hot conti  
she words in Ruther of the comin lento of  
“hey sere tide in 107, simply to make the object  
fia he sein de ot oxalate dey in at Bat  
iyPeguires a commen intention and participation in crime  
‘s'strerol peroony wt out together upon ae comman  
<esign be if murder or other crime, and fach fakes the part  
sss? lm ane tcommal he oc he  
WalGh at oper distance, ete they are all {ifthe offence  
Te commited) inthe eve of te Taw “presenta because  
  
eae 6 aos  
2 Secon 40, Ins Penal Cae  
Tie she oe wed Lol Sune Ree  
ap at AS EE gh RE Re  
1 Bernd Kur 9 Kg impr, ALR 85, Ps  
  
Se dcr Ki . ALR 1904  
aa SS eins Nie Bap Roa Knar, ALR. 1924 CA  
3-122 MofLaw.  
  
  
Page 64:  
o  
  
1 was made a common cause with them, each mat: operat  
sng i his station atone and he sare tstant Howard the  
  
{Puta ns combi of hs Kt “not  
ie ip cca tit eae  
ot ArePan, eos es eed  
Steely sey nfl ee ad dag ee  
ecu eiatl mers ae, Dis  
Thence hes le Te ge x  
Sal SPS a tga a  
SOLD Oe HE ete eet ae  
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FPO NE Nic ha pa a  
PS age np sal ae  
EBSA Oe ei Wet sak  
Gashrioklae War ure i eens  
SARE eng a Be tenes  
  
1. For the present purposs, i snot necesary to eabor  
rate the meaning teach Ingeecant of the ston, 2  
Finke! stem to Shaw ow. the section afer from  
Siheeeaynate sections dealing’ with sbetment, unl eal  
‘Ssrombiy and an on  
  
cod Simon intention” in tion 94, din, Penal  
ode, pre-cuppases pre-concerted pla, ty 4 poe meets  
tng of minds though ft fe not necessary that there shuld  
talons inerval between the lan and the ac Te  
sommon intention may even be Seveloped ‘aM the spot.  
Greourse the act, must be "done™ Some of "the peants  
CE a ee See Seoted  
  
= =e  
SE eee ee Gt bese yn  
ourarsras era mm to  
  
Bae Dec Cap Ch ety te  
  
BW ATR wpe Cal as, 390 BBY  
"A hice, eat etn ad tin 14 er  
Kime Kg pee nd hyp. Sos PERS Cag a Is  
  
Pty Goal 1  
“Gatton Yemen wen aad sen 4 Namah  
Lie KER? I5s"Sshcime Soe  
Fialt V. Baie AER ag A gh  
Se he mvt fate Malad Shak  
Empire's Ly Lek 2 Gl 9) Pat Re 7  
ark ese 3 2 Belin PS Hiab ALRe 1935 SC  
Zee ahaa. Emperor, RUR-to4g On  
‘ipl VS of Oe ALR. 19 8.8  
9 Ramya V- Sut of Bilay, ALR 1995 5. 287  
Tolman 8. Sue, ATR 19) A 6, 690 © 67, pgs  
(auc Biss es abo) (Be).  
  
  
  
Page 65:  
“  
  
95, Persons liable under section 34, Indian Penal Code  
would, at common law also, be Hable for the substantive  
‘fens Sommited im pursaanee of the canton: design. Ie  
‘teveral persons act together in pursuance of, x common  
Et etary 0, dane ih apterae of such inte by ach  
  
im is in law, done by all A. participation In. an  
tltence which tn seat of» concert design to cont  
4 specific offence, is sufiient to render the participant @  
Drincipal in the second degree!  
  
96, This’ ig the general rule, So far as murder is,con-  
ceed, 2 mosification in respect of sentence wos made by  
section 5(2} of the Homicide Act" But, as provisions ot  
that Act feloting to “enpital murder” are now temporaeiy  
  
Jed by ths Murder (Abolition of Desth Penalty) Act,  
1965, tis unnecessary to discuse the earlier Act, in Aetail  
At would sulfice to quote the Felevani provisions” which  
are at follows:—  
  
"3. (2) Subject to subsseetion (2) of this section, Duathzena-  
the following murders shall be capital murders, that {oy Zain  
  
Bieay  
  
(2) any murder done in the course or furthers  
ance’ et thett  
  
2), 409 murder by shooting or by casing an  
explosion;  
  
(©) any murder done in the course of for the  
parpom of resisting or avoiding or preventing a  
Tnwfal arrest, or of affecting or assisting an caeape  
ores from legal custody;  
  
(2) any murder of a police oMecr acting in  
the execution of his duty Gr of a person assisting  
police oficer so acting,  
  
(e) in the case of a person who s05 ® prison  
ex af the time when he did or waa a party to the  
Iurder, any murder of 2 prison ofeer acting in  
ihe execution of his duty or of a person aasiating  
prison affcer 29 acting  
(2) fin the cate of any murder falling within  
  
the foregoing sub-section, two or more persins are  
fully of the murder, it shall bo capital order tn the  
Ease of any of them who by his own act caused. the  
  
Seats Criminal lenge, 962. paras 4125 2nd  
) Pauapaph 9s. pe  
4 Momuate As 197 ( and 6 Ble, 2 61  
$ Seana #1) and 3 Gh Homie At  
  
  
Page 66:  
‘bodily arm on, the person murdered, oF who himself  
Used foree on that person in the course or furtherance  
of an attack on him; but the murder thall. not be  
capital murder In the case of any’ other of te persons  
aulty of 1"  
  
97, Even as regards manslaughter, if two men concerted  
togethes to fight two other men with their fists, snd one  
struck an unlucky blow eausing death, ‘both would ‘be  
‘uty of manslaughter. But if one used a Knife or other  
Weapon without the kuowledge or consent of the other,  
‘only he who struck with the weapon would be  
  
ble for the death resulting from the blow gi  
  
by  
  
98, The net result, therefore, under section 3 ig that the  
common intention and participation In. the rime make  
the person concemed guilty of the offence: Whether, how:  
fever, he should be punished with the highest punishment  
Provided for the particular offence is not a. matter cn  
Which section $4 hay the final say. The question of sen  
tence ie entirely in the diseretion of the court. On the one  
Than, the mere fact that the person Ibe by virtue "of  
section 3A did not actually init the fatal Blow, may not be  
conclusive. On the other hand, if, on the facts of the ease  
the moral culpability of the offender held to be lable bs  
virte of section 34 i lower than that of the actual assall-  
fant, a lesser sentence would be eppropriate. Fortunately,  
‘the Thdian aw does not contain any rigid provisions on  
the subject  
  
99, In a recent Calcutta case', the evidence did  
paket cent hich of the two appeilants give, the seal  
blow or did the last act of strangulation. While the eon-  
vietion for murder was upheld, the sentence was altered  
to life imprisonment. ‘The court followed the principle  
Ini down by the Supreme Court i Dip Singh case,  
‘where the following observations had been made  
  
“This (sa ease fm which no one has been convict  
for his own act but fa bring held wiariously tes  
Doras fr Wevat "ot anager fn cae  
Ihere the fate ane more fly knots ond i i pore  
Die to determine who inflicted blows which were fetal  
tnd who took leer pert it ea sound exercise of  
jfedlclaldigeretion to Gicriminate fn the matier of  
  
MTt is an equally sound exerciae of judi  
Ei dacretion to refrain from sentencing all to death  
  
3 Seay EEG Tira ie,  
cue Ra Eafniat {20 ates mas 9h  
  
Remar. Sta, AIR. 1962 Ca. 0659, part  
mabsttas e Seo" In  
  
Dale Sich 6 Sie of hs ALR. 988 SC 86 986 me  
  
  
Page 67:  
When i¢ Is evident that some would not have been if  
the facts ined been more fully Known and it hed been  
ouaible to determine, for example, wily hit on the  
reed or who only on & thumb of an snkle; ‘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 ll the cases..."  
  
No single rule ean, thus, be Isid down for all cases,  
  
100, We may discuss here a case which evoked some  
intrest in England. That is the. case of Bentley ond  
Grau." A"London policeman was killed on November  
45,1882 in a gun battle while attempting te aFprehend two  
Youths who had broken "into & warehouse. he youths  
were Craig, aged 18 and Bentley, aged 18. The shat that  
Tollea the constable was fred By fftesn minutes  
after Bentley had been already taken inio custody by am  
‘other paliceman, Both were found gully of murder.  
  
Craig was sentenced to imprisonment for life, being  
under the age of 18 years. But Bentley was sentenced 10  
death, Efforts to obiain reprieve for him failed, and be  
was executed in 1963. Now, ft was uot Bentley who had  
fired the actual shot, and, further, he had aetusily been in  
the hand of the, police for quite "of an ho. These  
facts, coupled with bis age and the fact that whe actual  
perpetrator received a lighter sentence, caused shock and  
Indignation’  
  
It would appear, thet though Bentley was in the eus-  
toay of the police, yet he encouraged Craig to shoot after  
the himeelt had been seized by the police ofcee. The pose  
Himiim India would not be different. if encouragement Is  
‘proved, coupled with the other facts as in this case  
  
01. An English case on the borderline is that of Betts  
fang Ridley’. Ty that case. both the aceused—Belts "and  
Ridley—were held to be rightly convicted of "murder,  
where they had a conmon comma robbery With  
Yslence on the person ofthe decesady though the ‘ete  
‘dence was that Betts slone was the man who actually  
  
Rg, Gon, od Bo Fie, Deco ‘  
see de Ming Co Capa Potten aad Ri Pole,  
Git pao)  
  
2 ora deal siemet of the ft, ee Paget and Svea:  
Hines Sigs peer By 08"  
  
3S Aloo Run on Cee ‘tasty Volt pane 146 an fone  
  
4S tm Te Male Ae (90 pt a  
{Somes Sere as  
| Senet operare ee ree  
  
sect eee me ie Ts 2 12 Sy  
  
et ee ES  
  
  
  
Page 68:  
“  
  
zniited the wolene, while Ridley remained in carat  
aire ote sre eh wher! Bet ae con  
  
the Tobbery immoediataly fan. "We are nol conc  
ith the dettne of “umpled maces “ay “Sonsteucoces  
Ialceas wae thon known to che Englsh Lav whe  
‘portant that the appeal of "Ruler wat" dead  
  
nse he was a party 10 tho agyement thatthe decesed  
‘an sbould be robbed, snd “he ancclpated that he Weald  
lest be puted down and was thus «principal in  
the econd Sagres  
  
102, A somesehat similar case is a Lahote one In that  
case, the common intention Of the culprits Was to commit  
obbery, and one of them, S, went to fetch the owner of  
he house from his felds, 10 threaten iim. to. sursender  
the property. While $ was thus temporarily absent, one  
‘of the other culprits shot down the yon of Use owner of  
the house. It was held, that, though temporarily absent,  
‘as participating in the joint criminal aetion in the course  
St which the murder was commited, and that the murder  
‘ras. committed in furtherance of the common Intention  
Of the culprits to commit robbery, and that he was there:  
{ove rightly convicted of murder by virtue of section 34.  
‘As regards the sentence, though his lability Was coms.  
‘ructive, yet the fact that all the four culprits were armed  
1with guns showed that they all intended to uoe the gun  
When necessery in furtherance of thelr common object  
The sentence of death an S was therefore held to be justi  
fied  
  
103. That the question of sentonce is one of dlisretion  
bass been stressed more often than once in the decisions.  
‘The following observations of Roberts C. J) are helpful  
  
i sae whi to ed den  
sgh ie a  
sae 2S, Seas  
ehhh Be, Sec  
ae  
Sah mba elo See  
ao  
  
sTize!  
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i  
aE:  
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=  
eh  
  
4 For duo of thal propos whch thee wa ave.  
sax Ghana Witte Grima Law, Pe Geter Bar (905) Pata 393  
Bata 96 e397.  
  
Joer Sm er LR Labor 4 5 ARM 199 La 9  
ay!  
  
14 Tan Kine The King, ALR. 198 Rang 39s 39 Raber C1.)  
  
  
  
Page 69:  
hand, it is, of courve, clear thet there are cases ia  
whuel, onee it has been established that one person.  
‘out of several took = leading part and the others @  
Comparatively subsidiary part, the grester penalty  
may be inficted upon the ring-leader und the lesser  
penalty upon those’ who took a comparatively subale  
Gary part. ‘Thats a matter of discretion entirely.”  
  
10k Mow far the sppletion of seton 94 would be  
Justified in cases where the actual” persone parteipating  
fre nsmed. or unnamed "a point which has Received dot  
{Siled consideration st the hehde of the Supreme Court in  
‘eeent caueas which contsinn a helpful antiga, “Asin  
Ssly ‘helpful Snalyss in relation to cess tader section  
{Wo is ato contained in another Supreme Court care  
  
205. In many cases, sections 34 and 149 may overlep;  
nevertheless, te corimon Intention which is the basis af  
section 34 (3 different from the common object which 1s,  
‘he basis of unlawful assembly. Section 34 applies where  
the facts disclose an element of participation 2} action on  
the part of the accused persons. "The acts may be difer-  
ent, ond may vary in theiy character, ‘bat they are all  
actuated by the same common intention”  
  
ne tFt tween te det of he ie may  
eben commited by another person, ‘Bat singe the  
aid act wad done by weather pelson In fsthermce ‘ot  
he “Smmon intron” shared by that pesos and. Sy  
fe pervn who's fob lable uae? eecton 3 now tho  
Sc Pict be detmed to have been cumimtted by the person,  
it've lable under ection St Te my bev bokeh ay  
Sherved be the hoyal Commit en tty os  
Perens afe concer ina crime NMG volves Wee  
Er"miawiat vience, there may be substan “ier  
feces ithe degree of meal gull but ir ebviusly he  
Saathabwe to asume tt the'man who does” te Hing  
inast always be more git thaw ang of the ohes, he may  
the agent oft stronger personally who hos planed  
Sal ils the crmo’"e wat on this init, Eat oe  
Royal Cermason, even wh recommending the abl  
fei he det of ore min Cn I  
and, tok ate to recor ir tong ro  
ld'bote inthe wertinghabiy of rinoue  
1 ns Seo hts Cit TR  
8. 6 sats ga oe  
Bein Sigh Sa 8) Sp 5 SER. A ATR. 65  
Tm Sins Seo a, ATR. 963 S14 081%  
saoahy Si  
a ie So, AL. 86.18  
$ toy Chm Roe ee ty pens  
i Sip Gammanns Rapa sod tr ponent 180 ae  
  
Soke  
  
  
  
Page 70:  
fies,  
ee  
  
“6  
  
the second degree: In its view. considerations beth of  
{equity and of public protection demand the maintaining  
‘of the principle of the existing law that when two or more  
sons are parties to a common design for the use of tn  
ful violence and the victim is killed, all the parties 19  
the common design should be held responsible und all  
should te liable t0 the same punishment” ‘The Commis-  
Sion also. pointed out" that It may’ often be impossible to  
prove whieh of the two struck the blow or Ared the shot  
When two. persons are concerned, for example. ina Fob  
bery with violence  
  
107. Section 149 of the Indian Penal Code is the second  
specific case” wich deserves some detailed discussion. The  
section runs ax follows:  
  
“149, fan offence is committed by any member  
of an unlawful assembly in prosecution of the common  
object of that assembly, or such as the members of  
hat assembly Know to be Hkely to be committed in  
prosecution of that object, every person who, at the  
Eineof the commiting of that tence, ie a ipember  
‘of the same assembly, is guilty of that offence.”  
  
‘The main ingredient ofthe section sre, fist, the exist-  
‘ence ofan unlawful sasembiy secondly, the formation of  
common object; thirdly, the commission of am ofence "by  
She of is members ne feuthly the requirement thatthe  
Hence must be committed in prosceution of that common  
objector mat be sich onthe members of that assembiy  
pew tbe likely to be comited prosecution "of that  
‘bject. Eis only when thear ingredients are suited that  
{he Sonatsucivesbity under the ston arse, amvely,  
that ‘cvery other membar of the assay is galt of that  
‘lence Before the acon can by called im af, the court  
ims find with certalnty that there were atleast fie et  
{one sharing the common object  
  
Tog, The central fact on whlch the Habilty of the per-  
son other than the acaal doer of the act depends ts “the  
‘Common abject" coupled with the rejuertent expressed  
us osgeeeston imports, ot lass oy expecation fouied  
  
‘oxpremion impor, ry expecation fone  
  
Upon, fects enoten to the members ‘of the asoembly. that  
ftoence‘of the. perticlar Kind commuted, woud be  
Sonmitte. "courte have nt overiooked this Tequirenent  
‘he Teading cae on the subject i that of Subid. AIP Tp  
that cate thore wea a dispute about land between Sand  
  
RL Seine’ Rew ae a, Pane 1. Sera pre  
40, pT  
  
2Sue Bowe, eon 5 2h Homie A, 197  
  
3 Are te aren bangnoh 9, me  
  
1 Sc aya Pol  
  
5 Dap Sigh Sn of Pan, AER. 1959 SC. ys  
ce REE Se Ah ae te Beg aw Rete 3s 2 WE  
  
fort  
  
Ly  
  
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mi  
  
ee  
Risen  
  
a  
  
  
Page 71:  
«  
  
F, which ended ano, inthe courge of which T fired  
stand illed 3" wane member ofsn unisrat erste  
fof which the appellants were <also members, nd it  
‘Wie found that'S fad tineely voles the sof the ae  
ombly,“smong whom was his T armed with a gun. 5  
Sd other appalants” were held gulty of murder “under  
Secon 3 fed with Section 19, and setenced otra  
Dortation for hee, Tt was held that way not saafactorly  
age out by the evidence thatthe aking of fe was  
Immediately connected with the common sbject of the  
drscrly. or that the prsoners knew that tls eflence was  
iikely tebe commuted in protection ‘of the common  
Object Te was pointed "out that the common” bfect  
Wat "to\ drive Fool! the” land and\_ to" prevent  
From caniivating, ie Butit “was net proved that the  
tei of he ely were prepared need fo  
{ink the the gum would beamed ne parle? mane  
sn tat the pom he manner  
in which i wad used by  
  
109. The provision, in section 149. Indian Penal, Coy  
fs not peculiar” to India. ‘Even in England, the rule at  
common Isw is, that where several persone are engaged {a  
the pursuit of a common unlawfil gbsect, and one-of ther  
oes “an act which, the others ought to have known, Was  
batimprobable te happen in ihe course of puraing! sich  
  
Sun unlwt “ble, Puce gy Yo  
common "purpose aise  
trportant Qo Coat in aie that nents of on essembiy  
Ima hate amma of a ofert ony a 8 cea  
Poin, beyond which they may sifer in their object, an  
Er knowtedge pressed by each member of what Waly  
te be committal in prosettion of Uae common object will  
Vary not only according to the information a his, command,  
av alo Searing to the extent to which he shares the  
gmmunity of objects, knowledge othe kalthod ot  
{he'"pariclae fence cannot he tensonably atrbuted £2  
the other members, then thet Habit does not aroe  
  
110. The impact of section 149, Indian Penal, Cadet  
‘es im this; that the person whose’ case fas. within the  
terms of the section cannot pitt forward the defence that  
Ihe did not commit the offenge with hie Own hande®s  
  
1 Paagaph 167, wre  
  
2 Russel on Colne, (9645 VOL 1, HES Aah  
  
Se dnomsion in Gai Wiliams, Crna La, (961, Vol.  
ace! aps ho, Borsa 33 ad ee 5 i?  
  
44 Paragraph 107, pra,  
T. Gnd ir (924) ULAR. 49 Mia 746: ALR 925 Mad 1  
abl (380) ELAR. ay Mad. 146s ALR  
  
60 By Bukahar, OSE LLR. 9 AlL 4s, econ  
ne ek tp 445, 65, 653 neon 396  
  
  
Page 72:  
Section 149, "so to speck, takes him out of the region of  
abetment, and males him reaponsibie as. principal for  
ihe sets of ench and all merely bevwuse he isa member of  
shvuplawtal mosembiy',  
  
112, Next comes the question of sentence, in cases. to  
Which’ section 199 appli. ‘This is @ matte of discretion  
Here agein, no hard and fast rule can be aia down. ft may  
be that on the parcularfacis ofthe case, the person conse  
tructvely' liable under section. M48 deserves @ leer sen-  
tence. But the facis may be such that all deserve the  
Highest penalty.  
oct hb olny wuld not be core to ay  
lown a browd proposition that in no case cen 4  
ty be given Because the person who inficted” the  
Esta blow cannot be ascertained  
  
113, That the matter is one of diseretion, has been  
stressed by the Pederal Court also? In a proper case’, the  
Jesse sentence may be impesed on the person vicariously  
Mabie,  
  
114, "The following observations made ins recent dec  
sion of the Supreme Court may be quoted  
  
=p  
Eakmi Prasad the charge under section 302/140 reste  
‘against the ober accused persons on the ground that  
five murders have been committed by some members  
T Bip. ¥. Raw Pras (83) LER. 6 A 21, 139 Somehe D.  
2 Ram Bias + Sa of Bar, (964) 1 Ch. Lat Joural $73 (S.C).  
4 Minat vs Sue of U. PAIR 1959 S.C 52  
  
417 Sins Site of M Py ALR 1996 S.C. 6.  
  
Lakh Sale 9. Sate of Bier, (ils) § SEN. em 139  
  
fe Raw Lab AR tr Lah van, 30 Choe C.J  
  
7 Pet Bar ALR, 9 A. 16 6 By od ie  
  
1 Rajaopaon © Esco, 494f) ECR. 0p 5 ALR. 944 EC. 55.  
dened Se tenth ST 0 Poin, A S61 Rest  
30° Ma. Stat of Us P. (965) 1 SC. 5 6  
  
  
  
Page 73:  
of th unlawful assembly of which they were mersbern  
‘and the srguinent is that unless it i  
foruclar Soaved perca har binge ‘sdtted the  
updo of One oe the oer of he vitims the sentence  
Of death should not be imposed on hint. In other word,  
the contention 13 that it pn iE found guilty of  
‘murder under section 302/14) and i is not shown that  
Fe humgelf committed -the murder in question, be is  
‘not liable to be semtenced to death. In'supest of this  
‘argument, Mr. Sawhney has relied on certain observa  
tons made by Bove. J. who spoke for the Court in  
Dalip Singh ond ochere v. State of Penjad= in that  
ase, what this Court observed wat that the poWer 10  
‘enhance a sentence from transportation. to death  
Should very rarely be exercised and only for the  
Strongee asone: "and was added tha it int  
for'the appellate Court to say or think that if  
‘eit to ise 1 would have awarded the greater penalty  
xcaue the docretion does not elong ithe appellate  
Court but the teal dg the ony, grote  
‘which the appellate Court can interfere Is thst the dla=  
{retion has been impropery exercised. These observa  
tong have no relevance in the present case, because  
‘we are not dealing with a case where the High ‘Court  
has enhanced the Sentence imposed by the tal Judge  
at all. In fact both the trial Court and the High Court  
Sre agreed that the sentence of death impored. on 10  
persons are Justified by the circumstances of the case  
Seay the rogements, of sce As, mere  
Proportion” of ln, Meo igioute “to ace  
ep the Grgument tha she sentence of death can be  
‘emacs imposed oniy where on aestsed. person,  
fg found 1 have commited the murder Rimwelt  
‘Whether or not sentences of death should be imposed  
‘on pefsons who are found to be guilty not because  
‘hey. themselves committed the murder, but because  
they were members of an unlawful assembly and. the  
‘offence of murder was commitied by one of more of  
the members of such an assembly in pursuance of the  
‘common abject of that assembly, Is @ matter which  
Thar to be decided on the facts and circumstances of  
‘each case. Ih the present cave, itis clear that whole  
‘group of persons belonged to Laxmi Prasad’s faction,  
Joined together armed swith deadly weapons and they.  
‘vere. tnapired by the common object of exterinating  
The male member in the faimly of Cayadin. 10 of these  
persons were armed with ‘fize-arms and others with  
verl other deadly weapon, and evidence shows  
that Ave murders by shooting were committed by” the  
members of this unlawful seb "The condict of  
‘he members of the tnlawful assembly both before and  
Bfter the commission of the offence has been consider  
fed by the Courts below and it has been held that in  
  
© G95) SF. si 5 1954 SER. 1s,  
  
  
Page 74:  
st  
  
ry  
  
harmon Shae  
Sot Oe NO  
  
“There are, however, three cases in which we  
think we bught to Interfece, These are the cate of  
Sccused No. 9 Ram Saran who fs aged 18, accused No.  
if" Asha Ram who is ane 23,and accused No. 10 Deo  
Prasad who is aged 24." Ram Saron and Asha Ram are  
‘he soo Bhagat wh iy acced No.2 Bath, of  
them Rave cn sentenced o death Silay Deo  
Prasad ha siso ‘been sentenced. io death scat  
regird othe crcumeances unde which he ula tl  
Ssvembly ‘came. to be formed. we are  
ieee poung enn tate ive ied He snioel oer  
Semibly under pressure and influence of the elders “of  
their fespective famulies, The list of accused pereons  
Stowe “that the unlawf assembly waa consisted by  
‘ombers af diferent families and having regard to the  
Ipanner in which there factions ordinary condact  
themecives In st srould not be wareaconabio  
‘mist have been  
compelled to fon the unlawful sembly that morn  
ing by their etders, and so, we think that the ends of  
5atice would be met ifthe wentences of death Smposed  
‘them are modified into sentences of life imprison:  
ep, According econ th aes af conviction  
Sd sptence peed’ aaa all the appellant, exept  
Sued Nos, 11a 10m whote cans thy sentences  
fre altered io these of Imprisonment for fein the  
Feral, greats are damised sobject othe said mod  
  
115 Section, 306 may be briety dealt with, Seo-  
tion 395, of “tourse,” does “nat require “that the  
Sider) should be.” comida consent  
Gr acquieswonce of the sther dacolts; the sscton would  
e,“imost\_superiocus. if that" were the correct Inter  
  
ation, 1¢ does tot alae require that minder mast ‘have  
er iin the contemplation ofall or se of he  
  
Wit does require, that there be tome connection between  
the dasoity ad she munders if the ranacton of ke  
  
Bray’ ATR. 1999 Labo  
smn to 985 tr a a Min 38  
  
PD sou AR am tn 6  
  
  
Page 75:  
dacoity has ended before the transaction of murder has  
‘commenced, the section would not apply.  
  
146 is true, that under section 296 questions  
arise a to wheter the murder was committed “in "20  
  
not successfully "accomplished, the  
question ‘may arise whether Uhe cage falls under this gece  
Hon,” the question cannot be answered without « study of  
  
the facts of the case. ‘The under-mentioned decisions may  
bescen om this point’  
  
M17. Again, when one dacoit, while making good his  
escape with the booty obtained in the “dacoly, “commits  
‘murder, the lisbility” of the ethers will depend ‘om. the  
ets he ndermentoneds decane may Se seen  
on this paint  
  
118, Similarly. it is @ question depending on the facts  
of each case whether the murder can be regarded as com=  
‘mitted "in the comission of a dacoity™ when the person.  
Sought ta be made lable Is absent. As was observed?™ =  
  
sCmmatter not, when in the commission of u dacoily  
4 murder is commiticd, whether. the. particilar -dacolt  
charged under section 396 was inside the house or outside  
the house, or whether the murder was committed inside  
OF outside the house, so long only as the murder was com=  
tmittes in Uhe commission of that acts  
  
1 may bo, that on the fact of a particular case, pers  
sont the woje absent fromthe scene, may be regarded  
falling ouside she section”  
  
og tigen Spas Riv Say Cpe Priah ALR  
eg SESS, WSear a Et pol a a aed  
SS  
2 soa 9th moon “aempe exams bier so,  
3) Sed Sone, ALR. apt Al 34 35 pura &  
Bae, Soy, 2 Bey La Reporte  
a aie ane Ste es wR  
Se am se eh  
  
Memon Busway. Bann, ALR. 1932 CH. 18, 20  
2 GU ea  
  
6 Kevin BAN, Grats, ALR. ty Lah 99 (0,  
  
lglg rae LLAR, 3 La 2755 ALLR. 121 Lab. nts (Sb  
rat Pd Fagor 1  
jot SME R: Bes ALR. 95 [ah 1 (Sha La CJ. and Fe  
5 avr Chandar (16) ANN. 47 3 Cie J 204 dacs Ia  
Seehadia' Sig, AUR. 1950 A. Hs Dasa 3  
10 0.6,» Tas (19) LILR. 17 All. 86, 87 Sie fsa age and  
ce Bias  
  
Te Tho, decison in. B, Ura Sigh (1890 LER. 6 AIL ag?  
cant be Tepid on OP re  
  
  
Page 76:  
\_The,matior hav been cult with alo in @ recent Cale  
  
119, Where the murder is committed before the dacolty  
actually takes place, the answer to the question Whether  
‘was stil committed “in the “commission of the datoity",  
depends on the facts of each case™  
  
120, All these! are questions of application of the sec-  
tion, and do not deiract from the sotindnest of the prine  
ciple on which Ie is based.  
  
Moreover sis not a general rule thatthe sentence of  
eateamurtnecsarityBow on a coictin Unda ee  
{ion 308, ‘The. facts of the case "may Juntify the highest  
Sentence or the lester one” en  
  
121 If the sectlon is applied with discrimination —and  
srs bslew tht it ha teen so apple the paste do  
ot thine that the peovision can be regarded as tao harsh,  
‘The. question whether the murder was committed in the  
commission of dacoity must always bo a question of fact,  
Sand of degree, on which the Legislature cannot lay” down  
4. geval rule” Pacaty of tine and place, of objects and  
Tntention, of preparation and participation, “may or aay  
hot be relevant in a perticular ease. But the crucial test,  
Indicated by the words "in so committing dacolty” appears  
{0 be basically sound, to far as'= justification forthe  
highest penalty Is to bo sought for.  
  
ips Sah 6 The Se, AE 985 al 8, aT 5  
  
smi ane Beran: coe held peor se aie seach  
Bee pe i at ‘me  
  
2. Sim Rime nnn AER. 94 Oh 85 Shs Sed ee ot  
  
he So ea an BT ol  
  
4 eee es AIR, yg.  
ns Aer He man ls  
  
6 Pash Singh vp LR. 15 Lah 8 ALR. 1085 Lab 977985  
cra ches Bone B, “  
  
> pe v Shy Sha, LR 32 Pa 35 AMR. 1984 #  
cin st cai Ih  
  
Ab Shak, The Si, ALR. 993 Asm 45, 46 purranh  
  
9 StoQ Ev Saba, (900) 3 Bom LIL 335 eatin GJ.  
  
  
Page 77:  
8  
CHAPTER IV  
ABOLITION OR RETENTION  
‘Forse Nusa 18  
Major question of abolition or retention.  
  
122. The major question of abolition or retention has to Mict  
be considered first. {t must be remembered, that this Semi  
Seon fe Unked op wate ope of fess anal a  
umnment: the objects of capicalPunshisent” are we  
Eommendable and if they are achieved in-a Yair messure, SOP,  
SOP Re Manan Sal'Saahea it hey aes  
Scrmeable or tot eared Gh e"meaare patie  
  
Baton of tape punhent woud Nae 6 Ws cnn  
  
oa  
  
128.1 should be borne in mind, that the arguments  
against rtention have to ba contiderd he ight of cone  
‘floes tnnaios “Arguments tat rang be Vata Fapet  
oi ny" mca Bao  
  
Svat aunty. ri ste  
nce of law and order tay vary fom State to State, sod,  
oe ils Sir a ae we te nt  
Sisy Saal  
  
324A lange mass of the population is iterate, The  
mayeiy ofthe propl ie lager, sated wie snd  
tours an iokel oer bya alice free wich i moan  
‘Srmiy adequate, "Tere aren sora prt ot i coum  
try, secon fends marred by tanatice"hes extol  
{ition that at ata check op murder in" Western "coun  
fesoducaon. Prosper, homogeneity and abi  
tye sadly sent ina pae of Tao, ae ia  
SE cetpcey. seryowered BF Sheard hore vllet  
Sere  
  
22s In thi tan, xia aw an unbeaten  
‘state practically the only mi ters for the protec:  
{ion 'oP society andthe only berries aguiat Ue upsurge  
of wilence by individuals and groupe  
  
‘Toric Noxenee  
Arguments for retention  
128, The arguments for retention or abolition of capital Armumet:  
punishment have been stated times out of nursber on varie (tem  
‘bus occasions. “For convenience of reference, the im:  
portent arguments on elther side are summarised below.  
  
‘We begin with the arguments for retention,  
  
  
Page 78:  
Deen  
eae  
  
lines of  
  
Bimini  
  
esi in  
  
o  
  
127, Capital pusishment acts as a deterrent:  
  
1 death senvence ig removed, the ‘ear that comes in  
the way of people committing murders will be removed.  
"Do we want move of murders In Our country or do We  
‘ant less of them?"  
  
‘All sentences sre awarded for security and protection  
‘of society, s0 that every individual, so far ay Jt is possible,  
‘may live in peace. Taking 2 realistic view, so long as the  
society dows pt become more eines, cath entence has  
  
‘Toe security of the society ag well as individual Wberty  
of every person has to be Dome in mind. Capital punish  
tient In needed to ensure this security®  
  
128, Experience of other countries would not be cone  
ciusive for India, Need for deterrent control provided by  
tepital punishment ie greater in various classes of society  
There 42 greater danger in dla of increase. in violent  
Ehines if capital punishment 1s abandoned, particulary in  
Feapect of professional criminals  
  
‘Moreover many Countries or States bad to reintroduce  
capital punishment after abolition.  
  
129, When the publie pesce is endangered by certain  
particularly dangerous forms of crime, death penalty 5  
Rreonly means of eliminating the offender  
  
130, A particularly potent weapon is needed for dealing  
‘with dangerous criminals end individuals not only for pro~  
Yeeting hamaa fe and cultural valves but even to safe-  
uur certain social property, which is placed under the  
Droteetion of the lawe  
  
The guctinn of dierent eft dca om dent separtir  
arb Sopa ie  
  
[ate Shi Govind Fab Pare, Mininer of Home Ak, Ra  
saan Bett ais oa 156  
  
5 Lat Sri Gov alt Pu, Minatr ef Home Ais, Raia Sata  
pesha"Sah Apel aah coh Gy ay  
  
“4 Late Shot Daa, Miniter of Sure i he Minty of Hane Af  
ot Sabha Babee ie Ape es. 6 .  
  
5 ehh armne ato tre Caan Comme Cannan  
page tes puragriph tn cco a Pear POE 88  
  
© a thi cometary be goad that adi cots of dec  
et RR ec TaE e S et  
7 U.N, bliin, poe 5, peat 206  
5 U.N Putenie, (ita, pgs 6, panera 287,  
  
  
  
Page 79:  
police oficers it wigere  
need to death “Very often, there om  
have bea cases when murderers, after they come cut of  
privon, pursue the man Who got ther convicted  
  
182, Society, must be protected from the risk of a Pony,  
‘second affence by 4 eriminal who is not executed and who Sew  
imay be released subsequently of may escape"  
  
Altes release, the marderer may well kill agein  
  
139, In countries where capital punishment has been Coniieos  
staised the Ngure of homdcige is fers fo; four ina  
filon, of even less tha th  
  
194, Capital punishment marks whe society's detesta- Reprpation  
tion ad abhorrence of the taking of ife and ils revul. PF ==  
Sion aguinst the "erime of crimes’. This “supported "not  
  
Because of a desire for nevenge, but rather as the society  
reprotinion of the grave exime of murder.  
  
195. As alto observed by the Royal Commission’, there  
1s 4 stomg setoviation between murder and death penalty  
4m the popular imagination, and "i ig reasonable to aup-  
pose that the deterrent force of capital punishment opera-  
Pes‘not only by’ affecting the conscious thougats of indivie  
AGalstempted to commit murder, but lao by burlding up  
fete community, over a long petiod of time, 2 deep feel-  
ing af peculiar abhorrence for the erime of rourder.  
  
196, By emphasising the gravity of murder, capital  
pucishmient tends to foster the community's abhorrence  
Er'the crime, ‘This decreases the ineidence of murder ia  
‘the long rus,  
  
182, Poblie opinion is substantially ip favour of capital Re op  
punishment, ane ft would be unsrise to abotish capital “  
Punihmne contrary to Uie Wishes of the majority of the  
  
eiigons  
  
1 Sat Vale Alva, Rava Sabha Dees sh September pst, sh  
  
2 U.N, Pablron, pat 9, pease 2.  
  
Cn Repo, Suaary of Argonne ner Aheraie  
penne  
  
"yt, Vet Ada, Riya Sabha Debate Sth Septenbor, 1961, cok  
oe  
  
15 Cassin Rept, pot 10, pA 38  
6 FG. Report, page 2, Presa  
xc, Se Ro, Samay of Amat ee mr “ong  
  
1 Gf, Canaan Repo, page 10 patos 3  
6-122 M. of Law. ‘  
  
  
Page 80:  
56  
  
4188. Since public opinion belioves in the etfectivencss  
cof death penalty, this sincere belie! should be respected,  
tnd posubie viclims should be protected by metelaining  
the penalty of death. In ther Words, even if its deter  
eat effet should be debatable, for seasony of public  
salty. those concernd ought to be encouraged to Believe  
ini  
  
Price a  
  
Este, 289 If all convicted murderers wore imprisnned, adie  
  
Keeping murderers alive in the prison greatly compli-  
cates the Work of prison administration’  
  
eof | 140. The taxpayers should not be celled upon to  
GEES —for'the meintennace of eutraocal criminals for an inde  
  
nite or for 4 ver® long period”  
  
‘Money of the cltizens should not be spent on msintain-  
ing people who cause great harm?  
  
Prope: Ll. Punishment should bear a just proportion to the  
  
See. crime. ‘Therefore capital punishment it the only pune  
shmen for those who have debberstely violated the fanc>  
tity of human tet  
  
o,f 2.cld beaded murder is committe, thers is po  
‘other way by, which soeleyy can be recompensed than by  
taking’ life for a life Cruel murders and mutilation of  
children still govon:, and It Is not yet time to do away With  
capital pusishment  
  
‘Avodactc¢ 148. Execution avoids certain popular reactions. which  
  
finite mast be exnected in eases of helnous erimes If an over  
Geelted public opinion were not aware Wnt the crleninal  
fen be sentencrd to death  
  
1 LN, Pblicaon, pa 6, pargaph2,  
2 Comatinn Rept, pages to ant, raaeagh 92  
  
Ein, Root. Simmacy of Aine, gt 6. wider “Dron  
  
41 ULM, Pbticnon, page 6. paragraph 220  
  
4, Hach Shane Vat, Rah Sa Debates, th Sptambe, gt,  
eum  
  
4 Coon Report, Summary of Ange, Fae 39 eee“ he 8  
se,  
  
7 Smt, Vist Alva Rays $8 Debate, 8h Sept, 196, co  
gia  
'S UL, Palco, (ra), page 6, panera 0,  
  
  
  
Page 81:  
s7  
  
‘When @ murderer is placed before the court and he is  
‘ithor not convicted. (beeause of Want of evidence) oF i  
fiven a lighter sectenes, and the persons agarieved thik  
thet shey have not got justice according to” thelr deste,  
they take the law inte their own hands!  
  
M4, Death penalty is the only just punishment for the MH  
seravest of crimes. of the only one capable of effacing an  
Gnpardonable crime  
  
145, Capitst punishment painless and humane form Des,  
4s ese crud than imprisonment for f= eRe  
  
146. there is miscarriage of justice in one of two No mie  
cases, the higher courte can be appecsehed. ‘The. whole sama of  
Machinery of the Government would be there to protect ™"  
  
{he ie fs petsn wha I realy Inncent ‘We shot ot  
be'misguided by a single instance of erroneous conviction,  
espezsly when the Supreme Court & there looking Very  
atetully into all such exes  
  
147, In Tain, formerty im capital can, 9 Isr Bern  
sentence tot not be imposed exept for spetil’ grounds. 9S  
‘The Judge was thus expected to justify the leseer aunts  
  
ence. but this has now been amenied' Hence the matier  
  
iS completely in the eseretion of the Judge  
  
Formerly, it was provided that whenever an accused  
Derson was convicted of murder, capital punishment was  
the rule; thet provision has now been taken aivay, and It is  
kere open 20 the judge t9 give the Fedoeed.puishmeat  
een WThou alving reasons!  
  
14, Iti impossible to replace the denth penalty By any Ne te  
cefccive substltare Imprisonment even for life ae neds:  
  
juate, particularly Decause of the practice of earlier  
Selene  
  
‘There 8 no sntlfoctory alternative to expital punish=  
  
tate Stet Dart, Miner of Se ish Min of ame Ais  
Let's Dobe Sst Apel 96 eke  
  
UL, Patieise, pape 9, paagaph 286  
  
5s ip Da Myo Sin Minin fee Ain  
an sai Bi Sic Rpt a Sel tes ad  
  
4S Sn eit a Pay Nie ewe Aan Ra St  
Dede Sak Apts wos  
  
ge St Dy, Mae fe ae yo ae An  
sats Bee So ei ee 9  
  
5 UN. Paiewion, pige 6 prgrph 216  
2,Sevin Reprs,Sumaey of Arguments, page 4, wer “Akeaatre  
sean  
  
a  
  
  
Page 82:  
8  
  
Ma, The majority of murders in India ate commit  
by lpover and backyard cles, Prison Sodio ate  
  
helper han eoniton peeing tr tha home, od  
{oe'such person, death is the oly deterrent  
  
‘Tine oot \_\_ 150. Even if the principle of sbolition is accepted, the  
  
Jetnpe’ time is not vet ripe in India. Present day society is not  
pe dor this reform, "and the community hes not reached  
such a ag  
  
rcin on 151. Those who advocate the abolition of capital punish:  
  
‘Atta. ment must prove thelr ease before any change carrying  
{sk to the Uves of innocent people Is introduced  
  
‘Torse Nunenen 17  
Arguents for abolition  
  
Acronis, 152. Angumerts for abolition of capital punishment, 36  
SPIER pr fish fn various quarters may now be summer  
  
153, The arguments for abolition are numerous. To  
eellitste their consideration, It may be. convenient fist  
  
classify them. First, there is the general argument  
jinat retention, based mainly on religious, moral a  
umaritarian grounds. Next is the group of arguments  
which emphasises is evil features, namely, that itis immos  
  
i Inman, eevoeable. and morbid; ad eats  
Injustice. Next ia order ig group of arguments,  
Arles to point out, that ts deterrent object ts not achieved  
and its ther objects are not praiseworthy. “Then, there  
dive arguments which ty to meet some of the contentions  
‘advanced by retentionlsis. Next comes the argument that  
4n experiment of abolition is worth-making, and the argu:  
Tment which takes palts to point out that the substitution  
of other punishment forthe Geath penalty is worth attempt  
{ng and desirable, and involves no'risk, Lastly, there Is the  
fatgument that the onus for retention ties upon the reten-  
HHonists, who have not discharged that onus  
  
We now proceed to state these arguments in detail,  
1. Generat  
154, “Cepital punishment should be abolished  
  
ft is a legalised, Fevengetul and cruel destruction of God's  
bisa , event ‘cruel destruction of  
most wonderful creation, the human being.”  
  
5 GERI a SREY Aeros pee der “Pret  
Set ck Ab, Raja Sie Deboe,Sh epember 64 9847,  
sod SES, Samy of Armen, wee se “en  
  
4 eaten wie ot oval St. wy Der Naga  
‘Tae Raed ton er wench Sy Set Pi Ra Rape sce,  
je Sata Det, Ape teh, ck 3 Bott se  
  
  
  
Page 83:  
Iwill be the greatest of dharma to do away with that  
whieh does away Stith lie ted thus give people a chance 10  
became better. to become improved, giving a chance 10  
people to hve in amity, Brotherhood, love ond alection  
  
185. The question of capital punishment ig a question  
cof values, the values we put'on human Tie"  
  
UL Immoral  
186, Capital punishment ie morally indefensible, mms.  
  
Society has no right to lake the life of any person.” This  
  
is’ consideration which is paramount to all cther conside-  
  
1 Is morally wrong for the State in the name of the  
  
law to take life deliberately"  
  
Cepitsl punishment és morally wrong because st is  
artes on of stp with modem moray. and  
thovant!  
  
287, In eliminating the criminal, It is stated, the State  
does not erase the crime, but repeats 1  
  
IL Ikumen  
4188, Copitel punishment is essentially inhuman, lnc,  
Death penalty is a form of cruelty and inhumanity un-  
  
worthy of @ humane civilization; even the most effclent  
  
‘methods of exeeution do not rerult in instantaneous and  
polnvcss death  
  
Humanity demands that capital punishment comes 10  
an end?  
  
4188, Capital punishment is most inhuman, ‘Those who  
Ihave witnessed the tortuous process Know ie. The prison-  
fer ithe isto be exceuted tomorrow mening, is informed,  
the previous evening,—-Tomarrow torning! at 6 clock.  
you Will be hanged’ ‘This is the fst torte. ‘Then Tis  
‘entice family is brought there, even the youngest kid to  
‘weep there. Then there ir the remaining 12 hours in the  
  
gt SNP Ra Rape, Rab 8 Dr, AW AP  
  
' ii Ii Sing Lak Sabha Datu, ate Api 1965, ek 304  
  
3 Gri Reprt, page 38, cag, Sarimary of Argument, under  
tonasem ae PRE SS  
  
an Ror, pase 38, pangraph 37, sting the seamen.  
  
Pubcon (1962), pape 62, parazayh 22  
U.N. Pasiealon (960, pape 61, oupagh 237  
  
4 Siys Raghmath Sigh Lok Sate Detar 208 Apib 1962 ol  
ea in ina  
  
  
  
Page 84:  
ight that Kile im hour by hour. the ast Ratan  
HG, ei led mute hy mune. Hf dhe Labbe  
stg ecae ih iahumem, how ca i pcm thie  
ieee ms  
  
IV. Non-siolence  
  
‘anwsine, JED. Indlan ideology. is based on non-viclence. This is  
tho great Meal whicz the Father of tke Nation kept before  
Zind i we have any regard and respect for bien, death  
  
Sentence must be itumediately removed  
  
11 “a country physically and morally in shambles, as  
was Germany in 1946, could abelish the death" penalty  
seithout any ll effect. this country of ours, the land of  
Lord’ Mahabir and Budeheand of Makatma Gandhi: the  
apostles cf pesce and of Ahimsa ‘should need the  
onlinsed protection of the hangmaa  
  
101, Indian tradition fs bated on reformation of the  
voind and spirit Capital sunishment was discarded BS  
‘Ginaniis who, regarded ft & negation of non-violence,  
Sd was of the opinion hat only Cal could take aay Ife  
sven by Him’ Dd torn death sentence a contrary 0  
‘Allin’ Only Hl’ ake ile eho gives tc All punhrvent  
is repugnant to. Ahimsa. Under @ Stote governed aceord-  
{2Sai8 Geshe pensontiary and tere given evers  
Ghonce of reforming himeelt. All-erime ten” kindof  
Siseass and should be treated as Such  
  
¥V. Irrevocable  
  
tn 162 Cepital Punishment js irrevocable. I an innocent  
person ts sentenced to’ death and executed, the greatest  
(Raster resale  
  
168. Several cases of erroneous conviction are known,  
Aan innocent person was once hanged for murder. while  
the person who actually committed the offence later on  
  
1 Sul ina Lak Sabin Debs, 3 Ape 98, cL BB  
  
4 Sin, soonest Nigam, Ran Sabha Debates 25th Aas  
teas  
  
[SSergBt Are Lo Sth D2 At 996  
  
“ssh Hagan Singh, Lok Sabha Debates. 21 Apri as, coh  
soak re nth  
  
Tals too Gani eared to by Sh ML, Ags Lok ab  
Denker STAGES igh ees exh. 'n ane ta Be Sk  
Bo ical of Mahane Cust 82) eee 97 Blew Rox Stes  
‘Sa ida Now Bea  
  
wnt Sa Catan Report ge 1, ark 49 sang te ase  
  
  
Page 85:  
a  
  
spent 14 yours in the Anlamans for an attempt cm the lite  
SPC Giver of Bengal OF attr om the Us  
  
161 in ope ease the man who really committed. the  
‘murder Was never prosecuted and @ man ‘who Was inno:  
‘ent of the crime Was sentenced to death. In the Punjab,  
or 4 persons were prosecuted for the alleged murdet of  
2 woman, and while Uhe case hed been going on for over  
4 Year there, the alleged Vietim--the womnan-—sppeated fa  
cme court in UP, and thersofter the tozes against the  
Alleged murderore were withdrawn,  
  
165. A case in which error might have ensued jg cited  
In the Mehboob Nager district in the. Andhra Pradesh,  
when the (ral of @ person Tor the murder of “Av wa about  
to begin the Sessions court, ‘A’ who Was alleged to have  
been mardered was walking alive inthe court rear.  
  
166. Capitsl punishment ig irrevocable. When as a re-  
‘sat of an erroneous convietion. 4 man is sent. to prison,  
hhevean be compensated.” "But death admits of no compen”  
sation”,  
  
161, Sometimes there may be @ mistaken view of the  
ew. ‘Thus, (itis argued). a person was sentenced to death  
in one Madsas Full Bench ease, on a confession msde by  
Iiien to an sovestigating Mer. ‘Ten years Tate. the Privy  
Council. in s similar ase, held, that this ease Was wrong  
Iy decided, and that te confessions ought not to. have  
‘een admitted In evidence"  
  
188. The pensity of death Js based on thu postulate of  
hhomnan freedom, while setually the offender dors. not  
reneratly enjoy” complete freedom. "Absolute histice  
{herefore. (san Wiysion. and full atonement a fiction’  
  
on  
  
qhedtnaaes thsi Pag ett  
obs Shee eer Ee  
  
lobe Sung el aa ns mae age  
  
okt  
  
ASEM G6 co DE  
  
TEA Gs; ALR toe Pop, 7, prea an  
7 UX Pastecon Cis, ioe 6 rrp a  
  
Man an  
  
  
Page 86:  
tows  
  
un  
eraton,  
  
e  
‘VL, Morbid  
  
300, By giving ise to sensationalism, copital\_punish-  
sient deflects potential effenders towars Voace  
  
‘The eaviosty aroused by the execution is morbid, a  
the penalty of death ital ay bave the effect of leoding  
to crime, particularly In respect of abnormal individuals  
One murder breeds another murder. After every sen  
sation Execution, there comes a wave of crimes!  
  
170, Hanging is a mockery of punishment. “Real crimi-  
nate donot fo ie uty pete at tat poment you  
G0 td seo there, 16 the ofleers who look guilty. ‘They  
fre huddled together, they are aeald, they sre ashamed,  
they now that they ate doing something ghostly.”  
  
171, Capital punishment has a brutalizing effect not  
  
conly on the prisoners and the staf of the prisons, bat on  
society at large!  
  
VIL Unjust  
  
172, The sentence of death injures the family ot the  
offenders, ‘ond thus imposes ‘sulfering ‘on pepsons who  
have done nothing to deserve the suffering. “Have you  
‘ever tried to visualise the feelings of Mother on the  
night before her boy is to be hanged?.....-The agony and  
hhortor which you and I representing the State must |in-  
fet on this perfectly innocent woman must be more ter-  
ble than any pain the murderer ean inflict on his vie-  
‘ime  
  
173, Death pensity se applied unequally. Some per-  
sons who have not sufieent” Anancal” means to defend  
ifemselves or are morally snabie fo do so, sere The  
Puimiytheretore, whch shoud be the ‘expresion of  
tall ate, ton leaden pacts to nhs apa  
inlviduale  
  
174, It has become diffcult te obtain justice im the  
present judicial system fe India, ‘The standard of Invest  
ation has terribly deteriorated. Further, until total sepa-  
Fation of the judiciary from the executive is carried out,  
Geath sentence should be suspended. Thirdly, persons who  
  
1 UN, Pbtcwion G96), page 62, areearh 335  
2 St. Sarit Dest Niu Lk Sat Bebtes 1 Api 96, ch 330  
Sl Pre Ra} Kapoor, Rane Saha Deon, ag Arti 1938  
14 Casal Report, page 13: paragsaph 99, sting be serene.  
‘ Samay sumone, oxed br Shr M.L. Aprval, Lek Sus Debts,  
sath Seth pesca Sa at  
IG UN, Pabion (52, age ©, pamgraph 29.  
  
  
  
Page 87:  
6  
  
cannot aford to engage a good lawyer, are unable to 8  
Shetene to he ok“ Ceumel praca by the Sate are  
  
Tete “and’ hey’ eannot te expected to devote ele  
‘ote heart to the’ case  
  
173. Since humar. beings are imperfect, the system af  
gatmilstztion ef asic ll "alwans remain impertct  
‘Theretore, from the point of view of justice, the sesump:  
tion behind capital punishment thet justice can be meted  
but to another person ‘only by filing bim, "cannot be  
supported.  
  
176. Even i those States of United States of America  
  
‘where doath sentence has been retained, tho matter is left  
tothe jury and not to the Judge  
  
‘VIN, Deterrent ond other objects not achieved  
  
AsDeterrrest effect not achieved  
  
17H. The deterrent effect of capital punishment is not Dxerrne  
cesablished’. Sey  
  
In Bngland, very petty offences were previously capital,  
‘they aren anger expat  
  
178, The question is to what extent capital punishment joc» wie  
thas a greater Impact on the mind, compared with life wx der  
Smoprivonment. thas not been aeitled yet, for example, $2  
  
that "20 degrees” of deterrence will be éreated Uy impric  
  
ronment for life, and “100 degrees” by capital punishment®-  
  
“It is no doubt a deterrent, but we have to see if itis  
a deterrent which is unique and which cannot be replaced  
by any other punishment  
  
170 The crime crv, and th exiene on he Staite cape  
pedr the Sel poaent tesa ditty ay, SU  
The two thi Wirtually Independent of one another” me,fee™  
; Suen enone natch a,  
  
Shs Yegendra Ja, Lak Sita ebay, 16 ADH 96 cot ln  
vias  
  
ght Rannnm’Sigh, Lek Sha Dts, a6 Arc sadn  
  
4 The ole of desruae ef willbe dient ja. deal separa,  
agin Jo) 0 35  
  
5, St Baupet Gap, Ripa Saba Debus, 25th Angus, 295,  
ion  
  
°F sts soe Gaps, Rava She Debs, 25% Avg, of, col 170,  
SBR E Aree Tak sha Dec ath Bato 996 cb  
ob Wat  
  
2 Der. 5. sarngs, Rey Sra Debasa5 Angus 196, cl 706  
  
  
Page 88:  
amples ot  
iam  
Sex  
  
eine ot  
=  
  
«  
  
420. If cspitel punishment had any deterrent value,  
‘murders would be ess a Toss, since capital punishment  
Nias been ‘om the statute book fot many many Years. "The  
crime curve would be a declining ope; but it is not actually  
  
181. Ih the old State of Hyderabad, for the last forty  
‘yeats, 0 death sentence was executed. Every sentence of  
sath Iwas commuted by the Nizam of | Hyderabad; and  
‘here tad een no instance to show that it required the  
revival of eseeution of death sentence in Hyderabad!  
  
(We understand that in the old State of Hyderabad the  
death sentence was not exaeuted.. In individual cases the  
Nisam ‘used co commute i 10 life imprisonment. There  
‘were no standing orders In this regard, but individual eases  
‘were being considered?)  
  
In the Statos of Cochin and ‘Travancore, capital punieh-  
‘ment was not in existence for 2 number of years; the iret  
dence of crime in those years was no higher there than  
{nother parts of indian  
  
182, Numerous countries have abolished capital punlshe  
tment, and have not thought of going back to it sgain  
  
“Af you deive # motor ear and it runs exactly at the  
same <peed whether the brakes are off on, sUrely iis  
fan indieetion that the brakes are not working”  
  
In ecuntries where capital punishment has beon sbolish-  
‘the ineldence of crimes had not gone Up"  
  
For many crimes which were eapltal in England pre-  
viously. the death sentence hag been abolished, end "yet  
there has tot een any increase in the Incidence of those  
crimes im that eovntey®  
  
In those countries of Europe where death sentence as  
been abolished “for example. Ausra: Bellum, Deomars  
Finland, leeland. Netherland’—end alzo Norway, Portugal  
and Swreden—sholition has Ted ot fo an increase bu t9 8  
  
wg M0 NO, hg, Raa aba Das 5h an 1968, ol 6  
  
Sara eter of Gemeente, de 2c Jo,  
wha OLS Ea a  
she BN Nar faye Saba Debus, 50h Mes 19s, col 46  
Bow Chan Lo, Rae Sioa Deb, 58 Aap tye  
[eS & Arama La Ste Dabs eh AR,  
sh Nal, Raye Sabha Deowes, sh ACH, gS, OL. 47  
5 Sir. KP. Sins, Raya Sbba Dtwe 28h Aoe, tse 4c  
4 Sie Rath Singh Lat Satta Dee, 08 A, 19,  
wt cof se Hina  
  
  
Page 89:  
6  
  
193. As far es ordinary crimes are concerned, capital Espen  
ppurishment has not achieved its objective. Under the  
British. capital punishment had been used, and yet murd-  
  
‘Rone a ineressing and dacolty’ has become ip  
Some plac the order of the day!  
  
Yet The detorant they doesnot Hold god. ono dose Ce,  
analysis. 70 per cent ct -bese who go to the gallows are crratst  
nen who had'comnited the crime inthe course of a heat st  
  
fd argument, ti a of insane Jealousy. or robbers who  
  
When thew were fearful of dscovery, uawrillingy pulled  
the'triager and) became murderers.” When such peovle  
  
‘commit the erice, they do not Ehnk of the consequences  
  
Serius erimes are committed only in 2 state of men-  
tal exeitement, and in Such stale punishment fever acts  
Gea deterrent ta such & person  
  
“Mostly people get suddenly provoked by passion and  
without considering the consequences commit murder  
  
185. The orguments that capital punishment does not  
oer is various categories of pereons why commit hom!  
Gide\can be thus elaborated. “Ofendars ‘all into following  
Sstegertos—  
  
1) Those who carefully plan a murder or a erime  
like 'F “hcrys~they deliberately plan to avoid detec:  
tion, ond ‘ze not therefore influenced by the threat of  
the death penalty:  
(x) Those who meet the test of the legal defence  
init: thes can never be deterred  
iu) Those who do-not meet such test, but are yet  
pot fully responsible for thelr setions. They also can-  
‘ot be restrabned by the threat of any punishments  
Gy) Thus, there remains only the normal law  
abiding eltizens. ‘who would not murder sn any case’  
  
196. Capital punighiment ts not an effective deterrent, ttegatey  
on the planned murder se has ao efect. On the wnplanned 657  
‘murder committed i the heat of passion, te, it han no  
  
GHtect" Further ts etect is weakened by the compartive  
Inrequency of te application due fo cificutier of detec:  
  
Hon apprehension and conviction, and by The exercise of  
  
the potter of reprieve ster conviction?  
  
Raja Sabin Dubus, sh Abo ih St  
  
‘Sei BL K.P Si. Ry Saba Debates ast Api tse 447  
1 She Yonendr fa, Lak §.8ha Dobe AD 19, e352 (HIND  
  
4 Sari MLL Agta, Lat Sabha Dede auth Aas, 1956, ce  
ahs teane  
  
"Cian Rep, page 1, pacagaph 36, sting the anew  
6 enon Rep age 8 Samer” Argues eer“ De  
  
  
  
Page 90:  
Cena ot  
  
197, There is 4 contradiction in claiming that the death  
erally as a deterrent effect and at the same tme sur  
Tounding the execution with secrecy".  
  
B Retrbutive object crticised  
  
188, Capital punishment is cold-blooded murder.  
Crime ‘cannot be feplied by ccime. Stealing or prosecution  
[a'mot replied by'steling and prosecution fn return, ‘The  
basis of jurispradence. for ‘rel capital punish  
sient—death for death—requires to be changed  
  
269, Revenge is a very primitive and berbaric irstinet.  
With intellectual renaissance and progress, such novons  
should disappear!  
  
290. The old, ancient society was bssed upon violence,  
and the entire object of that society. (fo maintain its own  
fxisience) ‘Was (0 pat an end to or minimise violence It  
[5 because of this approach that whon a person committed  
«+ murder, the relouves of tke murdered person could take  
Fevenge, and if they did not do so, the society would take  
Fevenge. An eye for an eye, a tooth fora tooth aid le  
for Tife—that ‘was the ancient soctety. “Surely, in 1961  
ave alvanced fa enough Yo ow that hati no the  
principle that should govern society’ at all”. The more  
‘humane principle of trying to better the conditions of  
hhuman being. so thst they may net indulge in these erimes,  
should be followed”.  
  
Revenge should not be part of any just punishment’  
  
IX. Counter-arguments for abolition (in reply to reten-  
‘lonist arguments)  
  
49h. Deteetion js important. Deterrence by any means  
‘an be substituted by detection snd prevention.  
  
162, Capital punishment, or the possbility of sentence  
of death being atvarded tn ‘ase, diminishes the  
Certainty of anishinent sted makes the jury unwilling to  
sonviet —\_—  
  
1 U.N Ralcain (a, pe & pS  
  
2 Stet Uma, Lk Sabie Deb, 6 AP, 198, co. 38%  
  
5 Sie ML. Ags, Lok sabe Det, ath August 95  
  
4 Spt Sy Dev gam, Rae Saw etry 250) Aes, 96  
wb Dr can ‘all, Raiye Sabe Debares,asth Angus 96, cok  
  
(6 Conalan Report, pigt 12, pacnzagh 3% stating the argument  
  
1 St Bape Gups, Rap Subba Debs, 25h APG, 19 co 95  
  
  
  
Page 91:  
a  
  
108, Abottionists do. not want to take away the right  
of the State to punish the oflenders, “They would lke to  
  
nigh thowe ‘who offend against the State of any person.  
Bar the truth ts, that because of capital punishment, ofer-  
ders. escape unpunished. Capital punishment “hangs Hike  
ihe Damecles ivord sn the heeds of the Judges", They  
dread it and are afraid to give capital punishment, because  
‘hey tear so mony foopholes ave there  
  
‘When it f abolished, there will be less murders, because  
  
everybody" will be punished  
  
194, Existence of capital punishment makes murder senseiorse  
triale protracted and sensations and distorts the adminis fim  
tution of Justice and renders the dispassionate examina  
  
Hon of the evidence more dificult "When life is. at  
Inszard sn’ ela, Ie sensationalises the whole thing elmost  
Lnvlttingly: the effect on juries, the Bar. the public, the  
Jusiciars, Tvegard as very” bad T think scientifically,  
the claim of “deterrence Is not worth much. Whatever  
proof there may be in my judgment does not outvveigh the  
Focial loss due to the inherent sensationalism of a teal for  
  
Ii  
  
195, Juries ary unduly swayed in thelr verdict by fear  
of deait penaity  
‘The presence of capital punishment fslsfes criminal  
precwtng which ake ont character of staged  
ie renders junice Uncerti.  
  
End fees ei  
  
197. Public opinion is divided over the matter; those Publi  
abo argue for abolition, aso reflect, to some extent, public =  
opinion  
  
4, Sh Pe Ral Kape, \* sth Aor  
ah Ra ‘Raa Sabha Debts, 25th ADIL vast  
fet Sh Pie Ra Kapa, Ran Sabo ewe, ah ABS 9  
{Gs Ror, case 98a ag, Summay of Argumene acer“  
rindtetion 0 Janis \* “ “  
Me Joe Fax Frantcuer USA) cis ML, Agra,  
us SBR Bibs Sit Auman nes eke sigan  
45 Conan Repo, page 1a, peach 4, sing the segue,  
§ U.N, Paleation (96), page 6 pergcioh 284  
2 Si PS Nat, Rae Sabor Daten, ash Ari oy, ch 470  
  
% Shes haps Gaps, Raya Sabha Deine. 23th Api 6, co 98,  
  
  
  
Page 92:  
Sonne  
  
Pro  
Rites  
  
8  
  
128 The argument of public orini-n 3 an Irrelevant  
‘ope, Fot no social reform, even the Hindu Marriage Act,  
there was tay publi opine” Silfgaation was Hrought  
forward. because the leaders who are Alembers of Pati  
  
ment are responsibie for creating publie opinion and for  
Felormang sodets  
  
199. Public opinion is divided on the issue, ond is large-  
ly uninformed.” Practically all spovialised studies by  
experts favour abolition. Parliament should give «lead to  
public opinion, # abolition Is destrablet  
  
200. Judges, lawyers and police eficers are not in any  
favourable position to form wiews, on ‘hie question, since  
they see the murder anly after or at the stage of detection  
fof the cvime, when his attituse to the possible punishment  
is lcely (o be very different trom hie attitude before: CF  
daring commission of the erime'.  
  
201, Disicutties of prison administration are no argu:  
‘ment for retention, The. execution of Murderers runs  
coaster to the established purpose of the prison adraini=  
Station “ramet the teferaton of soit. Farner,  
‘sdeocates of abolition Include many. experienced prion  
Siministators. Taking of life by the State for economic  
eavons ts counter to Univaially accepted religious aNd  
ioral principles"  
  
“The argument thst its unreasonable to expect the State  
to feed and clothe convietod murderers for the rest of thelr  
lives ‘was met in very forceful language by Professor  
Ghedhares—  
  
“There are. undoubtedly, serious arguments, which  
brave been advanced against the abolttion of capital  
punishment. but this perteular une seems to be wick=  
fed and immoral. Are we to kill men and women In  
  
Dood! because it is teo expensive to maintain a  
  
1 St Sony Det Nigam, Hae Saba Dees, ip ck  
  
SE RAP pee 8 Seay of Armuntts ender “aie  
  
"colon fon, pge go © © Spr gyre we “en  
caine ei ane | Ren Bae  
1 Cua Rep. pat pan 3 ing the ee  
A Sent torr A Cate foe ltr ada tet  
fg the Wondsow Wat “Aria the aru Cartal Puwlteat Ter  
sin Jeary ooh apediced Mita, Capt Pantie  
Can pg ae  
  
  
  
Page 93:  
Cs  
00 tn which to house them? If the terrible pro-  
ism of Ife or death ts to be Teeided on the basts of  
  
pounds, shilings. and pence, then We ene. have Kite  
  
Feoson t3 be proud of cur modem elvliztion  
  
203, Sympathy for the olctim’s family does not Justify sympan  
  
capital punishment.” Death canmot cure a Crime or zestors Gri  
  
the lite of the viet. By just "murdering the murderer”, msi.  
“ampaly ff ayo the tin  
  
“ing syopath for the person who has  
  
Been ‘murdered bythe State and his family  
  
X. Experiment of abolition worth making  
  
204 Progressive jurisprudence requires abolition  
Some country at some me has to make an experiment ects  
io by this progessive juriaprasence. fda, with ts Saal  
eat weaions ts More fed to make thi experiment  
  
{hen any other countries "If eames go up as Tesult of  
  
stolton, SPariament wit be” sting for sever: onthe  
  
very sear” and-can restore capital punishment  
  
XE Substnde possbie  
  
238, Criminals canbe reformed. They ar> the victims Reena  
cf Grcomstances “They are bane of our bone snd fs Poser  
SL Suresh: They aze‘fsem ue'snd we should not be  
SSid ct them. We should have foith in humsnsty;  
‘Wecthoala howe iui in the goodness of an."  
  
206. Sturderers can be seformed. Murderers who have  
ben pt in prisons insod OF being tentenced 0” death  
Have proved. fo'se the mest “docile” and most. sbsdient  
people"  
  
207, The for that aboliion wil ereate a srt of risk im Not  
the oct is9 fenr not Based on facts, ons echidigh sob  
nd primitive  
  
216, Abolition. by showing the Slate's reverence for Me,  
tenis io'inculeste the same appecach Inthe minds of Ns  
eitisens. Sha docrestes the Incidence of murders BY  
fesuon cf the great example of aceeptance bythe State ef  
the’ principle of sanctity af life by abolition ‘would esd  
  
Substantial ond progeesive Animation of mance,  
  
i Siiny Des Nip, Ras Satta Debts,  
  
Spier  
  
Shor Gova,Ros Sth Debres 250 Aus. gb, cl  
  
1 Soe Pv Raj Kagan, Sabba Detar, 22h Ape 958, 0 488  
481 Sry Davi Nigam, Roja Sabha Dw, 3 Aug WH  
  
sesh,  
  
con SRS, Raa Shs Day, 35 Ang, 9  
  
Tels Rae 38 Sto Arpanet er Len  
yh Ak L Atel, Lak Sahu Debs 2th ABpILAgE6, ca  
42 a  
  
  
  
Page 94:  
esta  
  
209. Experience shows thot there ts no appreciable rise  
of convicted murderers Elling again"  
  
210, Society con protect self by othst' means, and the  
death penalty is no more than a lazy acswer which ham-  
pets the seateh for effective means Of curbing crime ad  
"rational systema of prevention  
  
211, Deterrent punishments have not been able to check  
murders, rd th time bas come 10 replace them with some  
other punishment’  
  
212, The only objects which ean be fuitifed in. comson:  
‘ance With the modern tendencies, are prevention and  
Punishment. snd these objects can be achieved by means  
Sther than the taking of the life. Cepialpunisiment 1s  
btten abused, particularly for political purposes  
  
‘XT, Onus  
213. The exeeutlon of a human being is @ punishment  
  
of the most final nature, ard those who advocnte it must  
justify Hs morality and socal Utlity\*  
  
‘Tone Nosenex 18  
  
Abolition or retention Replies to Question Xo, 3  
  
214, The general question of abolition oF retetion was  
the subjectina'ter of queation Tin. the Questionnaite  
‘Shued by us ‘The question was as follows  
  
“1, Are you in favour of retention oF abolition of  
  
capital punishment?”  
  
ols ein. he saat important queton 9 the Ques  
tionnaire, naturally almost every person oc body’ which  
hige sent a reply to the Questionnaire bas expresbed det  
MMe ites Ce This question Whale aie poe  
oper to came to a conclusion about the state of public  
Epinon ‘by merely counting the replies on either side, It  
Would rst be out of place to mention here briefly the  
nature of the replies Feeived,  
  
215, The replies received to Question 1 may be classl-  
fied inte three categorie:  
  
() thoee who are for total abolition;  
  
ASSES REE. Pe ot Sc ore er A  
PON Pableton 960, page 6 prerph 28  
Sh aginst Sigh, Lae Sait Debus, 6 APLC 309  
co Hint  
4UD, Pbtcion (963) sag paragraph at ad 23  
  
‘Cayce Repay page 38 Sumiary of Araneae “One  
ot ret  
  
  
Page 95:  
in  
  
(by thoes who are for retention without any  
‘modifigation; and  
  
(€) those who are for partial retention.  
  
216. In the Iast eategory again, there are several ‘sub-  
categories which, while not {avouting total abolition, age  
fest abolition of capital punishiment,—  
(8) for certain offences, oF  
(by, certain eases on the lines of the (English)  
Homleide' At 1957, of  
() for perticalar persons  
217, Tt fs unnecessary to ener here into details of these  
  
sub-caiegories of partial retention, since the relevant topes  
are dealt with in the Questionnaire® under other questions  
  
1218, Those who favour total retention seem to form the  
lacget majority. and conaderably out mmr oa Who  
favour partial abolition or total abolition, In favour of total  
retenticn are almost all High Courts that have sent replies,  
almost all High Court Judges individually who have sent  
Teplies all State Governments and Administrations "of  
Ucton territories that have sent replies, some Members of  
Parliament and State Legislatures, all Inspectors-General  
of Police who have sent replies, many State Bar Councils  
or members of Stste Har Councils, almost all State of  
District Bar Astociations that have sent replies, and many  
Advncates,  
  
210. The Bar Astociton of Ta esa for retention.  
220, An eminent member ofthe Bar fr retention,  
221, Almost all the High Courts that have ent reple  
  
nace fovuted ihe tetenten of capa punta  
22, Alt all State Goveroments that have sect re  
  
pla te a fovour of ation af capt paste  
  
2 The views of the Home Secretaries © the Lew  
  
‘Ministers of some State Governments have been Tecelved  
  
Prough the State, Goverment, and they "are also in  
favour of retention’  
  
‘Te tol ol he Bat  
  
  
  
Page 96:  
2  
  
224, Governments snd Administrations of certain Union  
territories have sent replies, and all of them are in favour  
of retention’  
  
225, A State Government! has expressed itelt in favour  
‘of retention, emphasising the need for maintenance of  
Security and peace, and also potating out that the abstrsct  
‘theoretical dactrine that human life is sacred may work  
harihip If poled tothe snsrs of panes who conser  
tthe life of « human being not so sacred and who act reck-  
lesely without any such coatiderations crossing their mits.  
  
tere ie ual ret gure for an aga te,  
there ie equally forceful arguments fr and gata Fe  
{snc stated that in the preset uncertain conditions of  
fie and in wew of the fc that laesnest and alone  
ate jnerenting in allt aperes of life would ot be  
‘cls tostuich the cpl sentence In apn  
‘ee'dnath pencil i a sola nacstty, Beuso ie eecive=  
i"deters people from committing tarde by  
  
(0) the ature of the immediate family and frend  
  
cirle of the pereoo Punished;  
  
(i) the future conduct of others.  
  
227, Many High Court Judges have sent replies their  
tnaieniel Same and anos al the High oul Judge  
‘Who have sent such replies, aro in favour of retention  
  
208, Replies of several Members of Parliament and of  
‘Stote Legislatures are in favour of retention”  
  
229, The Bar Association of India is for retention’  
  
One High Court Bar Astocition” has sent a  
favour of retention. as ely Ja  
  
The Inalan Federation of Women Lawyers is for reten  
  
r  
  
5,8NO 94 160d 903 (Governments Admins of Un  
  
7D es ta  
Eth  
  
sae Sar toy ae igh  
5,5. BU a og ne an a a  
  
O'S tae ct  
  
  
  
Page 97:  
2  
  
220, A High Court Bar Assocation in a Presidency Tote  
‘rom of She Gn that capal panshment shoal be dit  
Fined” Yo i pins the nar fet of paniament Some  
{Setribicion, anane of Ne purpose Yo sore as a8 out  
  
Ie forte indignation ofthe common  
  
131. Several Advocates are for retention’:  
‘Many Advocates are in favour of retention’  
  
Many Public Proseeutors are in favour of retention’,  
A number of State Bar Councils are for retention.  
  
252. The Presidency Magistrates in a Presidency Town’  
who are in favour of retention (by majority) have  
ised ‘that the offences for which the Indian Penal Code  
Drovides capital punishment have not Tost their gravity  
‘with the passage of time or change of regime.  
  
Some of them, however, are against retention, on thy  
ground that ‘retention ‘would serve. a a Tevenge by the  
Sboety and the Lew should not sanction it, and that if the  
{imprisonment for life actually lasts for the whole life and  
‘ot for period of 14 to 29 years reduced by remission, then,  
{hat sentence t20, would have an equally deterrent effect  
fsa sentence of death  
  
283, "The Juical Section of the Indian Officers? Aston  
siation in State is for retention, on the ground that the  
SSeterront object of preventing hlnous crimes inveleing  
a en degree of Violence ie "substantially though not  
rullent achieved. those  
  
z  
a  
i  
f  
a  
z  
g  
  
1) Adoate- Gener Of + State  
  
pred Seca  
  
{fa ae’ Rvocate nts stubbe Proseaion” ys" qor can  
  
‘Rigo bio at 4 St BD  
torte  
  
j.2 SNA a APube Pin, 471 (4 DeAe Praca si5and  
  
oS. Nw 16 132, a 19. Gate Bar Camel.  
5. No so, ei 0 gomtion Fan 3  
SNose  
  
  
  
Page 98:  
"  
  
‘We find that of the Judicial Officers or Judietal Officers  
‘Aswociations that have sent replies, an overwhelmingly  
large aumber are in fevour of retention ‘These incluse~  
() District & Sessions Judges'; and « Chief Prest-  
  
dency’ Magistrate’;  
Judges  
  
{(W) Additional Sesto  
) Assistant Sessiong Judges, Civil Ju  
rues! Cate Magatretee snd offcele sxercing poets  
both of Chil Sudges and First Class Magstratess  
  
(iv) Judicial Service Officers’ Assocation  
  
234. A large number of District Bar Associntions\* are  
in favour of retention.  
  
235. Of the Inspectone- General of Paice and Inspectors  
Gopara‘at Baan of Sate Governments tat have sent  
pM, Sone ar tor eto  
  
296, Cernin District Mgnt! ar ls for retention.  
  
237. Apart from the replies already summarised,  
have received rapier on our Guestinnetre fom publi  
Ios peat fnlltins an certin Tnateons, Severs)  
th rep are for ret  
  
atta a oe  
  
wes BS Bide 4  
  
ae Sete  
  
Pot ee  
  
Se hein SS eee Ssh sb 55h, $00, ts,  
SESS aa Te 3  
  
25 Na een in a Praidency Town)  
  
2S. Nou 26738 470, 9H 37 SHH SMH SIS Ane 58H  
  
aah Night 88 9H I DH SM Bh sm BH 50  
  
5S. Now 372 374 an 562  
  
ae  
  
FRB at EMER,  
  
15 Noy) and 146) 69 and 284  
BS. No. 286, a, so 50, 95 and 65  
  
19S. Na. 95 (Reve! ge af te Boba High Crue  
1, Mo. 396 (A very eminent pac man.  
  
Ug Ne i 98 1a Ral Se Jase a0 ss  
ae So bo 508  
UE te atc od Diet Mac  
  
128. a 44, 987 (dl wore 0 State Jal iho), 5, 4484  
2 a a an BS SS  
  
a  
  
  
Page 99:  
6  
  
28, Those whe favour total abolition are few in  
  
Yery tew High Court Judges have expressed themselves  
sn lavour of foal boli!  
  
No High Court Judge who has exprese he individual  
slow has favoured soa: except ay Nwady nota under  
ummary of views of High Court?  
  
one of the replies recsived from State Governments  
or Union terrories isin favour of abiion,  
  
Of the roplies secoived from Members of Parliament  
and State Legislatures, very few aze for abclition”.  
  
229, Several Advocates have sent replies in favour of  
abolition’  
  
1240, No State Bar Council has expressed a view favour-  
ing total sbolizn.  
  
No State Bar Association hag expressed a view favour.  
ng total abotition.  
  
‘241. As regards Sessions Judges and other Judicial  
ofticers, and. Astoeations of Jadic'al Oticers, very few of  
‘hem have sent repltes im favour of total abolition,  
  
242, Tne number of District Bar Associations favouring  
abolition is very small’.  
  
‘48, As rogards Inspectors General of Police snd I  
toreGontat Priore aol Dota Magisusles gaya  
Inspector General of Prisons! has favoured sotal abolition,  
  
25. No 147 (Minoty view of oot High Coe)  
  
Feeapeieerteceel tenn  
go 25a ate oes eer at  
Sy  
  
(A Memb of «8  
pp i Se?  
host  
  
oh  
ph tole & Sots ae  
8S i Deo fe ie ete, 7  
  
Speco fae itt we cr Sirhan’ Bee  
& Font Bic” hs inet aed  
  
Ee Rice ta ae Sig  
EERE ESS SSS RGR  
  
(65. en 287 and a.  
178. Ne GH) (Aa Lapeer Geer! of Pie).  
  
i  
  
  
  
Page 100:  
6  
  
244, Several public mes, institutions and private per=  
sons have favoured total abolition. Leis not heceaary  
sstamera'e them, but few replies ‘4! mals points worth  
insideraton, and these points are dealt with ters Some  
the replies are from Zila Parishads or similar bodies.  
  
28. Those who favour partial abolition may be grouped  
4) one High Count;  
(8) two Judges of High Courtst;  
il) some Members of Parliament; and State  
Legislature  
(iv) some officers of Governments (in thelr per-  
sonal eapacity)\*;  
(¥) one major Bar Association";  
(vi) one Bar Council”; and  
(il) otters  
  
26. The arguments which have been put forward in  
the replies received an this question, ray now be et out  
80 fat ag those: who have supported total abolition ‘are  
yeliy"that'an insocent person tay bo Raat TE  
pone ta ine aon  
is Hated, that the conviction is Eased on tke oral testimony  
af. mitresies to the occurrence or gn cicumstantial eve  
‘deseo and tho appreciation thereof by a Suman Judge,  
tvidencs itis contended, may be tainted by 20 maby fate  
{ora and these maybe coupled. with the inatilenty ot  
Want otesares of he ecu op fre the vet  
{atton might have baon coloured by corruption and mal-  
rected ut tha in tera hen, dhe Diy  
Coanel or the ‘Supreme Court has set aside stences of  
death even alter confirmation by the High Cour and  
{rgued perso who do not command talent or sbikty far  
‘king felt ease tthe highest Court would sil  
1S Ne ao A bag Ten  
3S No St De EN. Kain bi i,  
  
35. Now ts a tb ed oa  
  
1S pre ai ahr  
  
nhs Seay Sip tn tte eaten a oar  
oka  
  
3S. tes and yp, in ety 0 Quon 1. 360 and  
  
ES. Net st apy a aw Mt of «Su.  
  
38 Ne se snd 10.  
  
het  
  
caren Sarees, Te dee  
a6 ao Adve) 13 (on Aamoen 97  
  
  
  
Page 101:  
247, Further i i argued that capital punishment is &  
serious blot on’ our civilization, that inthe ast 200 yeare  
icemendous change has tsken place inthe atte towards  
{lta puntshent; thet spony fences which were eaplal  
{n"Bagland in the ISih Centasy have now ceased 20 be  
‘capita that many countries. in Europe have abolished  
  
Seal punt ant may Sales ln Arete Bate aa  
‘boliahed captal punishment, and that the people a  
‘With ehimse should have abolahed the death sentence Tong  
eo.  
  
248, 1 2 alo stated, that there are ao many aspects,  
namely, biological, socal, conomic, etc  
oma tid moat, to the ‘ad that socal pcblems  
$a’ ch a ie oats “rahe nn, In tir  
Symptoms. ‘It is pointed out, hat modern coca  
  
‘ntacogy aod! ponology Sey ders fenmental  
feconstrction and radical reorientation of the existing  
Donal nystemn, I's alse stated, that solely te oot 9 far  
Savanced tht It can. demand the hfe of another being  
‘hatover cme he might have eomiteed, ‘The deterent  
tite of capist Punishment as been questioned also  
  
22 Te reply of Sate Government es oe the  
arguments ually advareed for sbolion, First the argu  
ine tho® life i 9 git of the creator is met ty eating that  
{he abstact theoretical dosrine that human ie ta sere’  
wilt work hardship 1 applied to a. clas of persons  
‘Sinai ble of bomun Gaing not so anere, Secon, the  
Squment thet retalletion f not a defensible basis for  
penal system is met by stating, that the dominant idea of  
enologe of imposing death sentence isthe deterrent idea,  
End thet capil punishment fs intended to serve, end  
fox ences docs Feally serve, as a deterrent. Tt'is also  
Stated. that the, consciocmess of the generat public that  
evtein kinds of offences are" penihed with death itaelf  
fives security to the general public to move about freely.  
Fhiraty, the argumend that the desth penalty fs unjust  
Sohumai is noted the reply tates “hat punishes is  
‘evolved for the maintenance of security snd peace for the  
tizens in. general, and What Kind of offences should be  
‘met with deeth penalty should be determined st a given  
time and place having regard to the state of development  
ofcipaa andthe teqements for atnaling seca  
fd safety.  
  
230, One of the replies states, that society ts not so far  
sedvanced that ican’ demand. the Ife of another human  
SE aloe the Mtr (Aton 3 Dat P-  
sans) Aa ols ha  
° Dea ro dsr fe wee Goein 285 e  
eseep ta a  
e's Neste  
48, Noo1n,  
  
  
  
Page 102:  
®  
  
being, whatever he may have done. Further, there is  
always the risk of an innecent man being hanged,  
  
261. Another reply" states, thet capital, punishment  
nether deters the Grtainal nor achieves the object of end  
ing justice; that family feuds ate carried on fo such &  
fength that murders take place in the concerned faniies  
isang generations a ama of ebuton that Tet  
based on the old principles “tooth for toath”, and on the  
‘Seumption that mun cannot be cured" ‘Since iar deterrent  
object Is ot achieved, the reply favours abolition  
  
252, Another repiy\* points out, that studies conducted,  
in foreign countries reveal that, ‘the assumption that  
«person who” has once committed 2 murder wil” again  
Commit serious erime is not warranted Again,  
Stated, if iis assumed What a person Who his once com:  
mitted 8 marder hay a proclivity to repeat the same or  
‘Similar offences, and thus conatifotes “threat to "human  
Eetng hat must be equally true In the cate of «ern  
who hag at any time committed any act of violence. Un-  
tuailable evidence, its urged, is ail acking ta show that  
{cor of punishment ts the dominant factor which dlasdsd-  
tums being trom commiting'ocally forbidden act,  
  
ualshment in te ein Burope shows  
that the increase in the number of spltal offences aid pot  
produce the expected result it ie ean emphasised. that  
  
‘he spectacle of the State taking away the ie by judicial  
Iu tends fo produce jot the result contany to what  
fe intended, It also stated, that criminals are of thee  
Clssses, those Who commit mirder as n resilt of defective  
ena or highly wfortete oi prone tome  
ss xtreme passion: and those who commit preme-  
dated murders Ta the fro two eaves the deterrent effect  
fof death penalty i very negligible, while, a regards the  
ft Son Efe vey seldom da eal ty ith hen  
reste “weapons during their sdventure 20  
as india ig concerned. Tt  
that the fear of poral  
pons should be feted by facie. ‘The satstical-onalyss  
Ide by the Royal Commision is referred to in otet  
{o'ahow that in countess lke Norway, Sweden Italy: ete.  
the homicide tate has not been afected by abolition,” The  
‘ample of Travncore-Cochin sal clted, Its also  
Sted, that pubic opinion may not be easy to. ascertain  
{n'the matter of abolition or retentions and further, that  
ublie opinion always fuctuates with current "events  
foreover ita not based on ratenal grounds  
Sie a  
2 S.Nn dork Uninet Pde  
3. Raprs, pe 38 hd  
4 RE Repu, hope  
5 Gower Lit fr bil page 96  
  
  
  
Page 103:  
”  
  
1 tt st ep at srt  
og one cpt eater et  
eta ane uate  
  
254, Dr. Katjo, in an article, made these points:—  
  
«.... ‘The publie consclence is sald to revolt against  
the death pesslty. and the fear ot a miscarriage of  
Justice and of an Jonocent person being hanged is ever  
resent.  
  
th her ody. He protested his inocence  
however tried, fourd guilty, sentenced to death and  
  
‘During the past 12 years between\_ten and eloven  
thousand people have’ Goon actuoed of maser esc  
Year all over'adia: "There were protracted tals ad  
AStmerous sequal, about 12278 per cont by Besions  
‘Judges: Teter another 18. per cent were sequltted by  
ihe lg, hic om geal And eh many of thane  
Convicted escaped the Siteme penalty by the exercise  
St the presoprive of mercy by Gate Governments and  
By the President of India Uitzately, only a small  
‘number—between 100 and I80—go tothe gallows every  
year  
  
“This apect of the situation requires very carefal  
ceuatlecaln” verse invodting the Gent en  
See caus rarer dificates forthe investign  
tthorite and “tha cgurs concerned” Brory ane  
fonscous throughout the duration of the case that ©  
Suman ite isa sake, and the accused gets fhe hen.  
fiona dab saline bse  
tipon purely mamenitarian consideration night  
President of India. ht voto  
  
‘Those sho support capital punishment stress ite  
deterrent effect and say its abolition will probably  
lead to'a larger number of murders, but the shower 2  
that if Sata 10,800 18.00 people ceuned of murder  
  
TSN ee a  
  
SAPS acy Dee on tn, To  
  
otto ane”,  
  
  
  
Page 104:  
jou punish with death orly 125 or 160 ine year, it  
Spools tha the phase ‘deterrent eiet has po real  
‘iconlng. Further snare, the vast majority of these  
murders are commatted’ on the spur of the moment  
‘without any premeditation and’ the murderers seldom  
Tellect that bf their action they are running the danger  
‘cf being sentenced to death  
  
“in det sentence cnt, rom the Maghtates up  
to wiigh bart Stith’ wake ns  
Masta Mes oni wate of tomy aman ner  
ITERATE Ra ly bool ape  
  
"The proba isa, perplxing soe, 1 have, how  
ove SS SERS Sedan Se  
‘Soi in any spore of timings a fos  
Sao Aa ee we ae  
Seah Wen, sc ioa empeey mega oud  
See BiaN tuhterads sete deat ow ten  
Seedy wl tae Savas in ina Whe te te  
Seer Sota panier The ae cote ind a  
Be eee pet snags tae Pret  
feat finda wl hare igh fT, "the ste  
acter hatdc nO cae wih ss bone eee  
Pecsateapd Greil Se dower gel a  
  
255. Another reply! summarises the argument thus:  
  
“We do not consider that the death sentence acts a5  
1 deterrent, for the various reasons enumerated below:  
  
() Belgium, Finland, Norway, | Sweden,  
Switzertord, New Zealand and many states of the  
‘USA have either abolished capital  
of allowad it to fall Into disuse. ‘Their statistics  
‘bot only show mo increase in the homicidal ate  
but also indicate decrease in many cases. On the  
contrary, fe sentences and ‘Tong imprisonment  
Thave proved more deterrent.  
  
4) The police would do thelr duty better  
without the fear of having to bring # man to the  
  
iil) Juries, would do their duties better.  
Decent and intelligent men avold serving on Juries  
ding  
  
‘Bed  
(Gv) Administration of law would be speedier.  
(¥) ‘There would be lese corruption in courts  
  
(vi) Bxecutioners and others concerned suffer  
fcom the degrading and brtaising eect of mh  
  
  
  
Page 105:  
a  
  
(ii) Witnesses and readers of excutions feel  
«= bruttiing end hardening inlvense:  
  
(ill) The criminal is-deprived of the chance  
ot roar, :  
  
(ix) The nature of the punishment ie due to a  
arbre teodency aq outcome of ignorance. of  
rans nature and of What heppens 9 him shen  
he'is iolentiy thrown out ot hs body.  
  
(Its immoral. The erring anes aa infect-  
4th the moral plane, "Why murder them shen  
‘Se do not murder discased people who also are'8  
Imenace to society?” Why not aise morally A?  
  
(2) Justice might be miscarried and the Sano-  
cent slaughtered." Such cases do happen and are  
  
(il) The wrong done by the murder is not  
sighted by another murder, nee: by this method  
‘he ict not brought back to  
  
‘si The critical ie Uke « delingyont child  
and requires intlligent guidance. “We do not kil  
fSaugbiy children but guide snd edvcnte them 0  
shave eter.  
  
‘Gi, Sometimes the secused is like am insane  
serpin We" ot else pele bu  
Ecdeavour to rehabilitate them Why Bill's crim  
nal for meifesting hie mental aberrtions?  
  
(iv) “Though shalt not Kil” is one of the  
curmandentge Jeon, he ¢ ner ete  
Wiction based on metaphysical ‘llosophy a  
  
reflected in all pital ealtions  
ty cl 20 for Pay sake—and est yo.  
  
‘the meanest thing upon its upward way”  
‘hits spoke Lod Busha th enuncating the Fan:  
hasnt Not witout tenon did he edjure is  
  
‘Mtuation obtaining tn he country has been reterced  
Sustfying ie retention Tee ala pointed oat,  
bre ‘eountries in the worl the average citien i  
Well infceme:! and conscious of i duty ciety and  
has healthy outlook on life, and does nat Tose is balance  
Sfeplstndeproveaiin wile indi, eegue of lack  
‘St efuestior: and proper social outlodk. people are esi  
Find, (im such uncontrolled state). are  
  
Upset emotionally  
  
  
  
Page 106:  
2  
  
207. In the reply of the Chief Justice of a High Court?  
‘thas been sisted, that a cold, caleulated and brutal mur  
rer cannot be equated: with's murderer committing Use  
fenme in the heat of passion and other exteauating eireume  
stances Tn the former case, the ‘sates, the only  
befiting sentence is the sentence of seathy  
  
258, The reply of a High Court Judge, who has hd  
‘extensive experience nthe Court of Sesion alu states  
tha the exiting iw Suey achiever te teen  
ie he jet af preventing thee Pena fom  
Smmiting seriou ecmes.  
  
Prades 1°Bs been emplasied, tat in ony parts ot  
PB a Sin ay pare  
Ee‘Souriey the poops abe very bnctward unde tet  
Gie'gtng Meh, spots obott possesion of abe ars  
ie cata  
increasing in‘groat umber; and glass ore actualy hited  
{er"ohtating force poses of proper ens  
fence st bad aur ested ake Rt inertia  
HSS etre sate het nos wt bee gre a  
  
260, An eminent public man’, who had had rich and  
aie experince of criminal nw, and who has beld very  
‘high publle offices, has expressed himself strongly against  
abolition, in these words  
  
ing these days, and Jal fe has Tost most ofits terrors.  
  
“t therefore am clearly of opinion that  
should take the motive and the distress of the  
into account and be free to deal. with the convicted  
‘ollender; but ‘the death penalty should be there for  
suitable cases so thst men may” sbstain from, ‘ling  
fon account of the dread of the death sentence,”  
1 S.No. a9, val co quetion a  
2 S.No. a6 ey fo question 20  
cers  
45.8. 308  
  
  
  
Page 107:  
8  
  
261, Those who have favoured partial retention, have  
empnasged the. unjustdabllty of eapital punishment,  
fexcept for brutal crimes, and have argued for Uberausatin  
SP Slemtatagecumstancey Some gh, weal te  
10 abolish the deat except for waging war oF  
Peon Some, ould Engst Spon of 2 Towser  
‘he (Engish) Homicide ‘Act, 195%  
  
Cone of the suggestions is for entalning the death  
sentence only for waging War and treason  
  
Another reply suggests, that the sentence of | death  
should be retained for offences under sections 194, Thdian  
Penal Cade and for offances under 5 902, Indian Penal  
Code only if attendant with very cruel elrcumstances, and  
‘offences under section | 296, Penal Code only” if  
Sltendant with very cruel clreumstaness, Examples of  
‘gruel circumstances given sre—murder by burning, murder  
‘by cutting to pieces, and murder by taking the victim  
  
Another reply slates), that Whe imposition of, death  
ventence in s few selecied cases of gruesome, premeditated,  
Colitblooded and ghastly murders, did oct as a deterrent,  
ind that, opie ser fom ive a som  
‘hotoriows places with some el ‘people. The rep  
‘leo suggests, that the sentence of death chould be retained  
for offences under sections 121, 182, 392, 05 and 306, Indian  
Penal Code,  
  
Another reply, while stating that capital nt  
is found to be effective at a particular place and with some  
people only, seems to contemplate that it should be fesery~  
Gdlor murders of & heinous character “committed after  
planning and cold calculations, and that it should be abo-  
Tshed for the offence under section 307, Indtan Penal Code,  
  
Ths i al et  
erate ue Greet ce ea  
Soe neat nerd Sa Ta  
Shortly of ths crime (eolt-Mlooded and premeditated),  
  
“a bere dhe ping of the Mader Abin  
  
of Death Po Acs  
pices  
LE 80D omar oie Leer ede Qe 0  
  
ot  
1S. wo 376 (A, Guy Crt Cae Jats, hos experience  
Sendes aie et Sits  
gy sn 38 1 Cay Cr Selo fe ei unter genio 3)  
soa" me  
  
nage NO 297 Miah Come tein ety co ea 2 0  
  
  
Page 108:  
unnecessary brutality, murder by life convict, murder  
swith dacoity, ete  
  
Another reply suggests that capital punishment be re  
tained otiy fof woggiwat tnd abuterest of ly  
  
‘Torte No. 19  
Arguments for abolition considered  
  
282. We have carefully considered these arguments.  
‘The agrments for and agnina have to bo counter balanced  
agsinat each other. Ultimately.  
  
afd the Lai emt of rch coutertloncing Ro  
Shale argument for abolition or retention cam decile the  
issue. But in arriving at any conchslor: on the subj  
the need for protecting society im general and individ  
Inuman beings must be borne in ming  
  
2H eit wl ut be vay ode  
oe Tigh oe et uta  
a a tre  
Sho ttosh (ie tetie ceca:  
  
2 ary ae reer aad  
Gehan Re Tels  
Soi imac, Mek  
ie courant eine  
thei ue he ey on  
SII eA innate aa  
iB sey Sita spn ln a  
ee hes ee en  
rh Rn ay a tie Bn  
Mcrae Rit me Woe a ee  
secrete Mee US Be ea  
Sou olan tres cret. Seat  
ices igen a eae et ei  
sear  
  
3 SNe 9 @ Dian & Selon Jude) vey to euatoce  
va Sa c ‘Sess Jase) i reply co gaa  
  
2, Tas, Wonl show the imgorance ofthe deteent ict of he  
capa) pass‘ of 2 cadens ene,  
  
3 Tie gas of toacse ae given der,  
4 See perp 314-306, ae  
  
  
  
Page 109:  
5  
  
264. The suggestion that death penalty may be abolish-  
  
co ae an experiment (ao that can be reintroduced ater  
  
Soliton) am argument to which we have given “out  
  
ough stiention: but we have to take note of corte  
ibliea Between abolition and se-intreduction tay  
  
Tatervene an era of slolence—we do not say thet this i @  
  
cevian contequerce—out ft iv pouty which cannot  
  
SS loved “eeprabie har wold then have bon done  
  
tot ony to the victims of such violence, bat to the general  
  
‘Cause af security of te society. Once the forces of lawles-  
  
See ate fet lose resntoucton of cept punignt  
  
ay ct have the denied effect of restoring In  
  
Eubedivehy” Further, Peramont may nat be ating all  
  
{he timc, and tho interval thet might elapse before the aw  
  
‘gain aaa amended would prove danas, On @  
  
feration of ell the isues involved we are of the  
thon that capital punishment should be Fetained tm  
prevent state of the country. :  
  
265. We state below, briefy, our views as t0 the main  
agent hat have Poon ‘edvanced th favour of sbate fal  
tent ‘ec  
ea,  
0) General —The gener nt aga cap  
  
tal punishment that ils See Togelsed, revenge sed  
  
destruction of uman vel really atfempts 0  
  
Stmmarise so many facts of this big question. tn the  
  
fino soalyi, cpital purnishment a quesiion ot  
Values, of rather, of the balancing of values, and the  
Getalled discussion of each argument, that follows, is  
‘nly intended fo thow the relative Importance of each  
  
(2) Immoral —That the taking of Ife by the State  
not morally justiied, Io sn argument which could  
Berhape be acayered br drawing steation tthe ends  
  
for ahich the State takes Ui ne'ot toe ends  
is the very protection of human Ife, by protecting the  
Individual dnd by protecting the soley  
  
(@) Irhumon—to some extent, the argument that  
the penalty of death & inbumec! Ie conmected with  
the Mode ‘olexecaton, However, all” pnkshment  
‘omptie auering In fat, he ery concept of pan  
‘heat inples sulfrng. "itt true that capa pans  
tent i diferent in quay irom al iter fanieemonts  
Und to that exten the econ ab to le jutabiiey  
Sesumes grester maporiance ‘han questions as tothe  
Juste for any ober punishment  
  
  
  
Page 110:  
(4) Nonviolence of, Indian tredition—Stress has  
been laid on the principle of non-violence ss Fequiring  
the aboliion of death penalty. But it must bo remem  
‘ered, that nonviolence is am "idea! nd practical  
‘ificitieg have to be Sorme in mind in determining  
hhow far the action of the Btate and the poliey of the  
Ine should” conform to hat ideal Ail penises  
Imply suffering, and “(excepting pecuniary pai  
ment) all th ual punishments imply some degree  
tke io ie perce. Moreover protestant  
Society from violence fo an abject of Punishment (and  
Bacicilry, of capital purshmert: and the teention  
Bhcapital punishment, fr from being inconsistent with  
the doctrine of non-violence,” sctualy promotes” it  
Spins may of curse iter an Whether the  
  
lreclay 2 cepa putea): andthe eeentlon  
i and oder and, so many sspects of the  
glucston awe ta be conldered ‘before » decision can  
  
Bevreached on the subject. It carmot, however,  
troeted hal nomvilecse fees the abun the  
Seath penalty irrespective of other practical considers-  
tone  
  
(8) Iryevoesbility—This has been dealt with  
separately,  
  
(8) Human Freedom —This is a fundamental ques:  
tion cancernitg all punishments. If an offender 1s not  
‘a froe agent, then no punishment is justified, The  
  
rgument would take Eway the very basis for all  
‘putishments. It may also be pointed out, thet where  
the circumstances show that the volition of the offen-  
ey Was affected the Courts jn Tada are ree 19 dix  
friminate in respect of punishments,  
  
7) Morbid—Executions a5 such are not given  
‘much publicity in India, and, therefore, every execu  
‘lon may not leed to violence in its wake.  
  
(8) Mockery It is stated tha mock.  
‘ery of punishment and that It the ‘who Took  
  
nd fel echamed There is, bowever, Do  
Sree show that thiris sos Newever bo ev  
  
©) Injury to family —Tat the sentence of death  
cause ny f pete oho have no part te crime,  
teeth faye the vicki, i» faraal propnn,  
ich wales deny In al racer  
ire uring 1 the iene hoot,  
“equ moe han any other  
pti” othr Sas Mtcatlaaten ad Ss  
Eten into seeount fo'8 question of value  
  
“YS dcaion a to feeb panes tea We  
  
  
  
Page 111:  
: a  
  
(10) Unequal,—That persona who have no sufl-  
cient financial means, or who for some other reason,  
Sano hy casei ot sfler and tha Se  
jaW proves to be unjust to them, isan argument  
‘concems the subject of legal aid rather then the  
Substantive penal law  
  
(iy Jury system —Whether It would be better to  
lea the diem a othe sentence to he Fudge or  
to the jury fsa matter on which conflicting views have  
Shen ekpressed "So! ear a nai concerned, Bae  
ver, experience of the wor reset system,  
ides which the question of Sentence i left to the  
‘Tdge, a not shown the system to be faulty in this  
reapect, °  
  
(1217), Deterrent effect-—The various arguments  
conpocted with deterrent effec of capital punishment  
feed not be dealt with here  
  
Cf) Rete eer tio  
cee tart naa  
See  
Peres Pee  
eee cea  
oe rl ppl meen  
Soe same cacao, ark ee  
peed prepietgt a  
Sone ie omen eae,  
eT Ries uae  
  
Jonge, but rather s refined evolution of that estinct—  
the feéling of special abhorrence of murder. That this  
{feeling prevails in the public ts fact of which notice  
{s'to be taken. The lav oes not encourage it, or exploit  
Jt for any undesirable ends. Rather, by reserving the  
  
sath penalty for murder, and thus visiting this  
rime With the gravest punishment, the law belpe the  
lement of retribution merge in‘o the element of  
Geterrencet.  
ane CEU for, eves wil sue to note tat  
sy ‘revenge is no longer recognised,  
Social abborrence is intended to. take the place of  
Fevenge which would otherwise manifest itetit in the  
Dersons concerzed faking the law into thelr own hands  
Punishment is meted out by the society, and nat by the  
Individual, through the organs of society and not by  
Te ny ae  
3, Sie ig dcosion rting Co det of the cou  
onl i . ae  
Sdeappiee Woon ring codeene eat panre  
  
4 Sw tho RC Report, page 1, paragaph 53.  
812 Mottaw.  
  
  
  
Page 112:  
the family of the individual, for the protection of  
society and not for the. Viedication of the = wronged  
individual. If the society does not express its sbhor-  
rence of the offence of murder by te sen  
fence, there le a danger that individuals may take the  
{aw into thete ow hands, as a Jarge namber of cases  
from the Norther: pert of india will show.  
  
(20) Effect on trai It is stated that juries are  
unwilling fo convict in view of ty of the  
sentence of death, ‘Certanty of punithinent its sated,  
ie"thus’ resced thereby flecung deterrent fect  
i ihe ely of eit Ay otic agian we ih  
{o potct su, that in Indi, the system of tral of murder  
ind other capital offences somewhat siferent from  
Efe ete count. Tha by fr at i  
force uniform x. the county, (In fac, it  
{G'Pracialy obebed) Even where U6 in force,  
the final decison i the Court of Session on questions  
‘of fact does not entirely rest withthe fry, aa Uhre are  
Drovisions in the Code of Criminal Procedure where.  
Linder, the Sessions Jud ‘with the verdict  
‘of te jurors or the major) of thom, he can reer the  
  
ater to the High Court’, Further, the question of  
Fentence lao net left to the ry.” ‘Triged juaieal  
cficers, with long expertenea, are not likely to be ine  
iivenced by sentimental considerations.  
  
tn this connections we may rofer to the, observ  
tion itn ch Cel" wih thug nade te  
‘tet ot contsps st cat ate space he pt  
Unde cain a, Adee Fie ‘very dierent  
nt toa hergmen. ‘ade in so See pete  
ima he as y taining “no difclty in putting  
ato i mint ers i nk eence ne  
Sate! Tl Indood pane daily te Jpn on Atte  
Sal she me in he eno api of tat  
att of Cina Apes, oho rego an appeat  
Seat Sve Sing ss ete) in  
‘eno ws ho tence of am open cee  
Fonvietion is considering whether or not the sentence  
fore in peneple  
(Ql) Living conditions and. ther factora It ie  
sre a ee festonce of dent by fell sya ext  
‘ivy nfoeney te te of oii, soi thee  
‘countries where the rate was low, it might have been  
ioe tctuwe of a beer dander of Euing. ‘end eel  
URIS of he pep! BURA wot we  
wo Hg alt ESP Eas tl Pate  
oo ages me. by be tno 4 Oak of Ce Poe  
3 Sec 34%, limi Pree Cle.  
2 Res oon Sato aC.  
  
  
  
Page 113:  
afraid, constitute an argument for abolition at all.  
‘What ‘has to be emphasised, i, that these factors also  
fact in conjuistion with the’ sentence of death, or any  
Other sentence that may be substituted.  
  
(22) Public opinion How far public opinion  
favours abolition or Tetention", and secondly, how fat  
fch opinion shoul be take. into account are eo  
import questions hat have often heen the subject  
inutier of debate whenever the question of abolition  
Gr tetention ir considered. We Selleve Ut though  
Public opinion js not. corclusive fecor, iis impart  
Ene canhot be brushed aside. In tis asin many ether  
Schivbece the iw operates, there onan sere  
ction Between law  
{he one t advanced, sometimes  
Fepute. It poblle opinion favours fetention, and  
ibe ne wpares faba the sees of dehy  
{here ls « danger that pable opinion might ser ae  
ina reckless and uncestrained menner by. Hilieg oF  
Injting the. offender, particularly wher. the offence  
{ge brutal ope arousing intensely the sentiments of  
the public  
  
is true, that those who argue for abolition also  
reflect public opinion But, hen. thelr views have to  
berwsighed ageinat the views of those who wll favour  
retentionwe do bot say thet the matter can be det  
ded oniy en the mamereal strength ithe  
  
(22) Opinion of Judges, eto—it Ss stated chat  
a yer ier te ot ny ate  
  
iy favourable postin for expressing = view ob  
  
{ise question art that they see the sfonde only when  
he blleteted. "it cannot however, be Genied atthe  
  
persons mentioned above have more points of contact  
Jrih the behaviour of ermine than others.” Further,  
{e would not be always accurate to assume that thelr  
knowledge of the conduct of the criminal begits only  
{om the point of detection: often, the relationship  
‘between the accused and the vitim, prior to the crime  
bas to be investigated and. gone int by them. We do  
Bol the length of evi that the views af dues  
fn Inert be Eat concling the gue  
Eon U'BU Wey deserve spect cnsieraton  
Se concene with he amiatation and apiaion  
ff the lave and the whole eviderce comes  
‘Tovthat extent they are in a superior postion.  
  
(24) Prison administration-We agree that the  
aimnculty of maintaining In the prison prisoners cone  
‘lctd of capital offences cam be no ergument for reten=  
Eon  
  
The 12,04 Seaman, ects on Gaon  
1 ad aS Ta a  
  
  
Page 114:  
”  
  
28) Sympathy for the famuly of the victim —We  
salvo agree, that inere sympathy for the family of the  
‘tint dey not justify capital punishment. We should,  
owever hasten ober, tht i Po tea, ts  
sympathy plays is part in bull public abhor-  
‘enwe of Wie ecmme, R'is a commendable One, and may  
‘constitute @ tink ir the procesa of merger of other ele-  
‘ents of punishment iio the deterrent one",  
  
26) Experiment —We do not think that in the  
present state of the country, India eax risk an experi-  
ent whieh may put into danger the lives of numerous  
ilzens. Ut may hot be easy to restore the status que  
if the experiment fal an it may, in those parts f  
country which are notorious for cximes.  
  
(21) Reformation —That a criminal cam be reform:  
fe ig 8 consideration to whieh even now the law 18 not  
blind.” The discretion left to the court in the matter  
of sentence leaves ample room for considering whether  
‘he offender is person who eat: be Fettieved from his  
‘evil ways, Te is um Mo cite here cases, in  
Which, en the ground of age, Ignorance, or other factors  
whieh’ show’ the Posibilty of reformation, courts have  
‘refrained from passing the death sentence  
  
(22, Abetiton no rit hasbeen sated, hat he  
the {esr that abolition consitutes a rain tocety is  
childish and primitive, and that, rather, i wil neal.  
fate spirit of reverence fr life inthe people, who wil  
fee omer Sees Wem ae  
this argument Fi ‘gvertion :  
fect of capital punighment, which is discussed  
‘cwheye te we" ped tot ead bp tae growed  
  
y Gompate aici ring wo Ge Fabel of panos  
pergrapt 295398, Be  
  
2 Sue Analg fee a  
2 Se parnpapta 2ey—aT, in  
4 See pangpb 396—208,  
  
  
Page 115:  
a  
  
(0) Experience of other countries regarding con  
opoaton stick bas been urged in favour ot bole  
on ohich baa Eaves urged In favour St sboir  
Mee pe, Raval Commie secre gone evince  
tnd collected certain figures ax tothe conduct of mu  
Severs after release from prison’. end cbyerved that the  
fvidence and figures would tera to show that released  
‘deena genevay have velar long piss  
"The eonclusion of the Ceylon’ Commision” abo was,  
that tne danger to the community from such Prisoners  
‘oh thee relesa Se mismo, portieulely 4¢ they are  
SEntenced to life imprisonment and a fesible and ne  
‘lermined system ‘of roles. accompanied by" attr-  
cre mupervisin replaces the Present system. must  
foweved booted: that muck depends on the personal  
Iiosymetagy of the oflender.  
  
hr wold not gt of epi a  
a mice Se Sie Poe,  
Ms Best Lp, ee tent ke  
  
" it halts St  
Ena Ee id ab ph” Pe  
  
In the caze of the latter categories of offenders, it may.  
not be Safe to predict Wat they would, 1 they hed  
been sentenced’ to the lesser sentence, also have be-  
Rave ithe same way. "To this extent, the value of  
the figures obtained in respect of retentionist countries  
fn diminished, ‘Moreover much depends also on the  
taining which a prisoner recelves in prison, the  
social hierarchy to which he belongs, the envleonment  
{n'which The lives, and the “after-eare™ given 10 Dim  
  
(20) Death penalty a lazy onswer.—If the object  
which can be athieved by the penalty of death could  
  
Be achieved by ony other" ‘no one would for a  
‘moment justify ‘ite retention: But the very question  
Ieywhether the objects could be so ac Tale  
  
‘again raises the icsue of deterrent effect.  
  
C3) Oe The. sd Ho hom  
Stier Se rein ts Be  
unica grnteate ities sae  
Hees pectoral tae was Sais  
  
  
  
Page 116:  
Inrevoea-  
bility.  
  
Constitu-  
tional,  
  
Substantive,  
  
92  
  
Toric Numsrr 20  
Irrevocability  
  
266, An argument which deserves our most anxious  
consideration is that based on the chances of error and  
execution of an irnocent person. It is stated, that one  
peculiar feature of capital punishment, as contrasted with  
other punishments, is that it is irrevocable, and if an  
innocent person is sentenced to death on a charge of a  
capital offence and executed the injustice caused to him  
cannot be retrieved.  
  
Some cases of erroneous convictions are cited in some  
of the studies’.  
  
We have not the slightest irtention of underrating the  
paramount importance of ensuring that no innocent person  
is subjected to any purcishment by a criminal court, much  
less to a punishment depriving him of life. Nor ‘do we  
intend to answer the argument by stating that in no cir-  
cumstances would an innocent person be executed. All the  
same, we would like to draw attention to the safeguards  
which the law has anxiously provided for avoiding any  
such unfortunate consequence. ‘Those safeguards are con-  
tained in the Constitution, in the substantive law, in the  
procedural law and in the administrative orders in force,  
and are re-inforced by the prerogative of mercy, and can  
be classified below:—  
  
267. Every person, who is arrested, has the right to  
consult and ‘to be defended by a legal’ practitioner of his  
choice? The Supreme Court has jurisdiction to entertain  
appeals where the accused has been sentenced to death’,  
where the requisite conditions of article 134 are satisfied;  
in other cases also, the accused can appeal to the Supreme  
Court by obtaining special leave‘, The Supreme Court has  
the power to review its judgments\*.  
  
268. A person who gives or fabricates false evidence  
with intent to procure corviction of another person of a  
capital offence, is himself punishable with death, if an  
innocent person is convicted and executed in consequence  
of such false evidence®. There are other provisions dealing  
with false evidence and offences against public justice’.  
caged fuse, UES No, 2 aw Quatiety Gournal of the Inga Law insti  
tute, West Bengal Unit), 123, 128.  
  
Article 22(1) of the Constitution.  
  
Article 134(1) of the Constitution,  
  
Article 136 of the Constitution.  
  
Article 137 of the Constitution,  
  
Section 194, Second paragraph, indian Penal Code.  
Section 182 and sections 191 to 229, Indian, Pena) Code.  
  
wonsun  
  
  
Page 117:  
280, The procedural safeguards can be sub-divided Procedect  
  
into  
  
(© thowe relating to tia  
(i) those relating to judgment and sentence;  
(Gu) those relating to appeal.  
  
A gi tlaling oa capa ence con, be red only  
"sige sequring precommitment yr Magister in ach  
Misine reglring pret tee tn uc  
"ised? SRSA Si lore the Court f Sesion  
ther i is held by the Judge human or with a  
ced he acotance wih he Cot or  
Recused fo explain any circumstance apeeering  
ence again him, te, Court mu queen him  
re Site anc the Soe of te prosecution The sri:  
Ge tree to ive evidence on onthe. The lew of evidence?  
‘ontalng elaborate provisions for excluding from evidence  
Confessions obtained improperly,  
  
270, Coming t he sage of jdament 1 a sntence of  
death is proped ty a Gost of Seas) it mast be cone  
  
EAP ppest ust be peda  
  
‘211, Where the trial was held by the Court  
  
Agate 9 night ot eppeal ta ine High Court en conviction  
the tral was held by a Judge of the High Court  
  
fniteoriginal exminal Jurdicton, there ie Tight of  
  
ooeal ("the High ‘Court ix sertan case. in ation,  
  
the Constitution provides for appeal to the Supreme Court  
  
in certain cases  
  
a Sn Fa ST TE EE Ca Rae  
  
"Secon 20818, Code of Criminal Pree, 198  
3 Seinas 365395, Cae of Chamind Precfe, 898  
4 Senion 943), Cafe of Criminal Prof 858  
{Seon 345A, Cale of Coil Prcaute, 198-  
  
6 Saxton 34 co 2, Inn Erience Ac, 18>.  
  
Seto 379-376, Cole of Criminal Proce, 18  
9 Sesion 77, Cale of Comin! Pree, 198.  
1 Seton 37), Cade of Criminal Procedure, 189  
eli Seti Won Cale iad Pee, ty lt to ee  
  
Ts Sosion 4th, Code of Chiniad Proce, sip,  
1) Arley 32, 134 and 136, Catron,  
  
  
Page 118:  
ot  
  
te  
  
Py  
  
2 Ly, roosting wth ie pe  
or Se Reto eng hse  
  
spies i heat fe at  
paca amit ee he ance  
ty 2 Sao  
desk Ste St Re ce ea  
ie,  
  
279, The assistance of counsel is provided at the cost  
of the State in all capital cases  
  
214, The above resume of statury provisions  
the anxious concern of the law to ensure dat the chances  
of error are kept to the sainimaum. That minimum, per  
he, wil ever be @ nr. We must conan endeavour  
  
{enviellon, Whether noticed ofall or unofialy, deserve  
{o'be'tocied into whe they are Brought 1 the hotce oF  
the authorities, fe prevent 8 recarrence of such errors,  
We hope, however that such eases have not been mang.  
‘After passing through the seve of fudicnl setting tndot  
ihe’ provisions already set out and the sruliny applled ft  
Pihould  
her  
ood. apie  
that only shows the  
other or  
  
715, We glve below some of the important arguments  
acvenced er te head ot “ereneais conviction and  
Sat one theenlogards entry ot propa  
  
  
  
Page 119:  
a) ness may ie  
  
(a) Accel ay ae be deguely  
‘preven by sume:  
  
(lnerigaion mii, tave See  
‘SiS'Sy cstpen anal  
  
CHAPTER 5  
OBJECTS OF CAPITAL PUNISHMENT  
  
‘Tone No.2.  
(ects of capital punishment  
216, We may naw proceed to an examination of the Obes ot  
objects of Capital Pishnent. oa  
2 Section 19: meted pera Idan Peal Code "  
  
2 Su seston eng to egal othe sowed, pragghs 466—  
078 Bis  
  
3S acute ebing w appa the Sepwrme Coun, pumgohe  
957798.  
  
  
  
Page 120:  
For convenience of reference, thee objects 8  
  
cm tho erate on the bjs, my be onamera ee as  
(0) Deterrence:  
(i) Retribution;  
(iy Disabing  
(is) Avoidance of Iynebing, private revenge:  
(#) Disspprobation by the public;  
(oi) Atonement by the offender.  
  
‘OF these, the Ses two are those most frequent  
forth, and subjected to approval or disapproval. wy pat  
  
Tone No. 22  
Ob;eets of Capital Punishment-—Anewer t0 Q. 2 (a)  
  
{27, We ha i our Questionnaire put a quer  
tion aboot the object of expital punishment The ques.  
tion ‘ae follows =  
‘Wht, in your opinion, is the object of capital  
unishmestt" Boos, the “essting iw sucinthy  
Eohleve that objec  
[As was expected, most of the replies ox this question  
have’ sresed the deterrent objet of capital punishment  
‘That object has been from ite various aspects,  
{uch as, 40 preserve the socal order, to deter pesong from  
rimen tact ay a deterrent in respect of serigur offences,  
{ Uolér persons from” homicide of more laboretely, to  
  
the acace of each, punishment) estate to take aay  
Ife or to commit other offences which are capital at  
present. ‘Detailed discussion as to how far the \*  
‘hject has been echleved, falls under Question 2(b)\*.  
  
fseguing that ts “imposs  
Bere heaving a oct mo of een  
  
id for by a lst of crimes ranging, eg, from theft of a  
  
~ s Qecson a) in the Qoesionaie,  
25 diconion of ope under Quaton 20); Panapts 294—  
jap  
  
  
Page 121:  
o  
  
hhandkerchiet to murder" or (iv) point out that even this  
retributive object hat hot been suftclently achieved.  
  
270. The reply of a High Court Judge? states the ob  
  
of the punishiteat of dau fo bo deltas namely  
  
Tetributive with reference to the murder tte,  
  
SSlerent on tov perms Who might wader eu  
‘anger, greed or religious frenzy feel tempted  
  
‘other people's lives: atad, thirdly, morally satisfying the  
  
fesing ei that wrong-doers are kely to be punish-  
  
of @ State Government? states, that the  
cbjet i tecrt0d,€) primasiy ona deterrent nd to  
lesser extent, retribution. The reply pointe out, that the  
Biss a such that one sapnot expert Ho achieve 1 fully,  
bat Since the penalty of death inevitably acts as a deter”  
en 'the object can be stated to have ‘sufficiently  
  
snd ones one te  
pany bdmatt Lannie ae  
a b Ghat Be, Principal object of punishment  
ase Sree  
by deterrence, vee  
eye cig gh Gt ig gate at  
  
jurisprudence that ‘munder (deliberate homicide). should  
be deterrently punished with the gravest penal  
  
Avcter High Court Jute date te bic ase  
mati the tie which dale with ithe death  
15 the most heinous, and to prevent it  
  
In the reply of another High Court Judget, it has been.  
stated that a more subtle meening has to be given to the  
‘word “deterrence”. ‘The Teply refers. to a case whieh  
  
ccurred a few years ago, where Ue entice family of 3  
‘Aavocate was done to death on the outskirts of Bangalore,  
  
1 Quodan fom se Manoa of Gaveiond Sree, ed by te  
‘Actin Corestans Asoo ge ale  
  
2S. No gt (A Mien Core Jae).  
  
35. Nb 26 (A Sue Goverment.  
  
415. No. 390 (A High Cour Joa,  
  
3.5. No. 282 (A Mah Gur Je  
  
$5, Ne 22 OT Oo Ty ode emi ond  
emia cede od  
  
  
  
Page 122:  
by 2 murderer in the hope of gain. The community felt  
osked beyond "words} the netesity of nfletng. death  
penalty in similar eases for proved offenders illustrates the  
point made above:  
  
“Tye repy alo proceeds to deal withthe point made  
br. EN Ruja, and sates tha tho reasons given by De  
Kaiju for abolition that so few persons ullimately rece  
the ath penalty and tat the severity of the pusshiment  
‘Enas co to0 many” sequal, “appear tobe relly the  
  
por reasons for ttaiing the capital fentence for  
oramitted in the circumstazcea which shock the commie  
nity by their aggravated. circemetances or” by. premedit  
ton”?  
  
‘Tha reply of angtr Hh Court Suge! dace th  
PE BS NS er eee  
Sid'expressing group din cult  
‘einbatlen theo a ‘heory of deterrence) cm ‘and notes  
ver, ster that mone of teas thetic seem tomate te  
feat of call punishinent  
  
‘The reply of the Chi Juste of a High Courts  
thal the ‘sn objec atid the ele bation of  
Fshasent she deictent caret ot persces whe night  
Shoots lake sway fhe Hees of Wek llow begs  
  
282, Most of the District and Sessions Judges have  
emphasized the deterrent object of capital punishment, and  
Stated that itis schleved auficlentiy or (© a considerable  
extent.  
  
283, One of the replies! emphases that the object of  
captsi arsstment not tooth for tosh, but fo crete  
SStton Sr'telstion inthe mind of a mirderer at he  
‘Tao met the sre tte a his vit,  
  
2b Another replys while stating that the pringpal  
objet ie prevention of ofncen ites that at tine there  
  
Soh fel aoa pags i ad  
Se ane calmer nar  
SoM me's Sk el  
Bombay Cou the objec of cata! punishment i deco  
a. he  
  
SADR aS fh BY a  
rear  
+S he nea Ont oh  
  
TEI Ones ow  
  
ce  
  
sake  
  
Ee  
  
‘7  
  
  
  
Page 123:  
‘hig cruel and wicked crime; and, secondly, t0 serve as.  
eterrent not oaly to prospective cruminals but alco to the  
Average citizens who have a natural dread of capital punish  
  
206. The reply! of the Chief Justice of a High Court  
states, that “the fist ard primary object is thet it should  
Sct as a detercent. ‘The second abject is that the punish  
ment should correspond with the gravity of the crime. In  
‘regard to punishment, a cold, caleulated and brutal murder  
‘cannot be equated with @ murderer committing the crime  
ln the heat of passion and other extenuating circumstances,  
Th the "former case the only befting sentence is the  
sentence of death"  
  
281. The reply of a City Civil Court ond Additions!  
Sessions Judge’ states, that the experience of Sessions  
‘Tidges ond prectising Advocates on the criminal side shows  
‘that the scctised as well as the common man does have the  
fot of death sence even ordinary on canal conve.  
Sation, expressions such sa “What. will you do at. yout  
‘Worst? “You would not be able to hang me™ are met with,  
  
288, The reply of a High Court Ber Association? states,  
that the peimery object of punishment Is retribution in  
the senge that punishment look (othe past and erga  
In the Instinct of vengeance, "One of the purposen of  
punishment is to serve as an outlet, a kind of safety valve  
forthe Inaigation ot the coromunity All cae ul  
  
depend on thelr enforcement upon publie sentimont in thelr  
favour, Fear of punishment protects 2 man against him-  
self” Both the deterrent theory and reformatory theory  
are inadequate to express the whole truth about punish-  
  
289. The object of removing a person from the, world  
for ever, and thus protecting the soctety, in stressed in the  
reply of one of the Sessions Judges!  
  
250, In the reply of x District Panchayat Office it bas  
becom emppasiand hat capa punsninet grt, weno  
Shout et hnprsonment can, Ube "mesure and heal  
fesentment” of the relations and frends of the murdered  
ian andit Span’ fst chuck co under,  
  
201, Thore has beon = strong objection in ore of the  
replies to the retributive aspect, on the ground that the  
  
15. Ne aon  
  
5S. Neo 4a, under “aldol nee  
  
35. Noy (A Migh Coun Bae Asocition Sas Presency  
wn.  
  
48 No. 516  
  
  
Page 124:  
prejudice that the murder should not go unav  
several cases, been the eatse of a sontence of death  
  
290. The retsbutive aspect has been expressed in some  
  
the replies #2. diferent form, namely, to alley the  
  
feof the family of vielina, and to give consolation to  
relatives of the murdered person  
  
aye One blect which has Ron mentioned in ome of  
1 eplies is that of “disabling” that ie to say, the  
af at stay with «perton who. flowed Wve, may,  
fn vegdining liberty, be a serous menace to society  
  
has in  
  
Tone No. 23  
  
Conclusion regarding object—Decerrent object strongext  
“tifeation-—retrbutice object how relevant  
204, For the present purpose, i is not necessary to enter  
into detailed Gncuatiog of tho various aspects of pusishe  
iment. os a seterrent. Punishment gonera, sdcky 10  
Control future eventa in "three wave’ ft seks  
(2) {0 stop the offender from offending agein:  
(Pattiular deterrence);  
(©) to deter other potential offenders; (General  
deterrence): a  
(2) Yo protect the society from the persistent  
arterdes” Brctctnys =  
Ti has been also pointed out, with reference to (a)  
ato That whether the pucshment ag at dering the  
fender or at reforming nim, the teal object Hs to check  
is criminal career.  
has been charted, wo sme extent i one ofthe  
objectives of practically every sentence to fhe a penal  
‘wil Geter ethers tor Comumiting 9 Uke sence 6  
  
tas RN ee ATS Sete eA Rah St  
BP poi, Salas faraa erty merely ole at he reece  
Sf Sedat sot te ete "on te erat of ae tected  
er aged ca bey Wns yet  
38. Ne 154 (A Sate Goveramea.  
238. No 166 (An Inset Geer Piso).  
tnau{S: 8 168 Meter of te Bar tothe Bae Cruel of  
‘f+ Report of he totexeparesisl Coemice oo he Baines  
hg, Saal iin San Gas 5 Tent “Conor  
Repo of ef af Commince co the Bits of  
he Grinten! Couray ios Gnd Tap, pape > pesetoh aya  
ZReper of he, Inerdepanmenl’ Commie oo he Buses:  
ot Getta! Coch pet Crd 185, pore St, pag 38  
  
  
  
Page 125:  
201  
  
ety wl ny le tv antdaren  
Se ee eg ere  
Sr hare Se ices on een  
sein ie ein ec  
  
rr» oo ect  
er Seen aha ite ee  
Bet ath tenes Se alter yoo  
RET ea?  
  
Lay nb of palpi ne  
ita Mack ce rents tas  
Secale Ha ee ee ay  
ae  
  
295 We fel thatthe detezent object of capital punish: er  
  
ment is the tot important ject faded. it woul seat)  
{o"constuie "its strongest jusiication Even if all the  
Sher objects were to be kept ade, the deterrent object  
woul by ituelt furnish" rational basis for its retention.  
Weare are that thee i noting new in this approach  
those who have studied the mubjeet are fll consdous of  
thercontroversy that has centered round the deterrent  
devoted toi, (faredary the shane of Site) and  
ed toi, parictany ‘alas  
the volume ct iteratute on this ape  
  
296, We would point out, that the chief object, not only  
of capital punishment, but of all punishments, s deterrent,  
for what fas been ‘called “general prevention’, In the  
Hingunge of Bentham, if we could Snader an offence  
which has been committed as an isolated fact, the like of  
Which would never recut, punishment would be useless  
‘Bak wen ws consider that Sn unpunished rine Leaves he  
path open not only to the same delingaer, but also 10 those  
tito tay have the same motives and. opportunities "or  
‘entering upon it, we perceive that the punishment inflicted  
fon the individual” becomes a souree "of security 10 al.  
Punishment is elevated to the first rank of benefits, when  
{is regarded not as an act of wrath of vengeance against  
4 guilty or unfortunate individual ‘who bas given way 19  
Iischievous “Inclinations, but as an indispensable sacrifice  
  
[Regan the luenicpnecial Comite on the Basse  
6 she Simin Cours, (ist) Gade 138), ape SS, Gomprant se  
  
2 Regdary Rate of Puialanent,” 2 ced to Helowy,  
swan URS age ey paucity ”  
  
  
  
Page 126:  
102  
  
{o the common sulety” Capital Punlshment Is no excep-  
tion fo this tule a  
  
297. This is not, however, to rule out the retributive  
object totally, Aisunderstanding ig caused by certain mis-  
caceptions about the ttnbutive object. If it ts taken €  
mean’ the primicive concept of “eye for an eye", that. is  
  
‘hocking crime, ie exists in Faalty, Though not a the chiet  
feof apa ponihment, ean bee be desea et  
Sreprobatfon’ of “the emphatic denutciation ‘com:  
munity of a crime!" An auhorrent eslne deserves severe  
fand abhorrent punishment  
  
nonce of ahock, but a fesling of pity, the  
  
subdued  
‘feeling sides itselt  
‘down to this fealing  
  
Sen een el  
of punishment is s fundamental one, and no  
at  
  
209, What we have said above can be substantiated  
polnting gut, that even In inany. countries" where dea  
Sentence for murder has beers abolished, it has. been Te-  
tained for treason. One reason for this seems to be the  
feeling that treason is such a serious crime that it must  
Feceive adequate condemnation  
  
00, Even after all the ants advanced to support  
  
lane  
ed by any. {fectors, Le, factors other that: the wil  
‘and determination of the erimibal. As Stephen said, there  
10. Land Dring, Sdn RG. Repo, page 1% pene 5p  
2 For expe, secon 90, Beye Inn Penal Cae  
‘Disa reluing to npn fr hoiton mar abo e acon  
428 Mngund, ed New Ze  
  
  
  
Page 127:  
are, in the world, “a considerable number of extremely  
‘wicked people, diapooss, when opportunity offers, 1 get  
Shee they want by donee or faud, with complete indiser=  
Choe to the interents of othecs, and in ways which are  
freonalstent with the existence of civilized society, Such  
prisons, I think, ought in exizeme cases to be destroyed!"  
  
‘oto allow such persons 9 live would be like leaving  
wolves alive in a civilized country?  
  
01, As was observed in one American cas!> To permit  
ar of nese deci tn 2 ee  
fehere he can give indalgence to 7  
ES whlloe commasiy “mul! Safer felt te  
Sram say more than should allow « wild animat to  
ange st ail i the cy streets, Th, therefore, there i  
Tinger' tat 2 defendant rey again commit crite, sce  
‘esta his berey anit such anger be past  
  
es ree per alpaca ox a  
ms ini roe een gene  
Belmore eran Me pa ee  
eae ty os nates peed  
  
Foye te peas  
reir a0 ca fact nada ald  
are ce aaa Se Bae oe  
  
murder  
Ander eitcamstances of such atrocity and inhuman "bra  
iy to make hs costnaedcxstenee one of nay danger  
{o society then n my opinion, the sentence of  
  
Sotmoble ond adele. The "community. may not be  
{fe with such a man in existence even though be be serv  
ing e term of fe mmpraonment, he tay ogain comralt  
Isler withis the pron walla, or may eecope and: agalt  
Tisalonel sponte Wisin s pas Hom gamer  
rental authorities  
  
eI ac aes. thre en hay of foal, po  
scope for explation. and every teeson for employing.  
iment provided by law a & terror to others ache  
Tee for the general good that, the exminals of  
{his type std not remain i Seley.  
  
ay ‘iarry of Coton Caw ot ng, (eS,  
  
SE ae ina oa  
Corer, om a Trg,  
  
PSY S  
i wate  
  
  
  
Page 128:  
108  
  
Tore No. 24  
Deterrent effect—Detailed discussion  
  
T, Deterrent Effect—experience of countries where  
pital unichiment abled,” oF abolished ond  
  
Ermiene 308, It would be useful to discuss, with reference to the  
ddetorrent effect of capital punishment, the experience of  
  
Shesng, other countries whore it hay been abolished, or abolished  
  
Eeatolas. but restored late.  
  
Sieeenh  
  
s 304 TL must be noted at the outset, that the definition  
  
gf he cimela murder ile tn varios countries and the  
  
SSRRIR, figures of he venous countren cannot, therefore be taken  
as an absolutely satisfactory basis for a comparative study,  
Wecause the like is not contrasted with the ike and thet  
are alight differences and variations 0 Ube objects of come  
Parison. Further, differences of character, bebaviour and  
Sutloek and iterence in the ‘ethod of "compiling  
States naturally reste complications! However the  
‘evatlable material has to be st an analysis of the  
Apres of snlected “countries, ‘thereto, attempted  
  
Wen for these selected countries, only ceriain sample  
  
figures have been taker, for brevity  
  
‘Alton 305, Besides the countries in which the capital punish  
Shiu” meat has been abolished but restored later. there are coun  
‘norton {rica where it has heen abolished or kept fi abeyance, bud  
Not restored. An analysis of the figures for such countries  
is given separately  
TH, Reasons for restoration in foreign countries.  
  
306 nthe vacious countries in which capital punsh-  
‘ere ment has been restored the reasons which Ted to festora:  
EGE lst may be snaigood a flows”  
srs, "New Zesland—The tein rewons were (apart  
Meal factory he afte of murderers ow  
ttc, the penalty, (ang “the aoliion period, one  
‘murderer wad "You do nef get hanged for murder now:  
ibys"), the evidence sven before the Select Com=  
tric Bi the police soit the deterrent lect incremse  
tr the ‘amber of wexcal tnd aid murders soe  
  
iated with robbery, and "newspaper reports about  
Snereae inthe number ot mutdels after Teoltion  
cook men See toe emi tom ge Bem One  
  
apo Rope Nos page Go-To ay en ak  
‘ier lfemarcegivea een a  
  
26) RG, Report, ras He, ranreph 24  
  
See Apgentie craig Table weaying fice f non-estornion  
cin et ee  
  
“Tee salu hasbeen sade on 4 say mel en in che RC.  
Repay ee $98  
ga 2B. ear eA 387 ERO 16 td ne 48,  
  
  
Page 129:  
106  
  
(in New Zealand, death penalty has now been abotish=  
‘ed, exeept for treason’).  
  
In New Zeaiare, capital punishment has had a chequor.  
ed Bstory. It Ig sald that, to some extent, it has varied  
‘with the party in power. ‘The following quotation "from  
the spect of Mr. Honan, Minister of Juste, on the Crimes  
‘Bll Will show the positions  
  
“Capital punishment for murder has had a cheques  
ed story tn New Zealand Thus been enfoced and  
Sispended and sbolished, and sernstated and suepend:  
fc again~a weather cock varying with every change  
at Goverment snes {0s, “he Bhai a ater  
{o resive the some by peoseribing the death penal  
{or certain types of murder=which are referred fo 8  
fn augravatedmurier—and life imprisonment for  
‘hurd in the other categories” “  
  
rte ogre erage i cote  
Dice aie er  
Dita a eee a  
Wah (3) epee  
stl scart Las eon  
Eee tacman aa ae  
Sein § euparega a anaet  
Shel Reacts  
ih Gttaobe ties a eared  
ie  
One (inne ey  
contre ta Beene ee oe  
Sd in the adzeat ho nid that a wave of ere hod  
Ei seat th eae  
Ses ee he acest  
  
Termes SAYA te ep of  
copht REALs i Eht  
\_ cn 0S) pd daly  
snl oa ee met  
EG Mb ae Re etary Se  
EES Galtial As Seahe  
Ses Crimes Ret, 196t, (ew Zesinnd), Sestows 7a #09 #73).  
328), dated rth Sepeember, 1961, pape 2206. wet  
‘ie tonne eect  
  
  
  
Page 130:  
106  
  
Kentes (US.A)—Prior to restoration, numerous  
euberate murders were. commaitied im the State bY  
fervons who had previously commited ‘murders IR  
Rievurounding. Sates where death, penalty was in  
force  
  
Souh Datota (USA)—Two nls conve  
having ‘flahed, serving their Wns, ramped ocros!  
{he'Slae and illed couple of ling “station stone  
‘ints afer commiting robbery. This lod to Tesntro-  
dhetton ef the death penalty  
  
Switzerland Some particularly heinous murders  
took place shordy afer Sbolton, lending to Tesora:  
  
sr reco Gantong’ Unmately, i wee abolished  
‘Broughout all Cantons’,  
  
2M. The following analysis of the developments in  
Switzerland might be interesting?  
  
Principle of abolition adopted in the Federal Constitu 14  
tion of A  
  
Series of murders tok pce sme  
  
Teferendum held, giving small mairity for restoration 7%  
Retersticn took pack thefeaior certs: Cantons bat  
the rime wave subaided” Between Sone and Ii, there  
were no execution, Between 180 and 167, there were &  
  
Tov executions  
  
Both Houses of the Federal Parliament secured majo- mats  
nity in favour of abolition "  
  
Death penalty abollched with effect trom 1942 by the  
Swine Bendl Gade of 1057 excepe intine Of war, wth the 27  
Shatbative of pecpeeal sctary cohen  
  
Owing to tnesease tn crime cf restoration 192  
  
question  
‘was diseussed, but the proposal rejected im spite of increase  
in the number of murders since 1918  
  
QB eh fo URE the fe to apnea  
‘a ment restored s  
in asf abled 18. ‘  
  
RL. Report, page 375, paeraph 199  
  
+R. Report. sage 35, paren 104  
  
NRC. Resort, poe 75, peatraph 105,  
  
ARC, Reprg, age 360,  
  
‘Bie oo. mari in Joye Right 1 Lie a6, pages $0 and 4  
6 Se abo R.C Repo, pase 3, ptrupaph 6  
  
17 Se, History of Capital Punisamene 90a 7.  
  
  
  
Page 131:  
wr  
  
AIL Comparison of figures of abolition and non-abolition  
‘States for the same peried.  
rare,  
  
300, It may be of interest to study the rise in homicide SP;  
rate in States with capital punishment, and to contrast oF Saree  
‘compare it with States without capital punishment. At a mien  
Sample of such study. we may take the figures for Rhode so 0s  
{sland (capital punishment abolished in 1852) and Macca: S80,  
‘chuseetts (capital punishment in foree) Ee  
  
‘The average annual number of deaths due to homicide  
Fer mics of he population for dhe to States a fle  
  
tae O19 to the last tune lag ending 1948. This  
shows, that besides punishment, there are also other fac~  
tore which determine the meldence of homicide  
  
ona 09 hy Waray wes by ad Setar or  
persons, eo by ead  
Tepe 0148 (Comparative ay of bolton std  
ection States) and by Barnes em Tester, show that  
ihe‘rate of homicide fot affected” by the Presence of  
abeonce of death penalty  
The pioneering work in statistics on the subject, as  
  
well kxovn, i by Profesor Thorusan Solin As'views  
are quoted in the Royal Commission Report and in the  
Sonatian Report  
  
Bor frre, wy RIC Repo, ae ari fring, ww RC. Revere  
uae yy OU deca toss RS Rapa, Bebe ase  
  
2 Xogge [Opjol nates § Shay Madbine Recent  
‘Short Rathnet Gs pa  
  
YRC, Repen, ee 34, raesod 67 aad tom pees  
i” — 1098 67 tad In Appene  
  
{Goran Report, pas =I pane 0.  
  
  
  
Page 132:  
Spec  
foie  
  
108  
VI, Specific iMtustations of deterrent effect  
  
Sir Harold Scott, Commissioner  
fd the following facts! of one eace:—  
  
A pero wos pened for hose nd shopnaking  
  
behind wall oe Gop for of sme promis he had  
a “jemmy” for tse against persons  
  
Brest him but left It on 3 bow at the top of the stairs,  
  
‘When asked why he had tet it there, he said that he de:  
  
cided not to use it, a8 he may have 5 “swing”  
  
i  
  
{ood Government  
‘Acase from USA. may’be cited, In South Dakota, te  
sons ctesed the border from inst to that State and  
committed "robbery murders" "of the sttendants of 8  
Slingatation, at atime when caplal punishment had  
been abolished in South ‘Dakotas  
  
212, mga tthe tine when copie punishment wae  
  
snot in foree in persons  
‘mitted ‘murders. In sursounding Slates (where a. capil  
punishment was in force) started deliberately committing  
  
urders in Kaneast  
  
ob  
  
\V. Special postion in India,  
  
314, (9) Te aciv ecision about the necessity  
of Sipital pamishmentsit ts desirable to make Oneal fami  
lise With the homicide rate Sn other countries ag compared  
‘withthe murder rate in India (By “homlelde” or "ourdar™  
a heres might the hate or murder rte per mallon  
{fhe population) Murder rate in Indla has fuctowted in  
fhe nine Sears ‘ending with 1082 between 38 and 30-6. Tk  
his never been Yes than 28 in this prio  
  
TRE Reps pa as wel Fs  
  
Rep, sea PMMERY 86, qui the spec  
ee Rance SE 1aRISS SP hel RROD ale Wie oc Reptsese  
YRS ent tes bower mae, pnianee  
fo nae. "Sn" oe" ana lint “hee igs ue  
m  
4 See RC. Raper, page 375 paragaph 204  
See B.C. Repor, pee 975, parseeph 163  
  
‘6 gre wing murder rte in Ta ae te spaces  
  
  
Page 133:  
109  
  
(b) 1 must be stated, that the homicide rate per million  
‘9f the popilation in several countries or States fe less ther:  
ES  
  
‘The figures for 1940 to 1948 (or 1040 to 1049) for some  
countries are a8 follows —  
Mangers per miion  
Stik pfoaime  
Beal and ales! (Aboibed 1969) 40  
Sood “7  
  
New Zetand (Abuiched og4n, rote  
ie bse ene fr ee  
  
New South Wales Retains) wo  
Qeremand (Abo 1922) are  
Séxah Aastra (Ret) os  
Sweden (Abolished 1910) ss  
  
Maine USA) ‘(Abolibel aty6, re  
toed i) wer  
  
Masachassens (USA) Rete) a7  
Nebrnta (USA) Cate) hy  
ine ond (U.S. (Abed 89, at  
Varnes (USA) (eins, 26  
  
(©) It may also be stated, that in many countries, the  
zte'of homicide per malin, or the period 1940 to 1540  
‘Was higher than 8. "Thus, for South Attics, it was 108  
fer Georgia (USA). it was 167°8; for Kansas (USA),  
20:4 “for Michigan (USA), it was 334; for Missouri  
(USA). it was 38-4; and for New York (USA), it was  
28,  
  
315. Out of the States or countries mentioned above,  
with figutes higher than Tadie, Kansas (USA) and Mise  
souri (USA) hed abolished ‘capital punishment et one  
  
“aon fom de RG, Rp ee 3m Fe ing sae  
cages of pence iRise “Re  
SETA BET pe le se pe lon se pple  
Sie se nese  
20) th ane Aino Dex Po A 1 eth pe  
‘Ge emp Soon, No) Ae to “  
i apes Nesey gm some Se, di  
pg Hs Hen amare meee, oe  
‘een ei ot Cio Ln Cnt oad oe Set  
" 4Te fue sre per milion of the poplin. See LC. Rept, page  
  
nap  
  
  
  
Page 134:  
ee  
  
uo  
  
‘namely, South. Africa, Geo  
(SAY aa’ New York" (ESA) have not abisbed the  
death penalty  
206. There is another aspect of the matter, so far as  
India is concerned, ‘The murder tate por talion ot the  
‘in tna. seema to have een” funetuating.  
  
population  
Thus, the figures for the 10 years ending 1962 are!:—  
  
274 (peal)  
  
at  
9 .  
  
we  
  
oe me  
  
sas  
  
961 ay  
  
os rr)  
  
‘These figures show—  
(2) continuous increase during 1954—1969,  
(b) slight decrease in 1960, but  
  
gof®? METERE sgain, in 1961, which wae maintained in  
  
Ft  
1. aay asp be noted, tat some eter of fod, the  
increase has bees noticeable!  
  
Vi. Punishment not the only deterrent  
S17, Ts stated that punishment i not the only deter-  
ents dows no play major ptt for many pertons  
{ar aa grave offences er concave It har eve sid, that  
AE cel form of purchment eral for mir,  
tape; and. arson, only. a very small number of persons  
‘Weald thereby become fabre gposed” to coramit™ these  
Fine 1a fr eb a wenn cae we  
  
soe Sore  
the, ioe iat? and Mie “ho Beay “Theda Fase, “Eine  
ius for eat e Duato SCeine i In ree page  
  
naa? TH Heng mt nce Im own ci gen spe  
“Glare Witla, ‘he foo of he Law (95, Page 96  
  
  
  
Page 135:  
ut  
  
‘res, but on the other hand, if motaring offences, could  
be committed with impunity, the celevant laws would soon  
‘become z dead letter. In other words, the “deterrent in-  
  
Floence of punishment. is in inverse ratio to the gravity of  
the offence” aay  
  
‘There is some force in the argument. At the same  
time, i ust be noted, that the saneton flowing fom  
Pressure of public opinion and the general setae of the  
‘amu, Hough may operate on many ers ay  
ot pe “mae oo person ong  
Pansan ils for such cases tha the Goertent eee of  
Punishment is needed badly.  
  
Vil. Deterrent use unjustified Wrong to punish A to  
Geter B.  
  
318, Tt ig often arguod that itis sunish A to Decent  
eter Bo ft € may be detered from Ming D ry  
  
‘319. We think that a sufficient answer to this pee  
is provided by the following observations of Beatham':— te de  
  
The prio en of punment st pravent ike  
cftence’ he Fatt tence i only ag one pont, the  
future is snfnite. "The past oifence concerns cnly oe  
IBalvigusl, similar offepocs may aflect every are  
Some actions aze burial, what ought fo be done  
prevent. tein?’ /prebili "auch actony; punish  
hem." ‘Tais meihod of combating oftences is the most  
simple, nd the first adopted... remedy coosats  
{nihe'epeicetion of pumhment end puntshruent con  
only be tnficted after the erime ie commited  
  
520, The srgument that st is wrong to punish A to  
ce it ben pt pore fret th rm 8 te  
‘is punishment is 2 deterrent only, # amounts to treating  
{iseTeriminal es @ metns to on end, and though the. ave  
sim at preventing him from the erie, the actus)  
‘pleco of te panihmert fs mainly, concerned, "with  
i. "Tothet extent (ie argued), tie on-maral  
salle we po socal for ie lays tor  
sents would be hnioval, for iti slap itor  
{o'treat's person only a5 2 means to some and ather thee  
His own ‘well-being. Now, im reply to thi argument, it  
Should bo’ pointed‘out, tht’ "criminal ts not’ punished  
Imerely as 4 means. ‘The social good, which Inchides his  
‘own individual good, is taken Into account swhile award  
the decision whether the colina "abo  
Feceive any punishment, and if so, the By sheet,  
Ist emoia on Heed onthe fc ating fo tat  
‘decision, the socal good is considered, but the sndividual  
  
a ee  
assem Wiony ot ‘eae Th V3?  
  
‘ee  
  
  
Page 136:  
nm  
  
‘riminal’s good is alto considered, ard. his past history,  
pombility ‘of reform ete are weighed against the othe  
  
1, Moreover, this argument, in a way, zalaes a funda-  
rental question which applies not only to the sentence of  
SG al etenee ove he ase of sen  
tees other than death the punishmens is itended fo deter  
ther persons als. When a man is imprisoned, for  
Smmple, for theft the imprisonment fs Intended not only to  
‘Prevent him feo committing simalarevimos mn fotre, but  
Eio'slan ekample tethers:  
  
222, So long ae the deterrence of similar offences te the  
foundation upon ‘which the structure of ceiminal law is  
bce is nee pomble to aceeptthiy fundamental ob  
  
Rtn One rari anewer wine srgiment would be, fst  
Iie an inevitable cacifce which a proved ofender fas to  
Take for the wellbeing of society, and hat there ie no  
ster way of "avoiding serious danger to the liver of  
  
VIL Other arguments regarding deterrent effect.  
  
Aryusport 203, There are certain other arguments in connection  
  
forked” with the deterrent effect of capital punishment, which may  
also be sdded here, to make the study comprehensive:  
  
() Deterrent effect cannot be seer directly, but  
  
it acts on the community through its moral conscious  
  
') I does not operste on impulaive murderers or  
abnormal persons, but it does operate on normal per~  
  
(il) Because of ite uniqueness (as compared with  
Imprisonment), it acts on the professional criminal als.  
  
(2) Human nature is complex, and acts not by fear  
  
Arges atone but by lve, loyalty, greed ost and many ober  
Emm actors  
ia (@) Todividuae do not think of the death penalty  
  
before they act  
  
(©) Detection of murder is uncertain, and reduces  
the deterzent effect  
  
(2 Lang ean a ede he tren ec  
  
(@) Death penalty ie permissive, and very  
murders ave Tacully’ evened. This reduces the  
Seterrent effet!  
  
a Fg Rr ample, the Bes revtticg UP. oct in he speech  
SARS Be eps, ee” Som  
  
  
  
Page 137:  
: ns  
(2) Executions are closed to the pubic. Heree  
‘he pUDIe do not fect the impact ofthe penalty,  
  
‘ES, Some Important points,  
  
324, Much of the controversy that exists as to the dete  
et efecto capital pune would disses ee  
RE Bove wich. hos fameny be conch Sk  
val camps, ate borne in. mind Elcmenasy “yeah  
{bay ore, they are oten act sight a. We merely  
‘het, without mach ahora iy sale  
© Human bebavicar is conditioned by many fac  
‘tors, und not by law alone, ond ty amy  
(ui) Pasishment i oniy one such factor, There  
tay be other factors, which operas to isa “ike  
hetavicur of paiiolarsffender er petenal ofte  
  
(Gv) How fer and to what extent punishment  
Sperates in 2 particu ease on a “particular person  
Will thus depend to some extent slso on what thoes  
ier acto a;how my of then Be” centre  
  
complementary cr neutral tothe deterrent sect)  
to what is thet Teper Tony  
  
(0) Therefore, the deterent effect of punishment  
say nct be uniform in all cases and‘on af pera  
  
4) But punishment provides the moet concrete  
and tangibe deterrent”  
  
X, The basic argument,  
  
Ep cane ba ay Goon  
SETHE Weenie ame ones ee  
eae ear eee  
  
“Re her pst rs map feany  
from conwnlting crus as the Punichroent of Sea,  
fo carl cies ne rare aaa  
inictian Cadac ork ate  
an. he whale experlent® of ethind iin the te  
SESE cores bps  
a  
  
jan, Vat LK,  
aoe THE pgs 753 Sed Ya RE Raper ape to Banh  
  
  
  
Page 138:  
Phen  
  
ited  
  
sh et a gs de we eo  
ERIE ea oe ee  
Lamas  
SS Ree De  
Eee hearse eee a  
Sea an is  
Sn ceaaie ewese  
Shon aia wis rae eek  
Shiro ah Stall Sate gis  
hb ae, Sener Beate  
‘eannot be ribed more forcibly, ath 8 terrors  
  
326, This basic argument about the deterrent value of  
ccpital punishment ‘hes been Well put ia the minority re-  
port of the Massachusetts Commission"  
“Does the death penalty for first-degree murder  
really sorve a8 a deterrent to potential murderers? All  
bbuman teings fear the lots of thelr lives, even thowe  
  
must have a powerful ‘sfluence on the  
malay’ deen of bursan avy Noone wil  
  
fed exstence tn what e fads to be ap insarable  
Situation, The claim that  
  
Scerced for the committing of a major exime, will Dal  
Gxercive # deterring infuence on the great majority of  
Golentiel criminals; contradicts one of the fundamen-  
{a jacte of aman peuchology.”  
  
XL, Discussion fa other Reports,  
  
327, Valuable discussion about dhe deterrent, effect of  
  
fal punishment is contained in the Report ofthe Royal  
SE Lion, Te will be convenbent to set out Brief the  
feces cds of fat Canin on ep  
hose are ae follows:  
  
First, prime face, the death penalty Whey to ba  
surah Eyice LS tktreat Genome husan, beings  
temas aerrmeals Secon hee  
  
Tilinariey Report of the Special Comminion for ne purpove  
sina Bere BS SE ef tae ea rey ope  
SIEM SEU teeter, Hous Raper, Ny 7, Bo  
on) dated. su Bae Mo Sec eels Capi Rasim  
fie 24 pares 6a alla igs 39580, Pet  
  
2 RC Ret  
aos ee  
  
  
Page 139:  
tome evidence that this (sap. ‘Thirdly, there 4820. cone  
Vineing etatistcal evidence that the penalty of death ‘has  
stronger efect an a deterrent Man aay other form of  
Punabment. “Fourthly, ths effect (dat is to say, strong  
ft effec ab a deterrent) “devs not operate univerially oF  
Uniformly,” “there are many offenders on whom its init  
fara may alten be nepigible=™ F\thy, the deterrent  
force ot'captal punishinent operates not only by alecting  
the conscious tought of individuals tempted. to commit  
amd at olin um ne emi ert  
long period of time, 8 ‘of pectllar abhorrence  
for the crime of murder’. "B of Pee  
  
Stxthly, ts tmpostble to arrive confidently at «fem  
corti a'r fect af art ganay,  
fr indeed of ny form of punishment Seventiiy, 18  
Imporsant to view the question in'a just perspective, and  
tof to base's penal polley in relation to faurber on exae  
feorsnd its of the unig) detent force of  
  
ih penalty  
  
1 would, thus, appear that the Royal Commision did  
not totaly rule out the deterrent effect, but the Commis-  
Sion ‘emphasised fs limitstions and aaa the deirabliy  
sf not overeating its imparts’.  
  
‘Appendic. to its Report® the Commission discus  
  
figures and other aspects at the deterrent effect of the  
capital punishment.  
  
328 1t may be noted, that even In the Canadian Re.  
port the view taken sin fovour of the deterrent effect  
‘her a careful consideration ofthe tastes presented by  
exper, and alter nating the evidence received from Law  
Bilrertent Ofcere ftw ft ht cota poignant  
mr nportant thd ‘necessary deterrent murder,  
‘Snelson reached in that Report wae tls) Fee, that  
{Bis pinion of the ofhcers was not daplaced by other vie  
dence’ based upon statistic comparison and thot capital  
Penton i exer «deterrent ct, wih eld  
Tor result trom imprisoument ar other forma of punieh-  
rent secondly, the fac thet a considerable proportion  
1 Re es grr ng ai ay am  
  
ca BRE Reon tae SI Rear aT SN i  
SRE. Reart sae 24 caracanh 64 and nage 2, puss 6,  
“ERC. Report pat 20 parson 8  
SRC. Resort. pe 24. paraaph &.  
  
GCC, Report, pape 24, pra 6  
TRC. Raper, page 20, paragaph $9: nt pase a paren h6r.  
RG. Repors, see 338  
  
  
  
Page 140:  
us  
  
of murders was committed under compulsion of pastion  
2% anger seemed to demonstrate tat desth penaler ested  
cl with the excellent sandards of law enhcomest fee  
ailing in Cabada, had sucoewded ia letting: aenetete  
Uhiedly, "the deterrent eect  
ane ile ye eyed tain of Sent  
wiht “murder; fourthlys it ‘was. neces  
‘etn ser peal doth sa 4 <oatinung roan  
sgainst, Sf violence by “professional “cminalat  
‘My’ Pubic, abhorrence of mlurder refected trod  
onal sttude built up by the “reservation of “etphe  
onhinent fr th parclar erie, and the ebliton af  
4 penalty traditionally accepted a 4  
deterrent could only be recommented  
Slee" hat he eo the ran  
fficagy was demonstrably: wrongs  
Shment did protect th  
Drisonmeat Slane would d  
Using violence to Taellitate the  
Sseape, ete  
  
commission "of crimes,  
  
429, We may state here belay the conclusions resshed  
by the majority of the members of the Ceylon Gomme  
on to dnertent effec. Taat Commie, aterm study  
Of the statistics of other countries and of Colon, came  
‘the conclusion thatthe satstca tended to prove Uh case  
gaint the general deterrent effect of the death penaly®  
Wsgreed with the conelusion of the Royla Compson  
thattprima fect the penalty ot death wa Iiksly to have &  
strong eect a8 deterent to normal human ings than  
tng, ter for, pushmen. sad that ere a ane  
eeidence "was no convincing :  
Since tat tit way, fe fack go. and tat tie eet one  
hot operate universally or usiformly. But ote that fm  
Gin this statistical evidence wont further than merely  
feaving open the question of deterence of no deterrence.  
‘Oh the bass of statistics, t came fo the coneleion tht in  
Ceslan, rerntodctan of the penalty of death could not  
fe"junind ‘onthe argument that Iwas @ more effective  
Gexeroent to potential killers han protracted impeicon-  
sent  
  
> Canaan Report, pape 4. parang  
‘Canaan Report, pae 15, pana 36  
4 Canatan Report. page 5. parse st  
‘sCona Report, Bae 4, Pa 15  
6 Sie Coy: Rept, page parC 1  
Onsen Report, rage 46, pas 1.  
  
  
Page 141:  
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24 ue ceyoa Cammion tur i a he  
cle tt, Seams a es  
SSE hc es ee era  
eracce meee cee Seer ae  
ata tac fk “ee  
pacce NSO eg hat 3  
Ber wh ad cae etal pe  
Smee anit eat“ Aa  
maearet cegne se cee ke a  
Snagit Pie als Geen  
sate germs ater ae A Soe  
AE erat a foal mete te  
Bec ee etlcet meme tt  
See ine Sateen cee tea  
ceramide oh Soe cae  
devine moat wan” ara “d  
fe rhet e Sule canteen ad pit  
Say in ens, cout  
Set te sare eth Sa ey  
se incited all fmt poulir Pa  
ie testa! Sa a eae to ba  
Ee Rooke Siete cee ale  
Be Siti in ey LS  
Reon Sees ee  
  
S31 The Ceylon Commission expressed its definite  
view", that certainty of detection and convietion was  
Tove ‘conducive to the reduction of crime than the actual  
Severity of punishment. {ts final conclusn’ "wee—"in  
Seciding on the wisdom of retention or abolition of capital  
Danishment, refonce cannot be placed on there being any  
[rcater deterrence to potential murderers "by Imposing  
Expital punishment on @ few than by imprisoning all cone  
‘ied murderers  
  
XII, Abolition in Indion State.  
  
382 Capital punfehinent was abolished in Travancore gain  
snd in Cochin in November, 1948.” Tt was re-introduced in aaion  
WSL in both the States when (after they became part\_of Ss  
  
Gj ar ge 7 para a  
2Geyon Repo age a3. pera 33  
5 eyan Rapa page 48, Parep 24.  
| oron Repor. par ap paeeph 29  
$ Cajon Rep’, uve so par 26  
cmon Report, page 5, paragaph 2  
"rnin Reoo, pie 3, paraaph 2K.  
in’ Coven, Coal Ponatsent wah ceiualucal by the Sar  
peo Capital Puntos ape) AS, 999 C8 of t9  
  
  
Page 142:  
Bele  
paces  
  
8  
  
the Union of India) the Indian Penal Code became appl  
cable to them. ‘The statistics of murder during the aball-  
tion period In those States are inconclusive of the qaes~  
Won of deterrence. Those statistics are given below’.  
  
Minders in Trane nd Cochin  
  
90 a  
ou a  
ss i  
346 us  
aoe “0  
Revesion 5s we  
90 rn  
ns 165  
983 10  
1955 19  
936 ny  
  
‘XIII. Result of UN. Survey as to deterret effect  
  
ot 338.4 few years ago, the United Nations (Department  
  
er of Resor oh Soi Aa) conduied a Survey eo  
tal punishment, and tued a specie questionnaire st  
{okie abterrent tect The ress” of the survey on Was  
Point was es follows  
  
“un, The argo here wes tgs, for  
Be“desth penalty. itis, howeves, very” difcult 20  
  
—TRiges ips jose we wae fom enly deed panes  
he Sates, Ri Dn Ree ee  
e “Cammnisson’s Quenionnate (Se No St tw the’ Law Commit  
  
TPM F198 0 1844 A ken Cepon Roper, Pat  
  
Ute, Neor=Cipe) Pete, (962 pages sos pare  
senna pigs Se Pa  
  
  
  
Page 143:  
us  
  
an data of tat ype which are compete and  
Shove al objective. "Phere are mumerous gaps  
{Ne eapet it the materal, and many of the Feper  
ee see nh gt "hte Ba ge Ser  
Sty from one coustry to another feparding  
  
Sn which enact dats were supped  
  
2 bgt sm ht nt  
i aa a sae  
recta apm Qi ss Ye  
ea eo  
(i bout ia as are  
eee Rare te ated  
SS are Ey a area  
Beet Gila Seen eta ta  
rts Ghee yen a  
a es ea are  
Ee a  
Porrenaar mentor os ke  
ee aan a aerek  
seal gae sriace Cigale wana  
a ey  
Perc Fun aa a aoe  
Peete Sk  
  
“193, The replies received from many abolitionist  
countries, in particular the Scandinavian "countries,  
‘Austria and certain Latin ‘American countries, take  
‘his consideration as the basis for the view that the  
deterrent effect of the death penalty is, to cay. the  
least, not demonstrated, “And even & number of cotine  
‘ties which have maintained the death penalty Query  
  
its value as a deterrent in their offical rey  
‘is true of the replies of Spain, Greece, Turkey, and in  
Particalar of the United ‘and also (with  
‘ualifiations) Japan.  
  
"104, Many other government replies. however,  
state that no finet ‘can be expressed as t0 whe  
ther the death penaity has deterrent effect ‘or not.  
‘This ig the view of Austria and Yugoslavia,  
  
nr ne st ete  
seihetata teen fete  
Soe  
government reply on this specific point.”. ”  
  
  
Page 144:  
12  
‘Tome Nunes 25  
Deterrent feet how for achievedReplies to Question  
  
2(0) summansed  
SEIP 304. Regarcing the deterrent fect of capital \_punish-  
SS" ment 'specife question wes put in oor Questionnaire” a5  
  
follows:  
  
‘Tn particular, do you think that the sentence of  
death acts as 8 deterrent?”  
  
Conficing views have been expressed in the replig  
seed fa unto. "Ope i, wl ay  
{ represent the épinion Single majority o  
{hone tho have replied to this qocsion. ie that” capil  
punishment does at as» detetent At'the other exteme  
Eth ew thet st har fated to ac as 9 deterrent Bete  
tse these two extnee we Ed rying Shade, uch  
ra  
) Copital punishment may not necessarily set  
fs a\deterrent, But fm the ‘lreumstances iit  
ater Beer  
(0) seacts as aren deterrent for normal  
dram beings":  
‘Gd Im the cave of hardened crznlnals St does act  
os a Servet  
  
(jv) it acts as a deterrent only in cases where  
there are no extenuating factors of sentiments,  
  
(v) though it may be debatable whether it neces:  
sarily acts as a deterrent, yet in the conditions which  
prevail in the country, lt tends generally speaking to  
Eelas a deterrent  
  
(i) tt acts to a large extent as a deterrent; but  
  
Jn some cases, ‘where passions are arous-  
ed, it cannot in the circumstances posably act a2 4  
Seterrent, especially having regard "to the present  
trends of thinking on the subject, which attributes an  
fact of homicide ts & fal or other imbalances  
or to 3 eriminel yy which flares up on passions  
Being roused upt.  
  
325, Ws may reer ere, that al the State Govern:  
rents ond Administrations that have. sent replies,  
Tispecton-Ceneral of Police who have replied "and all  
  
Spun, tery dt gay with eee he  
eS bh de ety °  
  
Jakes  
  
45.No 1  
  
$e Ain 0 tain, $3.83.  
  
(65° No or (an enn mene ft Ba.  
  
  
  
Page 145:  
m  
  
‘High Courts or Judges of the High Courts who have sent  
replieg % this Question, are of the opinion that the deter-  
‘ent object is sulflentiy' achieves  
  
336, The reply of the Chief Justice of a High Court  
stated, that statistics from other countries are. not safe  
triterla for the decision of the question whether the deter-  
ent object ls aufielently. achieved, because the incidence  
‘of marders and other crimes would largely depend on the  
Cultural and educational level and socal conditions -pre-  
Wailing in 2 Sartiular country. And, further, the statis.  
lee do aot lio reveal the type and nature of the murders  
‘The reply also emphasises ove aspect, namely, that since  
‘reforms have been effected with the emphasis more  
‘the reformative than on dhe puglive object of the sen-  
tence of imprisonment, and facilities like release on parole  
fipd other amenities sre provided to prisoners, a sentence  
of imprisonment would, a: 2 deterrent, have Tittle effect  
‘on the minds of the criminal elements in society, for  
whom the death sentence arly woula be” thee  
Aeterrent. On the minds of the average potential crim  
fl, itt» stated, the death sentence doey act a5 a deterrent.  
  
397, A High Court Judget, who has had expertence as  
a Sessions Judge ia more than one District noted for its  
Grimes of murder, has stated, that this particular offence  
Seainst the person showed 2 marked fal, if it was known  
to be dealt with firmly.  
  
‘Another High Court Judge’ has stated, that is ex:  
perience as an-Advocate and as a Judge maker him feel,  
That it has o detercent effet, and points out that “every  
‘Advocate pleads for the reduction of déath sentence to  
imprisonment for Ife, and every condemned prisoner  
enterlains hope til the end that the death sentence would  
Sealtered into one of Imprisonment. by the appellate  
‘court or the exbeutive. “ME It ts properly carried out, ft  
‘will satiety the sense of justice and provide social satis-  
Taction and s sense of protection”  
  
389, A number of Members of Parliament and State  
Legiltures have stated that capital punishment does act  
‘ae 8 deterrent  
  
389, The reply of @ Member of a State Legislative  
  
Coaneit® “states, that after all the Tight to iife is  
  
(preatest of all ights, and its deprivation is the of  
  
AM deterrents, provided the punishment ig certain and  
  
‘reasonably prompt  
TE No 9p (hit  
23S. No 302 (A High Court Sate  
38. Nn 360 (A Tih Cote Jae)  
YS. Now a0, 23 234 and 2  
S.No ae  
  
  
  
Page 146:  
340, In the reply of the Advocate General of a State  
is emphasised that the fact that certain offences are made  
ubisable with death (Gel? infuses 0 sense of secu In  
The citizens,  
  
341. The reply of the Law Minister of a State, while  
noting that tae number of cases of murder have not came  
Gown substantially, points out, that the very idea of 8  
ene sentence ot death soma f continua 0 act ot  
  
mt, and that the reason for the nltiaber ot crime  
hot coming down may be the materialistic trend. and the  
‘acute struggle for existence in modern society, rather  
than the ineficiency of capital punishment  
  
342. The reply of one Member of State Legislature?  
states, that it does act a8 a deterrent for the eriminally  
‘minded class.  
  
343. According to the Judge of a City Civil Court in a  
Presidency ‘Town, the deterrent. object is\_sullclently  
SSseved ta repect of the offences ‘now punishable By  
oath under the Tndlan Penal Code,  
  
ing te ely te Pn  
wnt As onda  
nae ain en  
  
345, According to the Judielal section of the Indian  
Officers" Association in a State, the object is t0 serve a5  
fanvltimate deterrent againet” heinous erimes savolving.  
igs depres of violence and, the existing law, “substan-  
a hace ‘not sficigntiy”, achieves this objec,  
of a Judicial Oftcers’ Ascociation\* states, that  
rotation of pial ponusheat i ebsoutely necessty At  
A deterrent, co long ae we have in our country divergent  
fares creeds and comamuntig, who do pot ve eye fo ye  
In‘the Soelal and national ‘and whore. education  
‘and culteral standards are hot above the average.  
246, It is the view of a City Civil Court Judge\* who has  
nnd experience asa Sessions Judge in several districts of  
the gual Sate of Bombay, tae iing of copia  
{ew selected cases of gruesome, pre-  
edited cult blooded and phasllyturdent did tet’  
‘deterrent  
  
TS Noe.  
38, No ash.  
58a  
43. Nate  
$8. Ne 545.  
65. Ne sen  
78. Ne 313 in ely co Question 20,  
SS Nee.  
  
  
  
Page 147:  
3  
  
S47. The roply of a Sessions Judge in the State of  
‘Madras! staves, What eath sentence Acts "ae a detersent,  
pecially when sti cased out within a resonable time  
  
“ As. Seasons Judge in the State of Mads Pradesh  
iso slates that his experience has shown that the sward-  
of death sentence has reduced the number of capital  
  
249, A District and Seasions Judge in the State of Maha-  
rashira’ hag stated, that in sonte measure the infietion of  
Sp purishment does impress the sell mind that a  
fe of crime is not worth Inang. He, however, empaasis-  
Ethat es deterrent fect docs not last for # sulicentiy  
Sing neve Pubic memory, tit eae,  
  
an eective check on capital eens io rat be ele:  
iy found in the retention of death sentence.  
  
382: Hate cen of another Dict and Sesins Fudge  
sn the State of tra, it has been pointed oth,  
hat ot meray the awaring of a death sentence "or  
‘te execution that acte ae a deterrent,” but. that the very  
‘gaistence of capital punishment on the Statute Book, and  
The chance of its being meted out, together with ity actual  
  
fication once ina while, Works out as @ deterrent on  
  
Eminat mind. Toe cepa eat in certain cr  
nal strict, where the uumber of murders is particularly  
Tange, t hat been notice’ thst the awarding of Geath sen  
tence doce work as a curb on heinous crimes at least for  
  
from the Stature Book i Ukely to unset me  
ally settled fea”, “and so work out an unprecedented  
pitt of serious crimes  
  
851. In the reply of another District and Sessions Judget,  
it i stated, that the fact that serious crimes are on the in-  
‘rease is no reason for concluding that the death sentence  
any ther entene sould be sensed: Other measures  
for the prevention of crimos are necessary, but there ia No  
sstitcaion or belng'more lenient than ho aw ae pre  
ent  
  
1S Noa,  
28. Na gr .  
  
85. No.3, reply © quion 3) end 0  
45. Nee  
  
5 Ma ane  
  
  
Page 148:  
m4  
  
352. The reply of an Additional Seasons Judge’ points  
  
outa fae hanging alee ha tao he eal at  
coders take to hilang on insgniicant pretext, and that  
  
Spit punishment i the only Srawer sich shurders  
  
353, We may also refer here to the view expressed by  
Sir Patrick Spens to the effect, that from his experience  
fn India he cod say, thes capital punishment did cts  
  
ent to murdet. We quote his specci" in extenso—  
  
“What I have to say to the House is partly, but not  
Nery cst Hoanded iw my experience a3 = yodee  
in India... never, of course, there presided over a  
Murder tral of the arse instance, but T did preside  
over the Supreme Court of ‘and during the  
fo years that ant aa Clef tice ‘ea a reat  
number of appeals from desth sentences. "Our Guty  
‘was, perhaps, not go dificult as that of a judge of fst  
Instance, but equally serious wher: we had to consider  
whether death sentence was to be set aside or re~  
Guced=as we were entitled to reduce it, to 14 years  
‘igorus imprisonmentor eonfirmed.. fs party fom  
hat experience that 1, myself, am convinced that the  
‘death penalty Is a deterrent in certain cases, ated if the  
Geath penalty fo a deterrent in certain cases, we then  
hnave to consider, and consider ‘most carefully, what  
‘ould be the result of doing away with ft  
  
\*O8 course, i is rue that the bul ofthe  
‘murders with which Thad to dealin the Appeal Goutt  
Were siallar tthe bulk of marders In ‘He country;  
‘Sat ey, they were murders coctied een,  
eteely. unpremeditatedly, and a0 forth. Bt,  
course of that experience," I came across another pe  
Stmurder, which T tink does indicate, and indewte  
easonahly’cleary, that the death penalty is a deter  
‘ee Thowe were abs arkng ot of cigs fence  
‘When the perpetrators may or tay not, have  
Si that the letim was to de. but  
llence Woe, the victim di fh fact  
‘of course, wae that of murder  
  
“1 propose to quote only two ve yp  
those duet The et wat one of  
‘hats io Hear im August, 16 It aoe out che  
‘cng in Bia the ‘year. Thor, on 13th  
gure .  
ty tloters. It was burned and te police ofcers were  
rade pritoners by the riers. The titers an pro  
Cede io sp the pain and et them i ot  
  
They pleeseded to withdraw them a8 soon  
  
£5 they thought the palicemen Iooked ax if they "were  
  
TE New  
  
aged HAE Crome Debs 9556), ol. A, Calas  
  
  
  
Page 149:  
about fo collapse, There were two of these unfor  
‘mate victims. “One of them did collapse after thre  
or four Yosstings and the other did nor cellsese, "AS  
Soon as the first one was. seen to he bout to dle, oF  
to be liable to die, every person “concerned 2ei %0  
‘work trying to revive the victims end to prevent therm  
from ying:  
  
‘Ths rioters had already committed a erime which  
‘would obviously attract the longest term of rigorous  
Umprisonment--why should they have tried. to revive  
their unfortunate victims, but for the fact that they  
Knew perfectly well that if ote of those victims died  
they would be hanged, and hanged ‘or a certainty?  
  
“That Ig one instance, "The other was a quite diff.  
gent ong, A middle-aged In. who strongly distiked  
  
perlod, after which It wes quite obvious that the man  
‘was about to die. Thereupoo, she rushed him to  
Ihowpital and id everything tn the world she could to  
prevent him dying. Why? Again, because she knew  
perfectly well that if he died she Would incur lability  
{othe death penalty  
  
“Of courve, those are very small indications that  
the death penaity ig a deterrent. entirely concur in  
what har been said by my eight hon. and. gallant  
Friend that no statisties can prove one "way or the  
ther sehether the death penalty is a deterrent, but  
{very one of ts knowe—klows inside himeelt--whether  
Violent death is.a deterrent to us and whether it ill  
eter us from doing certain things. Masses of hon.  
Members in this House have served in the Armed  
Forees. I do not believe a single one i he says that  
he bas never been deterred by bullets or bombs. Of  
our have heen detrred by. bullets ad bombx  
  
deterred, almost to the length of turning my back and  
  
Mr. S, Silverman: “But the right hon. and Jesmed  
‘Member did not do 50.”  
  
Sir, P. Spens: “T dia not do so, but T aid not go  
‘forward in the way I would have done if there had rot  
  
‘been bullets fying sbout. I will give another instance.  
ust before T ltt Tadia there were bad rit  
  
‘There was a grest deal of firing on  
sgroehow of other 7 had to et rod the rea where  
the rioting’ was going'on.” F motored ‘niles to avold  
  
nyone  
  
aie ae  
  
:  
  
  
Page 150:  
126  
  
om absolutely comvinced—1\_krow—that fear of  
wiotent death ise deterrent and wo sutiie no argue  
Inentg whatever will convince me thet snot Tis  
Something ive kbow and if wo Know taat wolost death  
ie'Sdeverren, we must assume that Ja the pact there  
have boon cates when someone ould have Coated  
Imurdernot fos Members af this Hows—had that  
ern fot own hat he di so be would hang foe  
[eid there have boon cases ike that nthe past, ll  
ean say that {tm si that esd gare  
Injury Wo society we ‘of abolish the” death  
penalty forthe hace VP"  
  
“The right hon. Member for South Shicids (Mr  
Bae) nado a  
  
“To me, there is no question of what the choice is  
Sing atvay with te death penalty as one al of Hak  
‘that some innocent Rould be ‘murdered who  
Dtheewie would nol ‘have been murdared. would  
‘Roch ator ke the Pak ee fellow she get  
Rimaetf into a positon in whieh he is brow  
a judge and Jury and yet with al the evidence against  
fam that ho i's trader Shere ts something Seong.  
nt tat it fining appenicg, wher,  
nat that sot appenss “te  
SEGIGE me death Penal, 3  
persons being murdered who otherwise would not be  
Phurdered I believe are very gret Indeed.  
  
354, We shail now refer to the ar ‘danced tn  
support of each of the main views which have been sum=  
‘marised above. ‘Thowe who have exprested the view dat  
  
‘the deterrent object is sufficiently achieved)  
‘out, that successive conftraation of death’ aentences tn  
cases from districts notorious for the record of crime  
fine served as'a. check’. A hardened criminal, ft ‘aald,  
Is very likely "to commit marder after undergoing a life  
oP RRS Sra eis Ne  
  
Ei  
  
  
  
Page 151:  
Po  
  
term, ‘The psychologieal and social effect of the severest  
pitcher ais a ab bn seed, and had  
been contended that even if a particalar form o -  
ent js not a deterrnt by tact, hati no ground for sub  
  
ieee  
aan a fr mn Suara sil much "beter  
tet en every one than if he fe merely sent to jail  
SESS Sie ellin Sadapaln imme Senn ere  
  
65, Tt is algo stated, that the fear of capital punish-  
and If it is not sllcientiy  
  
great  
lchieved, the failure of the object may be due to the  
spprehenst  
  
‘tated, that ina country like India, where there is acute  
  
poverty\_ard where the percentage of literacy is very 1o%  
  
End party or family feuds are innumerable, abolition of  
  
‘capithl punishment would result io an adverse payehologh  
‘effec, aggravating the crime situation  
  
356, To sum up, while nobody has stated that death  
pesalg.act a in all cages (infact it wil be  
logtally im fovmake such an assertion so long as  
there is a single case of murder), the persons and, bodies  
In this category have polnted out, that ft acts considerably.  
az a deterrent. of acts as deterrent ir: @ large number of  
  
357, As against this, those who have questioned the  
deterrent effect of capital punishmont have advanced seve-  
ral orgumonts. “An argument advanced ic many of the  
‘epticyi that on the as ofthe suds ade and figures  
collected in other countries, it appears that the object of  
  
TA See Goveament, ia reply unter gonton 3a) S No wa  
2 A Site Goveramant wader gustion 20), S.No. 182  
  
  
Page 152:  
Scone eet ee, pd ht  
  
that psyehologisia take the view, that in every give  
community, there will be found a of it pe er  
‘ined with pathological and criminal potentials Sonsoend-  
  
Ing. the dolerrent “elect of any. pumahment, inclodlag  
‘pis punishment, ve  
  
3 Arcordng ete, Tepid  
serene Sym et aa terete ep nen  
Sartous reasons In Sip stew, wiih ma  
‘rely summarised a flows \_  
(i) Many other countries have sbolished capital  
puniiimert without any increase Ia homlclee  
(i) The pollo would do thelr duty beter without  
the fear of having bring a mam fo te gallows,  
el mon wuld do, thi aes ber  
and intelligent men avoid servicgon juries of  
Marder “al sie Uy brink from shedding the  
iiood ef fellow being  
(io) Administration of the law would be speedier,  
(©) There would be lee corruption ix outs:  
(wp Byeclgnars and etary concaroed euler  
from the deprading and bratalising elect of such  
  
work  
  
(vil) Witnesses and reaers of executions feel a  
beuthising ated bardoning taftenee,  
  
80, The conclusion of the Royal Commission on Capi.  
  
7 Roce, A Voyunrist Lots  
age DSN Ral iin a ptr” Oden 9a hs  
  
2 Thereience wens be 10 RC. Rept, page 28 para 6  
  
  
Page 153:  
Fry  
  
4s unimportant in this tragic drama, and is simply caught  
in the steel:trap of circumstanced  
  
360, St has also been contended that certainty of detec  
tion and conviction act 25 a deterrent rather than the pros:  
Ber. SBI aah. “Tis pinted out that sn  
  
snd numerous minor crimes were capital at a certal  
ne but the aban of death penalty has not inereaed  
  
{heir number: The comparative figures for the yearly  
pis of murders for Sie "with and without  
  
have been, refered to in support of the  
gument that abolition States have ‘consistently lower  
fos in most cases than retention State. As regards the  
cl that released murderer might commit the same  
offence again, its stated” thatthe: Tecaived by the  
Royal Commission® showed, that in countries Hike Belgiom,  
Denmark. Netherlands. Norway, Sweden and Switzetland,  
‘cases of released raurderers committing crimes of violence  
im were rare "Tt has been pointed out, that the majo:  
ity of murderers can be Temoulded by proper treatment  
and guidance,  
  
361. The, personal opinion of Sir Ernest Gowers! has  
beer. quoted fo the effect, that itis Impossible to arsive at  
a Hem conclusion about ihe deterrent eect f the, Sath  
  
Denali op iodeod of any frm of punishment. Is also  
That capial punlsment le'e type ef punishment  
‘Whhowe advantages ‘ea be obtained by ober imeans and  
  
whose disadvantage cannot be prevented in any” other  
way than by abolhing 1 =  
  
362, The want ot pubiiy i the execution of death  
  
4 owes fom Oe “rie Prob” by W.C. Reckless, New York,  
ae, ed  
  
5 Royal Commision Reet, page 299, parr 6, end,  
Aeon ceed of Seay ty Barn sa Ranh,  
  
7 Sie Binet Cowes, view expend i ie book. “Lie for Li  
  
eneg, “Pantene —8 eign, purr and  
9 Noun,  
10 S.No. 7  
  
1A Member ofthe Rays Sib, 5. No 06,  
  
  
Page 154:  
10  
  
In one of the replis!. «wo of the usual types of homicide  
have boca. dealt with Gh  
“Where murder is done, without premeditation om  
spur of tne moment and under grave or adden provo  
ition, itis obvious that death sentence can never ect  
Gra deterrent. The other type of murder commonly  
fund is where a feud! or faction, exists in a village.  
Hore too the sentence of death for the man found  
{ullly does not put an end to the feud or faction”.  
  
262, Te ngs a thea catagory md he toe  
nasely, thee who have emphasised iat epi push  
‘Ment i a's deterrent, Gut partly. Tt isnot nceowary  
Tas Son ata te varios shades of opinions eee  
See Ey a persone  
  
6. Another reply sates, Ut st nlther deers eile  
nals not reners jlge and) Ut. an the olber” hand,  
Pinu) feuds are cele oc  
  
265. Another reply\* states, that the existing law does  
not suiltontly aleve de Gelerent object bechue courts  
[Mardi des sentone Ins ery tore mamber of cans  
  
36, fow relist tate, tat it dog ot act as a deter-  
rent, because it ie not exrried out iv publi.  
  
367. The reply of an Advocate, who was  
Membr of Parliament, states, that due to 18  
luring ese lng years ie death penal as lot deter  
font effect (iff had any such effect initially), and that,  
‘aking! the utmost concession that It has some deterrent  
fffect, itis certainly not @ unique deterrent; because, if it  
‘rere a unique doterrent, the number of murders would not  
have been what it has been throughout these years. “It &  
Imotor-ear runt at exactly the same speed whether the  
‘Brakes are off or on, surely it ig an ldication that the  
Drakes are not working”. ‘The reply states. that the ex=  
ample of ha State taking ite dows nore to ower the value  
‘of furan life than the deterrent influence of death penalty.  
  
268. A District and Sessions Judge in the State ot  
Maharashtra”, while stating that death penalty is successful  
as.a preventive measure, expresses the view that ft is not  
‘more effective ae a deterrent than any other penalty. When  
murder is committed, the deterrent effect has obviously  
  
  
  
Page 155:  
ry  
  
failed. Sex murders and murders committed by mentally  
abnormal. ‘are Uallkely to be deterred by any  
threats. The same is true about impulsive murders. “The  
Fepulive features and undesirable effects of capital punish  
iment outwelgh its unique foree as a deterrent”.  
  
eo. Another Distict ard Sessions Judge in the State  
of Maharachtrd states, that the actual imposition of cepst  
  
ishent Is confined to very few eae of mare, 20 hat  
‘he number of capital sentences in a particular area of  
district ie not commmensarate with the mimber of proved  
‘sues of murder from that area or district. He state, that  
the ratio between cues of actual imposition of captal  
sSticoe and coe in which the eae ete we ne  
Gf in'a perticular srea would work out at Tt 80.  
Secetarlly males it affcult to sate confident, that the  
‘existing law. now administered, suficentiy achieves the  
Seterrent objec,  
  
‘Torre No. 26  
  
CConetusion regarding deterrent wpect  
310, tour view, copia punishment dong ut  
rent We fave alse dacused ideal several topes  
St this topics We sate below, very bie’ the ain ots Eg  
that hove weigh its usin eraving atts conclusion’  
(a) Bost, every human being dreads death  
2) Death, a5 penalty, stapds oa aly dir  
ont {Chet irom npsmaat fot eo any ther  
ie Slerence is ooo of quot, and ot  
Brvly of degree  
  
(6) Those who are specially qualified to express  
an opinion on the subjett, tacludig particulary” the  
Forty ot the epi recived fm State Covere-  
trent Sedgen, Members of Pariament and Lagiatures  
mite of te view that the etirent See of tel  
nitty of the view thatthe Seterrent object of capil  
punishment is achieved 19 2 falr messure in India  
  
(2) As to conduct ot prtonare released fom  
(ate ttderguing imprsarteent fora) would be  
dimes to cea conclanon, ithe seen oe  
  
tending over a long period of years.  
1S. No 308  
Seg, tales diction to deforrent eect, Pragrae  
  
3 See reali to quostion 216), somimarise separetely: Parse  
snapho 3342909, ropa eed separtey: Ps  
  
  
Page 156:  
(©) Whather anyother punishment can passes oll  
spasdvamings of Sota pret a ier ot  
Sout.  
  
Stat oer coum ae Jeena  
con the. subject. If they are not regarded as Drow!  
‘ho deterent effect, either can they be regarded a3  
conclusively disproving 1  
  
S11, The statistics] material which we have trie to ana-  
lyse shows at the tet of abolition hase bee uniform,  
we are counties in respect wherect the figures are  
  
inconclusive; thers are countries, in respect whereol the  
fRgures tend to prove the deterreat effect of the death  
aif and there are courarien in repet of which the  
  
ally “Al"reands the lst category, we should Sate  
aly, “AS Tega ‘category,  
Ueda pes eeu avr  
thrall ant regard to gocarl climate, ay regad aw  
‘tad order, many of them differ from India,” Lord Hewarts  
Sbrervations may be quoted  
ot  
  
“The figures of sny country over & series  
‘ay vary for qulte oiler rensons than the presence oF  
absence of the death penalty. They may be afected by  
fuch clreumstances, as for example, economic depres  
Sion or civil unrest and disorder” Of such unveser-  
‘oly varying infaees in diferent pare of the world  
Salisice take no account”  
  
572. As was pointed out in the Canadian Report’, the  
nterprctation of statistical data involves dificulty because  
the figures "cannot. express. the differences in teaition,  
‘standards of law-enforcement, soeitl conditions and other  
{actors is) various countries ‘or even regions within @  
‘county,  
  
Ao) Moreover, in, most of the | gountreg which  
  
having sbolshed expla fave  
$e soliton, the res of homicide iver lower tan  
Saini  
  
(hy Certainty of 22 soak  
important factor contelbuting to the deterrent eflet  
Fachnrnt but Unt lo ceesderaion applica: to  
Sit kinds of punishments, and’ thus, to any other  
punishment that may be subetituted for the penalty of  
Benth. ‘That does mot detract from the baste ditferecot  
Between death and a lesser pantshment.  
  
Tied Hora, Not withuat pean. page 214, cad ia the Cryo  
epi inary ew) Fae eh, ape fae  
  
3 Cantan Repos, pee 13, paren  
4 Su Kets or toa, for abla wd eto cae, gen  
  
  
Page 157:  
1s  
  
(0) Cases of stooemat peroas or persons acting  
ner pega mental ates apart. @ human Seley of  
ulna deame of tad would, beore commiting 4  
{Sipe thnk of he consegsonces ernniy where death  
ihe consequence  
  
(0) Further, the argumert that the offender nover  
hl of therpobe pmshmont mol ake avy the  
Foundation til puntments, and aot merely ofthe  
ponisamen of eth "  
  
(2) There i a conadeeabie bay of opinio to tie  
fect that he death pei ate deterrent =  
  
When agro brought up inthe knowlege  
of a any en sentence ent hat brow  
Suh of etal ah hy  
Fessnal to ience Rs sts rary  
Siuatoray and we do\_not believe that every case of  
Furder (or other capt ence) Sr one hehe  
ene Spiel arate hams ofthe abe of  
fer tha would have een woven bythe tes f  
{Si snowindge. The elon of ane wold not  
tetany absent tough its operation ay be ole  
Fort by’ cea ater facta  
  
(em show, he ane bg ase fac of fea of death  
tas fot been dspace by ‘al the srgumens taken  
together, that have been advtnoed in negation oi  
‘Rie rings of hum Sahara ow within the  
Giana cated by tw on pelos val oan  
ition’ “The erate stra of rowoestve tran  
Sanco he Stabe eed by ster cout  
Eling inloenes. tay iver’ tone pray oe  
SEMiot ow, but only scene.  
  
4, Su eles wo Quewion, 3), sammatnad epic parerphe 334  
  
— 39) Ber  
Pure Spe, Hae of Canenoen (95830,  
  
2 Seow of  
a Cah. eases, praeagh 53, ee,  
  
  
  
Page 158:  
rr  
CHAPTER VI  
DETAILED CONSIDERATION OF OFFENCES  
‘Tone Nene 27  
Replies 19 question No. 3 (a) .  
  
373. One! of the questions pot in the Questionsire,  
was a8 fllows:—  
  
“Would you like to retain the sentence of death  
for all or any of the offences under the Indian Penal  
Code which are at prevent punishable with death?”  
  
(hoe object, hind puting tig quetion war to lit  
the opinions of those who, while favouring retention "of  
‘apeal punitiment, woud sil ke tg be eboliched for  
  
Frain offences, oF of those, who, while favouring Ite  
Spolon im seer, ‘would still ike (0 retein It for certain  
  
314 The replies recived on thi quetin fll\_n to  
Schnee thet own in tot substitution for the exiting  
pial td the Pel Cade har ae Othe  
lpital penlabeen Eo oce or more le encase  
Sent punishable with desth, without daturbing the  
Sections, It-would be convenient. 10 deal with the two  
ntegories seperately  
  
Unde he fet catcery Ge pang btn  
‘itera sastegotee oe eps sapetion ‘hel eso  
‘optnd Certain reper.” fume nageied hat the  
dt Garten’ reliene\* at the  
Aeeth Sentence may be confined to  
  
() premeditated murder:  
  
eae  
TRIS CR, sae, 196 water quion xa  
  
Reng a Fgh Core nie 5. eg, der rin No  
ep TA pret fe Sei ep)  
  
poche G Stitt Maer (Aika of Dea  
  
ees, Sat at  
s Sumene Gout Bar Asin, 5. No. 106, and Bar Asotin  
  
tad, SNS  
  
  
  
Page 159:  
188  
  
(W) murder in the course of dacolty;  
(i) waging war against the Union of India;  
(Qv) abetment of suleide by child or insane per  
  
(W) offence under section 308, Indian Penal Code  
indian Penal  
  
(),abetment of mutiny by @ member of the  
‘Armed Forcast  
(i) attempt to murder by life convict  
(Some relia! have also hat certain ther  
fees ke aureration of ‘ool ag rugs “and  
daring grave emergency, "should alo’ be unitate  
‘vit Gea; “but his i's mater to be datt wlth separa:  
  
oRing tara Saaremaa tat  
a etd  
Social saa earn ae  
Sinder"12 years.of ager (i) arden of a person under 18  
turer of f wenn after elmittag rape on her’ (vy  
Se ghee cae ea wt  
% ace  
sedseed aria naa oh  
See Sie a aac  
Soca emcees co ob  
Enemas aar’  
let eye ger re ate  
that the eth sentence may be retained only for waging  
pe tie ede ris ere thar  
oe  
  
qwetion 2) Pareears g1emaa6 an  
etn teen  
  
3 Law Secetary to State Goverment, 5. Ne.  
4A Member ofthe Rage Sahn 5 Ne. 26  
  
SSNo a  
nih 'M of baw  
  
  
  
Page 160:  
379. Tt may also be noted here’, that in the replies to  
‘another question, a, division of the categories of murders  
into “capital” and “non-capital” ‘has been suggested. in  
some replies, ‘but a'detaledescusion of cht aspect Is  
‘unnecessary here  
  
00. One of the replies? states, that for the offences  
under sectlons 121, "TE, 194, 3 and 907" Indian Penal  
Fr ie sete of cath i tenable baton  
fe imprisonment ce rigorous Imprisonment for spec  
fe periods will, it states, Festore the individual to sosety  
ty bringing about a lasting reform in his character. Most  
of howe chimen it a tated, anoe Ov of an undieplined  
aad therefore, reformation of criminals which ws the  
‘mest important element In punishment, 2hould be taken  
eof ln he cae of dts oes, ee  
raya te erie, by the roy of erg ole  
105, Tad Gils stated) deterrence. sou  
ssn coalition “i aheald ot ecapy prem  
tent place  
  
SP Dejrrmten Basten  
  
‘that the ath pea be limited to offences under sec-  
  
SRS Ghar assess  
  
‘303 and 307, Indian Penal oe ne °  
te epi ate om  
  
goed ene ie,  
  
Sa teal APS reed ak  
  
Se! Ts athe reply ofa Dist Ba Avoiaton,  
Sor, ee enya ene br Ase,  
‘Revocation  
  
229, Th sepy of go, Advorate, whois elo the Member  
  
fence cay fr ‘ection 3,90, and 38,  
Indian Penal Code. "  
  
204 The Taw Miniter of « State Government has sug-  
‘gested the following geheme™  
il ould keh stein of the permisbity of  
death sentence only in the  
(1) Ofnces under vection 208; (Death ea  
tence to remain obligatory):  
ad  
2 Su pupane 83~€9, fe  
2 A’Date Panay OMcer § No.4.  
S.No aa  
35. Nos 98, 36,  
48. Nose  
$8 xo ne  
9 S.No. 353, under queeon xa  
  
  
  
Page 161:  
im  
(2) Oftences under section 12;  
(8) Offences under section 132;  
(4) Offences under paragraph 2 of wection 14;  
ne {2? Following (ype of oleae under section  
(0 Murder ota person under 12 years ot  
sen x  
  
(1) Murder of « person under 18 years of  
  
of ot onan, the courte of Tarte  
ace or thet robbery of eacoly of pro  
‘on their person; 7 1 of Property  
  
(Wi) Murder of « woman atter commit:  
Ing rape on bers  
de (Maer done tm the cou of for  
  
"esiting cr avoiding or  
Vending’ lawful arrest te of afcting” oF  
Usatig espe of reserve from lawful cus  
‘ay:  
  
¥) Murder of a Police Offer acting in  
the Stein fay a of person tat  
Ing polee oficer so setngs  
  
(i) Merder of a prison offer acting in  
tne dxevtlon of hs duly or of @ person ais  
Ing & prison officer 9 aeling:  
  
(iy Murder by « person who has already  
een convieted of another murder  
  
(il) Marder preceded by torture;  
  
(in) Murder of more than one person tn  
tne Goat af the same trenton;  
  
(G) Murder committed in the course of  
farvleranee of {Showing an offence punish  
bie with imprisonment for Ife and  
  
(ai) Murder by shooting or causing. an  
explosion  
  
sec 90 oa wstnce tote obese  
  
(1) Abetment of offence punishable with  
  
[No other offence under the Indian Penal Code need,  
‘in my opinion, be made punishable with death.”  
  
25, Peymey naz de wi the sod rou ote  
ie ions regarding specie oBences  
wisn Feaal Gate ™  
  
  
Page 162:  
‘Sec  
Se  
  
emma.  
  
it  
  
138  
  
1386, Abolition of the death sentence (with retention of  
Imprisonment for life) for the offence of waging. war  
ageinst the Government, has been suggested in certain  
Heplles'2~'-" One reply states, Uhat section 121, Tadian  
‘Penal Code nas become obsolete, as it was intended to  
‘Punish insurrections designed to’ prevent the King from,  
Feigning according to las  
  
‘Regarding section 122, Indian Pensl Code one sugges-  
sini ha where a mas by feeon of hig ola ves  
openly revolts against the system of “Government wi  
Ihe belicves, hac fendered itself unserviceable for the cause  
  
‘people and. the country, the  
‘death sentence may be done away with. But.on the other  
‘hand. even thove who are against the death sentence! have  
Stated, that If tts t0 Bevkeph it ebouldcertsiny be wept  
{in the cace of traitors saboted, spy, ete.  
  
In the reply of an Advocate it has been stressed? that  
{fs natural with ‘every young blood” to endeavour to  
Dring about 2 change in the existing form of Government,  
‘and therefore, the offence under section 121, fndian Penal  
Code should ‘ot 'be'a capital one.  
  
387, Abolition of the death sentence for the offence of  
  
23  
ahetment of matiny by a member of the armed forces has  
  
been suggested in certain replies  
  
A fow other suggestions ave to the effect that the offence  
under section 182, Indian Penal Code should be removed  
from the list of capital offences  
  
1A Prater, §. No.8  
  
2 Bharat Sewak Sami, New Debi S.No. 145  
  
IS.Na nt  
  
4 Bhar Seah Samah New Det 8, 8a. 14  
  
5A Pleser, Saarnpur. No. 1%  
  
(6A former Law Seaway 0 Se Goverment. $. NO 18%  
  
78. No.248  
  
#5. No. ass  
  
95.No as,  
  
105. No. 138  
  
1 Inwpeie Geren of Pie, 5. No.1  
  
12.6 Reader in Crimiel Lew, 5.8. 127  
  
14 Plede, Shaearar, 8. No 158.  
  
15 8 New 29,298, 409 418  
  
  
Page 163:  
10  
  
1 olin ct the death sntnes forthe ofees of Sci  
  
ra ise evidence leading to execution of Innocent per. ad  
  
ove as been suggested In'certaiy epi’ Per Pargach —  
a  
  
Several other replies have, impliedly or expeesty sug. =="  
seated the deen ‘tthe hentta under aeton i  
Second paragraph, Indian Penal Code, fom the ist of  
  
taleitencese “One reply’ sates, thatthe giving of ales  
evidence under section 104!may be due to police pressure,  
3nd therefore ‘he fence sould not bo panied Wi  
  
ext Abit exh entancet he fens man  
et has been suggested In certain reper” In view ‘  
importance of thie ollence, t woud noe be out of piace  
{cs and nals the opin ths peat somehat  
  
oa  
  
280. In one reply, the suggestion made is that as ro~  
‘gneda murder, the sentence of death should be retained  
‘nly where the act ie done with the intention of eau  
‘death, and even here, it should be murder premeditat  
for murder of more than one person'or murder by Are:  
fatms.or potsoning® This and similar suggestions can be  
Considered under another question.  
  
391, 1 has een suggested in some replies that death sein  
sentence should not be mandatory for the offence under F2->  
seetion 300 af Indian Penal Code, Hizey «  
  
Some High Court Judges have suggested that in the  
cave of a offence under section 303, fedtan Penat Code  
the death sentence should ‘not "be mandatory, and. the  
Slternative of imprisonment for life should be’ provided  
‘This ie the View of some Sessions Sudges aloo!  
  
‘One reply” states, that there is no reason why a, life  
convict Should be subject to's higher penalty than others  
1. Ber Goel 8. No. 18 Gated.  
  
2 An Ipesan ener of Prison S.No. 14h  
  
3 A Mesbera tae Leino, 8,82» Hy Cat Jat 8.  
ay Set Ese Fdges sv is | Date anh Sto  
  
ih Court S80 399  
"SA High Coat see No.2  
  
se Ro DMI od Seto Jas, No. 23st Quen  
10 A Dhar and Sons fades 5. No 975  
  
  
Page 164:  
H  
  
“0  
  
302 Abolition of the death sentence for the offence of  
abetment of suicide by ciild ‘oF insane person (section,  
305, Indian Penal Code) has been suggested,  
  
Abolition of the death sentence for this offence has  
been suggested by one High Court’,  
  
Its, abolition for this offence ts also by one  
  
ssa er stati gta, capt  
  
Section 905, Indian Penal  
  
so ery ats Ete gd eon 3 Jn the State  
‘Bence undo sortlon 365 The testy  
  
replies. 5  
  
‘A retired High Court Judge has suggested that the  
death sentence may be Felained, except perhaps under  
sections 908 and  
  
1 Sesion 5, Taian Pena Cate,  
  
2A High Court 5. Na. ¥hy in eply 19 Quen 20.  
  
3 A tar Canes 5. Na 132 pba):  
  
{he Toupecor General of Pale, Ne 3%  
  
{5 As Inopenor General of Pron, . No 166.  
  
& A Reater in Criminal Law, 8. No 107  
  
17 A Merete Associaton, 8. No.1.  
  
1A Reed Judge ofthe Bombay High Cor, 5. Ne 93  
  
3A meer of he Ont of Mai 8. te  
peeteas PSO dane eSecete SN RS ne Mie ef Bae  
  
si ett a onan 5 Ne Ane We Bes,  
Seo fap vn kere See seer 2 Collesee an  
Thorgpe A Dirt and Settee Judge, © Not  
  
No 37h  
EA Bar Conned, S.No. 132 impli)  
1) nape Gamer of Posie, S.No  
4 A Pender, Sabarenpe, S.No sh.  
5/8 Rated Joige of be Bomber High Cau, S.No 95  
  
.  
  
  
Page 165:  
cr  
  
‘Several replies have su that the offence under  
section 37, Indian Penal Code, should not be capital one"  
  
‘The reply of a District and Seasons Judge inthe State  
ot Muiga Prades ates tht thereto tesa ne  
  
son undergoing 2 sentence of “imprionreent for  
$Brota be push with death, in commiting the eens  
of attempl to murder, he cases some hurt  
  
‘Toe reply of « Distt and Seaigne Judge stats, that  
in respect of sections 303 and 907, Indian Penal Code, there  
4 no reason why a life conviet should be subject to. 8  
Bigher penalty than others.  
  
304. Abolition of the death sentence for the offence of seaioa  
dacoity with murder has not been suggested specifically. "R="  
  
(One suggestiont relating to section 996 states that only  
the dacoit who. actually commits the murder should be  
punished with death, and ot the otmer daca,  
  
‘A High Court Judge! would Uke to retain the death  
sentence only for morder, and that too murder for gaia  
‘Sad premeditated murders Oa the other hand, however,  
ian} of the teller which otherwise are in favour of pat  
‘al abaition have favoured the retention of capital push  
tment forthe offence under secon 3068  
‘Torte Nusa 23  
  
Retention or abolition for each offence considered  
  
105, Assuming that capital punishenont ig to be retsined, Reems  
ante at iui Kaban foray oe Sn,  
  
riicalar ofences, which are, a present, capital =  
Fecommended. We have surimalised the replies received 2g  
in this conection’ But, ax at present advise, we do hot  
feel ourselves usted "in. recommending any” material  
lange "We have atiempted to show the “principle oo  
Stich the penalty of death ta lowed by the Law for these  
THonces! Wales’ the application ofthat principle leads to  
Shy serious anomalies er hardshipe, arising. from other  
{actors when overthrow the balance, the priipe Deed Rot  
te abandoned.  
  
oo Sica OR Ses Das mee  
Spiel Fila ie a eee ne ee Be  
BEE er erase  
oe Rad hie feat ane ohh  
34 Bieet na suum pte tase rare ho.  
arenas  
Hem ear  
  
  
  
Page 166:  
code, though itty, none views bo treated i  
sean ft eh ere an tai fx  
‘eining the sentence o Persons comma  
ich oBlnce were to suoseed in thes Object the whole  
inachinery of the Government would collapse. We cannot  
{ice with the view that this getion has become obsolete.  
toning af a ans and doula be cosared by 2 pois  
ioning of ai laws, and should be ensured bY all possible  
tocons! ‘If me encourage the change of Government by  
‘ink means, cvery disgruntled person wil take it nto Bis  
‘hands to overdnrow the Government  
  
Section 132, Indian Penal Code, also stands cn a some  
‘hat similar footing.  
  
307, As regards the olfences under sections 121 and 192.  
Indian Penal Code, we may refer to the zeply of very  
Eenlor Advocate of the Bombay High Court, which states—  
  
“Sections 121 and 182 of the Indian Penal Code deal  
‘with matters of high policy, general security, allegiance  
nd loyalty to the State and the country, and military  
‘iscipline, and iy mainly acmatter for the clvil and  
‘military suthorties of the Stste to consider. From the  
‘Hand point of public security, they are grave offences,  
‘and the death penalty, i appropriate in the exigencies  
Of the situation, Is by no means excessive.  
  
500, Next the penalty of death fr the ofence of giving  
tavern Sh arate an cen per  
Son" (under sscona paragraph of section ‘penal  
oad hot ely conformity with the above mentioned  
‘poets, but erunently commendable from other ethical  
Eomiderstions sen  
  
Under section 194, the witness giving false evidence  
‘ought to be held as much responsible as if he had killed  
the person innocently with his own hands.  
  
400, The question may he asked whether the offence of  
sii, le tvdensIeding tthe’ execu of an ino,  
‘Bene peru fe a capital one in England. It i pot easy  
Enswer this question. "There is no stetutor”provisea on  
ihe'ubjet He ile, of pati de puahable in Eng  
{ad under the Perjury Act, 811 But thet does not re  
‘ide for the sentence oj death in such cases Section 1 of  
het Ace authorises impriscement “only up (0-1 Fea,  
abvication of flee evidence ix a mis-demeanour, for which  
no only tmapsionment can be awarded  
  
TE Kea  
  
Seen Aarne (a 2 es 5, Canter.  
  
3 Arcade 358  
  
1 Arial (96a, arn 4  
  
  
  
Page 167:  
us  
  
400, In a case! which arose in the 18th contury, on  
astempt, was made to secure conviction of murder for  
Killing by perjury, out the ‘attempt was given up. This  
‘ase fs suimetimes cited as authority for the proposition that  
4 person who gives false evidence which leads to the cone  
vietion and execution of sn innovent person is not guilty  
‘of murder.' “From a-detalled study of the case, however?  
{it would appear that the attempt vwas given up not from  
‘any apprehension that the point was not maintainable, But  
fom other, prudential reasons, probably s fear that wit-  
ones would renders aad tee evidence A ul  
story ofthe Bhglish case will be found inthe tnder~  
mentioned work."  
  
401, Ifthe matter were to be considered purely from the  
point of causation’ it could perhaps, be algued, that the  
hain of events started by the offender ie “interrupted” by  
the act cr omission of a thied person (in thit ease, the  
Court), who is not 3 confederate of the accused or contrelled  
bby him or acting in pursuance of a eomamon purpose with  
hilar "There 1s, however, a suillent answer namely. the  
‘offender in this ease intendeg or knew it to be likely that  
4 death sentence would be passed, and the course of justice  
‘was polluted by the offender's own misconduct.  
  
J would appear, that in 1692, 2 Bill was introduced in  
England to make ita capital offence, to commit or suborn  
perjury in «capital ease, but the Bill did not become Taw."  
  
1¢ may be of interest to refer to. a\_ provision in the  
‘Tasmanian Criminal Code on the Subject?  
  
402. In any cave, the provision in the Indian Penal Code  
‘shobld be retained to avoid doubis. ‘There have not been  
mang reported cise under the section, The offence i non  
‘cognizable, and triable exclusively by a Court of Session,  
‘and a prosecution cannot be initiated without the complaint  
of the Court  
  
Ti as 5) ah  
2 hey Ti Bie Vo fe 77, pr  
SLDiger at Arming Co on Grind Lan (sg  
anon, Mrs fEgh Cat La 93, V3  
  
wet  
2 Seta ws cn Ro Ce nh ek  
  
seit Sonn Tai Coa Uae ak SE  
hat on Grn 96. V ee  
Zt 1910 fhe, Tamaa Cnt Cal,  
SSE ee ar Me eas Soe  
Be =  
  
1 Seton 195, Cade of Crimi Proceare, 1898.  
  
  
  
Page 168:  
re  
  
m4  
  
409. Offences under sections 196, 197, 198, 199 and 200,  
Indian Penal Code, are sin to offences’ under section 194,  
  
‘and need not be discussed separately  
  
{04 1 may be ase hatin sovera counts of the  
world, perjury or unlawfully causing sentence of death an  
Presta? otal otenc “hee Sts wy Sef,  
ory Coss, Dahomey, France, cemburg (de Jato  
botluonst), the United Arab Republic, Somalia {Northern  
Somalia (Cotes! and. Seathern), Sudan, Togo and  
wey  
408. So for ap the offences under sections 302 and 318,  
Indian Penal Code, are concerned, no discussion ofthe prin:  
ciple on which the penalty of death is imposed is necessary  
A this place." Certain points of detail uch as categories  
St murders, will be comsdered he  
{esis af “premeditation” and sineatlon” are also divsaed  
separately  
‘46. As regards the question whether the death sentence  
‘under section 3 ofthe indian Penal Code thoald contin  
{o'be mandatory, we have dealt with ein dott seperate:  
ws  
47, Some observations appear tobe called fr egaeding  
‘he aflonce under section 405, indian Penal Code, Thit  
eats with abetment of sleide Uy a child or tn Gesu pete  
‘Sree mena faculties Yo Work It ald of the hye  
in mental faculties to work i aid of the phys  
Sctot ‘another person. “That other person, now dead Uy  
iis own, hand. cannot be punished (ard ought” not to be  
Punished), but the moral repreheaabty of the “invisible  
and, tha guided the at ig unquestioned, sd, in our op  
‘on, is of magnitade suit to jury the incloson of  
the’ act within the range of the highest penalty ofthe law.  
We are aware, the tie ofenee does not atrect Se penal  
ot death 'n many ofthe countries which have tetained  
tai panichment in general” But that fe not 9 conclave  
Sainent  
  
Be UN. Paiion oe Capa Pnihmenn 6a) Tle wt  
  
TE a pare op  
inner  
Peeestoaety  
iit  
ini een ese ”  
Sind ates = Sod pam gun nae  
Fatt a a) wierd ie reece the wenonee Sof Seth  
Boviewon “  
Ppt ee kt  
  
ato  
suid het,  
  
  
Page 169:  
us  
  
408, Ifthe punishment of death, while being retained for  
‘murder, is removed for this offence, an atterspt might. be  
rea ge Qucomucn th la iter by doing act wi  
Will fall only under abetment of suicide, or by distorting  
the facts and circumstances so\as to make it eppear that  
the case is one only of abetment of ‘suicide. “it may be  
Rote, that even in England, at common law" & "person  
abetting suicide was treated’ a5 a prineipal tn the econd  
dogree to the “selismurder’” of the person committing a  
  
rit he was) present at “the time when suicide is  
‘committed\*  
  
409, This, of course, does not mean that in every case  
of abeiment of suicide by a,child, te, the penalty of death  
wll belitgoed in Inde “The dicreon ito ‘the Coart  
Jeaves ample room, for a consideration of the moral culpa:  
Dility'of the offender with "reterence to\"the “particular  
circumstances of the case,  
  
410, So far as the offence under section 307, Indian  
Penal Coda (attempt to murder by a life convict); is com  
germed, & detailed discussion does appear to be accessary.  
‘The ingredients of the offence are sufficient to show that  
the case will fal within a very narrow compass  
  
411, The ofence under section 216, tndian Pens! Code—  
saci mer i etn pci te To  
Tala.” is historical background has altady been explain  
fc cisewhere. It may be pointed out that n'a te ate  
  
‘goonies! robbery or med burglary vs punishable with  
  
‘2, Whee tn 2 ere pron pe  
sigs lS octet  
ShEsth eS Sie mone he Sa  
SSeunlly commited the ardently eee  
Coa caer 2  
  
fee ey eo man abl ne  
Sea Bes aah eres  
iets ngna © pae ney of Sel  
se certs Mee rr, ce  
  
1 Rv. Dm GDR ER  
2 Gof 4944) 1 KB 395. Co of Ceiminal Appa,  
3 RC Repos, pre $9, pacar 164.  
  
ome Sines of USA, Price, Green,  
lefstng, ieAlicy and Tog Se ON RS  
Raeciptal Pinnmtn Tysse Fable, Wier Rather ae  
bern me ‘  
  
7 Se purgrgbn 139138, pr  
  
  
Page 170:  
Quetion  
a  
  
Aduention  
  
8  
Toric Nuspen—29  
Whether other offences to be capital—Replies to Q. 3(0)  
  
413. Question 3(6) of our we  
tet (0) Questionnaire was as  
  
“Are there any other offences, under the Indian  
Penal Code oF any other law whieh, in your opinion,  
should be punishable with death:  
  
‘Many of the replies received on this question have stated  
that sg not necessary to make any change in the existing  
Jaw. “But several replies have suggested the addition of  
provision for seatence of death for various offences, end it  
Would be convenient #9 deal with them offence wie,  
  
414. It has beon suggested in some replies, that adultera-  
tion of food and drugs should be a capital offence. Tt is  
Slated? thet While an ordiasry murderer might In some  
Ereustances have some motive, the manufacturers. of  
Spurious drugs ate °archeciminali” quilt of mags smurder  
‘of innocent citizens who have net given” any cause for  
‘ftence Another suggestion te to the eect that offences  
ot adulteration of food and drug, where there is a delibe-  
TES 30 daze ath the Knowledge" of “the coneequences  
Likely to follow: may be punishable with death where death  
i eaused. The Imposition of death sentence for adulters-  
on of medicines and drugs has been suggested by certain  
High Churt Judges aso! “Anotner suggestions io. he  
‘effect that adulteration of food and drogs in & manner  
Sikely to endanger human life, or to cause serious or perms-  
‘nent, bodily harm (such as blindness ot other permanent  
hysical disability) should be made pulshable with death  
  
415, Another sugpestion? isto the effect that | adultera-  
‘ton of drugs caustng or calculated 1 cause mase. deaths  
should be made a capital offence, being an anti-social act  
of grave nature, Stl another epi sugges that dale  
eration of food which causes death may be made 2 capital  
  
416, Several other replies“\* have slso suggested. that  
‘adulteration of food and medicines endangering Aurman  
Iije thould be punishable with death.  
  
U7 The augaeition tg mabe adulteration of food and  
rags a capital offence ‘has the support of State Bar  
Coutni  
Plater Gis 8) No aE  
2 A State Lay Commision, 8. No 13%.  
5 Teo High Cow Joep, No.0.  
4 Sepeme Ct Bar Avciion, 5. NO. 180  
  
eat member of the But, vheough che Bar Council  
  
aah, 08"  
Bae Asecaton of Fi, S.No.  
4A Dine Bar Satna, 8 No.9  
9A Bar Counc 8) Ne 159  
  
  
  
Page 171:  
Po  
  
418, A State Government! has suggested, that “offences  
of food and drug adulteration where there is 2 delibera  
Sc wit "inoledge of the comaayuences and death ie  
Actually’ caused", should be le with death.  
  
419. A High Court Judge" has sugscited the extreme  
routs faith manacur' ot eds” (tae  
Sither tdutterated or heppen to be below standard. Dist  
Stars and soliers of suc rugs can be dealt with by" Im:  
Drisonment. but ose who manufactre tem are res.  
Ponsa: alow a seme on «lrg te, Sd  
owadays.go\_scotiee’or with easy punishments.” This  
Imus be upped hy ipa, abd olence shu be  
  
420, Some other Important replies also suggest the  
capital punishment for adulteration of food and drugs.  
  
421, It may also be stated here, that in the course of  
the evidence before the Jaint Commitiee on the Preven  
ton of Food Adulteration Bill, 1963, the question of the  
  
alty for adulteration of food was raised. -Shrimatt  
  
oral Mookerjee (the then Health Minister of | West  
Bengal), ‘stated that she would be the frst person (0  
Accept” the death penalty for adulteration, if such a  
hange in the law was peo  
  
422, In the dlowentng note to, the Joint Committee's  
efor io ues sted ss Sollawsxo™  
“fe bale tht the mami, pray for mar  
eflences of adlteraton, particulary so lf repeated,  
‘How heat et ears an recommend y the Com:  
Bites, i death or imprisonment for lc, Our sg  
Estes ins alan curr i he vow offre  
kr Health Minutes "Shr DF, arearlar wile  
te sn fc, tat aduleratoce of fod ae Potential  
‘Surderere cn dere the highest pelt So a  
the’ Minster of Heit, West Benga who fare ev  
  
2A High Cows Jatge, S.No 2  
  
9A Dinsiet Dat Asrciton in Went Bengal, S.No. 233 + Seo  
Fags. S.No 398.359 58 Leer’ Ascii i Asso, §. 0.207,  
  
nt Cie Miniter of Sat, he penn eapacty, NO 35,  
  
15S. Nou 394.316, 381 33. 33,335 352  
  
(Report ofthe Jos Commitee othe, Prenton of Fa At  
szrulon Tareas) Ba Yong pobthee by the La Sate Sees  
‘See New Dein Sepeemter aka pager #227  
  
7 S.No  
  
Pep fe Joie Commins oh Pree of Fed ae  
Sip Ban enter ft Sane Sere  
  
  
  
Page 172:  
ue  
  
‘Sxptal "panshment be peesobed fo seh ering,  
  
ea ment mich 8  
  
invany cise during the Emergency, and even there:  
  
hao lng at xpi) pursant ie abel  
yaw  
  
425, The offence of adulteration of food has received  
  
‘een tae the Jugye of a Cy Ciel Court tn» Pres  
dency’ Town', that public opinion in the count  
  
to be that the death penalty should be extended to adulte-  
Fated manufacture, sale or Ofer for sale of food or drugs  
{ht ely to cause death and where “Seat, has een  
saused by the use or consumption of such food or drug,  
Where the accused had knowladge of reason to Believe thai  
‘uch food oF drug had been adulterated  
  
24 he wot of « itt and »  
  
conta TB BE Siete at daar of foak  
ideale an, nd  
  
Sorin piesa Se pane mi oa  
  
425, A State Government? has emphasised, that \_ the  
death penalty carries with Wt “the ultimate reotraining ine  
‘uene'om human conduct the greater the treat the mare  
fective ft would be". ‘rgerd to thin it rates  
{het adulteration of drugs and foodstals to death  
fof 2 person or persona, should be punishable with death  
  
426, Other susertins for punishing alteration with  
death have been received. 474, ine  
  
427, Another suggestion? ig, to the effect that harder  
ceases of premeditated planned action in the nature of  
‘adulteration, which afeets the vitality or virility” of the  
ation of human lite, may be made capital  
  
426. In our Report on soeial and economic offences  
also” we have referred to the received By us  
{o increase the punishment for ‘under the Preven  
‘ton of Food Adalteration Act, 1984  
  
45; Nos, (20, 428, 409, Dui and Semis ulues a Wet  
‘peng atl" Biel ind ’seen Tabge "Srna  
"(A Die and. Seon Jaden tm Matacmir. No. 334,  
  
5 8. Non. 0,403,404 427 Advocmen im Wes Beng  
  
7/8. No. got (an Avorn in Be  
  
14S. Now. 30,386,397.  
  
9-A Barinerat-Lav, Cau, 8. Ne 130.  
  
fo, Teeth Repay of oh Lng Comminen repo oie  
seit a Sami ae the ea Rok Sad,  
  
  
  
Page 173:  
Me  
  
429. One suggestion! is that, offences relating to the  
Army, Navy end Air Force should be made capital.  
  
490. 1¢ has beon suggested in some replies\*\_ that arson Ana  
should be punishable with death. i  
  
smal Stal epics pave suggeted that Mack Ba  
Peeing should be punishable with death. sng,  
Other suggestions make the ones of Mack market  
ing a capital one have also been received =",  
Ove suggestion is, that activities intended to corner  
  
the mares or calculated to withhold eftectively the  
Stctenta commodities to Uae wc in tne of nate)  
  
fepezgency witha view to earning profs should be punsh-  
  
432. It has been suggested by some High Court Judges,'\* Corrurson,  
that people placed in'poaied of responabaity whe tne  
Suge in sefious corruption against ital atonal ime  
Son Se crass ‘ebery and cortuption has  
Sen for ‘corruption  
‘been made in other replies also”. "  
  
433. One reply" suj ote that that offences under the Pre-  
SErourts ‘exceeding one ise rupees: sould Ee” mse  
Shouts ‘exceedig one ist ef rupees  
SSplal andthe atbount abs forehcd  
  
{94 One of the Bar Counc ie among thors who  
“ould ike the sentence of death tobe imposed for comup-  
  
1S No wr  
2S.No nt.  
2A Bar Col, 8. No  
4A Bae Cone, S.No 95.  
5A Dinsce Bar Austin, $, NO 215.  
A Dine Magnes 8. No. 386,  
7A Dist and Seasons Jade, S.No 358,  
  
BAD ant Seno fuse (Ok mating fxm 7)  
xh fee “ ™  
  
9 AB Advone 5. Na. 40.  
1S. Now 2th 294, 4  
  
1X Dist and Sesion Jigs in Maurie, 8. No. 33,  
12 Two Mh Coat ates. S.No 105.  
12 A Bue Coons 5. No. 106  
14.8 Dini Bar Astacio, . Na 8  
35.8 Bur Cound. 8. No 198  
  
  
  
Page 174:  
150  
  
435, Other suggestions to the effect that the offence of  
SgrTuBton shouldbe punishable with Seah, are given in  
  
498, Several replies/©? have suggested that espionage  
spond e'purabie "vin det ME enoukee Tene  
Suggested that espionage | rega  
Miltary secret “and eoplonnge by” police an securty  
tficers‘on behalf of foreign counties in elation to" mall  
tary secrets, should be made a capital. offence. A State  
Government" has suggested, ‘that the “death sentence  
should be presibed for espionage opuinat the security of  
the State,  
  
497. Bepionage during grave emergency shovla scoord-  
ing’ another Suggeton be ade a cabal fence  
  
Esplonsoe co an extensive sal, particulsty whee  
secrets for the nation's protection, ate invalved,  
Should be made capital according to another saggcsion  
  
420. A High Court Judge™ hax expressed his views re.  
garding espionage in these wc  
“One batch of eens 6 connected with epion  
age, ‘sabotage, “particularly of transport. system,  
military ‘equipment and installations. Tava way, there  
Gin even “tow be brought by come lg nda. the  
Geseription “waging war with the  
betting oF p or such wat". But for cari  
Eaton hese shuld be separately enacted a offences  
{ot capital punishment. Gure is probably  
aly ‘county in the present world whieh allows these  
‘offences to. go on ruling the ‘country's morale and  
exposing “it to invasion by hostile Heighbours, and  
Jetting fon the offender with ridiculously lenient gene  
fence of Imprisonment”  
  
wet Bar Aus, 8. N25,  
Atvoowe, 8. Na 72  
  
‘ia Pancaya Ofer, 8. No 2h.  
No 295.  
  
9. The Sopreme Cour Bar Auacieon, S.No. t0.  
20 Chick Jute of 4 High Com agdone Judge she 2  
PS ike epee Seti Ri clint  
  
1 SNe 3  
(ign Cove Yee 8, No ast  
  
  
  
Page 175:  
18  
  
489, Other suggestions to make the offence of espionage  
«s cipltal one are given in the feot-notes =  
  
st gsr en ing  
effence of kidnapping. One suggestion isto the elect?  
se Ele caine oa se  
  
ee atte aaa, Ba  
safer Gye a a  
cae aa eas  
  
CS a as En  
  
sect gait She'sino ede the age of 10 sould be  
  
‘Another reply also suggests that chiding should  
ve posable it dest \*  
  
4, Another reply\* suggests death sentence for Kina  
ingot cles ear One ofthe renin avg  
ffenestr al Rano ones in resp of amen  
  
“fag Othe aestions to punish with deat the lence  
ing Teceived, being suggestions  
to punish with death= ne  
(@) child lifting in the mest atrocious mannes™  
(ii) foreible sbduction of a girl or women and  
rape, which results im death;  
(iit) kidnapping of children with a view to black-  
rail and extofling’money from their parents or guard,  
{tne or wreck vengeance upon ie parents oF elders  
  
443. Tt should be noted here, that 2 9} to increase  
‘the punishment for the offence of kidnapping, made by 2°  
State Government, has been received ‘the Ministry  
fof Home Ailairs™, but the proposal does not contemplate  
  
1 Menor of Se Lage, 6 a3 a  
3 Diet ber Asacte, No.3, 39a  
  
3 tapator ena aso «San 8  
  
4A Tos Ofer Aaa, Noe  
  
$2 Nano ae ate  
  
ie nse Pedro of Soren Leven, Boy, S.No. 128  
  
J An Atvocue of Hh Cou Neo  
  
URaa coma SNe ne  
  
2 Tae Bc Sea Sana New Dai S.No. 14s  
  
18 Au temper Coe Prt, SN  
  
1A Lavy Ascinon a en Ne 97-  
  
12 A Banta ar ncn Mn © a9,  
  
15 A very scr Adc the Ba High Coa. NO. 38.  
  
Ti gupta et tee” Govenmes Teche” ae  
‘Home Ministry. 3. No. 369. mu ore  
12122 M ot Law.  
  
  
  
Page 176:  
12  
  
Stuspetontent torte and fn, to Kiting trae  
sopeaonment for Kidnapping for ram  
Seam Wt iy therefore, outaide the. scope Uf the present  
eport and ss noted" Here enly fo ‘axe the  
‘comprehensive.  
  
‘Ma. (The State Government has drawn attention to the  
Increase in the ineldence of Kidnapping foe Teaaom di  
‘the years 1956 to 1964, in the State, and has stated, tha  
aalis have now taken’ wo Kidoapning on a large acl  
as this is less risky, the punishment being only 7 years!  
Imprisonment).  
  
445, Te has been  
lon 364A, Indian Penal Code,  
‘wth death  
  
446. A more specific sugyestion regarding section 208A,  
Indian Penal Code har been made by retired High Court  
Jase, The Suggestion toto the flrs hat there should  
‘be death penalty (with imprisonment for life as an  
ative and heavy fine im certain types of serious  
ents resulting neath, where’ the driving ‘is callous  
  
sly neg gent and in uttler disregard of human life and,  
Efety! and that a suitable amendment in section S08A,  
Tan Pepal Code may be ade. The suggestion is intend  
fed to include Railway and other acca  
  
It has been suggested, that under section 304A, Indian  
Penal Code, when the "gross neglience” of the diver it  
proved, the sentence of death must be provided for"  
  
hat the offence under see-  
should be made. punishable  
  
447. Some replies have suggested that rape should be  
made a bs  
  
‘pital offence.” One suggestion is that it should  
be ponkaabie with death if reclting fn serio Injiry to  
eof the wists ins nad  
  
448 Tt has been suggested’, that for “murder of a  
vromay after having commited rape and murder of chil  
  
fafler criminal essault on thems”, the death sentence  
Sule mandatory.  
  
2.4 Riel se ofthe Bahay His Cour, 8. 0 98  
  
DA Menoer of Palme ener gueson 3,8 €o. 24  
4A Rael Die Seion Jee a oat Law Succ te 8  
‘sud’ ortnen, None  
  
S.No. tt  
6 Bhar Seti Sua New Deli, S.No. rs.  
  
Z.A Sse, Govemmes rpiy 10 qoation 3) 88 ith pty 02  
geolon sina Sve Ne se  
  
  
Page 177:  
3  
  
449A High Court Judge has suggested that rape should  
‘be mado a capital offence”  
  
estos to ounth with deth the ofence of a  
nave Elen Seceived in respect af \_  
  
(2) rape of gitl under 18 years!;  
() gang rapes  
(©) rape generally,  
  
480, Suggestions to make sabotage a cpital offence have Stowe  
‘gn made sera ene, One ange to te  
  
‘ect that acts of sabotage of train, ‘and similar  
iDstaiations or undertakings snooleing death of &  
  
mumber of persons causing wilespread alarm. ahd pane  
Inocity and easing a sanse of insecurity and. lop of  
‘ondenge inte basi Governmental undertakings, should  
  
be punshablo with desth  
  
Sabotage of public utility services leading to los of lite  
cg, property, it has been suggested, should be punishable  
Si  
  
451, A High Court Judge? has stated that there ace  
several other offences Which should be punishable ‘with  
Geath. “One batch of offences are connected with sabo-  
tage, particularly "of teansport “system, malltary equip  
rent and installation.  
  
452. Other replies for making esbotage a capital offence  
hhave also bean received"  
  
458. Suggestions to punish with death certain specif  
types of sabotage have! also been received  
  
TA Wigh Cour Daler 5. No ots  
2 Rey ofa Mente of Fasuamee S. No 224  
3 for gang eae 5. Now 4o8 al  
{A Dist Bar Asvocaton 5. No 233  
54 Dinu and Sesion Joie in Ralban 8. No. 996  
6 S.No m8  
swede nit Rept iy Rae Sesto, a"  
"A Sexe Govenmant #5. No $0,  
A Mign Coe Soe 8. No 3  
  
High Coutt  
e  
  
pe ieagh deminest ol raieny nes Sichng spe Seta eed  
‘TS ing mane Sauter abd ees "Na a.  
  
iV A Distt Magstme 8. No 86.  
13 Dit an Sessions Sedge S.No. 39,235 206.  
  
1 S. Mo. au (A Site Goverment) (in pet ofthe oece wer  
paslen 26 aa gs Ka hse ales Seeding ce wang  
geo mek sean  
  
ss ai eRe) Mahe by fe or thaw In rape  
a Peper SNe  
  
  
  
Page 178:  
184  
  
4&4. A supsestion has been made by a retted High  
Court. judge to the effect that. there should be death  
penalty (ith an alternative of life imprisonment a3 ise  
Ecnfvcation of propery) forthe ofence of ndvocaling and  
‘tively working for by, eolent menne the secession of a  
Bat or ar fe Stal ram the Unon Yin The sag  
estion emphasises that tas should be done by’ an smend-  
fEont of the Penal Code.” (In tis connection; i would be  
‘Sppropriate to eter to a recent Act, whieh pune any  
Petoon who questions the tertora) integety or Srontess  
EF Tpdia in w monmer which ior is likely tobe, prefual  
{o the interest of the slaty oF security of india The  
Rashes is imprisonment for" thre Year or fine ot  
  
5, [By the Constutin, (Sixteenth Amendment) Act,  
10h cies fy Bh anh of ree et the Coote:  
Homiave ben tnended, Saatoie eateions ca now  
Ertimpoced on he feoiom af spect ted Capeio ee  
Sholay end recta of ovement te tere  
ot the soveregat and auger of nda hese sea  
Stents ware te rena of the” Secondo afte  
Roti tegration Committe to seed arti 1800 as  
{Shae i petaile for oe Sato tnpoe esc fo  
preventing Setivtes dergned to bare fatter Sainegh  
Teer te cunt and sae cere! to fe meee,  
east the dig of are 18G)e se ts eed  
196s) til tol covers power “deeted dae cages  
such sought chiledge the eign and ieee at  
atin, ge some parties hed sought to do}  
  
496, (The object of the amendment wes to empower the  
State to impose restrictions on the activities of Individaals  
sl ecartfns Wi wanted oak scan rom India  
‘of disintegration of India as politica! Issues for the purpose  
‘of fehting elections).  
  
Other suggestions to male the offence of preaching oF  
‘edvocating secession s capital one have also been received  
  
1A rete Jade of he Bonbay High Cour, S.No 98.  
2 Caimioal Law Amenimen Ac 2961 (33 of 1961), secon 2,  
  
Spe Sei A. Sen then Mine of Lew, Lok Saba Dobe,  
ana hap peh Ca. nse tae  
  
4 Sgeetl Ste A. KSen, hen Mate of Law, Lak Sabha. Date  
ans bi pen, Oa tga  
  
5 Seri Sement of Obets an Renan, Gree of Inia, Ene  
nian, Parison 9 ded Sat Ju eh"  
  
(@ Spent of Stet A. Se, then Mini of Law in he Lk Sab,  
(on dd fay pd, ON 790 79  
  
6 A Cy Cig Soins JS. No. 30.  
  
  
  
Page 179:  
155,  
  
457, Smuggling on # mass scale or by International suggiag  
scangs hae Been Suggested ae stable fr coptal punshe  
Sent  
  
thor suggestions to punish the offence of smuggling  
swith Seat have also bec received  
  
452. It, has been suggested in certain replies! chat TH  
treason should be made 8 eepital offence.  
  
iongst those who have suggested the imposition of  
the Sat pay for treason are certain Members of Par~  
Damest  
  
459, One suggestion’ is to the elect that offences come Ure  
pecied with removal of untouchability, like ‘restricting ““4®-  
members of the “untouchable” clases from drawing watet  
  
them, oF  
‘hem from using public land or ether places, should be  
made capital.  
  
‘A High Court Judge! bas stated, that the question of  
death sehtence “for gross "amttnatlonal and “antisocial  
‘offences be consid  
  
ther suggestions to punlah with death the olence of  
treason have also been received?  
  
We may alo quote the reply ofthe Member of State  
‘Legisiature®. «  
  
“hay person who indulges In the nefarious ste  
vity of Gert the har ah slip of ie  
rrotherland for the matter of its of  
  
  
  
Page 180:  
Stes  
  
optee  
Seca  
‘he to  
Betnale  
Sa  
  
Autect 463. So far as adulteration of food and drugs is con,  
  
156  
  
$60, Certain other offences have also been. suggested as  
silences for hich capital punishment. woul ‘pe suitable  
  
tion’ mentions offences under sections 198  
280; tndan Penal Code  
  
461, Another reply® states offences of cheating. mis-  
appropriation, criminal breach of trust, ofeness "against  
treney, bribery. etc, assime the ature of "white collar”  
rimes, and 20 16 the’ case with adulteration ef food, and  
that these ate corrupt the morale of the publle “whieh  
naturally is the breeding place for murdeters ‘or pelty  
‘eves who are merely sepegoals of soe", and that  
uch criminalg should Be elimieated  
  
‘Toric No. 30.  
Other offences—whether to be made capital  
  
4462, We may nov consider the question whether  
other offences Under the Indian Penal Code or any 0  
Yaw should be made capital ‘We shail consider only  
affepes in reapect of which s0eh @ sugprton ha |  
Imad the epi received fo our guage? on  
Jocc” Marly the aftences “covered In tov, gps  
fsre—aultertion of food and’ drugs, offence Ses  
Avy. arson. espionage, Kidnapping and abduction,  
‘lds by negligence, raps, sabotage, smuggling ard treasen.  
  
z HH  
  
i  
  
a  
  
ccemed, iti true that such offences endanger the lives  
numerous persons. "We are. not, however, satisfied that  
‘rit cefontement of the existing law would not be enough  
fo check serious offences of adulteration. We may also  
point out, that adulteration haa several aspects —  
  
1), Adulteration may fall under sections 299 and  
300, Indian Penal Code, it death is caused thereby, and  
if he ‘conditions of those sections (particulary as f0  
‘mens rea) are sated.  
  
(2) If deoth Is not caused, then to regard adulters  
tion ‘ag a capital offence would ‘not be  
with the scheme of the Indien Penal Code. Tt may be  
ote that a perge throwing bomb Inte ened  
fot punished none is Killed. He may  
BE lly of an ateaplto murder bu not ot ardor  
  
404, Regarding offences against the law relating to  
‘Armed Fofoes we thine that's far ay civilians afe fore  
cerned, the existing provision in tection 132 of the Tndtan  
Benat Code ts adequate for ordinary situations. “Tf, ia elt  
cumstances requiring special provisions, need for Imposing  
  
a ei, SN a8  
  
3 An Advonen, 8. No 13.  
  
3 Quesdon 30) of sur Queionae,  
  
  
  
Page 181:  
wt  
  
‘any drastic penalties is felt, eltable action could be taken  
{oF the duration of the particular situation  
  
485, The offence of arson is ane ofonce in respect of Arse  
which suggestions have boot received to make ita capital  
pe, Ae presen, there are provost the tian Pena  
Se eta isl Eahng wih various fora of  
the stence now 36 “mischief a these comprise certal  
Drove dating prtculry with machi Wy Aro. x  
Hove uta rections 1 Bot he mga  
inal! thee. provisions fon damage to Property amd not  
tn the loam of posite lana ot human fe” Weare arson acts  
Walle camer death, the case canbe dealt with under  
Sections 290 and 0, Indian Petal Code, What remains Se  
fhe cobe of arson not causing desth, and we have to con  
bs ete sh an hibit eth  
ty om the ground that one et more Lives are put  
  
Unger by the act constituting the arson  
  
(6210 caran counrier, som, wel amdaen, fate  
tae he naming cig def de  
owediek vs  
Oat oman ter, witty aed. mslceuly  
se ea, AMP es  
Sipe i  
nab? sn ern cs eet eve oe  
rae  
Ty Se Be 19 te ums sige of aca  
oe sa tes ee os Sn aca  
ou gtgalh aera Ges nd te pling  
ied i, ck, oe neg  
Ce Eg oro  
reso bene oC Gt aad  
‘467. So far as explosives are concerned, there are ain  
(hrs Se eects  
eee eS ce a  
  
7 Sie as Aspe of came, owe No. a  
2 Sue ain sec 35 Macon, Indian Pel Code  
  
3.55 6 Donne Cl Paes (a Tae of Cait  
  
“¢Habry. a Ban Vol 10, page 86, paragraph 68.  
§ Maso Damaee Act 861 (24 and 2 Vics 7)  
  
4 Devious, ae, Protection As 772 (12 Gen 3 6 24h  
  
4 See Aci, Criminal Pieating, ee (962, peraegh 227.  
ae ie so eemed in Malus id Bam, VoL tO. BA HP  
  
panne Act, 184 (4 of 188  
  
  
Page 182:  
188  
  
‘maliciously cause, by any explosive substance, an explosion  
ely to endanger ie or key to cause series injury to  
property, irrespective of whether” an injury to Person or  
Property na been actualy ateed or nt. th punishment  
In the latter ease can extend up to Imprisonment for hte  
468. We may also zefer to the Bengal Amendment to  
the Explosive Substances Act? Sections $A and 9B (ee  
Inserted in that Act by the Bengal Amendment) ron ‘as  
SA. Enhanced punishment for all ofences under  
sections 3, 4'and § in certain cases. Notwithstandi  
anything contained in section 3, section 4, or section 8,  
if'an offence under any of these sections is tried by  
Commissioners appointed under the Criminat  
Law Amendment Act, 099" or by.a Special Magistrate  
under the ‘Bengal Su ‘of Terrorist Outrages  
  
i  
Range mmata scien aale  
Eee. Ce ee as  
beac fane Ee Aes  
ieee aes ey ca a  
iewitisay tad’  
iinet aherceetn wu ay  
wy on er at ra ent  
  
mee  
Aas emi  
eet  
she crit ee ete fer oe Pe  
ie TEESE LO ae Ge Phe  
Se EE Ee Soe  
  
{son a a ne  
  
ESE Ny eect te A,  
Vice foo Ramell of Gms pa Vo,  
  
  
  
Page 183:  
410, It may also be noted, that by a Bengal amendment?  
to the Indian Arins Act, 1876, an enhanced punishment was  
provided for certain offences selaing” to arms, in these  
  
1A. Notwithstanding anything contained in this  
Act, whoever goos armed with a pital, revolver, rife panes  
‘or other firearm in contravention of the provisions off  
fection 13. or has any such fire-ara in his possession or ==  
Under his control In contravention of the provisions of  
Section 14 or ection 15, under eitcomatances indicating .  
‘hat he intended that tuch firearm should be Used for  
the commission of any offence of murder shal, if e le  
{fled by ‘Commissioners appointed under the Bengal  
Criminal Law Amendment Act, 1905 be punished with  
death, of with transportation for life of any shorter  
term or with imprisonment for a term which may ex.  
tend to fourteen Years, 10 Which fine may be added”  
411. We do not chink thet the sentence of death should  
be provided for arson (except, of course, where the case  
falls under one or other of the four clauses of section 300,  
Indian Penal Code).  
  
weet As YDS ting.  
sm fe se te  
of Baryon are ats ore  
gugtendwalauereeees  
Soiree erica  
Spas ee ieee  
‘which allows the penalty of death. Other eases af colle  
{Won and tearamission of Sate secrets most fall under the  
ety ane mar  
In times ‘of emergency, additional provisions are made by  
ines See ee  
isaces aS  
Seat eure ees  
Pu rnaeere ata  
  
2 Sevdscusion st Domding amd peotcesgs eae 416  
"The oti Scr Ag gu8(9 a 1920.  
Se Bene ila Re Ba  
  
ees eta we  
  
  
Page 184:  
18  
  
We think that the provisions of the law on the subject  
4s they exist now, arey in Substance, adequate ”  
  
415. In some countries, spying (disclosure of national  
defence secrets) is a capital offence! These are” China  
(Glaivany: Datomes, spam, some States of USA France”  
  
ieece, Iran, Luxembourg’ (Abolitionist de facto), Poland,  
United’ Arab Republic, Central African Republic, "South  
Africa, El Salvador, Somalia (Northern), Czechoslovakia,  
‘ogo, Turkey, USSR. aad Yugoalavis,  
  
47¢, We have considered the question whether hoarding  
‘and profiteering should be made capital offences, Without  
avdetailed study of the working of the relevant Acts. and  
(of the dificultcy felt in their enforcement by reson of the  
fexisiing penal provisions, and in the sbsence of specie  
ropa of precise nature, we do nor consider i tafe (©  
nuke a recommendation in this respect. ‘The cardial prite  
ple of wilful disregard of human life, which isthe found:  
tion of the sentence of death for the existing’ capital  
‘offences: will have to be bome th mind, and the question  
‘examined whether the existing law jg not adequate. It itis  
found to be inadequate, then before embiriing on an  
mendinest, i will have to be considered whether 5 precie  
Enrmale could be evolved. which, while conforming Yo this  
principle, can define clearly the scope of the acts of hoard>  
{ng or proftering’ that are to be made capital"  
  
477. We have alio considered the question whether kid-  
napping and abduction of chiicen, particularly when the  
Kidnapping ts wth the object of maiming, shoul be made  
capital offence, So far ss Liagoine, generally is coo  
‘cemed, there is one dificulty if the affence is made 0  
apltal one The offender would (if the offence is punish-  
sble with death) have a temptation to take the tile of the  
‘Seton, because by dolng-90, he would. not get a higher  
‘punishment’ So far as Kidnapping for "maiming is come  
Sine this ciculty aay not be there. "Bul. we do. aot  
‘hin thst the social harm caused "by. lednapping for  
Inaiming approaches, in qravity that, caused by murder  
We are‘sotr therefore, ieelineg te make the suggested  
ohanae  
  
Lf UN. Rie on Gat Pemteem Goss, Tate  
  
the  
  
13 Proans of the Bench Penal Cate are of parr ners,  
  
3 Sv Sicasion reing fo eting cpt eens: paragraph 7740  
vod,  
  
4 From the (IN, Pblcwin on Cat Pures: (gf, Table at  
og ASW a heated hed gcan end rag  
Shstud SOG eH Siac (Beas rans 'span Rept ot Vie  
  
“The oloie disomad deta in te dscuson relaing 0 spe  
surstans Ses  
  
  
Page 185:  
161  
  
478. In the State of Ohio (US.A), legislation’ making  
kidzapping « capital ‘ofence Was inivoduced and enacted  
after the kidnapping and subsequent death of boy"  
479. Kidnapping is @ capital offence in certain countries,  
fand these seem to fall under tareo groupe  
) kidnapping simply;  
{inkidnapping. accompanted\_with aggravating cit-  
camstances (ea, kidnapping for Tansoa), and  
‘ty kidnapping followed by death  
490, After the kidnapping and murder in New Jersey in  
1982 of the child of Charles A and Anne Morrow Lindberg!  
‘Stale Legislatures in the US.A. expanded the definition of  
Kidnapping, and many States made ita capital offence. At  
the same time, it wat made a federal offence to transport  
the vietin ot a kidnapping. acroms a State Sundary, with  
a'maximuim penalty of death  
  
‘The following table shows the representative penalties  
{or ‘Hldnapping in the States of USAS  
Tone -  
Representetive Penalties for Kidnapping  
a USA)  
perry Mewgum ——Masiqun  
va se  
Caitenie . @ Sime yee 25 ya  
  
Ream, re Le, he ie wn smi  
CHEE Rah Se eh  
  
(i, Ranyo, ee Tf wthowe poy Death  
Rika tamed’ Oy ara  
  
He popanty tnown othe Bay Llndbereh Ac ~  
  
2 Sue the seatemene of Me Michel Dials. Governer 6 Ohin  
sued $n Feary Tog cepitueed th Metin “Copal a:  
ime, Cos, pe 1545"  
  
oo Reere eect gk pststen Ame  
Tan. m to the postion in Yarous eountricn mee =  
pe es Sa an nas stems  
nee eS  
  
ee ae Kaige Ssi  
eds Ene Choss ts HY. Re, Ove fe Sealed Lind  
  
"etn a See Sonam sete  
RSD Stig Hohn Mas rete  
  
  
  
Page 186:  
Jsicdon — Cuegory Minimum Mima  
Pei ee  
Demware— Nocaepprie Lie Life  
New York. (Vigin eaoed 29 yan Lie  
(@ Vein deat 30 yur Death  
Wicsin Simple Nowe 1s yas  
@.kamenis, Nene sey  
iy  
(i Race Lite ite  
  
negligent act  
‘rope up {rom time to time. When Ais guilty of Fashness  
‘or negligenee, and, by the conduct of A, the death of B  
  
Sour ia rio oh canta ali  
Seer ee age a ae mee  
ce teaeeg  
  
Sean he ASAE ta Pa at al  
fc eS he a a yeah ak  
Ace een oe ae Eke  
maces be det fom te tllovig eae  
  
Chart of negligent acts affecting the human body  
  
ZG ak ein co ge death wood al der he ek Gane  
of sta Tad Pea Ce  
  
3 The ecoes related te ae iow ofthe Indian Peal Cade,  
  
  
Page 187:  
163  
  
‘Depts of nowteiee, ee J Ofease  
ah or males at swing few Otic ot caning denh Oy RE  
‘spate ieee gence Gece SSA a  
  
ee So Sak  
Es  
  
Keowedge tht the A: might pore Hort or grees ort.  
iy, Bat as ll eo, cae  
Se iy ai ie  
  
142, "ur” canbe further aalyed:—  
vay ate ge aot ot  
ehaytnecaiees \*  
  
Very, cog rt, pr ey. Sios Dare 329 and 9a  
Briar ae)  
  
aig ga, tg ting, tence we sn 28  
  
Cee oe  
nto. by 0% ctanging iy Ofer water on 397.  
  
Slice tet thd. ee)  
  
ee  
  
ae tm 90 ee et ve  
  
oS Re Bs  
i brag strut mt  
Sarva See  
all probability. a aa lex,  
  
+ HERS SE St Sse  
Sie fae =  
Seca aah ata  
  
tay uate ton  
  
SEES SSE Westie A?  
Scene  
  
To han, we peg a ie  
  
  
  
Page 188:  
164  
  
‘The clause thus, streases several clements—  
Frege Sat the 20 ing dee  
ou tna (a) 1 t,t iy cnine eth,  
Seer sha further, requires that (i) there mast be  
Sebn ofan eneue for ncuing te Hak of cau  
Eeath ete. ‘Extreme recklesmeas by felt 1s not st  
le’ Tome be «holy mexcanle eto roe  
  
484, We do not think thet there is eny substantial defect  
in the lew, ‘The text adopted fs ove of disegard of human,  
e'\*We cannot ‘sbation that test. tnd take” Teser  
fence, a capital one  
  
We appreciate the fecing that cave of negligence, par  
tucuarty tas and negligent dating, should e dealt with  
Severely," Whatever steps are needed to. aid danger to  
[uman lite by such gets have 10 be taken. But the prov  
tions ofthe Indian Penal Code, a fat as offences attracting  
ihe sentence of death are conetrned do nose to eed &  
facteal change on this point  
  
85, We would sli out tat gray Bens cae of  
causing death by hegligence including’ rash or neh  
‘STiving) would fall‘ todor the ah clause of section 900,  
indian Fel Code. prvided there ro exter hat as  
(cla act, ‘The roatter depends apon 1 otinowe:  
ledge of the eftender and the mature of the act  
  
cast at mnligenss hy Railvay Oilers have tone up be  
Bois Boia tcomt nae @ Sait  
ir ie ng gnaety Gig, hte  
ec Set cnt  
  
Wee hve re eter spt oa,  
  
in View of the suggestions received to make offences under  
‘ection 304A, Tndion Penal Code, punishable with death”  
  
469, 1s been sugested hat serious acidents, which  
rest in deh where the diving ie elloay, gon ogi  
  
en ing of oie J. 8 Bah, (87) PR Nae  
  
ot vis ace  
3 Tope Prod v. Fp. ALR, 1918 AlL 429 (ine cer  
lnk Bon. (ine cer wrongly  
  
3Kobe v. Bmp ALR, r9at Lah 297 (Cal tan by scien  
  
we apt Dm a LL 16 hich woe  
sean ll te ers38 pron row” ON  
  
Sandie Ee © Ail ym 04) LR 38 La 5 (ig when  
© Oude Sach v. Erp ALR. 145 Lith 436, 460  
7 Rep of + Dist Bae Atxiion 8, NO. 35  
' Reply of erties High Cour Fade, S.No. 95 ander qveion 3).  
  
  
  
Page 189:  
165  
  
ent and in utter disregard of human life and safety,  
  
perve the highest penalty of the law.” But, according 13  
four view; this y already permissible under section $00: if  
the candivions of section 289 or section 300 are satisfied, the  
‘cate would not fall under section 304A. Indeed, section  
501A “inakes this clear by the Words “not amounting to  
Sulpeble homicide”.  
  
32 at smal gli  
samnentty dangercus that mst mn ll probability couse  
Rakthe chant murder can be brought home’ ‘othe  
Scosed "the sim te ivtroted by a sake ite case! In  
Mic the actaned actally caused the snake to bite the  
etton Who’ wes Keg  
  
400. If the knowledge is of, “ikelihood” of death, the  
ase would fall under section 298.-‘Thus, where a shake  
harmer exhibited in public 2 venomous snake and to show  
fis skll, put the snake on the head of a spectator, who tried  
to push off ths snake, was bitten and died, the adeused was  
Hold to be guilty under section 298.  
  
Mlustrations can also be drayn from cases, of woman  
jjumpang into sell with a child. Im such cases, the question  
‘whether there was an “excuse” within the meaning of sec.  
Yon, 300, fourth clause, Indian Penal Code, becomes mate-  
Hal?! Cases of women administering dhatura, ete, to nus  
‘bande? may also be referred 0 in thle connection.  
  
‘As has been observed. the real question which arises in  
such cases is whether the act was done with the knowledge  
that if Was likely to cause death or that it was so. imme  
eruy dangerous that ttm all probability cause  
  
Otten the facts do not fll within secton 209 oF section  
spo; and mo amendient of the lew can amend the facts  
  
17 way’of illustration, we may refer to a case which seems  
{0 fal'on the border line?” Ia that case, the accused” was  
dsiving a lorry on the Grand ‘Trunk Road from Delhi in  
the direction of Panipat. He had five more than  
hhe' was permitted to carry. He was ya Sub  
Inspector of Police to stop, s0. thatthe lorry might be  
checked. But, in otder to escape. he refused to stop and  
Grove on. ‘The Subsinspeetor, with his constables proceed  
  
2 Bmp. ¥: Goth Dol, (1879), KER. 5 Ca, 35, 92,  
OPA ce Sastedi Yt The Sta ALR 188 MB  
“Bp, Dla LR 1940 A: Ge? ALR. 1940 Al  
$ Bap. © Chatrpal Sigh, ALR. 1990 oth, 22  
  
yp POE NEO Be iy, Bop AL 9 Lowe Ba 36 27 eat  
  
4 Gi Sigh v. Ep, ALR. 1041 Lah, 40,460 Cog © Jd  
sac Ste Seek Bar  
  
  
Page 190:  
108  
  
‘ed in a motor car “to chase the lorry". The chase proceed  
fd for‘hve males but the accased refused to allow the police  
‘car to pass his lorry, by driving his lorry in front of the  
police far, or by driving it om the side of the Tosd afd  
aising dust. Most of the tame the speed was between 30  
‘and 85 miles pez hour. When the lorry came near a bridge,  
‘small gil, who Was standing on the side of the Tosd,  
ommended ty cross the toad i order to get to her father  
‘who Was washing clothes on the opposite side of the Toad,  
‘The accused was going 90 fast that he c0uld not stop. “The  
¢hild also added to the Uouble by stating to rn actors  
the road.” The result was, that the unfortunate child. was  
At Oy tha bumper of the ln and was keosked down and  
killed, ‘The actused was ultiiately arrested at Panipat  
  
‘The accused was convicted by the Sessions Judge under  
section 302, Indian Pezal Code on the ground that the aceus-  
fed Knew that the act he was committing was so imal  
ently dangerous that it must” inal probabiity cause  
‘death, Counsel for the Crown did noe support this conten-  
‘on, but argued that the conviction ought to be Under see  
ton $04, Indian Penal Code, as the accused Knew that be  
twas Ieely by his act to esve death. Tho High Cour,  
however, id not consider that “the offence came elthe!  
‘under section 3D4 or under section $02. Th its view, the  
‘offence fell undzr section OLA. In corning to this cond  
ion, the High Court emphasised two facts, namely, frst  
that the child’ wag wat filled came from the side of the  
oad and’ attempted to cross. in front of the lorry, and.  
seecondly, that it eas not crowded place like a ty  
‘thich case the offence might result ina charge Under geo  
Hon $04 even der attion 302, ‘The High Court seme  
teniced the accused to rigorous Imprisonment for 18 months  
Under section 904A, Trdian Penal Code  
  
491, An instructive analysis of the words, “with the  
Knowledge that he. ig likely by such act™ used in seetlon  
280, Indlan Penal Code has been made by Peacock CJ. ta  
the’ undetmentioned ease!  
  
492. If the ingredients of section 300 are satisfied, it  
becomes the highest degree of homicide, But otherwhie 1  
will consittute only the lowest degree of culpable homicide  
section 904, second paragraph, ‘whereunder one of the  
possible punishments i fine only. "Je 1s, therefore, obvious  
{tbat great care ie reguired in cases where “knowledge”  
fonstliutes the only mens req, and the provisions of sections  
289, 300, and SO4A Tall to be consid  
  
If, even the conditions of section 299, Indian Penal Code,  
‘are ot satisiod. 1¢, if knowledge of the. Hkelinood of  
‘Geath cannot be proved, then it remains a case of section  
‘S044. “Thus, the evaluation of the evidence, the drawing  
  
1 Gorachand Cope, (1066) § Wi 45 i Bengal Law Reports,  
-(Suppicneney Volane as, a al Bea  
  
  
  
Page 191:  
wer  
  
‘f focal inferences, nthe application of the ta,  
Shel Sse Recomes's mater of tne yrestek pat  
‘The act may even be no offence a nee  
  
49. Most cases une section 204A, Indian Penal Code,  
wot nlf “onde manatee Re  
‘Risimum putin! for ‘marslaughte i Fa  
imprisonment for life? oaland  
ML Cans ate not Integuent where a conviton under  
section SG2 has been altered to one under secon BARS  
  
495, For certain interesting points relating 19 the ques  
tion of Nabity under section 9O4A, Indian Penal Coder the  
Undermentioned decisions. 0% may be seen,  
  
490. As to section 101, Railways Act, the undermentioned  
Supreme Court ease may be seen.  
  
We should also state here, that every case of rash\_or  
negligent driving may not be'necessarily heinous. In this  
fonnection, we should like to quote the folowing observar  
fons of Beanvoat, CJ, in a Bombay case  
Then the learned Magistrate says that  
there was “exinemely rash and calloss conduct of te  
stecused cnusing the accident without the Teast juste  
Rei "ie Pleo at view of the acceded,  
Tshould certainty be m favour of eohancing the sem:  
Hepes Win a i a ‘hes aoe is  
Sider whether the rash and noqiigent act of the ace  
‘which has cccanloned the death, shows callousness on  
  
OL Nace Bhmapna, (a) TLR. 4 Rom. LiRoass (Pacem  
epalach eiaiaitee SP there ng nbefedge ot pees Lad ae  
Satna  
  
2, Soars Kati Bp (867) LLB, 4 Cal 66, so  
  
ane ASE RN Babee AS 6 see's ates Oy  
  
14 See Pik Rana, Bap, (093) LEAR, 49 C855, 861  
  
5 Sie v, Bats Sigh ALE. 199 Math Pratesh tos, econ 300k,  
Snide onal Cae and Mie, Taye Ace cocedy  
  
Bap. Khan Sehorzad Shr Moko, AUR. 1937 BOR fy  
eatin 25 daa  
  
“Bap. Marl, ALK 7 Ba 8, Benen Cand Wade  
> a mtaos ALR Madras 97, referring 10. ff. WF,  
gah Bien NEE SB tn ase  
  
9 Sie of Some Boe Kain, AR. 198 Mr 7  
  
te Se MP Ro Kor, ATR. Topp MP3.  
  
12 Rise Pau Ste ALR: ot oe 45.  
  
13 Bop Stam, ATR or, Sa a2  
  
‘emi Bohr Sete of Py ALR. 1996 SC. aas  
  
‘p Eanerae Phat Mahood Sr Moka AL. 9h? Bom  
  
96,88 a FS,  
  
33122 Mot Law  
  
  
  
Page 192:  
‘Accidents of this nature are of frequent occur-  
rence, and in tbe interest of administration of  
fastice and protection and safety of human life,  
Such offences require to be sternly dealt with.  
  
‘I do not agree with that principle. One bas to  
remember that driving motor’ cars” has become an  
fssential part of human activities, and itis impossible  
fo avoid certain number of accidents. In may view  
if ig no part of the duly of Courts to punish with  
favage sentences every motorist who has! the misfor  
ffane fo bave am accident. which ‘results in a loss of  
Ife. even though the accident be due to an error\_ of  
jadgment on the part of the driver.. The cireumstances  
Ef'tach case must be considered in imposing sentence.  
  
497. A moment's inattention should not attract the death  
penalty.” Reference may be made, in thlg connection, to  
{She observations made by an English Judge with reference  
te prosecutions under section, 1, Road ‘rate, Act, 1960,  
Sucvenson J, seld's “ft 1s terriBly important that these cases  
should be most carefully serutinised before they are start-  
‘Sa, and that people should not take the view that merely,  
because of death there should be a prosecution.”  
  
498. Every case where a risk of life is involved ts not  
cone of rashness. “A surgeon ts not reckless in performing  
Gh operation merely for the reason that he knows, very.  
{ihely to be fatal; lt may afford the patient's only chance  
  
499, We may reler in this connection to two cases decid.  
gan England by Steateld Jn Noverber 004 le bad  
{0 consider the sentence to be passed on the accused per  
fons who had pleaded guilty at the Suflok Assizes to caus.  
ng’ death by ‘dangerous diving’ Ip one case, the court  
merely fined the accused #90 and banned her tor driving  
Eerie fers aid tlhe cee the coat fed the acu  
Ed £0 but dig not disqualify him. for deiving, as that  
‘vould have led to very serious consequences for him. In  
the first cate, a Young woman who had no driving Heenee,  
asked the man who gave her s lift for permission to drive  
  
Severn is iow repr i the Tos, Jy 1 961, cd  
  
ss Mater Law Review 0 \ “  
‘ere Wacplr, 09 Oana amd, Cre 96  
  
pra Scan athe acerca Aca af Seiad‘ Soc Wee  
  
  
  
Page 193:  
atone  
  
Nepbence!  
Monte  
  
Maing  
  
Mate  
Meus  
  
500. We do not, of course, rule out any improvements  
‘or changes in matiers of detail that may have to be made  
fm section 900, clause 4. Indian Penal Code, 0° in the  
‘sections dealing with tacts, If there  
  
Detwveen that clause on the one hand and section 299, Sed  
Clause or section 904A of the Indian Penal Code on the  
tether hand (in the senze that cases at present falling under  
fhe Totter sections, should really be brought under section  
500), the matter can be considered. As at present advised,  
‘we do not find any auch sertous gap as to require immediate  
attention  
  
501. It must also be remembered, that a decision wher  
ther a case of homicide by negligence fale or does not fall  
Under section 900, 4th clause, Indian Penal Code, ie a mat  
ter of great knportance.” There is no intention io cause 8  
boaily injury, and such a case i, therefore, one only’  
  
"eno if it fas ‘under section 500, it becomes,  
  
then, itis punishable only under the second part of section  
304, Indian Penal Code (Wwhereunder the maximum punish-  
‘ment is ten years imprisonment)  
  
502, We proceed to consider the English Law. At  
English law, iis taurder for pertn, of sound memory  
and discretion unlawfully to' Kil any human creature in  
being and under the Queen's peace, with malice afore  
thoupht either expressed or implied by law, provided the  
person killed gies of the injury inflicted within a year and  
Bday after the sume.  
  
503. Manslaughter is the unlawful of such a  
person without malice, either express or imped  
  
504 The requisite mental element in the crime of mur-  
der in. English law is, this, “malice aforethought”. ‘The  
‘efinition of this expression is not to be found in any  
  
atte and ha io be drawn trom the decided aie  
ice aforethought is elt ‘or implied  
B: alice, according to existe where the  
  
  
  
Page 194:  
370  
  
elder purpnso of the accused is to deprive another of  
‘ie ‘orto! do! sorae ‘great. bodily Bata Malice afore  
‘thi, scoring te Haibane tmpled bya)  
whete the person llled ig an uffcer ‘of the lew, legally  
acresting or imprisoning the acevsed or executing. ether  
‘recess of law in a egal manner; (2) wheres alincugh there  
Fay have beec some provocation, the provocation has 20%  
been suicent to reduce the fence to mansiaughiet, (a)  
Siete the Ung "has ben caused by the scthed ule  
‘enuaged in comitting somve otver felony involving an act  
Sf Viskence ot an act dangerous to Ute 18  
  
setae heh doesnot fll under murder may, yl  
ler manslaughter.” Briel speaking, Maralaughier  
‘s the unlawfully hiling of » human crestice in being a0  
under the Queen's pence, without male elther expressed  
Seis! Mote sahcrctels an one i guy ot mane  
slaugier, whow() Unlawiully kil another ‘upon rove:  
Cation of such a character as to reduce the ofleace froma  
‘hutdey fo manslaughter. or (i who, while committing ah  
thule act oe a felony not key’ to" couse danger to  
5. sintentionally ‘lls another perton: or Gl) who  
nent cats heath of tothe the ae  
Pable neglect of legal duty. resting upon the person  
Enusing the death  
  
805. Apart trom this position at commonslaw, we may  
refer to the statutory provisions in sections 2 and 4 of the  
Homicide Act 67 Under setion 2 = penn suring  
from such abhocmality. of rad as substantial imp  
  
is mental responsibilits—te,  
  
{Be toanslaughter, snd under section 3, person acting in  
pursuance of a. auicide pact "between himeelt and  
  
Seoeased (whether he himeett Kile the "deceased or is a  
Barty to she fling Yo eullty of manslaughter and ho of  
  
S06. Generally as to manslaughter by negllence, the  
dsised dzcunn inthe urdewtmentonsd ses Thay be  
  
[AS 10 stig tn iemory-—Dewh caused, while Coming (long, vat  
atsban, id hae Gas, pores S368  
CR Te Cotas  
Jct, brite row er  
‘mae  
EOE acoso A ee  
foie SEP AG ot ona t8 eS  
mies Ae See Bees  
Ba eae ee  
occ See Bes  
JRE aS ae i  
  
  
  
Page 195:  
i  
if  
  
m  
  
807. Unfortunately, eases of unintentional death which  
have arisen in England have almost al been' those where  
some felony "was intended, and” the vests that. In the  
Books a, discussion of the topic of “implied” or "consteue-  
tive™ malice ie always presented” with reference to. the  
speclal situations of resistance to “offers of justice or  
blfences constituted by acts done jc: the course Or further~  
ance of felony involving wolence’  
  
808. There have not been many cases jn England where  
shes nat oe mio 1 cae death or Boal Bar and  
  
lath ensued, Because Of negligence, (apart from cases  
Scvompanied with the complication of “iclense favolving,  
{clony” or resistance to ofeers of justice).  
  
‘508. It would appear that where there is no\_satention  
to cause death or great body harm, then (ia the absence  
Sf special feature suchas the viclm being an officer of  
{he law or the actused being engaged ins felony, ete),  
tere In no “malice foretaought™ and, therefore, Ro smut  
oer  
810. We shall now note the provisions of the 1089 Act  
Section 1of the Homucige Act, 187, rune as follows:  
“a (1) Where a person kills another in the course  
x fariherance of some other offence, the kiling shall  
eg amount fo murder unten don ith the come  
Inatleeeferethosght (express or Ymplicd) ass requ  
2 Gora aling to amount to morder when not done  
iS the course of furtherance of another offence  
(2) For the purpose cf the foregoing sub-section,  
a ning done in fhe course or forthe purpose of resist:  
ing an 9fcerof Junie, or Of resting or avoiding OF  
preventing’ lawful arfest or of effecting or assting  
fp escape of rescue from legal custody shall be treat  
‘ite a bling in the courte ot fartberance” of am  
  
Now, th gvertion “What ithe postion resulting  
from thie provision of the law and the 1651 Act regarding  
eath caused by negligence?”  
  
Mores that death would or tigh be caused then ext  
EEtngt inthe aioe would be involved Ie toe ores,  
ange {tthe aw elf would be Involved i the 134  
ftom!” ‘This seems to be in harmony withthe view Of  
Ts ieee se Saad i Tae wd Amis Ca a  
cima Tip ag Sp os SS  
  
3 Tu dient arte en nH Chine (yh), Vo  
ues Gr s0s Sols 3, wo conn a page sg, he OD VoD  
3 Se we cat Cine ig Va, be  
  
seo B 191 Ae fp, Ral Sane i VD pes  
  
  
  
Page 196:  
wm  
  
Stephens and of the Royal Commision on Capita Punish.  
Bent "Gout ta shown 9 ier ote ef  
een, mould, so ‘Unis reasoning, be guilty of murder (if  
  
‘512. Most of the definitions of manslaughter in English  
law are of a negative character, for example, thet mane  
slaughter consists of killing another: person” unlawfully,  
Jet under contions not 0 enous abt render, the act  
‘2 murder, or that the offence of manslaughter includes  
felonious Yomcide not amounting tg murder, of that Tis  
the unlawéal and felonious kiling of another without any  
mallee either express or implied”.  
  
BIg. It has been the practice to divide manslaughter  
ini vo main alegre. vluniary magaaughtey pe  
voluntary’ manda ‘Setar as" homicide by negli  
ee Hy concerned vis ie air ctegry whch oat  
Sobia athe former is confined’ {o. ears where inex:  
Sina Kling te seduce to manslanghtet owing fo Prov  
fStion or where special satitory provisions, such ay see  
tion 23) and sectlon #(i) of the Homicide Act, 1987 are  
‘spplicable]  
  
516, According to. Russell, the maip thread running  
tarovgh ail the line of Gevelopment of manslaughter It  
SBC ay Mh snes our abt» enh he em  
  
edn hay he relned nan exper oteoti’s eran  
  
8  
#  
z  
:  
¢  
as  
#  
H  
All  
3  
%  
  
515. It lg often dificult to decide whether a case of  
Gangerous driving resulting In death “amounts to man-  
sloughter or not  
  
516. The expression usually used in the English cases  
for denoting the mene ree requisite for ter in  
intext) is “criminal negligence’”. But it has been  
  
"Acad i962. pareraph aR  
pad SBS PLE: Pah, NEON 760) a, stra wh  
Se the dekions eed in Rone 00 ae 960, VL, page  
  
"4 See Rosell oo Ceime, 196), Vol 1, page 60.  
4 Sue Ramet oe Grime, Cpedy Vat page 08  
  
+6 See Ramat on Come, lost Vek Te pee 98  
  
GER Shore Soh ots META F096 2 WLR. a8  
  
8.0L Andros». B. PP. (931) AC 576, D2 An.  
nny BP P07) AC: 51, $8417) 3 A Boe  
‘Gif 8D. P. Py (1937 AG. 506 89 5 (99 2 ABR. 592,  
so WE  
  
  
  
Page 197:  
if  
  
:  
  
i  
  
2  
  
ed out that this falls to. say afftrmatively what  
Exactly 0 the mene fea ds mansiaghues sO  
  
517, Kenny\* has subeaitted that the law should be clati-  
fied by a statutory provision which should, in effec, sett  
  
that It shall be the crime of lavolumtary mansisught  
‘hen aan who Ris cated the death of another dd te  
1 course of conduet which, would or might  
alse someone a physical harm but not a fatal arm, pro-  
vided ‘that he had no lawful justifleation or excuse for  
Infleting or risking’ the infiction of the physical barra  
which ie foresaw.” The testis intended to be subjective.  
  
518. Sometimes it may not amount to manslaughter,  
‘but many ‘amount to an offence under ‘section i of the  
Road Traffic Act, 1900 or section 2 of that Act  
  
510. Sections 1 and 2 of the Road ‘rate Act, 1960,  
run a8 follows'—  
  
(). (1) A person who causes the death of another  
person by the driving of a moter vehicle on a road  
eckiewly, or at a speed or in a manner which ib dane  
{gerous to the public, having regard to all the eircams-  
fines of the case, including the nature, condition and  
‘Use of ‘the Toad, and the amount of trafic which is  
‘actually at the time, or which might reasonably be  
‘xpected to be. on the Toad, shall be liable en convic.  
tion on indietment to imprisonment for a term not  
exceeding five ears  
  
2) An offence against this section shall not be  
tnt 7 quieren tnd nethid in he fore  
ing subsection ‘construed as empowering 9  
Ecurt in Scotland, ether than the High Court of Jade  
‘Gary, to pass for any such offence = sentence of pr  
Sonment fora term exceeding two year”  
  
sone Seti tt te Coroners (Amendment) At  
{ig informed before Se jury have. given their verdict  
that some. person has. been charged with que of the  
offences specified in that section) shall apgly to an  
‘offence against this section ae it applies to manslaugh-  
ter  
  
1 Key, Comind Law, (963), pat 1  
3 Kenny, Cem Lam, (902) page Re  
2 Roa! Trlle Ax, 1960 8 aa 9 Eliz 2 ¢ 10)  
  
“Sue, gener, rom & Jones, Imroduction (© Criminal Lewi96s),  
pues tee SSta  
  
a SS Tse age Skt alee Ret Tee A ve  
  
  
Page 198:  
1%  
  
2. (0) Uf a person drives a motor vehicle on a road  
recklessly, or at & ‘or in a manner which ie  
dangerous to the having tegard to all the cit.  
(cumstances of the'case, ineluding the nature, condi  
4d te of the road, and the amount of tecthc wich  
4s actually ot the time, or which might ressanably, be  
‘expected to be, on the foad, he thall be Hable  
  
ampltSh conviction on indictment, to a fine or 19  
imprisonment. fora. term not exceeding two Years oo  
‘to both a fine and such ‘imprisonment; ven  
  
tng $2 SG SHRI conto, to tne not exceed  
one hundred pounds ar to imprisonment for's ter  
pot exceeding four months et t6 both such fie eid  
‘a amenment the ero gaan or ab  
Sequert con ‘a fine not one  
  
Pounds or to imprisonment for a term not exzced  
  
Beto Wie ac  
  
(21 pen he wt of spc fran eos naan na  
eS Lanee title ime ew ct  
Sth SPSE ets yf eh ate  
bse) or fa cag meee ie  
Bera ay rig al owt  
  
2) Upon the trial of a person who ta indicted for  
manslaughter in England of Wales, or for capable  
‘homicide in Scotland, in connection with the di  
of a moter vehicle by him. it shall be lawful  
‘Jury, if they are stistes that he is guilty of an offence  
‘under this section, to find him guity of that offenc  
  
consideration  
  
20 aoroen, hrs one prc  
SB dower hee tote act ent  
paren oe ae ea ey  
peti! god Be ie ee Sg ome  
‘motor-vehicles the road, pew cased {heir peel  
  
sie oe sd eh rnd hr  
oe ee)  
‘Negligencet\*.  
  
S21. As to profiteering, separate discussion may be pretceting  
  
to recion ae Rx Gow, 9m) 3 ATER 3  
‘Suter BoP. Pep) AE. 83 GOED AER. 58,  
ah  
  
Pot comerhmae dc Bt, \* Mandir ed the  
Mest ubeit 37 Ranan Lae Yoana 6g,  
  
iS dacs tig to Rote Peed, ANE A,  
  
  
  
Page 199:  
Rape,  
  
522, A suggestion has been made by that  
ta fence of cape should ua be punhasle with deni  
Nobody can doubs that ebasity should be as" zealously  
protected as ie, ‘There ls, however, one important. prac:  
{ical consideration which has to be boone im fad JE the  
offence of rape is made punishable with death, the offender  
will always have a temptation, after commiluing rape, 10  
pur his victim to death. We cannot, is this connection, do  
Better ‘shan quote the words of the’ authors of the Indian  
Penal Code! who made the following observations on the  
subject  
“To the great majority of manking nothing is se  
dear as life, “And we are of opinion that to put Tob.  
bers, ravishers and mutators of the same footing with  
murderers isan. srrangement. which. diminishes the  
Security of life. "These offences are almost always  
‘committed under sich circumstances that the offender  
San Te tn is power to‘add murder to his gut  
Aa'he hs almost slwaye the power to murder, he will  
‘tten have. a strong. motive to murder, by shasmich  
{is murder he may atten hope to'remove the only wite  
fete of the grime which he has already committed  
Ifthe punislanent of the crime which he as already  
‘commitied be exacly the same wit the “e  
Surge he "wil fue ‘no Tetaping tative A awe  
ions for rape and robbery, and hangs  
Imurder, Holds out to raviehers and robbers 2 st0ng  
Indsceroent to spare the lives of thos whom they have  
injured. A law which hangs for rape and. robbery,  
Sand which also hangs for rmurders, Holds out, Indeed,  
ite be rigorously carieg into elect, « strong moave  
to detor men trom rape and robbery” but ay soon as 8  
rman has ravished er robbed, it holds out. to Bim,  
Fron motive to follow up his crime with & mnirder”  
  
£23, We may alo mention here that the offence of  
was peevouny punishable with death ln Gaada, ‘the  
Fenshment te only tepetconment ‘or We and wiping  
pent te only re a  
“elton hasbeen approved n the Report ofthe Joni  
Commitee ste Senate spd ‘of the Howe of Commons  
Sn Capital Pualchinent in Gosnda  
52, In Bngland, rape was, at fst  
  
felony  
bby death” ‘The ‘Statute which made It capital offence 19  
the beginning. was the Statute of 1576, 18 Elizabeth C. 7  
  
1 lt Penal Code, Now A, Page 9.  
2 Seton 136, Criminal Cade of Cana.  
  
Report of ihe Join Commie of tbe Senate apd he Howse of  
‘Combs co Ciplial Ronahonent, 2h Jute, 193, Page 16, pean 6,  
  
4 Su Rateinowice, Hintery of Eaglsh imine Lew (948) Vol  
puget foense  
  
  
Page 200:  
116  
  
funder which « person felniously commiting rape oF uns  
igwtuny and carsally knowing dnd abuse any womee  
hie der th ot of 3had sor dah Bye  
States he same’ tas or todomy  
Sod forthe cole agaist nature Ener the cence eet  
‘toned oe dentour pone wat iw of  
eyes and cestraionSubvoquendyy ny the Stato ot  
  
Fstministr 1 1, twas fedaced 16  
able wltelmeisonmént up to 2 years ond Ane}. But the  
Siu of Westminoter 2°C- 94 gun dered Wt fo be a  
cays  
  
525. The evolution of the doctrine of constructive malice  
in connection with felonious acts, however, made a difer-  
fence in England where death, resulted from” a rape. ce  
SMterapted rape. This wes on the principle that an act of  
violence done in the course of or in the furtherance of a  
felony involving violence, if it fed to the death of the  
‘vetim, amounted to murder, even if there was no intention  
to  
  
528, This  
snow been abolished by the Homlelde Act"  
‘Position in England is” that rape is a felony punishable  
‘With Imprisonment for Ite  
  
827, 1 would appent\* that, simple rape iy. capital  
cstece ln very few cours, whereas tape followed by  
Seah is captal fence in sme counter  
  
In the light of the above discussion, we do not recome  
mend the sentence of death for rape,  
  
50, Ae regards acts of sabotage, generally the ascut saben,  
son relating arson" may be 5008, sews  
  
ficial concept ot constructive, malice has  
  
erent  
oR ata GP aS  
3 Sie 5h a Rs  
  
2S ao cervaion of Seren I. fa Rv, Som (187) 6 Cow 383  
‘The Zi Amie Cs 8 Cd Lae Gist soe es Oo >  
  
‘stone 9) Gane Cer es.  
sent oten wean mie  
  
SSSA anh co, i mt  
ECON ro mG ue, Te  
  
Po ee tS  
  
Shing Taran. Nowland, South Alia, Nonbere Rhodes, and 18  
  
1 Jape an Pipes.  
9 Set ivan raling Co aio, sepcne,pagraph spa.  
  
  
Page 201:  
i  
  
try  
AE  
  
if  
  
ly  
  
im  
  
$22, We have considered the queton whether the  
preaching of sctsay fromthe Unis Tein by let  
stn ald fe tande teas open, We fot ttt his  
ra 'mattr Of peal aarader and wold tee be  
Soper sugete boeton of ths none  
  
590, Some ofthe replies to our question on the abject  
suggest that the emaging of goods shouldbe made 2  
SEES cence \* We aft whale {agrestis Paper  
ifr the eas that tiaclypeadng te snc  
Of death abel (part rm ects th iy estrus  
Tarare wit the ofall and erate of She ara), be ve  
  
ce Ty sed peal of Ss a, be te  
  
ited fran ence Which shows's wal Berar 9)  
Sinn i  
  
SSL. Train robbery and inn wrecking are capital  
tacit in cram eat edna tae heer that  
ieiirtseeaty tg beyond scene" and 9 Taian  
Penal Cade whith safety take" care of the matter  
‘hore dent iestned ea revit ot soc at  
  
532. We proceed to examine whether the offence of  
‘reason, as suggested in some of the replies, requires to be  
sade » capital one.  
  
153. In India, the provision that corresponds to the  
‘offence known as. "treason" in English law is the offence  
ot “weging wat against the Government of India’. The  
‘ain offence ts punishable with deat, and conspiracies  
{ind preparations and other connected offences are punish  
able with varying punishments”.  
  
S94. According to the law of England. death sentence is  
mandatory in all cases of high treason’. ‘The ventence i  
‘She of hanging by the ‘neck Unt such person be dead,  
  
1A io pein eon ar bg gan ode The Ue  
ciel tren) Bey Chae Sa bil Noo os)  
"T'S U. N. Poon on Col Peismen (i), Tae at the  
2) Mainly, cain Sete of USA. (@out 20 Stem.  
“cai 0 Coen 3 Oe sed pre Se Penh  
Section #8, Tada Pea Code,  
4 Stion a0h, 135 33, nda Pent Code  
9 Sin so won ph Cole of Cain Proedre, 1a  
{Tees Ac he Ge Geo 3, © 148 son  
3 Tremon Ae tba, tetion 2  
10 Tremon Adz 1351 GS Biv. 3 86 5 3b  
18 Treen As 179508 Oee.3, © 7h mon  
  
  
  
Page 202:  
Ths sn sn a ging yw  
Tse ninerind ee  
  
586, In England, @ temporary addition to the murder Trae  
‘of capital offences as made in 1040, when the legilasare  
paso the eechery Act, seston of which  
“T. If, with intent to help the enemy, any person  
dons apa cnet Wit any thet Peron  
io", any act which js designed or ikely © ive  
Ssalstance tothe naval: military or ar operations of  
the enemy. to impede such operations of His Male’  
{oteey of to endanger life he sball be, gully of felony  
fd shall on eonvletion sulfer death  
Rausells dzcusion of the Act may be quoted; :—  
“Save in the caze of a prisoner who is eubject to  
the Naval Dicipine Act fo iltary law, orto the Alt  
Force Act, or an enemy alien, persons charged with  
this offence are to be prosecuted open inictgen, and  
AP convicted are to be dealt within Uke manner as  
Bertone corbicted on indctnent for: murder, Dot no  
omen i tobe fated oer hy way  
Proceedings for 2 tral by courtmartal) except  
or With the onset of the"Adiorney General although  
Sey" person may be arrested charged, and remanded  
‘eitbour that consent. ‘The Treachery Aet would seem  
1o'be temporary for by section 6 no person thal be  
oly gham goce ante tha Ae yeaa ot any.  
ing done after such dey as Bis. Majesty may "By  
‘Order in Council declare to be the date on which the  
‘Sevaeey whlch ‘wale octane the pas ot  
is Act tame 4 sn end”  
  
‘The Act has been recently repealed  
  
Sie et  
tions were rewsked on May 9, 108  
  
598. The French Penal Code contains elaborate provi-  
sons regarding treason, which speccally cover dielonte  
of eecrete as  
  
4 Wigs, Ac clang .0 amon wi be found deck within Arbo  
  
ant iesing ce C985), Paogaph SN ro  
  
2 For deal discaion, we Appendix reaing to Hngish tw ree  
  
1 Teeshey Ack 1940 (9 an 4 Geo. 6,6 20.  
  
4 Rossel om Coie (rs), Vo. page 3.  
  
5 Suave Habery, rd Ban, Volo, pugs 365, paragraph toys,  
  
6 See the Cal Law As. 1967 (Ci Sebnle 3, Pet J,  
napa Sopra of neaaney contents?  
  
"7 Cf weston 5, Dfece of Indie at 96,  
pode 75 oo, Preach Penal Cote  
  
  
  
Page 203:  
10  
  
580. The provisions of the Indian Penal Code regarding  
‘waging war are sulficient for practical purposes,  
  
S40. An, overwhelmingly large umber of replies  
‘express satifaction with the pretent. provisions  
  
CHAPTER vit  
DISCRETION OF THE COURT  
Tome No. 31(a)  
  
Replcs to Question No. 4  
  
ont Question No.4 Jn our Questonnaize was at fol  
  
“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 leser sentence of im  
Drisonment for life. the vesting of such discretion  
hecestary’and are the provisions conferring such dise  
fretion working satisfactorily? “If not, have you" any  
‘Suggestion to make In this behalf?”  
  
42, The question’ comprises thrve part; fics whether.  
the veating fe dacreton in the corto award he  
sentence of ‘death of the lesser sentence. ie  
  
Rowever, are connected with one another, and can be  
dealt with together.  
  
39. The repli gceved, on thi quetiont fall under  
thre categories which “rege th existing postion  
4 satstctory, those which express the view that the  
discretion ts Hot being exerelaed’ tn a Proper way. snd,  
Ney ewe hich, hue exresing, “geal aren  
veh ihe pron prong hve mage fugeetons ot  
Seta pol "This group coms mast  
  
the State Governments,» Fi ts, and individual  
Hlph Court Judge who have entropies (9 the Question  
nite’, besides a number of other bodies snd individual.  
  
S544 The ep of the Chief Justice of a High Cour?  
os ef sialon Penal  
  
aes tha dhe ecg  
Gain: when considered’ whty the judicial decbions of the  
Various High Courts, do give sufficient discretion of the  
court to award either the Sentence of death or the lesser  
‘sentence, and that the system is working satisfactorily.  
1 Paap 0), mire  
2 Ti urmcoery to sour thee ete,  
3 Guat Foner af High Came, SNe gre 6S  
  
  
  
Page 204:  
180  
  
546, In the reply of a Member of the State Legislature,  
St has beon stated, hat the discretionary powers are work  
ing satisfactorily, though with a lenient trend.  
  
47, In the reply of another High Court Judge’, it has  
been pointed” out What the vesting. of the discretion Is  
‘ecessary, 40. that punishment sultable to the facts and  
curses “ot ie'ete ean be meted out" The "ply  
ds. that it is on the balance of the particular facts  
‘dreumatances of each case that the question as to which.  
punishment to be avwarded bas to be  
  
548. The reply of another High Court Judget states  
that ever ater the anand af 1855 in beckon 97  
ak ctl Froese,” the aan  
  
ath 4p the nermal punishment cosines,  
GE? the Criminal "Praceduce’ “Code may” be satay  
Smendet! to provide that Tessons should be piven fot  
imposing the Seath penalty:  
  
48. The reply of a Advocate, who hag been a Member  
og Se St a tots, whe tater Seeks,  
Smita Pica Cia hte boeg tno ral aed  
Fe ee eat RE  
EE ane gerd  
Beer Corer he pen one eigh  
ore Coane c  
RUPEES soortie Cou "te he ne nay bees  
See eee earl Mea’, iy ey  
Sultadato essere Ge te, aS  
re tenet erg  
a AEE et  
Patt ae ye ten de te pte tev he  
Beloe se athah atc Reha a sake  
Sg LIE cae solace  
  
1A High Gow Jue, 5. No. 330  
  
2A Member of a Sate Lega, 8. No. 232,  
  
5A High Cou Jus, 8. No 396.  
  
4 High Grae Jug, 8. No. 353.  
  
5 Aa Advort, who has ben a Member of the Lak ith, 8. a. 905,  
6 tare Sambo AIR. 199 Ma 9 102.  
  
  
Page 205:  
381  
‘condemn four persons to death for the murder of one  
  
he ps eh Sopa Ct ste  
gS Suse ns "gure cu  
the te inen, Wahoud be sed here tat what  
See Gate coer ge  
Sr cee BIA anra ae  
ee ae Ree ee  
ERS Sins attain  
  
41, It has been emphasised, In the reply of the Advor  
catecieneral of a ‘Stale thatthe award of deat penaliy  
ust ultimately fest with the Judge who would "decide  
{he case. The ‘avity of the sitvallon, and the deliberate  
aon in whith the ence Ie consitied With nye  
fenusting” creumstances, ete, ar, ite seated,  
1o'be considered while wording the death sontence,  
  
382. Tt has been suggested in the reply of an Advocate,  
who is slo a Member of a State Leper’, thet the  
esting ‘of the discretion is absolutely neccisary,” ond  
hatin every case where the sentence of death ito be  
  
S83. The reply of a very senior Advocate of the Bombay  
High Court Sates thatthe discretion "is both necescary  
bbenedcial "This discretion is the main feature of the  
‘tie Tew relating to "murder" which takes is more  
Sensible, rational and humane than the correspondlt  
Tish law, enabling tne Judge to disrtsinate between goal  
‘Yes of murder. My only comment is that there 1s 8" ten-  
dency to use this discretion much too laviehly “in favour  
of ts Meer enlnc “whic in te ong ran, ty “ake  
n ya dead letior in practice. On the whole,  
‘the provisions conferring the diseretion have - worked.  
salistictorty.”  
  
LE pin recat ese ay  
Pe nr  
  
2 Vales TS of Bako AAR. 9) So  
  
3m avons Gua & Nem  
  
4 Mente 4 Sie aps, 3 Nea  
  
5.8 vey er Abe earn 83  
  
  
  
Page 206:  
182  
  
se Ia the, reply of Member of 4 State Lagiatre,  
‘thas been siated that the provision of diseretion general=  
Jy works in the right directon, excepting in s few cases  
  
585, The reply of a High Court Judge? states that dis-  
creo bas seloetiy fo be elt with the cour, bat one  
‘cannot say that it is working satisfactorily, as, ‘after ‘the  
“imendment of 1980 in section 367, Code of Criminal Proce  
‘ine, 188, courts have become even more erratic in” the  
imiie of chasing Unineen the gute penn” onthe  
‘dhe hand and lesser penalty on the other. ‘The reply pro-  
‘eds to observe that an element of discretion novessa  
Invtves some uncertainty, "but the uncertainy can  
  
juced by re-enact rovisions, not ot  
{ion 902, indian Penal Gods but in other sections  
sections as 306 and 121, Indizn Penal Code) thet the  
Sentence should be compulsory unless the court  
‘special reasons why it may hot be ewarded.  
  
856, The reply of another, High Court Judge? states  
that the responsibility of deciding Between death sen-  
tence and Ife sentence has been discharged by the Jud  
\n India In a human and eorsclentious manner. ‘The re  
however, expresses an aniety as to. the future, stating  
that there {s Weteriration in the qualities of judgment. ia  
  
it se  
  
sf  
Sr mais soma tte  
Eevee ons Brome Surana  
  
£57. The reply of another High Court Judget states  
‘that recently there ig tendency among Seasions fudges to  
find an exc forgiving the leser sentence or for reduc  
ing. the offence,  
  
568, The replies of most of the District and Sessions  
‘Judges ‘expressly ‘state that the present” position ie  
‘working satisfactorily  
  
$80, This is also the view of an association of offcers of  
‘the judicial service.  
  
580. In the reply of # City Civil Court Judge”, it has  
been emphasized that a decision as to sentence depends  
  
Tame e+ San non ty  
Tingtesntet oo cee  
oii eee  
  
s 13S Se oon ns ng Tog  
geet ei cartes Be  
‘Shes362, Su, dee, 970 37K eo  
  
2 ela Se home. 90  
1h Sy et Sa Fae.  
  
  
  
Page 207:  
‘on the facts and circumstances of each case, and that the  
‘Seurt\_would be tho best judge of those fac gad circum  
  
561, A District and Sessions Judge has in his reply  
stated! that, 25 a practising lawyer for more than 25 years,  
hhe had noticed that many Sessions Judges were relactant  
to award the desth sentcnce even for brutal rurders but  
thet on the whole it was described that a Sesions Judge  
must heve'a free hand 'n awarding sentence  
  
S62. Jn the reply of Preideney Mosistates in a Pres  
dency town, it" hat "been pointed: out that chseretion 4s  
hnecessary because the eireumalances under which each  
Individual "oifence of murder ie committed would be  
vastly different, and #o qould be the motives and methods.  
  
melee leper, gaat  
re agains en eet  
‘ita are ce aed a  
bat HS mance oan ath tk  
Sorta een tena ee ed  
Pesan tae ce cena  
  
‘i, 1¢ has also been pointed out" that tho High Court  
has simple’ powers to ste tht the penlty bythe  
tral court fe adequate and to enhance 1t where necesary.  
‘The, Srgument that the siecreon may be alfected by per  
‘onal bias prejudice, iikings and sympothten ha een  
Anliipted in? one of the reper. which takes care to  
hrcrve. that the disereton would not be abused, ‘as the  
Sesire to do justice, expecially in tush serious times, ie  
Inherent in every tadiordual  
  
‘A iia  
28. No an  
  
Chie Jno «High Cons a Jade fh ih Cour areing  
‘win Rept af the See aes Comte, St 8,  
  
44 Sexe Goverment, 8.'Ne. 183  
  
$A See Law Common, So tt.  
  
4 An trpecor General of Pati, 5.0. 13%  
  
4 A'High Court Joie, 8 No.  
  
{VA Member of he Bar Counc of Madr, S.No 4  
4122 Mf of Law  
  
  
  
Page 208:  
104  
  
305. Im the reply of the Judicial Section of the Indian  
fomcers "association in State, the reason for etinng  
discretion is thus stated: —  
  
‘Discretion is necessary, since compession as a  
basie element, even in admainintering Justice should  
fat be lont sigh of" Facts of every “cave present an  
Inotte are that cannot be provided fot except by  
Some latiale Involved in judicla discrelon. By" and  
intge, “provisions conferring diseetion have | worked  
ibfactorly herent inthe nature of the” dae  
reton "that needs‘ bo exerlsed i an Smposnblity  
{0 define more precisely, ov in any set terms,  
Snes premiss on whic ch ducretion should be  
  
508. On the other hand, a small group of replies has  
expressed disatistaetion with the way ia whlch the di:  
cretion is exercised at present.” A Secretary to one State  
‘Government’ hos replfed that often the courte err on the  
side of leniene). 2nd” award the. lesser punishment of  
pritonment for life owing to sentimental reasons.  
  
Another State Government: has, while agresing that the  
present provisions are” working "satisfactorily" en the  
‘whole. ventured to point aut ‘that death. dantence is  
Psp pry rare casa Juans appeat to have, some  
fdtaey™ on this issue that capital punishment should be  
avolded ac far as possible  
  
582. Two High Courts Judgest have stated that thelr  
cexparience is that the diseretion has been exercised on the  
‘hime of the individual judicial officer, and not on any  
Fecognised. principles ‘That the” vetting. of dicretion  
scan lgn element of Duck is 3 point made in. another  
rep  
  
S68, One, argument advanced is hat the\_ vesting. of  
aceon places bath he sean othe aa  
Sora0 Matter of faethe enone aden at mae  
sere eel tel wl ei een ak  
Ponishane Shing he ess severe  
1 nay Quinn «8 Na  
2 Hose Severs Se Comme, 8. 61%  
{Tes Hh Co Fy 8 Mo  
San Almas No.  
4 ah te ony Ip Ned Kn es) 2  
11300 S88 vara a5 Be Se C9) 3  
  
  
  
Page 209:  
howe who have favoured, the continuance of the  
sxisting provisions have also referred to one case where  
the. Supreme Court had to ceticse the lonieney” of the  
Inver agurt., fete lan sated thet’ the vesting of disre:  
jgsinet the spnit of the law, hich sme at equal  
nt for equal offences:  
349. In the reply of a High Court Judge, the position  
has been thts anaivsed:  
  
“where the law ex escribes, for a crime,  
two alternative “pustahment, & aplediy recognises  
‘he existence of dagrees, In the etme, although tech:  
  
Beall the same degrees are’ determined. by  
fhe cigcumstanoes of the case, the state of mind of the  
Stlonder and the quantsm cf moral osligity aie  
Played by the act “The existence of two. alternative  
Penlties "mmust necessitate. vesting of sereion in  
{he court, ao am to cide which of ie two slterneuve  
bends should be imposed in the fasts of particular  
  
1e reply. however, adds that in the Mufasi, courts  
in es Seke she decietion his nt “been aatatastory  
keresed, rid in many caves, the Tigh Court had to. Fe  
Sorte the sentonce of death.  
  
‘570, The reply. of a District and Sessions Judget states  
that though ‘the discretion has to be exercised judielally,  
{nvactusl practice 3 has cen found thet the personal pre-  
ahacons and congo cnt, foil  
tence an the part of the Judge concerned have im  
the exercise of the Judicial discretion. The reply sug-  
ft! Mat ies aller penepen ate vee ee  
{ining to the imposition of capital sentences, the law as  
{dministered” at present canna be avid t0 have achieved  
Be deterrent ob |e  
  
571, A Stote Government’, while stating that discretion  
{necessary and that the existing provisions are Wor  
Souactonly, “has added that" Sbinelination to aw  
‘he death sentence ts prominently” noticed im recent Jude-  
{ments Often the feeling fs that the judge ls bending’ Rim  
Self away from the intevocable sentence of death and,  
  
LE oes aH Co aa og or Tle et  
  
38 Ne,  
BA Hes Coan fates sor guasin, 4.5. Na  
4A, Diz sat Soros Tadgein Maser, 8.0, 346 5 ender  
  
gael  
‘The rol cts two ccs decid. by she Homi ah Cou. Geet  
  
‘Ss ST bear atl fs Capes a he Setzer wn 3  
  
‘Sapo abcie oe ehstee es nating to woul commited the  
  
Bese TRS tence cs he Habis coe" Bom Lew Repoter  
GA Sime Govenmen, §, No, $80  
  
  
  
Page 210:  
188  
  
‘herofore, trying te look out for reasons to award the  
lesser plnishiment”, ‘The reply, ‘further, ‘states that it  
Would be better "if the legislawure stepped im to indicate 9  
‘lear distincuon between eases where death sentence shall  
be awarded and one where it may be awarded.”  
  
‘2. It appears, rom its reply! to other questions, that  
tn the eatery of murders which sil be punishable with  
death (rst dogs murders), st would place "murder of 2  
‘woman after having , commited rape and’ murder of  
children afer crumial aout om thes  
  
578, The third and lst group of replies under thie ques  
tion consits of those who, Sele in favour of retaining the  
fsiking provionn, Nave soggeted. certain, todos  
In deta. "One suggestion tit the aiscreion should be  
spplied accorling tothe Intert views on pepology and  
Pevchiaey"Anther i tothe elect that tere should be  
Bo discretion in cae of heinous or repented murders  
  
S74, Another reply! emphasize that the diserstion can  
be effastve only whet: the judiciary is an “enlightened”  
he. One rept) assumes that the courte have to give the  
esp sentence uns there are clrumstance jury ing  
ihe lose pel a agate thatthe moae of exe  
  
discretion ‘ose change. Another reply would ke  
the dicretion to bo iken away trom Seton Judges  
they have hed not much experience of eriminal WN and  
gests tat whe sentence comes up for confmaion  
Before the High Cour, frcan be relied upon to exercise the  
Shecrton vated in hi opty tes tat he provisions  
conferring. the diseetion on The Session Judges. are Not  
‘working atsfactonty  
  
575. It remains, now, to note a suggestion’ in the other  
‘izecsion, to the effect that discretion should be given 0  
the Court In the caze of offences under erction 308, Indian  
Penal Code also,  
  
16, The view of one Association of Judilal Ofcer® is  
‘that If dioeretion fp vested in the court, there Is siways  
We enncy on he ong idan the bat top  
‘woul be to Suggests thatthe practice  
ma ‘the death sentence,  
  
sentence, and  
that this practice may be codified,  
  
1S. No. so ander auions © ant 304  
  
2A Goermecivtam, Caleta, S.No 130  
  
35.No be  
  
45 No ns  
  
3A bar Comet. Nats,  
  
Bhan Sovak Sana, New Delhi, 5. Na. 1s.  
  
‘alan Feteraion of Won Lawyer, Bons, 8. No 13  
88. No. 373 ey to Qoets 3, 4. $ aad  
  
  
  
Page 211:  
1st  
  
‘A suggestion made by an Advocate! is that  
the vesting sf discretion is Heceasary, records of all death  
Fentences should be compulsorily perused snd exemined by  
@ special Bench of the High Court. Another suggestion  
nade oy am Advocates is thet though the disereuon 5  
Teceseaty, in rueh casey the court should have the help,  
ofa set Of Special jury  
  
‘7H Another suggestion of an Additional Sessions  
Jadge thats provision should be inserted that if the  
‘rial court awards the losoer Punishment, it should be made  
Stal and vocopae of sng enhanced ard termed imo a  
Sentence of deat  
  
Tore Nowagn 31(b)  
How discretion exercised  
  
579, The way in which the discretion ts exercisea by  
the court can be seen from the decided eases"  
  
Torte Nona 33(¢)  
Recommendation regarding diseretion of the Court  
  
880. On a consideration of the replies received to the  
ques'ion ss to Whether discretion of the Court in the matter  
She sentence to be swarded for capital offence should  
be retained, wwe have come to the ‘conclusion thet it is  
necessary to Tetai: this diseretion, and that by and large  
‘iscretion iy exercised saiafactorly, an in” accordance  
swith judicial peinelpies.  
  
58: If the discretion Is to be abolished, the alternatives  
‘sould be, ether to subsite ¢ provision thet the sentence  
SESSA he ae ae Te sane a bs  
the exceptien; or 49 substitute & provision that tmprison-  
tent for life shail be the ordinary sentence and the sen:  
{ence of death shall be the exception. So far as the Bret  
ternative is concerned, me sre not inclined fo agree With  
"Y sush proposal, ‘he amendment at section S6%(0) of  
‘he Code ot Criminal Procedure in 198 has dealt with she  
tnatter In the abeeace of sttong teatone, wo would ot  
Tike to alturh it We know that the question how fat  
tich'a discretion should be conferred os ether the 7  
  
or dury a tater which “ralsed great coctsoversy  
  
Englandt ie fe ot necemary” to consider the varios  
  
1A Advocte, 8. No 410.  
2.An Advocate in West Bena. S.No. 7  
2 Aa Astitoas! Senions Jole, 5. No. 379  
4 See Asis of cases,  
  
oY FRA, BO 1 8 WB ean ase  
  
cutee,  
  
wean,  
  
  
Page 212:  
sep of tht conto gt tor s  
Seles in Bogan.  
  
tetSten te i seniceee would e fo Nery for  
  
The Rayal” Common recommended leaving te  
fon the sur bat the recommendation was Bot  
  
by the | Govertinent: fiom in Tad Ie teres,  
‘The cases of homicide it india are. not so few and far  
ienreen as to jusify any apprehension that the decison  
‘hen to tie Judges, “Moresver, expecenes in india of te  
Shentio he Slee experiance in india of the  
Morty fe, roi far at rare oy sto  
Brocical ticles as to the Durden placed on the Judges  
Tn fact, Sir ohn Besumount, in hi evidence before tw  
oval Commission’, exprensed the view that the alerting  
Eenlience ad worked well to Indi, and ad  
omplained Bat the burden wae eter unl er extaalee  
  
the other hand, the judges have  
‘according to juticiay principles,  
  
In this view of the matter, we do not think that eny  
change im the law is celled for,  
  
  
  
Page 213:  
189  
  
865. We note that some of the replies reveal dissatis-  
{action with the manner in which the discretion is exercis-  
cd, snd thst a view has bean expressed that judges are  
Inclined to be lenient. "We, however, think that since the  
  
Sota judi rele, a  
faction Teterred to above.  
  
‘Toote Nunteen 31(4)  
Lesser senience jor offences under sections 302 ond 308  
  
886 Two points regarding the punishment under se Lower se  
ere  
  
tions 312 and 808, Indian Penal Code, may be discussed here tece  
‘hough they do not directly arise. from the question of sac  
  
rah MOS of She Indian Faderion of Women Lawyer, 8.10.  
3,5 tino eon 3 (a) —eaing wi tn 3s, tn  
hese oy es ret  
  
  
Page 214:  
100  
  
sentenced, for example, under section 304 (culpable homie  
ide), under section $89 (dacoity), seetlons 388 and 580  
“extortion by threat of accusation of an offence of | un-  
‘matural intercourse), mischief by fre (action 488) and  
counterfeiting currency notes (seetion S89A)."Tn all these  
cases, Hf the Sentenced (0. imprisonment for Tite  
‘commits, murder again, the court would (by the terme ot  
section 313) he precluded from considering’ the extenuat-  
ing circumstaneas of the case, with a View to passing the  
lesser sentence  
  
Sets pm cals cg  
Bae Eade Ba  
  
S80. As against these points, it can be argued that where  
4 person has been already sentenced to imprisonment for  
lute St'means that he has been st least ance guilty of @  
serlgs offence, ara in the van majority of cst the com  
‘mission of murder by him would tend to show that be  
is a dangerous criminal who bas net mended his ways  
  
590 We also considered the question whether section  
  
209, Indian Penal Coda, should be confined to cases where  
  
the’ sentence which the offender Is undergoing is one "ia  
  
respect of a capital offence, by adding" the. words "for an  
  
effence for which he could have been gontenced to death  
fer the words “imprisonment for ife™  
  
S21, We have, ower, come othe cancion ta  
fe not acoesery 10 male ‘any changes We fn  
such cases it would be pots to award the sentence ot  
Iprisonment, whieh wider the Gods’ of Criminal Proce:  
diufe! must fun "concurrently Acie cies of hard  
  
ivhere the extenuating circumstances sre everehehsn  
  
thelr intertty, can be Gealt with under section 401, Coe  
nf Geiminal Breese, 1808, and that sere Yo a=  
  
‘Torte Nummer 328)  
Conciderations guiding the dlecretion of the court  
  
See Courts exercise thelr ducretin (a8 0  
the higher or lesser sentence in a capital case) cncecat  
oad principe “ea on mie ep  
{Bia fale meature some ofthe important pine tha ce  
  
fair ean sme rnclce  
taken note of, in this context. pane  
  
“~T Tadinn Penal Cafe Amendment Act, 1875 G7 ef ye)  
  
2 Su tect 977), Cole of Crna Pecan. 1k  
3 Set ans eam  
  
  
  
Page 215:  
ry  
Torte Numman 32(6)  
Replies to Question No. 5  
  
589, Question No. 8 in our Questionnaire was as fal. Qt  
lows  
  
“tf the vesting of such diceretion is necessary, what  
should be the considerations which should weigh with  
‘the court in awarding the lesser punishment of impeit  
sonment for Ife? Ts it possible to codify such consi=  
erations  
  
‘The two parts of the question, named  
the considerations “to "be followed in  
Punishment, nd whether it ig possible to codit¥ puch ‘con.  
‘derations, may be dealt with together. ‘The replies to  
he Question fall under three classes—those against codif-  
cation, those in favour of It and these Suggesting s middle  
course, ie, provisions in certain respects.  
  
504, Most ofthe repli! received on this question have  
expressed the view thatthe considerations Yor award  
{Reeser punishment do not adit of exhaustive, coe  
{ction "Tn'n way consideration of tha fope i iked up  
SEiNSine gestion of the courts dnereton atl fe thet  
Zeason, one reply to this queson points out thatthe field  
st discretion should not be curtaled or widened bys righ  
lassifestion, That codfeation might both widen Sed  
{uN the, dsceten in point which ca, be wlaedatd  
{fom the elaboration made fn anoter teply bien pee  
cit that it is undesable to codify the consideration, be  
‘cuss there may be s case where the death sentence Is pro-  
ed for under such codifeation, but having regard foe  
fetes of he cao, the perselar acaned does ol  
ic 'On the other hand, Ws dangerous also forthe  
State fo attempt such codieation becuse in some cases  
‘where ‘scordlag to such eodientin inte ts'no capi  
iishment, the accused should have been punithed, with  
lath in view “of the exceptional "nature Af the oftense  
‘That reply furher points out that is not. pessale sp  
Spore parisalrly the Ingenio ciate tee  
‘ore particle, thei FY o  
the cirumstanced under which the crime may be comet:  
ted, “that the eoxaiderauons for swarding stones mae  
sven change with ime, isa point rade by 9 retled High  
oure Sudaet" Another” danger of coieaton han teke  
‘oted by 2 High Court, samely, that it might rest in re-  
Surrecting the old view=now’ dlecarded “by ‘Progress  
  
THe i wciwary to cranerse all of them  
2A Migs Coan, 8, Notas  
5. Huai Terie 0 Hh Cot, and Je of « Hah Cont,  
  
4A Resco Jadge of the Bomber High Cas, §. No. $5.  
5A High Cou, 8. No. 163.  
  
hat should be  
varding the lesser  
  
  
  
Page 216:  
92  
  
juidicial opinion —that\_whese both the punishments ate  
provided, the normal rule is to award tle higher pumish-  
ment  
  
505, Cerisin replies, while suggesting that the test of  
intention pene ces etree arenes  
absence of premeditation would be a principal consider  
‘ior. in awarding the lesser sentence’, have faln care to  
stats 'that' tho “considerations cegnot. be codified. And  
have pointed. out that the peinelples have  
{d'dowa by juliet decisions, ut thot, atthe samme  
time. the couserations cannot be coded  
  
505. A State Government has stated that the enume-  
raljon of codification of the considerations would meake the  
cr Vers rigid ia Hs application. Another State Gove  
sin. fg seed that st present considerations af age,  
  
co "Stevinwe condue’, mental conditions, pesmeditatlon,  
intoxdeatiog nd the native of Une crime are the principles  
  
Whien gue "0 neg of dwerotion. These. eonchderatons.  
Sorefieisn sad itis not necsery to eodily therm, 49 Code  
fieatiua tou mesa Iimiting the Gisescionery power  
i, Tho rows o¢ the Chieg Jutiao of a Hizh Court  
who 18 aguinsi wodtitieation, is a8 fllows:—  
wail gettled by Jadlcicl decisions that capital  
  
sentence “cule not be impowd slew Were se pie  
foeditsied coW-bleoded murder Sturders committed  
in the hest of the moment are seldom punished with  
ol Nien alee the ode ha ated oa  
fear tence rg boon iy 2 eulipe murder coe  
miviel in the siurse of the same tennsaetion fer  
Committing other serious offences ke Tope, dacotty,  
an  
  
309, Tho Chief Justice of another High Court” has stated  
dhs he ni consderetions are sex age.” provocation,  
‘hough no! sufictent to reduce the crime to manslaughter,  
absence af premeditation or eruelty or barbarity, motve  
land ether circumstances indicating that the accused ly not  
‘{verson with a selfish, cruel and calculating nature with  
litle’ or no respect for human life. “The reply however  
points out that the mitigating considerations vary im each  
Ease. and are so" infinite in variety that it would not be  
  
1A ar Coan S Na  
4 An ImputorGonea of Poh, SN 13.  
or curls one High Car §.No, 17 and one High Cou ae,  
  
5 ne free of «Hah Ca S.No, 93.  
  
  
Page 217:  
nee, HE BE  
4 alle Hii Fy ye  
Holst ad ap wha al  
fr lie Hugs ERG Sh an  
Haul ue fied ln gy  
Bote Sal Ta Hb dg Me lise  
ffl nlig Uptls t CHET Wa Ga  
aa sey yey ee  
‘, Aail Be aia ie anit  
vit Ge Tel far Gini gt Hes  
  
  
Page 218:  
194  
  
08, A High Court Bar Assocation! has stated that the  
discretion verted in the court waa a wise oh, and the Iw  
‘eed ot be altered because for the Jas 100 years it has  
Worked very satisfactorily. "The reply adda that while the,  
Incr reports are replste withthe considerations which  
weigh With the court in awarding the Tesser\_punishmest,  
iiundeseabe to cody then ay the areion ofthe  
  
ges fe unfette man  
Fiy'of the Presidency Magistrates sn the Presidency Town?  
Esker that there are extremes of munders-—ive extreme  
Stance being & cold blooded murder committed with te  
sont cruelty tr for dastaraly motives (on the one hacd),  
End murder by-2 mother of her child owing to poverty (co  
the thor bald). "These tw. extreme stances “Would  
litstrate the gamut of motives and methods for the com  
Imlasion of the crme: It would be dificult to enumerate or  
Eodify them ‘The discretion “regarding sentence, I  
fated, in being exercined judiciously, and it m not nec.  
Sy to Cody ‘the considerations.  
  
606. The reply of a District Bar Association? states that  
‘each case will have to be considered in its own context aud  
‘Sireummstances, As times change and circumstances vary,  
Sonsivarations will also differ  
  
607. It should be noted thet a very large majority of the  
District and ‘Sessions Judges have expressed themselves  
Swongly ‘tal In very clear terms against coditcation,  
  
603. One of the replies emphasises that human nature  
is 50 complex, that in every case a different set of cir-  
Cumstances ie likely to arise and all of them cannot be  
‘ssleeted and’ codified.  
  
609. Another reply® states that while considerations like  
the gravity of tie, oferce and the motive of the "crime  
‘shoul weigh is awarding the punihment, 1 Would be  
‘ial anh to codify them, and the considera-  
{ions shoud be elastic because ences der in their magni:  
{ode and complexity  
  
10, Several District and Sessions Judges" are of the  
view that as the clrcuratances of mlrdee Vary from ease  
  
1 Rety guess 4 md 5 5. No anh  
2S Nese.  
5 S.No se.  
4 Dance and Sesion des, 8. Non. 36,38, 366367 390,48,  
195 nie Oy a ae anes  
3° Dic od Senoon Toe, 8. No.2  
{6A Dist amt Senna Jae 5. No. 35  
  
75 No gees §, Nose 5: Ne gai Nov 6.9, gre  
SRA ER ESR i TR RE STS SB  
  
  
Page 219:  
195  
  
40 cate, 1 would not be wise to codify the considerations,  
4h one reply’, it is emphasised that itis the “sum total”  
‘of the circumstances that guides the court in awarding  
sentence.  
  
G11, The reply of a very sentor Advocate of the Bombay  
High Court cms to concisely the reasons or  
‘pposing codification “ART extenuating circumstances,  
  
\* ‘of premeditation of  
  
‘Sith as motives far the crime, absence  
previous preparation, provocation, even fallin  
  
grave and sudden". inappropriate circumstances; sess  
Of the situation which ted to the murder, age, 2x, family  
‘hrcumstances, ete, may cumulatively incline the court 10  
take a lenient view.  
  
murder has its own peculiar features which  
Seration”  
  
812. Another difficulty of codification has been thus  
brought outs  
  
“It & rot possible to codify the considerations that  
should Stclgh With the Judge, for othersriae It is no -aseres  
iow a al, Tus judge who i trusted to try such eases must  
bbe trusted to exercise 8 wisely”  
  
615, A small number of replies has, however, stressed  
the desirability of ‘edification. “This category comprises  
toro classes —fret, those Who, while not exprestly  
  
ing codifestion, have stated that che prinaiples should be  
Indicated: and’ secondly, those who regard codification as  
posible  
  
(614, Under the first clas fal the opinions expressed by  
certain High Court Judges\* to the effect that if diseretion  
(in the matter of sentence) is to be left, some principles for  
fhe swercise should be indicated, for example, minority of  
the accused,  
  
538, To the second clas belong several replies which  
inave ventured to sugeest » basis for codifleation. Various  
aes "Sins “been aagested |e, motive and abeence of  
premeditation and tender age},  
  
1A Distt 28 Sens Tae 8. Mo, 296  
2S.Noamt  
FA Aidtional Seine Jaden, in the Sate of Guinea, S.No  
we  
4 Teo High Cour Jasper, S.No. 196  
3 APuader, Mais, S.No r05.  
S-Adminsatin of 8 Union Terery, $. No. 16.  
  
  
Page 220:  
196  
  
suggests thatthe only two considerations  
are that, if the Judge strongly fewis that the accused =  
honest, or, if the past history of the accused shows satie.  
tory eharseter, the lesser punishizent should be award-  
‘ea and that these are the only two considerations for lesser  
Dunlshment. Another reply” statge hat the age, nature  
Lr the ofienoe. circumstance of the offence (se, whether  
1 was committed onthe spur Of the raoment cron excl  
Tent ce” emotional outburst, ete) may be considered.  
‘ne the considerations to be  
  
ey ens  
SRORSEE eae tee Blow  
  
(1) the greatness or smallness of the evil likely to  
result from ‘he et  
  
(2) the facility or aificulty with which it ean be  
committed of with which tan be detected  
  
(3) the frequency of pacity with which act are  
‘commitzed; mt =  
  
(4) the aggravating oF extenuating circumstances  
which sccorapany "this particular sete te, @) the  
‘tim, where women or child ie snvolved, 0) the  
placa” (5 the tie, sed (a) the company.  
  
S17, Ag regards the offender himself, secount should be  
toben, i fe sted, of the following facts —  
  
(a) his age, heslth and sex;  
  
(©) his rank, education, emreer and disposition;  
(6) ie motive:  
  
(2) any temptation of intoxication:  
  
(c) hie sascoptibil  
  
ty to punishment; ard  
  
(8 the eit which the judicial proceedings have  
inflicted on him already. =  
From these consideratens, fivefold classifeaton of  
omen, sated nay Be formed —  
(0 passion; 2) opportunity: (i) seqsiced habit  
(ie) haiti (0) Sonate inet  
  
1 Aa Tasso General of Pace, S.No 16  
41 A Member of he Rai Saba, S. No. 297,  
S.No ua,  
  
  
  
Page 221:  
197  
  
618. Tt remains now to consider replies ing the  
saidde course (provisions incerta reapeets). fas hes  
Been stated! that there Is no insurmountable <ifficaity in  
mating’ = epanie provision teeming the cometeestione  
guile i court's discretion, but that it should be made  
esr thot the enumeration is not exhaustive  
  
619. One reply states a follows": —  
  
“T would not put it as if the exercise of discretion  
should ‘be on" considerations which Weigh with court  
‘im awarding the lescer punishment of imprisotanent for  
life. T would put the other way. ‘The consideras  
tions whieh should weigh ‘with court tn awarding the  
higher punishment of sentence of death would have 10  
‘be Uhodght of and disereton vested sm courts im this  
regard. It must be possible to eodify such considera  
Sona  
  
2). Another reply", while favouring total \_sbotition,  
states, thar if total sbelition is not concedes the extreme  
penaliy should be recorved only for the folowing offence  
  
“(@) Cola-biooded pre-planned murders for sordid  
gin, specially ef children, Women, infirm and old per  
  
(8) After catistying sexual Just, murder of the  
vietim of rape  
() Murder for hastening succession or obtainicg  
riddante from sn uncengenisl spouse:  
  
(2), murder falling under wction 18, svecnd para,  
and tier soll 98, PC e  
  
(©) high teason, passing to the enemy seeret ine  
focmation fe the detiient sf Tadia of otherwise aie  
Ing the enemy of the county;  
  
(0) where tho accused has, taking undue advan-  
tage, scted fea eruch unustal and revolting manner  
shocking to human feelings”  
  
(621. A District and Sessions Judge in the State of  
Maharashira’ has also suggested codification,  
  
1 Lay Sesrtry 10 4 Sate Govemenent §. No. 168  
  
2 AMonter of Sine Legis, hos aos Adv Under gue  
  
2 Unter guetns 5, and 7, 5. Na. 05.  
4A Blewcy amt Semone fatge under ques 4 10 1, 8, No  
  
  
  
Page 222:  
Hig suggestion is this—  
  
se Tink at potion of capital sentence stow  
e made compulasry in certain categories of crimes  
Which fe at present punishable with Seath, The cate:  
cs of crimes indicated ia section 5 of the English  
fomieie ‘Act. 1957 and’ which punishable with  
destn under indian Penel Code way be taken ss offen  
es for whigh sentence of hanging snouid be the capital  
Sentonce."'So far as the vemalhing categories of the  
fences punishable with death under the Indian Petal  
Code are voncerned, certain Uniform principles should  
bbe eid down in the matter of the imposition of the  
sentenve. Whoto the murder ie premeditated cold  
ie and Bal such a here ie fence fl  
‘within the ambit of paragraph —1, or paragra  
ection 300 Indian Peal Code capital Sentee sould  
bbe the normal sentence.  
  
“Where the offence of murder fails within the ambit  
‘of paragraph 3 or ‘300 of Tada,  
Petal Cods, then the lesser sentence should be impos:  
ea”  
  
622 One District and Seslons Judge hag stated that  
the vesting of diserctian ig neoesary, but that the provic  
sion is not working satifactoriy, and that for the exerelse  
cf gration, some bread principe by Way of utrtions  
or illustrative cases may fe appended to the relevant sec-  
tions. The reply, while enumerating some of the conslde-  
ations which usually weigh with the court, takes care to  
‘mphasise that itis not posible to attempt an exhaustive  
‘ettumeration of these considerations  
  
‘622. One District and Sessions Judge has stated’ that  
policy of the Inw can be Iaid down, though en exhaustive  
edification ‘cannot be attempted; the reply gives (0) ex  
treme outh and (i) grave provecation which not sudden  
provocation, a examples of the considerations to be taken,  
Into account. An eminent member of the Bar has also"  
suggested, that while the diseretien should remain unfetter-  
fed it Would be Useful to lay down the general policy of the  
Taw, though the considerations cannot be codified. Anoth  
reply! suggests that in the case of a conviction ‘under see  
‘ion’ 302, Indian Benal Code read with section 34. oF see-  
tion i49, tndlan Penal Code. the normal sentence should be  
‘death, in the absence of extenuating circumstances,  
  
1 Reply to guess 4 and 5, 5 Na. sm,  
2 A Bat Coun, 5. Na. 199  
a. MaMitet Mente ofthe Rar through the Bur Council of adi,  
  
“4A Dit and Sanioes Fuge, Get Sue . No 202  
  
  
Page 223:  
199  
  
(24. The reply of « High Court Judge is 2s follows:—  
  
"The Gonsidecations should bo  
  
Tn murdes case2—  
  
@) where the olfender is under eighteen  
ears of age:  
  
(i) itn offence under the fourth clause  
‘of section 900, Taian Penal Code, when there  
{Was no tatention to commit murder;  
  
(i) the murder, though intentional, hav-  
ing been ‘committed without” premeditation  
fi in the heat of passior, without brutality,  
  
iv) hm. murda, having been, commited  
‘under grave provocation, the provoca  
being both grave and sudden bp aa to reduce  
the offence to culpable Remicide not emount-  
ing fo murders  
  
(1) reasonable doubt as to the sanity of  
the offender, st the time of murder actual  
Insonlty not being proved;  
  
(of) where murder has ben commited By  
more than one persot-—on the person W  
‘oaks prsdiple part in the murder  
  
1 do not aspire to be exhaustive, but theve are the  
few T'can think of at the moment. do not find  
ifieulty in amending the Indien Penal Code  
Igy.”  
  
625, The reply of a member of a State Legislature? sug-  
seats the folowing considerations “s  
  
(@) the circumstances of the murder, if the mur-  
devet tas foveed to Commie the murder,  
  
(6) the nature and character of the murderer, if  
there is enough groun to believe that it was coramit=  
ted only by accident and the murderer will epent and  
prove 10 be 2 goo and peaceful citizen;  
  
(6) the provocation was of nature which could  
not He eoerated  
625. The reply of a Member ofa State Legislative Coun-  
  
eo ag foto — “  
  
“The following considerations, inter alia, should  
weight with the court in awarding the feser’ punish  
sent of imprisonment for Tife—  
  
() Whether the offence was premeditated,  
calclgted. tn cold" blood and of alice afore:  
thought oe deuberate and very hetnour  
  
A High Cow Fu tee. anler quetion =. 8: Ne 316  
3A Member ofa Ste Lege, 8.80.33  
  
vag Mamba 3 ine Letene Canc who ao an Adve  
  
15-122 M of Law  
  
  
  
Page 224:  
200  
  
(b) whether it was a crime of passion, sudden  
ciad Unprowc kil case ot revenge foF deep personal  
Injury 0 one’s prestige, borour and reputation;  
  
(e) offence committed in self-defence;  
  
() ths impact of the sentence onthe depend-  
cents\of the offender  
  
(@) other humanitarian and paychologieal con-  
sidetations, Al these. considerations can be codi-  
fied but with ultimate snalysis Initiative and dis.  
fretion of the Judge and the jury cannot Be com-  
pletely bound and limited.”  
  
622, The reply of a District snd Sessions Judge deals  
with the matter in detail!  
  
hment a ie npsuenen, Sa hat 0  
punishes tapeoosment ba whats» stable  
Eisele within the courts dioecedon which tasty ¢?  
Sourse, be enetcied judicially and not abitzariy 0  
frrelsvent coniderad ‘conduct of the murder:  
  
the nature of the temptation to which he yielded  
Sha Uhe maner in whlch the orme wan commited are  
Some of ths considerations which wil welgh with the  
Sour, Ics not posible to cody these comsiderations  
Godfcation would make the law ‘rigid which not  
SSearable, ‘some of the censieratigns which should  
‘Weigh with the court in awarding the Tosser" panishe  
tment are noted below:  
  
1@) immaturity of mind, ss might be soen in  
youth or persons of Fetarded mental development  
  
(i) degeneracy of mind, ag might be seen in  
cexisime old ago ot in, nearojpathie of psychopathic  
Dormns who ate rot defaitely tsanes  
  
(Ui) unde tntuence of person in authority,  
thowgh not amnting is law to erent  
  
(iv) where theres & doubt as to the sanity ot  
the soelsuh a ue Eine of the oftenes, eal sony  
not Being proved  
  
(oer the murder cummed under  
prosenton which iz grave, though not muddeny oF  
E’faddon though ot grave’ or la nelther  
(et) where the murder wan committed due  
frustration in love; ‘ea °  
(vt) minor degree of participation tn the  
rims where. nconglet knmedge of come  
hon pursode exlated or where the part played i  
ing the crime Ino elect was tina ote,  
  
  
  
Page 225:  
m  
  
(iti) where the murder was committed in =  
  
(ix) murder to avoid some Imaginary mishap  
due tore suporntitious belt auch as witcherait  
  
(x) murder on the spur of the moment on &  
sudden quarrel without pre-meditation;  
  
(si) where the corpus delieti is wanting:  
  
there is no motive disclosed for  
  
guider of & new-born Meghimate child  
i) where considerable "tims has elapeed  
sinc the cine and te order has bekaved el  
Siting thar ine:  
(Gav) where the offender bas voluntary made  
a clean confessor of hi gilt at he earliest oppore  
tunity.”.  
28, Another reply state’ that though itis not posible  
to soi the connierton et the pron ca bo band  
iy sated thie  
  
‘The death sentence be given in cases of —  
(2) murder for ga  
(&) dacoity with murder;  
(©) coo! ealeulating diabolical murders,  
  
Tonic Nosmen 32(0)  
Conclusion regarding codification of considerations  
  
22, Having considered the matter in all ts aspects, we  
Ihave come fo the conclusion thats not posible to ca  
the various considerations which welgh or should weigh  
‘wtih the court in the exercie of the discretion. "There are  
flrcumatances which should never be taken into account,  
but they’ caret be exhaustively enumerated. "These may  
be circumstances whieh, when taken into scoout along  
sigh tbr creansiances, may sumer; bat they cannot be  
Extaustvny enumerated "Exty, there may be eleame  
tinces Which are by themselves suffetewt, But they cannot  
also be exhaustively enumerated  
  
secolog therein rectved to the question on the sb  
ject” also tale the same view.  
  
600, Further, the exercise of the discretion may dé  
‘on Toeat conditions. future developments, evelution of the  
‘moral sense of the corsmuniy, state af erime ata particular  
time or place nnd many other unforseeable feateres. Th  
  
1A Dasict aa Seaiors Jolge, under cvention s, 8. Now ssa,  
  
Conelaion  
  
ia  
  
  
Page 226:  
Agee.  
Sten  
Sieecton,  
  
short, codification of these considerstions may. if attempt-  
fed, be Too wide and too narrow at tbe same time,  
  
21. We do. not, therefore, recommend any chenge  
the lao on sis pot. "A “codieation” which does not Bu:  
por! to be exhaustive, would not be of much value, and a  
Ecincr. “which gare fobe exaustive may be i  
snd give 1s to die  
  
‘Tone Nuwmen 33  
Apprehension about disretion  
  
1682, The apprehension expressed in some of the replies,  
that the leaving of the diserotion to the Court makes the  
‘cual event arbitrary, does not seein to constitute a very  
Strong argument. In the fest place, the diseretion is ex-  
reise. and expected to be exercised judicially, and not on  
whim or eaprice. In the second place, if in a partiewar  
case a miscartiage of justice occurs by reason of the  
Improper exercise of the ducretion, the High Courts would  
flwaye be there to correct such miscarriage, ThidIy, it  
tay be poluted out that even in England the Royal Com  
‘mission did not favour’ the position then existing, under  
hich the sentence of death Was mandatory for murder”  
  
683. As was observed by Lord Halsbury L. ©"  
  
“ase peu  
tne Fe md ef  
soy ene yr ec  
  
Eh Soe ae Sacra or  
isin i core te ote  
LS Seo eas  
  
(634 If, therefore, a discretion isto be left it should be  
4 real and effective discretion, not trammelled by condi.  
tions laid. down for all times, all places, all offences and  
all offenders.  
  
2 Shep, Wael, (1691) AC. 173. 79 GL.  
2 Rosie cae, § Pep ton  
4 ina Rah TR, pe 197.  
  
  
Page 227:  
208  
  
‘cuAPrER VT  
CATEGORIES OF MURDERS  
Tone Nrseen 34(19  
Division of murdzrs—inrodastory  
  
5, We have next ta consider the question whether it 8 Divino  
psi to dive murders tnt diferent categorie. The marine  
"Rion an important ona he movement or abolton ayo  
Gy capital punishment hag induced many person to chink  
St S orm which wou, atlas, Fecuee the huss of  
Saptal murders fo the mmm.  
  
‘Toric Nusearn 3406)  
  
Categories of murder--General discussion, and Homicide  
“er ‘Bet, 1961  
  
636, Several attempts have been made in the past to taroducry,  
sub-divide murder into various degrees, a "to the  
Severity of the act, and to regulate panishment for it. Tt  
‘would be of interest to note these attempts, and to find out  
ether ffs pense to arrive ata Sasfctorysub-ivi-  
  
627, In England, the Royal Commission om Capital 1356 Com-  
Punishment of 1868 suggested the following formula’, for ===m-  
‘fest degree murders", which would be capital:—  
  
(a) All murders deliberately eommutted with ex  
press malice aforethought, such malice to be found as  
2 fact by the Jurys  
  
(b) All murders committed tn or with a view to  
‘he preparation or ssope ater pepatalion or  
Ustompt at perpet ‘any of the following felonies  
“inater, dream, rape, burglary, robbery” of plrsey  
‘The cemaining mursers would be second degree mur  
dete and nonseapital Some legislative proposals were  
introduced after this Report, Bat they dd not become  
  
635, A number of Bills, under the ttle “Murder, Law gat  
Amendment Bil” or "Homicide Law Auvendment BI” te. Bik Sr  
eye teuce an Tt 107 nd oi  
nd. Tt is unnecosary to go iat details, but speakin  
roughly, in most of these vases the test wes deliberate its  
{ention’ of association with ather offences, or murder  
Inthe course of escaping flvin arses of murdering “&  
constable, ete. acting in the ufseharge of his duty  
ops Goch +, een the La Cammiion  
  
gee eit nee My ‘sc Tide Afus oe Deceber 9c,  
  
2 Cited in RAG Repore of 1933, page 470.  
  
9 SR. . Report, pane 4, 7  
  
  
  
Page 228:  
Ey  
29, The Criminel Justice Bill, 1948, a5 sought to be  
  
imi  
TRE" PS amended ny the Governmert amendment may, however,  
  
Pasion  
ne  
  
Soins Ie deta "hie Bik sgl: cntaned  
prof te abaon of desk pena tough  
asec at wld ea ch ¢ pon i ew  
te Fst pase Se Common 18. "The Bi  
Sa ce RST ont tne her Sydney Ser  
Tr, iy gh, move 0m cle Propsng ae  
Apa aptal "Ranh fe, experi  
ecole ie ys In iw sve a eth pray for mae  
der. The clause was approved by th mons, though  
seth te Lara, aa came bck he Coma  
Beretnmtnt theupan theugi fs compromise  
Pecenll i propeet,thHeua of omfnae ough  
{Retry General, Sir firey” Stow crn). Brel  
ih Qiseton propos tien te deh pny  
{Georgie on howtebteing wong of fie  
(oy argay gong one  
fee cvs Gy hemo tee of ove pens cing  
Stee erme cme hy ace o& expec  
SnsMieniseescbtance, pear ndeent sel 6  
feraae and sol and eeeet tele on ain ahd  
meine malaga the ate ye wins  
{Eun of pu obo snes fy Feng  
murder by econ preva conwcted of wardr)- In  
Aha cae, the ara ep adh her te,  
ELSE. trot for ide At as  
tbe Cerna the Hoge of Lond: Lord  
sats, West eunuch ae date  
ote capita ponent Sid be jie iy At  
{Sprott uder” tnd the ec fr wich fhe  
ER eal WOW fn Ss pop wee as  
store wes ete that acted at Geant ie  
SSS as Serene er hn Sm te in,  
os presncdision or degree of al uit Tae ‘Cee  
foweyer et wil src pperion, Sh was decibel  
te inde Coe” at bel a gear od wae  
Sigua Sled ya ole of 9 gana Bm he Rowse  
oan  
  
640, tm some countries in Europe certain forms of inten-  
tional homicide are regarded as more heinous and. punish-  
Ae by death instead of impritonmene for ie Ara Op  
fal example may be cited the law In France. Mu  
Ginesretey ty defined in Article. 299 of the French Ponsl  
(Gods as homicide committed Intentionally.  
  
Se Ee ‘Fret, “Crusade against Capital Punistmens™ (960)  
  
2 Parte Dees Loe Vl 7 ty 2, 194, Calas ro  
soon SNS skate tee Eoin tuene Cnn Bune  
Tele ah mate  
  
2)5te RC. Rept ge 4 an ao ge 47, rar 13 (2.  
  
  
Page 229:  
GAL. Tae Soliowing forms of Intentional homade are  
ppanishable in France by death:  
  
() “Asssssinat"™Musdor committed with premede  
tstion or by"viving in walt (Arteles 208" and 302,  
French Penal Cadet  
  
(i) Marder accompanied by torture or barbarit  
(Acti Sn, Freneh, Benat Code). \*  
  
{iiy Marace preceded, acenmpanied ot followed  
another felony (Rrae ah Frem eal Codes  
  
(is) Murder of a magistrate, public eficer, police  
caicer or person performing some publie duty, ifthe Is  
Ssaulied Ip the evercise of hie du or on the occasion  
fit (Articte 25, Fronch Penal Cade).  
  
(0) "Parviide”—murder of a father, mother ox  
anestion (Avisies 28 and 2, French Penal Code)  
  
(1) Murdets the purpose whereet is wo prepare,  
facilitate or omit a misdemeanour or {0 further the  
(Seip i GPa pital or ago ta hee  
SEmesnoue’ Ariel 308 French ‘Penal Code).  
  
(it) “Poisoning”, (defined se any attempt on the  
ea paon OY can of ay substance which ean  
‘ouse death move or leas quicely, srrespective of the  
Sanne! in whic the substance vas boed radmin  
{ered or the resilt ofits admnistration) (Articles 301  
Ghd‘, Prenoh Pont Code)  
  
642. In several States in the United States of America,  
surder hag boon clasiied into degrees. While the punish.  
iment for “frst degree murder” is death or imprisonment  
{oy life, that for second degree murder is imprisonment for  
lig (sea lesser retiad. tn some cases)” As an examgle, may  
bbe cuoted section 47c1 of the Penal Code of Pennsylvania  
lind." "schich al? tousder ‘which should be perpetrated by  
freay- 3f poisen c7 by tying i wait or by any other kind  
ot witut, ‘deliberate and premeditated “filing oF which  
Shall be commutted in the perpetration of or attempting 0  
perpetente any an, 13 jbarglary, oF kidnap-  
Ding. shat be murder in th> Hest degree.  
  
643. The division of muder Ante ennital and non-capital Canada  
nas been Teeently adapted 1m Canada  
  
G44, In Arica two stat Quoenland and Westem Ave  
Austin -appecr fo have divided. moueder, into degrees  
AUT aR an examples section 210 0 the Westen  
  
usa,  
  
Bae aie, Sr RE Rept le even ot page 43, ae Wut aE ES  
wt ° we  
  
egw te pang 659  
  
  
Page 230:  
‘Australia Criminal Code, which defines wilful murder as  
follows: —  
"218. Rxcept as hereinafter set forth, a person who une  
lawfully kilis another, intending to éause his death or  
that of tome other pefson, fs guilty of wilful murder”  
  
Murder is defined in section 279. Under section 282 (as  
amended by" Act 26 of 1961), in the case of wilful murder,  
the penalty” must be death, while in the case of marder, 1  
Is imprtonment for lie.  
  
445, The scheme of division was considered, but rejected  
after discussion in New Zealand when the Bill whick led  
tb the New Zealand Crimes Act 1961 was under considera:  
  
646 The Royal Commission on Capital Punishment ex  
‘mined thls question! very carefully, and ultimately came  
to the conclusion, that while the introduction of degrees of  
Iurder ia some countries had resulted in limiting the sppll-  
‘cation of capital punishment and had for this reason com:  
‘mended seit fo the public opinion, Yet there were a Bum  
‘er of practical difictlties, and that juries often refused to  
five a Verdict of murder in the first degree even in clear  
Sees and instead velumned a verdict of murder in the  
Second degree\*” The Royal Commission “noted that i  
‘ould be impracticable ‘lass of musders in sehich  
‘lene siietion ot “death penalty is appropriate, and  
fecorde that the great majority of witneties of ll reese  
sions we:e firmly opposed to degrees of murder, a  
‘the tests adopted in other countries, its views were a5  
  
() Premeditations Impulsive killing does not  
ret any ong ess fr mia tan homicide  
Sommitted after genuine internal struggle In response  
(o°r' strong. provocation\* What time should ‘have  
lupsed to bring a ease of premeditation is also a mat-  
{erot controversy, and the. problem where a tine can  
be drawn between premeditation and mere intention  
could not easily be resolved  
  
(il) Categories of murders as contained én the Cri=  
rinat Justice Bill, 4940—The classifeation of murder  
By'categories would produce anomalie, az In the Com-  
promise clause in the Criminal Justice Bill, 188, The  
Trurder of a Prime Minister by fanatic’ may be as  
Strociong as the murder of a pliceran, yet the former  
‘tar excluded and the latter ineluded in the Bill  
  
inl, Paienemry Dobro fe of Remeron,  
  
FRc Reser, pangrap 485534: Condon In puerarh  
  
RE. Repo, paraanh $3, relag poston lo U.S.A  
ERC Repor, purr £6  
ERC Repor, peraaph S1.  
  
  
Page 231:  
om  
  
(i) Provision in the Indian Penal Code-—The  
autora inedn mur and calpble ‘ori,  
{Bien in the Indian Penal Code—(apart from the ex:  
epuons given in section 900) wrested oa a distinction  
Go ple and eine to anne jst erin  
of lability to suffer capital punishment, paticws:l,  
fh England where the Gitingion would ‘have to be  
Spplied by the Jury?  
  
(iv) Intent to Kil—Whethor death resalts trom a  
direce intention to kil or froma welll act of wich  
death is a Probable consequence, should ‘pot make  
‘erences "ety the wild) exponare of Ife to petit  
that consuls "te cre.” Moreover for praca  
‘Purposes one canhot make a distineton between) 2  
nan who Shoots through the bead for ling, () @ man  
‘eho strikes a violenteblow with a sword ad (i) 9  
Tha who, {or some cbject of his own, to stp ralway  
{tain contrives an explosion of gunpowder under the  
Sagike, hoping that "death may not be caused, but  
termined to effect his purpose whether it sso eaused  
  
647. Though the Royal Commission had not favoured the Tye Hom  
division of tmurdee into the Homicide Act, 1897, le Ast  
fadopted different course by providing (in sections 5 and  
  
8) that only certain tourders “shall be capital murders  
  
Under aetna SC) the folowing murders ae” capt  
  
namely —  
  
(a) any murder done in the course of furtherance  
of hett®  
  
sell A09 murder y shooting oF y causing an ex-  
losin  
  
(6) any morder done in the course of for the pur-  
pose of resisting az avoiding or preventing 2 lawful  
Bret or of effecting or aesiating an eseape or rescue  
{tom legal custody:  
  
(a) any cuder of a police officer acting in the  
‘exceution af his duly or of @ person assisting’ police  
‘tise so acting  
  
(2) in the case of a person who was a prisoner et  
tive time when ihe ahd oF Was a party 10 the murder,  
  
TRE Rept, poeaganh  
RG Ror para the comin snr nn of mane  
vs Bat  
  
"The slonot provers of he Humic Act 1957 ase  
any ered by he Mie, et Ase 1s  
  
"san ering ene aco he ening oh exten i cure  
ot eR Fone agg PAIL E,Re nls CA) 2d om ree  
Ste aE Mal Law Rav  
  
  
  
Page 232:  
208  
  
‘cay murder of a prison offcer acting in the execution  
cShis duty or & person Assisting the prison officer so  
ing.  
F wiher, a pteon who after a conviction for murder, is  
gars convleteg ol murder; Is sentenced to death,  
  
Sretion 5(2) contains special provisions dealing with  
gas. whave more than “One” pefson ig “concerned Int  
fromic  
  
643. The various categories may be explained Cate-  
sore (ay. reat to theft seems to have been suggested by  
{he-cintse which was proposed to\be introduced a6 the Gov.  
cian ameniment fo the Criminal Justice Bill 1948 read  
‘with the Schedule thereto, under which, incer alt, 8 mace  
oe conmitte ite courte ofr minedlatly belove. or  
  
Shin coancelon with the commission of the offence  
% obbery. burglars, ele, Was fo be plnishable with  
  
Category () relating to shooting or explosion seoms to  
havo bern sugested by the compromise clause of the ©  
foivct Juste Bil 1948 read with the Schedule. ity  
‘hich relates to explosives and other destructive substances  
  
slang to reiting ares tit have  
seated by the nbosed in the Murder  
Taw (Amendinent) Bu 196" {clause C2]? "Compare also  
the provision fn the compromise clause inthe Criminal Jute  
{ice Bil 1848 on the subjeet®  
  
Catexory (4) relating to murder of a police officer ean  
be traced to the Murder Law (Amendment) Bill, 1877, the  
Homicide Law (Amendment) Bi, 1876 and also, the com-  
promise elaue in the Criminal Justice Bil, 140  
  
Category (c) relating to murder of a prison offcer can  
toe trace t0 the compromise clause in the Criminal Justice  
Bin 1948  
  
(ete, dt have oot be, eyo the Explanatory  
aetserandin tothe Homtelde Bll "Phe Explanation re  
lng ease serely rees the” provisions of the  
‘Sans  
Se aie para 36 ae  
  
2 segonh cr re  
  
SCRE! Reore pass or and ea. ahee ee BL of 8 6  
wee RC. Report, ‘page 479, where the Bill of 1867 is reproduced  
  
3S RG Report paps the oe Io epvodue  
a en ep  
  
  
  
Page 233:  
649. The classification of murder made in the Act canuot Cisisam ot  
bbe regarded as completely above crieism. Certain ise nermn  
methods of mtlucr have been picved “and” chosen, But jt es,  
‘others have been left out, “A person who uses 2 poison, 2 SS  
Keni, or strangulation of other means, to commut a murder  
  
annat be seatenced te death. Murderers can thus “choose  
  
thelr weapons” carefully to avold capital punishment. Por  
  
example, Ruth Ell, hanged in July’ 1968 for shooting her  
  
Ynithless over, would, if ahe had merely used a hatchet end  
committed the offence after "1037, have escaped capital  
Punishment under the new Act\*  
  
‘gate word in he sone of o farina  
fn sean S(D{ay, Homicide Act tay. rate nate  
dlncuit questions "Brutal aitacks oh ‘defenceless young  
fds ana boy nthe course of rape or ober seca fence  
Sou escape the capital sctnee, and has bee tid  
itt asd telecon onthe vl a gu sooty ta we  
sete the tla 'of het a oils eee ros  
theft more highly than the protection of the lives of chi:  
dren and youty women" Lard Goaderd, inhi crust  
othe Boa BAE gold out anomaly Whats surdert  
entecing a house through an open door would not be guilty  
Sf cia cone, wierans Che ho “opened thetdas  
Tk anlnced would have comted” cpt user,  
breae inthe later cae there would be hase breaking  
  
650, It may be useful to discuss here the scheme recently Pia i  
adopted in Canada. Though the Canadian Committee’ did Carade  
hor favour the scugestion to divide murder Into degrees,  
‘and shared the conclusions of the United Kingdom Royal  
Commision on this point, vet, by the amendment to the  
Criminal Code of Canads, which was assented to on the  
sth July. 106, 4 division of murder into capital and non:  
‘capital has been introduted by new section 2028.” Under  
Section 206 of the Criminal Code of Canada, ax amended, ¢  
person who commits “capital” murder, shall be senten  
fo'death, while @ person who commits nomeapital murder,  
Shall be Sentenceg to imprisonment for lite. (A person who  
is unde~ the aye of 16. years, even though he commits a  
apie murdee eto be sentenced only to mprissnment for  
51, Murder fs thus defined in Canadat —  
  
202. Burden in commission of offences—Culpable  
homicide is murder where a person causes the death of  
Sir Roll on Gime Goh Wak pao see > SF  
  
2 Se ehe mee by J. Hal ile ne Aseendla 1a. bet  
  
‘Tarde Chaat Sut Cas Pubes pe fo  
  
‘atamenry Debate Lan Vay ly 20, ae) Cohamon  
rose! PORE EEGs game Cel "Panne gee  
  
“4 Cvatian Repos, ge 19, paragraph 70.  
  
‘Sesion 29 amin Cate of Canin,  
  
  
  
Page 234:  
‘4 human being while committing or attempting to com:  
{nit treason of an offence mentioned in section 82,  
piracy, escape of rescue from prison or leweful cust  
  
Fesisting lawful arrest, rape, Indecent ascaul, fore  
Abduction, robbery, burglary or arson, Whether or nol  
{he person means fo catse death to aay human being,  
  
Inzenton to cause bodily harm.  
  
(a) he means to cause bodily harm for the  
porpore of  
  
(©) facilitating the commission of the  
offence, oF  
i) facilitating his tight after commit  
  
or aftemnping fo font the fence, andthe  
  
‘leath ensues from the bodily harm  
  
Administering overpowering thing.  
  
(@) he, administers stupeving or overpower  
ing thle fora purpose’ mentioned “in paragra  
(G5 Sid"ine aah Snstes'ereten, "PEPE  
  
‘Stopping the breath  
  
(6) ne wilfully stops, by any means the breath  
of a human being Yor a purpose mentioned in parse  
fiaph (al and the death ensues therefrom, of  
  
Using weapon.  
  
(2) he uses a weapon oF has I upon is pe  
  
() during or at the time he commits of  
sttempte to commit the offence, or  
(4) uring or at the time of his Might after  
committing of attempting to "commit  
fftence and the death enue ara conse:  
‘quence  
Gepitcon “Capital murder” is dealt with in section 202A of the  
oleate” Criminal Code af Canada, quoted below:  
“g02A. (2) Murder is capital murder oF non-<apital  
  
murder  
(2) Muréor is capital murder. in respect of any per=  
{it planned and deliberete on the part of  
  
‘such pers  
  
(8) 48 te within section 202, and such person—  
i) by Ris oun act caused? or assisted in  
Ss the oir rr ehh the death  
  
Sexton a2, Criminal Cae wf Cana  
4 Eons ales  
  
  
Page 235:  
a  
  
8) by his own act administered or assist=  
‘sd in admimstering the stupotying ‘or over~  
overing thing from which the death ensued,  
(id) by his own act stopped or assisted  
tu tte of the breath ftom whieh the  
death  
(9) himself used or had upon his person  
the weapon as eansequence of Which the  
‘death ensued. oF  
() counselled or procured another person  
to dg any act mentioned In sub-paragraph (1),  
a) or (al) oF to use any weapon mentioned In  
sub-paragraph (iv), of  
(c) Such person by his own act caused oF  
assisted In eaising the death of  
G) a police effect, police constable, con-  
stable, serif, deputy sherif,sherifs officer or  
‘thet person cinploved for Uo preservation and  
Tamntenance of the public peate, acting in the  
fours of his duties, or  
(i) a werden, deputy, warden, instructor,  
keeper, gaoler. guard br other officer or perma:  
nent emtoves ef a prison, aching in the course  
‘of his duties, or counselled or procured another  
enon to do any aet causing oF assisting In  
using the deat  
(@) All murder other than capital murder Is non  
capital murder”  
  
682, To the Hew Zealand Crimes Act! sections 167 and  
168, the elevation of the crime of culpable homicide into  
murder fas been trade t depend on, two alternative cri  
{eria nome, either the Subjective element (intention to  
Cause death, ‘ete) dealt with in section 167, or, irrespective  
Gf thether tie effender means desth to ehsue or knows  
that death is likely to enue or not, it he means to cause  
fnlevous bodily injury for facilitating commianion of cere  
fain offences, or If be administers any stupetving or over~  
powering thing. or wilfully stops, the breath of any  
for these purposes. “These provisions, however, stand on a  
different footing from the azhemne on which the English Act  
{3 based, because, under the New Zealand provisions, the  
Sentence of death is abolished for murder and, therefore,  
the fling of s ease in one category of the otpor of murder  
pes not make sn difference im the sentence by itself  
  
Tn fac, in the Bill introduced in New Zealand, a scheme  
for divigon of murder into capital and non-capital seems  
{have been embodied, but the scheme was dropped Tater \*  
  
The (New Zetland) Cranes Act, 1961,  
oe spesh ot re J Ry Manan Acooe-Genera, ew Zand  
papietendet Belen Nove Reseeauree” Vol st, Se cater,  
  
  
  
Page 236:  
212  
  
Sgawated 638, The euus es i: swou in the New Zealand Bill is  
quoted below’:  
“107, Calpable homicide is aggravated murder in  
each of tins folowing eases:  
  
2) If te offender means to cause the death of  
the person iled or ang other person and the kill  
ing K plated ang deliberate:  
  
(0) 1 the offender means to cause the death  
oft person killed or ay ‘ther person, oF means  
{0 cause to the person killed or anyother pevson  
Shy bol ingcy that he Knows tobe kat  
fause death, and the act thar causes the Geath fs  
sore for the purpose of—  
  
() facilitating the commission of any other  
(i) facilitating the Sight or avoiding the  
detection ofthe offender upon the commission  
fe atiempted commission of any other rie,  
(Gi resisting lowfat apprehension in res  
St any other comes, mt  
  
4654. (The penalty on goavietion for aggravated murder  
was to bs death ~smnde: classe 172-—subjeet to consideration  
by execucive Couael. and subject to any recommendations  
that maght be mace for the exercise of the Roval prevoga:  
tive of mercy)  
168. Culpable homicide ig murder in each of the fallow-  
ing cases  
(a) 1¢ the offender means to cause the death of the  
peson killed:  
(b) TE the offender means to, cause to the  
lulled any body injury thet is known to the offender  
fp Be kets fo cause death, and is reckless whether  
  
(The penalty for murder was not death, but Tie im  
sonst ‘under clatse 1) me  
  
655. The scheme of division was referred to by  
Mr. Hanan, Attomey General, n his speech -on the fret  
reading of the Crimes Bil, ahd even at that time be hod  
hinted at the arvendment ‘which would be, introduced. on  
the subject, ter ai amusdmeat Tey: oltshing capital  
Dunishreeni for murder! “He explained, that the issue of  
1 See New Zelnd, Home =. Daber Val  
, Sree  
New Zeta, House of Reveematves, Deb  
  
Vos, pie €  
  
  
  
Page 237:  
a3  
  
c=pital punishment was 2 very solemn and controversial,  
fe, ad tee Bul wade an attemp. vo resolve tie iste BY  
  
letibasg she death penaity uot eerudin types oy nudes  
He roscsted so io precedent of the English Ast and. the  
amendments In Canada and pointed Out that the Bill p  
‘ded for categncin erent irom the Enghigh Act. “Und  
ihe preseat Bil the types of inusder singled cut as calling  
‘or the death penalty may briefly be described a olaned  
rmueder, or murder committed. ih association with other  
fmes and, of ecurse murder BY g person who fas "pre-  
‘iously been contieted of murder.” ‘His own views were  
knows an the subject and he Was oppised “to capital  
punishment for murder in any case. “He did not believe  
Bhat ic was posuble te daft a compromise without leaving  
serious Nawe. ‘Tre, clause in the Bill as probably” the  
beat that had ever been attempted, but he did not wish to  
discuss that nos. He could also gee one immediate dle  
culty regarding planned and deliberate murder, A ‘nice  
point would arise in the legal sense as to at what paint  
Fortis « matde  
  
898. In his speech on she second reading of the Bill,  
Me" Hanan dealt sith in detail the Scheme 6! civison. and  
‘polnted out that the clause dealing with aggravated murder  
twas based on the concept that there. were murders which  
shocked the public coniclenee and merited the death ene  
tence, and the elause was intended to embrace such crimes  
It would cover poigonets and robbers, and most cases. of  
‘apevwhere the vielim Was hilled. Tt wae much beter than  
the English previston. which had worked out very bedly  
fn eh Une go, "But he ad ome fundamental  
  
tions. Fire, did not deal with all types of rourders  
for which the people might feel that the death penalty ie  
the appropriate sentence, for example, a murder in 3 ft  
fof resentment of an unwanted child, “or m cruel murder  
committed by a sadist on a eudiden itspulse for the pleasure  
‘Ofeeing his victim suffer and die. Another objection was  
‘hat It would include "merey ialling” in, the aggravated  
fategory and also a planned killing of a deformed ehild by  
its fathers Third, tn many’ cases, le would be dlcult 69  
festablisn “planned” and deliberation. when in fact it had  
been to. Hf the clause became law, injustices as between,  
fone murder and another would creep in, “depending on the  
eidence, the mbility of the prosscutor. or the ability of the  
defence”. Tn America there had been trouble over pre  
meditation. "Fourthly. the clause took into” aecent the  
freumnstances of the murder only and Wgnoved the history  
‘2nd ‘circumstances of the murderer. Factors other than  
Dreameditation tended to foue shalt importance wter the  
  
clause. “It ig not true that the: measure nf 3 matdcrers  
{lll fen the Terath of tinse he had murdev.im contemplay  
Son!" Finally. Bitch Jat. a2 opposed to American vt  
  
Ina alwav sei ts fa  
‘semed to be tom  
neigh &  
  
Against degrees of inurder. "There  
» that the provision in the Honlesde  
aiieow the teattional Tish pattern  
  
  
  
Page 238:  
a4  
  
was a complete faiture. The proposed compromise would  
Not work out im practice, The ehoice was, therefore, be  
tween abolition aed retention’ (He then went on 10 ex  
plain way he favoured aboktion )  
Ms. Marshall, Deputy Prime Minister, defended the  
nthe ll, and. thought that the fear about it  
DSpezation was tot Justiled. ‘Though ie Lavoured Use 1ave  
6 it stood, he Believed that the compromise clause was  
Worksble As \o dalling of an unwanted child. he consie  
dered it unusual for the death penalty to be imposed in  
‘ich eates or im cases of sudden impulse, Ip such cases the  
pressgasivs of mercy was exercised. Ip the case of mercy  
firings, even though they would be planned and deliberate,  
ths isgative ct merey would continue to be exercised  
‘Tho‘compramise wae an attempt to meet the view of those  
Who felt that the present law went too far but who were  
ais) Unhappy shoe abolition. ‘Stability in this branch of  
tive taw was highly desirable, and he oped that the clause  
‘would be generally acceptable  
  
{Me Roster. wif el ain,‘  
posse he Meat alae atl  
ar Rie Se cee tar  
el fe  
Tobie CaF DRe® Sen ee eta  
ed Sa rel aun roe es ee,  
Sila Waele Wan ae  
SNS SPI ann ld, at  
Rony mae orien Saat eee  
Seas amit Oiies Raton wut catl  
Se SR tate ie Seah  
esac oe ake, ence ie” cat  
inc etan ares ert ei te  
atta CEN ole ert ae  
Cae Gt Me Inert Ate  
ra Bens Minis eer Att ere  
AEE ate ati bee a es  
Sahiba einget a Ne Sea  
wrt ay dad "ea peu  
\*Sgmot potential mers here was weakness ery  
Sevier ENTE ie he  
right tive™ mm to Oink  
sea Sze Howe oF Repesentnes, Debs, Val 8, pape  
Ne Fae, Hur enor, Dw, Ye  
Foes, Nowe Revver, De Yo  
  
  
  
Page 239:  
Pry  
  
Ree ed  
ie Ota inetd aa  
Dn eho gag care  
  
Goh, Ms, Manan. (Atiorey Genera in his tater  
speech oppoved the scheme of aggravated murders, an  
sthported "ati es etelecred "tat =  
“inherently impossible to prescribe by Taw a formula that  
ull do juutee™ "There war no proof that capital pecishe  
rent could deter “The statics dia not prove it one way  
‘r the other, and that is what the Attorney-General hed  
falco "stated in 1085 "When introducing "the Bill restoring  
‘capital punishment. "Hanging was t-betbarous perfor  
fnce,” which edifed no one and caused sufering 10" iano:  
cent  
  
62, After a long discussion, the scheme of division  
‘was dropped, and the Bill was amended a0 23 to ‘Temove  
the death pevally for murde=\* The scheme was negetived  
bby’ votes against 9h. In consequonce, ‘eviginal“layse  
Vo relating to "Diminished responsibility" was deleted!  
  
Toric Nuxenwn 34 (e)  
Replies t0 Question 8(e) (b)  
  
183, Question No, 6 in our Questionnaire consisted of Reps to  
‘two parts, and wes as follows! od  
  
(a) Is It possible to divide murders into different  
categories for the purpose of regulating the punish=  
‘ment for murder?  
  
() Is it possible to divide murders into two cate  
  
@) murders punishable with death;  
(0) murders not punishable with death?”,  
Part (a) of this question, it may he noted, deals  
generally with the possibilty of division of murders, while  
Past (o) dea specify wth the dirsion of murders  
Into capital and non-capit  
  
FN Zejiosts Howe of Repro, eben, Val 308 page  
  
2New Zeal, Howe of Repesomaves, Debuts, Vol 328, page  
278d fata  
  
New Zend, Hows of Repaemaves, Debiten Vol 328,  
stn  
  
[pNew Zales, owe of Repesenaines, Debet, Vat 38 pape  
  
Cla, 7 ning Dinnaed rapnsili) wasn wba,  
‘ne sini the peowinnon ta 'the CEng) Hamas AS. ash  
  
16-122 M of Law  
  
  
Page 240:  
Ey  
  
HA, Replies received on this quostion can be classifled  
int thes eouns tts, those wich tke Ge view that  
vison of murders is hoe , thowe whic  
fake the view shat such divisten fs posible, but not Gest  
{ible and thirdly, those which take the view that such  
‘ieion is ‘tele "and have made sugestions as to the  
  
‘scheme of Givsion,  
  
sha hat wo gusts matsp wth  
  
ee ae ester Racceaae part (dots wok arse  
i ee al ee ee  
Scheme of aivition really fas under part (0)  
  
886, The first group comprises the, largest number of  
agp and repent he pion Se theory he  
‘Site ‘Governments, High ‘Courts, High Court Judges,  
Bar‘asssatina Br Cou sd navidue that "have  
sent replies to the Questionnaire. Some of the important  
  
its "made in these replies may be noved. Thus it Res  
Becn pointed: outt, ‘that homicide. has altredy” been  
Givided "inte different catagories under bections 32, 208  
find SU4A, Indian Penal Code, for the purpose of regulat-  
{ng the punishment. There are ether exceptions provided  
In'the Code, under which homicide maybe completely  
Jlstifabie nthe. circumstances of 2. particular’ case  
‘lence « further division is not required).  
  
G67, Most High Court Judges are epposed to any dive  
siom of murders into capital and non-eapital, and tre of  
the view thst sich s division (nelther’ powelbe nor  
Sesirabe.  
  
Most District and Sessions Judgest are opposed to any  
acheme of division of murder, i  
  
688, One of the State Governments\* has pointed out  
batt alia impoaiieYoenumerate” Che. varus  
types of murcets in respect of which capital ent  
inp be retained, ‘There e always a chance. of a” certain  
Category’ of murders being left out without much Justit-  
ation, trom the eateyory gf those for whch capital punish-  
iment” may be retained. This, 19 stated, is ay adaitional  
Teason for retaining capital punishment for murders punish-  
‘ble undec section S02 in the entirety, without making any  
Gistinction between one type of mitrder sad another’ for  
the imposition of sentence  
  
Te unmensey vo emumerne of thew,  
2 A High Court Joie, S.No 17  
2 Mleh Gout fates, S. Nos. 233,251, 36,347.28 4, 396  
Diarict nd Senions Judge 8, Not 25367. 972 374 376 77.  
ooh BETS he aks in gio ic Basa a a  
4 A Soe Government. So. 153  
  
  
  
Page 241:  
an  
  
660, The Judicial Section of the Indian OMfcers Assoc  
ation ia'e State has, while opposing the division of  
tmorder stated as follows: —  
  
“Categories... can only be based on, motives or  
circumstances, Te exiting law permits the mouves  
see tet chaired ad ovate for  
the purpose of exercising’ aiseretion in regard. to  
Dunghmect. ‘To categorise murders on the basis. of  
Riotves “would almost require on impossible task Of  
Judging cridence to fing aut whether they are of the  
eetggofes aid down, Buch categorisation would ine  
frodove an undesirable element of vagueness, igiy,  
EEsetal Interpretations, ete  
  
ext nett neni eon  
got tetera ey Se  
the sakes of the inden Bez Coe as been sic over  
Sgeedchtarant nou Sth tates  
Peter heen ee ee  
meee ort eae acetal geen  
Sane oar eh atin aS  
  
the hearing stage, ites of evidence wil be led to show  
‘hat though the cate is one of murder, yet it not a capital  
‘murder. This i ls tated, wi confuse the ise a seein  
  
671, We may, under this group, refer to the argument  
put forth in ihe reply of a Government oer’ That  
feply states that while tis never to aivide any-  
{ing into separate categories the division of the offence  
fof miurder would not be desirable. The easedew in this  
Eontext, itl pointed out has developed on clear-cut lines  
[and continues 29 to develop. ‘The seheme of the. Indian  
Renal Cade, whereunder culpable. homicide is frst. de-  
fined, then iets lsd down 3s to when culpable homicide  
{s murder and, lastly, certain exceptions are Tail down.  
‘hich take the flee back within the fold of culpable  
hhomicide. has been tried in the country for over a century.  
‘The doubt points have been clarified by case-iaw to  
ich ‘an extent ar to make the scheme well-nigh fol  
‘The carefaw can be trusted to give good and safe gui  
  
2A High Gout, 8. No. ty  
se2 Ag emines member he Ba, sag be Bar Cote  
4A Dar Coan ag au repli he sme ee, S. NO 136.  
Chie Tae of «High Court an x Joe the High Cow, So,  
  
1 Law Serer 10 2 State Goresmens, SNe 3,  
  
  
  
Page 242:  
a8  
  
to the judiciary in determining whether an offence, is  
‘Murder, culpable homicide of a lesser offence. The law  
Takd down in clear and precise terms In exw Govinda:  
{il holds good. Tf this system i disturbed, confusion will  
Become the ardar of the da). Hence, the best course Would  
be to let murder remain murder. and (o leave the severity  
‘of the punishment to be desided by the court in accord=  
fance lth the principles, “(Phe peiaiples, the reply goes  
fon to state, should be atated seh greater clarity}.  
  
572, A State Government? has pointed out, that the  
variety of circumstances cannot ‘be tally envisaged and  
‘stegried.  
  
63. Another State Government? has stated, that while  
it may be possible to codify the situations and offences in  
respect of which the death penalty ought to be mando-  
{ory or diserotionary, in practice Ht will be very difflentt  
of application.  
  
O74. It has been stated in the reply of seversl District  
‘and Sessions Judges! that it will not be possible to divide  
‘murders inte capital and non-eapital  
  
615. The majority of the Presidency Magistrates ia a  
Presidency Tow are of the view that & division of more  
ders ‘would amount 1 hampering the discretion of the  
ours who have Deen exersing their aceon :X the  
‘matter of punishment in‘s judicious and appropriate men-  
ber. “After al the criteria for such a division would be  
fither the twethod or the motivo af murder. and. both  
‘would, in the ultimste anelysis, be the very criteria which  
Wil determine the sentence to be awarded even if Here  
Aare no two categories of murder”  
  
76. The second group of replies, under this question  
4s 4 ‘all ene, which ade thatthe vain of made 88  
Enviznged may bo posite, but not denne  
  
‘Several replies fall in this group\*>-  
  
Bers Gwinde HR. + Bam, 3a  
  
28M se  
  
3S.No sto  
  
S.No, g00 5 S.No. 58 No say 5S. No.8  
58. No on  
  
4 he tat Pern of Wome Lame, 8. Na 98  
5 he Atsreue (0.5) Boman 1,5. Now 89 a 13  
B.A Hin Cou fudge. 8. o\_399  
  
A sty scion vac of he Bombay ih Core, , Na. 388  
1A Menor a¢ a Suse Lopate, 8 8, 4p  
  
1 Law Minne of « Sa, S.No 353,  
  
  
  
Page 243:  
ay  
  
G77. This brings us ‘0 the third group, namely, those  
‘who consider that the division of murder into categories  
It possible, and have suggested an actual scheme of lassi~  
esting. Tt Ss mot newsvare t9 summarise exch and every  
epi on thie point But the repliee mostly seer t0 fall  
Iitily ‘under "the categories detailed below:  
(Replies suggesting adoption of the Homicide Act  
  
Certain replies have suggested that leplslation on the  
es‘ the" Bogan) Homise"Act 10 maybe Ino.  
(ced india  
  
(4) Replies suggesting exhaustive echeme  
  
‘An exhoustive scheme of categorisation of murders  
{nto capital and non-capital has been suggested in one of  
‘he tepliet! ‘Phat scheme Is az follows =  
(8) For offences under sectior: 33, Indian Penal  
Code, death sentence may be obligatory:  
  
(b) For offences under section 307, second para  
graph Indian, "Penal Code, sentence of death should  
fnot be made obligatory when any hurt is\_ caused.  
Further, the previous sentence of Imprisonment fo!  
life should have been for committing & murder;  
  
(©) Death sentersce may be retained for offences  
‘under ‘seelicn 121, 182, 191 second yert, Indien Penal  
(@) Death sentence may be retained for the fol-  
lowing cases of murder Under section 22, and abet-  
  
‘ment of ‘murder punishable with desth:—  
  
() Murder of 8 womsn after committing  
rapeon he:  
  
4) Murder $n course of oF in furtherance of  
thett: robbery oF dacoity of psapety:  
  
il) Murder done in course of or for the pur-  
pose of resisting or avolding oF preventing lawful  
Brrest or of effecting of assisting escape OF rescue  
rom lawful custody:  
  
{) Murder of Public OMe acting ithe  
exertion of his duties oF of person ssssting  
Public Omeer so acting:  
  
(8) Murder of more than one person fn course  
of same transaction;  
  
TA High Cour Sud, S.No. 105  
1 (Reader ia Conia Law) ander eps to que  
1A igh Cow) under quetion f 8. No. 36  
  
Sisco sete tbe he pain he Maer (i  
sich BEN Pons he \* ae  
  
3 Sew Law Conn 5:10  
  
Sater  
  
  
  
Page 244:  
20  
  
(oi) Murder by shooting or causing an ex  
loan og by deutertely gruesome act of (or  
fure or dismemberirg;  
  
(vl) Murder by a person who has been once  
‘convicted of murder aad sentenced to imprison  
  
‘ment for life  
‘According to this reply, dere are oo speci rensons  
for generally’ prescribing des ih sentence for murder of &  
  
person ander 12 years, of for murder of a woman or &  
erson Under 18 years’ of age for depriving them  
‘Property on thelr Person. Purther, the reply states, police  
fficers or prison officer should net be distinguished from  
ther pubble oftees)  
  
‘678, A somewhat similar reply has been received from  
one officer’, vely  
  
679, The voply of a High Court Judge? is\_that the  
normal rule for exercising the dlucretion in fspect of  
entonce ahodid be, that unleot here are aggravating c=  
Sumatances hike the enormity of the erime, the sentence  
f'deeth sbould not be impdsed. Further, if the normal  
File so suggested la adopted murders should be 80, divided,  
fad, i that ces murders punishable with death would  
‘ecto only wich are atndant with aggravating i  
aig col loded and’ presedated” accompanied wih  
ca sds aceomper  
Unnotemary brutally, ete, or munders by life convict  
ee Sent with mer ande set 3, nan Boa  
  
600, The reply of the Law Minister of a State? is that  
it ie possible to divide murders into categories, and that  
atdt ueder ectone ich iB $e 10 and 3 indian  
‘Penal Code, may be included in the categories of murders  
[punishable with death. ‘The reply states that the normal  
Sentence for misder should be smprisonment for life, and  
itshould be # ating circumstances only that the court  
should award: the death sentence. The aggravating cit.  
Ctietances, its stated should be  
  
i) detberste vik  
  
(3) use of lethal wespors;  
  
(Gil) wanton cruelty and malignity;  
  
(Ge) treachery:  
  
(9) nature of inj  
‘Save Coveenaant 5 Nos  
  
3S. No. 97 (A Hgh Cour Jotge, ser Guetiony a 6  
ge Miner of Se) wer ron 70) mt 70 Ne  
  
  
  
Page 245:  
2  
  
(ot) motives  
vil) (murder of) a publi servant in dlscher  
ot aay and ) 8 publ servant ee  
  
‘i (murder) in course of jail bresking  
  
681, Some Members of State Legislatures have suggest-  
‘ed schemes of division. ‘Thus, it has been su ‘that  
fm murders punishable with death should be included  
‘murders for gain and planned murders with conspiracy.  
  
652. The reply of another Member of State Legislature?  
is that the division of murders into eapltal and mon-capital  
‘may be made on the following lives, that is tp say  
  
(a) the circumstances of the murder, if the mure  
deres was freed to commit the murder;  
  
(®) nature and character of the murder, if there  
enough ground to believe that the murder was an  
ficcdent and tho murdecer will repent and prove to  
fea good ard peaceful citizen; and  
  
(6) the provoestion being of a nature which could  
not be tolerated.  
  
(The intention seems to be that these eases should be non-  
capital,  
  
623. The suggestion of another Member of a State  
Legislature! a that murders may be divided into catego.  
Hes, and premeditated murders and group murders, and  
icity cmbired with “murder, should be punishable  
  
24, Another suggestion is that murders committed  
‘out of provocation eaused by some moral snliction on the  
Thuweuer OF persons ear and dear to hiro, oF murders  
‘united ip edetece ute sve his family members  
for to save, his a ‘on-eapital, and other  
hurdess Should be punlshoble with death  
  
685, Some District and Sessions Judges have suggested  
fa scheme of division, Thus, one suggestion” ie that mute  
‘hers of heinous character and murcers committed after  
‘lsnang and cold ealeulations should be ieluded in the  
Ectegory of capital murders.  
  
T Mamie of Sere Laghlave Anembl, 8, Na. 235  
Tensions 5 and 6 Momber of 4 Stae Legis, 8. Ne  
  
 Menber of Sure Leghlaur, S.No. 28  
4 Member of Sone Lagire, eter quvinns and 6, S.No,  
5 A Dittet2n4 Seon Jude, 8. No 38  
  
  
  
Page 246:  
mm  
  
606, "The suggestion of a District and Sessions. Judge!  
4s thot the principle lid'dowa in the Homicide Act! my  
te followed: but te move cotogory may be added, name:  
1p, where murder has been somtniied by a murderer sat  
fed to life imprisonment, Kt should be 4 capital murder,  
  
681, The of another District and Sessions  
‘the four classes of murder mentioned in  
  
() cases under section 300, frst clause, because  
ig aly bral and batbarois to rsentloally il  
another;  
  
() fo murder under the second, third and fourth  
  
clauses of section 300, where the injuries caused are  
Brutal or the action is highly repugnant  
  
In other cases, the sentence of imprisonment for life should  
be Imposed,  
  
623. Many other suggestions for division have been  
received, for example, that heinous, cold-blooded, conspi-  
fatorial murders for some selfish wrongful gain, should  
be capital murders  
  
i) Replies emphasising partite types of murdere  
ssh reference to etme of cunatin teh her  
  
9. Another suggestion’ ‘s that murders punishable  
with death would inelude dacolty with murder, rape with  
‘ger death caused by arson,” murder of women ‘and  
  
629, Another suggestion’ is that murders punishable  
with, death would “include premeditated and “deliberate  
Inder, murder by fre-arm® and poisoning. and murder  
‘of more than one person. but tnfanticde should be exclude  
ca Knother veply would Include offences under sections  
381, 182, 902, 509" and 86, Indian Penal Code, under the  
atogory of éapltal offences  
  
1S. Nea  
2 The Homie Ac. 957  
  
51 Dire and Sesans Judge S.No 325.  
4 An ect, S.No gt  
  
S.No Bt  
  
64 Bac Coal Noon  
  
178 Disc Bar Ascinin, S.No. 125  
  
  
Page 247:  
ws  
  
1, One reply" sugges stm  
oy olumtary murder wilh evil motive, Cl)  
anurder" through negligence, ii) murder for self defence,  
‘nd (iv) murder under provocation.  
  
‘Another suggestion’ is that, if the death penalty is  
to be retsined at all, only murders under the following  
categories ahould be’ punishable with death:—  
  
(a) murders committed, brutally without any  
motive whatever By persone having sadistie nomic  
tendencies;  
  
(b) murders committed in cold blood and brutally  
with 2 view to personal gain er connected with robbery  
OF dacoity:  
  
() other cases of murders in furtherance of ven=  
nce or spite of family feuds oF deep rooted plans 10  
lls person.  
  
492, One State Government® has suggested thot the fol  
lowing should be non-capital murders hot punishable with  
oath, and that other murders should be expital murders  
Dumishabie with death or imprisonment for life. The suge  
erted tcheme. is briefly as follows —  
  
(CNon-eapital murders as suggested in the reply  
  
(), murders committed fn the heat of passion  
and shthout premeditation by normally Taw abide  
ing persons;  
  
(i) Telling in pursuance of suicide pact;  
  
i) morey Killing:  
  
4v) and the life).  
  
604 It has slso been suggested that, for a conviction  
under” stetlor 302, read with section $4 or section 302 read  
‘with section 149, Indian Penal Code, and for eases where  
Imirder is sorted to for the sake of robbery oF dacoity oF  
Tape or allied sex offences, snvarably the sentence should  
bee she capita! sentence. and for offences ursder sections £08,  
‘is, oF and 386, the minimum sentence should be eaptal  
sentences  
Gv) Wilful or pre-meditated murders  
  
04, tn several replies, the test for imposing the death  
sentence has been suggested as “wilful” murder or “rten-  
ional” murder; or premeditation” “in many other  
  
1 An tapaoor General 6 absn, SNe 388  
  
25 No ate  
  
2A Sime Goverment, S.No. 129, ander quai 6  
  
{1A Distt and Seon Joe, Gna. No 27.  
  
A Pade Madr S.NO Tog and an Ieper Genera of Poise  
shoe “  
  
  
  
Page 248:  
Evy  
  
replies, premeditation along with other elements has been  
asthe basis for division, Sena  
  
25, One reply\* suggests that categories of murder can  
be made, ard under mniets ‘with death should  
fr preslanned and welltbought out brutal murders,  
  
606. An additional Sessions Judge in the State of  
Maharachtra? hae stated that section 304 of the Indian,  
Penal Code is enacted in the direction of division of mit=  
der, and has given this suggestion —  
  
turing daeoity premeditated, epl-blooded’arder  
wall be inthe fra category. Others should be iat  
{o'the discretion of the coutt=  
  
(©) Crassifeation otherwiee than on the tines of death  
  
Sentence  
  
GN. One reply suggests that murders should be divide  
ce into (2) murders. punishable with Imprisonment il  
cerection ts achieved, and (®) murders punishable with  
imprsonment for ite  
  
(ci) Suggestions for further investigation  
  
(08, A retired High Court Judge has? suggested that  
such dvi of murders fs plies and tt Eoveremnent  
Should sppoint a committee to study the subject and con  
ld" the Ghanges made in various countries on tis pant  
  
(eit) Suggestion of the Bar Association of India  
  
600, The reply of the Bar Association of Indiat has also  
dealt with this poi. The acheme suggested by ft conte:  
plates that the Imposition of the sentence of death should,  
(co far as murders are. concerned), be confined 40. pre-  
meditated murders, murders in the course of dacolty, Pre=  
‘meditated murders under section 803, and attempt’ to  
murder by hfe conviet”  
  
‘Torte Nunesen 34 (D)  
Categories suggested in the various replies considered.  
  
Caczvies in 100, We may consider whether au of the suggestions  
JEEP. for division of murdera can be adopted usefaly,  
Sega, P< ——\_\_\_\_\_\_\_\_  
  
1 Fie Bw Avscinin of tna, S.No 1  
  
A Dens ed Senos Jaige S.No 2h,  
  
35.Mo a,  
  
41 Aa Jape General of Pons, S.No 13  
  
5 A'Rotred Tadge of the Bomay High Court S.No. 95  
  
6 Rep of the Bar Amocitan af Indi, 5. No 83, ender questions,  
  
sel Sih! guestion 9 “San.  
  
  
Page 249:  
701, Some of the replies suggest a division more or less  
ssumilar to tat embodied in the Homicide Act, 1957, which  
ihas already been dealt sith". Others suggest their own  
self-contained schemes for particular kinds. of murders,  
‘Of these, some emphasise the element of premeditation or  
brutality. “We deal with pre-meditaton separately”.  
  
700, Some replies emphasise the element of etseciation  
swith another chime, for example rape, thet, fobbery oF  
sci "whle we cmb these hme song wih  
Spedal” provisions regarding murder of publle servants,  
‘harder by shooting of explasion or torture. repeated mur:  
sted teenie tat "alt ise suggest ate  
‘pen ‘tothe general objection, namely. that marder ie  
Emples crice senpriseg so many element, ond mot  
rhe tae pena wept the lke "Thee  
  
fer the higher venaliy, neglecting os  
Tags the rak'of cert ategotes of murder being loft  
Gut fom the one or the other clase” We cannot also ever.  
fom the other danger hat tce ff Rnown tothe eriminal  
Inint that cream Syper of murders cmos be” punted  
{ith death the moriber of ch murders wl perease, amd  
‘forts will be made atthe tal 10 show thatthe cae als  
“nger the category of non-capital musder ‘True that  
hove i's futur dente to fet, au aggravated murder,  
IRs ta heck the pie cnc he eunen f  
the eruller modes of ling dn the calegory a  
Iurdes can be eaily unertood the result of such  
Tene." Aqui, the reed for proweting ofcers concern  
‘wih the maintenance of lew land order, which er 8 toe  
Trot of the propo that would treat the ruder of such  
‘Beer as nggriveted murder te vious, Next the Smo:  
cuon of murder\_with another serious crime may, tis  
Sindertandatie,futify the higher porihmen, not onl  
‘Gh conidereior of ficient enforcement of the etiminal  
{aw but algo as manifesting soll abhorrence ofthe motive  
In'such cases  
  
709. But the fundamental objection still remains,  
namely, that the infinite "variety of subjective as well a=  
bbjective elements,—the History of the offender, the clr  
‘cumstances of the offence, the motive ‘with which the  
‘offence ‘was committed, the elteumstances in which the  
‘etm wa placed and the ke “cannot be compressed inte  
fone single formula. "To give undue importance to one and  
{© neglost the others would moan injustice, anomaly and  
TNertship in practice? There might also be a yawning gar  
In the categories when a situation oceurs In real life, whlch  
4s not covered by the category of aggravated tmurder, and  
  
1 Soe pararaphs t—am, rs  
  
2 Sw disasion relating to remediation ec, parguehs 706 716  
  
3 Seago dunn roping ueions 42 5, pargrabs so—sts,  
he" ne  
  
  
  
Page 250:  
Cnet  
  
‘se  
  
Premati  
  
28  
  
the law will be brought snto disrepute. ‘The classification  
‘might cover sftustions which should mot be covered, ot  
‘might lenve ur-covered situations which should be covered.  
‘The former can, to some extent, be rected by the exercise  
fhe reopative of mere, ut the Iter connol be rect  
fied, except by an amendment of the law.  
  
‘Toric Nuun 35  
  
Conclusion as to categories of murders  
  
104. The real aifculty is that there are not, in fact  
two classes of murder, but'a variety of offences  
‘gy gles arte Peele tothemeat sxc”  
‘Many factors have to be taken into corsileration, and not  
infrequently, a careful balancing of conficing. considera  
tong has to be wndertaken. "No amount of “verbal dexte-  
Hig! inthe dofiition of the offence or of degrees of the  
Sntnce can surmount these difheulies. However atrocious  
for dangerous maybe the generality of marders comprised  
fn a selected ‘ategory, murders will occur from time to  
{ime which fall within the category, but are so different  
fn'character and clrcumstances “from the generality of  
under belonging f the ctegary that they carnat  
erly be elaaed ab murder of the aggravated category”  
  
105, Hence, the best course would be not to interfere  
with the discretion of the Courts ad with the scheme of  
‘murder and culpable homicide as defined in the Indian  
Penal Code and ag interpreted by Courts. ‘The scheme 1  
both logieal and cleat, amd has bees im operation for over  
a eentiry veithout causing any serious auicalty,  
  
‘Tome Nenenee 38  
Premeditation  
  
700. Whenever the question of minimising the cases of  
penal of ath comme up, a pleuibletest—premediatan—  
Frggests tsell to the mind Ik teeme natural  
  
th if'a marder is premeditated) the ‘sentence ef death  
‘would fe justifed, and otherwise it would not be. The  
{est has, to sotne extent, beon adopted in some States In  
‘America as a basis for the sentence of death in case of  
iad, sitar elt or comncton th el -  
ments.” Atypical “example isthe statute establishing  
Gegrees of murder, enacted in 1794 in Pennsylvania, under  
‘witch all murders which shal be perpetrated by means of  
Bekon or oy fving Inwat of by any otha ig of wif  
jeliberate and premeditated kiting or which shall be come  
Inited in the perpetration of, oF sttempt to perpetrate  
  
gy, pt at 17 PATA 49K cng the view the  
  
Je G Repent ae \*  
etige Slegelee gen he Commis fe, Jae  
  
  
Page 251:  
a  
  
‘ison, rape, robbery or burglary, shall be deemed “murders  
‘atthe frst degree!” (attracting the death penalty),  
  
47, This classiscaton—deliberate and \_ premeditated  
suiting a a fat degree murder-chas been adopted In et  
fain viher States of Ameren, with or without variation  
‘Ths, in Maseachusetta “fast degree “minder includes  
dor commitiea with deiberstaly premeitated aaice  
gfertiousht ce with extreme stro or ras or “in  
the commission or attempted commission of crime oF  
{or Example, Francesmurder committed with \*premedit  
tion‘ iving fn walt” fe punishable with death Magtead af  
Impeisoamen for life“ Again, in’ some courties of  
Europe" which have abolished the death penalty. pe  
feonment for life may be awarded for ceeain forms of inte  
{ional homicide ifthe offender sctad with premeditation  
‘orit he committed homie i erdet to fle or concent  
Shother crime, etc. while lesser punishment is awarded  
in‘otver cncee. In Englands in 10604 Royal Commision  
wos appointed to engive into the provisions ‘end’ operae  
tion “Of we under" which. the punihiment “of death  
Wes jnfictod, ete” That Commission recommended the  
division of murder into two degrecs on the model adoptea  
in certain States in the United Staten, and suggested that  
the punishment of death ahold be retained for all mur=  
ders delereely commitied with express malice fore:  
‘thought and for al'murders committed In or with a ew  
‘to perpetration ele. of certain felonies  
  
708, Judicial decisions in the majority of the States in  
‘America, however, appear to have’ whittled down the  
‘mearing’of “premeditation” im this context, s0 thay isl  
  
stance, intention "to kill is now sufleient to constitute  
‘murder in the first degree. ‘Actual deliberation and long  
  
"Te sn ut RE Rp pr  
2 wor ue my sums Agee Cen  
SoG ERee Ghee es thes Ate Come  
GES ES  
Dec Re ei ena 9:  
  
1TH Fes provion gated in RG Repo, te  
  
1 Se somamars in RC. Report page 18, pawerah 513  
  
are  
  
6 Sete prone in Noreay, Sodio. and Swat. ced in R.C  
Repos pare  
  
17 See RC. Repor, page 16, pra 4  
  
ex def hin pop ne Rep, ps a 47  
apd Dees of ures ibe de tne Reg ea  
Tie Spe ae a  
  
  
  
Page 252:  
wedilation are unnecessary, so long as there was time  
however short) tor these processes toceare  
  
109, 1k will be sufficient to refer to the discussion sn  
what ip regarded as the leading ease on the Pennsylvania  
atte  
  
“The intention to kill is the essence of the offence  
Therefore, an intention to kill exists, if wiluly it  
‘his intention be accompanied by such circumstances a  
cvidence of «mind fully conscious of Its own purpose  
land design, it is deliberate" and if suiclent time be  
Sfforded io erable the mind fully to frame the drt  
  
{o lall and to select the instrament, cr to frame the  
  
plan t6 carry this design into execution, i ie premedi  
{ated ‘The Law fixes Upon no’ time Bs neces:  
sry to form the intention to kil, but leaves the exist.  
  
‘ence of fully formed intent as fact to be determined  
bythe Gury, from all the facts and eieumstances in  
  
wu Somgines2 ies wig her, manly  
ng be diberate and premodlstd, ony if 1 seals  
Trem eat” and subrtanial“refecttn, 'Bven aor  
tng to this view, 1 no necessary that deliberation nd  
reson ike ac afer he forma of the  
atte te er har pondered erat the pon  
Dy of taking wether Me a bne rected apod Ss  
Irate cont and fly betes Svs eased he ay  
‘aly be sido hase llled Suu, ‘Melber ead  
remedied though after hi intent tk wap fly  
ermal he crced hi intention lato eect ropa  
thought ein be tanaated Sat sein’ What ie egeeed  
In tat che: homicide mast be tntntona, hat the Intent  
to Mill must 'be formed by ang tht cel rather than  
ne thas uprencnaby infared orexied and tat ihe  
Reh o Lge smu ave ben refed  
‘on for Some appreciable Tength ef te tefere i was  
Steed nto wet although oof neceaary ite the tl  
decision was made. \_  
  
“11, Te now remsins to be considered whether “premedi-  
tation” would be satisfactory test for the award of the  
Ingbest penalty.” ‘There seem to be theoretical as well as  
  
5 Ay, a Reagan, Sie ating Dero of  
mado, Sint a heya ae Raven 7  
  
Spano cnc ang These ced ines Po!” Kath, Cina  
Law's pene geal pape Soh ste  
  
‘3omamreathv, Dam (250) 38 Po  
  
an Pets, nal Law 957), page sorte  
  
SPortle Ran.t33 Cal Sop. ah 24 P 2 sto C193); Pettns  
cri a (553, pas 9  
‘6, Pasi, Criminal Lew 1957, Pa 76.  
  
  
Page 253:  
29  
  
practical objections of considerable weight to the adoption  
Brauch a tes  
  
112, Premeditauon and deliberation as tats for Smpos-  
Ing the sentence of death, have beem regarded ag ursati  
{eiory in Amerie’, “The tread in several Baropean sour.  
‘ele fe fowards dlarding then, Dicutis of Ierpoe  
{ation particularly Im demarcating the respective ess  
OF pronteditton Sod intrtans ar@ Ukely be created it  
they ae adopted.  
  
A crerea sucepe of sss, deri and hctng  
interpretation otght not be made the basis for ibility 12  
fut death  
  
718. Moreover, these criteria may be inadequate  
because. 22 was pointed out ia the Heme Ofice Memeraa  
dum to the Reyal Comission’, among the worst murders  
‘are some whieh are not premeditated, sich a those come  
‘mitted in connection with rape, or by criminals who are  
Interrupted in the commission of some serlous offence ond  
luse violence without premeditation but with a recklese  
‘isregard of the consequences to human life,  
  
714. It should also be poigted out that many. Iilin  
though premeditated, may deserve. syimpaticue test:  
meveveg. "mercy willing  
  
As has been observed by Stephent, if A, pessing slong  
the oad, sees a boy sitting on a bridge over'a deep river  
‘nda 6 ace wanton erry, pes boy ino de  
‘ver and. drowne him, there ig no premestiation,  
  
act represents more diabolical ‘cruelty and” ferocly  
{han that involved in premeditated murders” The very  
fact of an invernal long Rruggte many be evidence tat the  
oil aie was an berain “tar note the pe  
lick of extracedinary circumstances than the true, refee-  
ion of the hermal salt of the offender, while'asuiden tok  
ling may" Bethe ‘ditect “expreston’ of s very" vicious  
natire=  
  
13. We may also quote here the opinion of Lord Chiet  
Justice Parker” on the question of premeditation, He sa,  
  
pg Onto aon gated eG Rea ae 1, pani  
72.0% RC Report, age 81, paragraph sta  
RG Report page 7g paraph sco  
  
yt SP. Hii fee Crimi Law of Etnd AB), Vol, pape  
  
15 Sete so tenor Wee, sla BC Repo pee  
Sere Matt Pena Cote ALLL, May, 99, Tete, 8  
  
ota aie 3 pag Ss Ms 99% \*  
“Tkon! Pate gtd by Mr). A Manna New Zen Paloeny  
  
eh BEES Sie Ca a Se BS Ca a  
  
  
  
Page 254:  
Semen  
Seine  
Sire  
  
20  
  
‘Whea does a murder reach the stage of being planted?  
Tn 5 minuter? A few hours? A doy?  
  
1 may also be noted, that premeditation by ise # not  
treated by the Courts In India as ground for Imposing the  
Bigher penalty  
  
TIS. In view of all these difficulties, and having regard  
to the fact that there is no marsatory sentence of death,  
ven now for the offence of murder in India, we do not  
Secammend adaption of the test of premeditation, a3  
friterion for the sentence of death for murder.  
  
‘Toe1e No. 57  
Scheme im the Burmese Code  
  
‘17, While on. the question of dividing murders into  
catogorien wo Tay discuss the “scheme Sdopted inthe  
Burmese’ Penal’ Code, Burma bat teade cern send.  
‘ments inthe sections of the Indian Penal Code (known  
‘Bisma ae the ‘Burmese Penal Cole) relaig to calpabe  
fomcide and murcer. The effect ofthese changes, fated  
sthortgy i that firey, where death (eased by aa act done  
‘With the tention of easing such bouiy injury ai ke  
fo cause death tin only culpable homicide. The offender  
omieage ofthe peculiar searraty of the vietim docs not  
fecretarty make "marder butt televant. factor in  
roving the nature af his intention” Secondly, inthe cause  
Feige death by an ac ong wh he intention  
OF canting oily injury aude inthe ordinary couae  
St sature’ to eause deaths the, words” "infact" have  
een inserted before the words “is sufclent apparentiy  
to take it clear that i's not the subjective kaow edge of  
ori jy tly ang’ Sesto an 1 ne  
ata ary they: casing dest oy an 8k dew  
{he Enowledge thatthe offence likely” to ‘cause death  
‘fet cube hamle ant seme "be, ander  
Stn merely becomes an offence ie a eau  
death by negligence” under section S34A, the oly special  
frevslon befng that tn such © ase dhe tinpesontnentrany  
‘Extend to 10 years  
  
118. The scope of murder is, thus, corsidersbly limited  
im Burma, in conteatt with the Indian Penal Code. Cates  
Which would fall in India under the second clause of see-  
tion 30) of the Indian Penal Code are vitally afected; eases  
‘Which fll ander the third elauve of section 200 srw subject  
‘ed ta.a verbal change; and cases waich fall under the  
fourth clause of section 300 totally fall outside the category  
st med,  
  
Tae  
  
3 Deal sme Cate ate ier inthe cra mile  
  
3CF Vind Singh (986) SCR T498 FALR ys8 S.C abs,  
a.  
  
  
  
Page 255:  
ae  
  
a  
  
118. Having made these substantive changes in the law  
of murder, the Burmese Code further divides marders into  
two" cage, forthe purpose ef panshment Hf murder ie  
‘committed by person being under sentence of transporta-  
tion for life or with premeditation, or ip Une course of com-  
fitting any offence punishable under the Penal Code with  
Imprisonment up to.T years, the offander shall be punish-  
  
fe'with death, and shall aso be Liable to. fine. Ih other  
ices, the punishment will be transportation for life or  
Figorous imprisonment up to 10 Yeats, and also fe  
(Punishment for eulpable homicide which does not amount  
to murder has also been simplified, bat we ate not here  
teoneerned with that.  
  
120, ‘To summarise, in Burma the scheme ly—  
  
() to concentrate on intention;  
  
(4) fo provide that even sntertional sets punish  
able under "murder" are capital only’ if there 1s. pre  
‘medication of Af the act ia cominitted for "comrnitin  
fn offence punishable up to 7 years’ imprisonment: a  
  
in the case of such sggravated, murders, to  
provide e mandatory puaishment of death.  
  
FE nego mend orto  
oiteae ha creme emia  
2 i eg eae  
  
said fant Se ae ne  
SPST E LER ae aa  
  
‘Tone No. 38  
Iofent to Silt  
  
‘22 We may also consider whether the criterion ot  
intent to ka (which has been suggested by some) con  
be suitably Sdopledvo"ar to exluce the number of murders  
Ii whles the seetene of death would be fposed. "This  
{Lista aa appranh nd fr ©  
Tccepable on the merits tz adoption woul be ve  
tiny av Taras thr Inon Penal Code le concerned, because  
Selon 300 of the Cade, which debnes murder, eady puts  
itin'a separate clause“if the act by which the death Is  
Calsed irdone wth the intention of caing dest=  
  
123. The test of “wilful murder” (apart from premedi-  
tated murder or deliberate murder) has been adepted (i  
substanc=) by some countries, which treat “wilful murder\*  
s'am aggravated form of murder, justifying the sentence of  
  
Si spas pogo 79 remeation ard tet, para  
6 Si a at So “aren  
  
Ser ho denn ao cep f marke, pagan 720—703\*  
  
3OF RC. Report, sagt, sarah 470  
  
17122 M of Law.  
  
  
Page 256:  
22  
  
death instead of imprisonment for life) oF justifying the  
‘sentence of imprisonment for life for’ lesder” imprison  
ment  
  
724, We are afraid that the adoption of such a test  
might lead to serious snomalles. It would remove the prov  
tection ailerded bythe sentence of death in quite. alae  
  
A person who, by means of explosives, derals « passen-  
‘ger tTain In reckless" disregard of the probable "conse  
ences of his ar thereby causing death of numero  
passengers, would bo saved from the highest penalty, if the  
est of “intent to kil” te adopted.  
  
‘We may, in this connection, refer to certain passages in  
the Royal Commission’ Report? where this axpect of the  
matter has been dealt with  
  
"The Criterion of intent to Kill  
  
410, The more radiesl proposals, on the other hand,  
are primarily designed, not to clarity the existing law  
for to amend it in minot respects, but to limit the scope  
fof murder substantially. The natural” and. usual  
Spprosch to redefinition of this sort is to attempt 10  
confine murder to cases where there is intent te kill,  
it this ts taken to mean an actual intent to cause death,  
‘we raed 1 a 9 fective and inadequnte deition  
Seer it Is Comsdered trom lle point ot view  
or a5 2 means of distinguishing Us eases  
thot deserve the panishment of death. The reasons  
why such a definition is unsatisfactory were  
expoundet in the Reports of two Commissions whi  
Save very caret consideration tp this question during  
the last century. Tn 1830. the ‘on the  
Criminal Law, in thelr Fourth Report, observed—  
  
“Agoin it appears to us that st ought to make  
ro difference in point of legal distinction whether  
Geath results froma direct intention. to kill, o  
from wilfully doing an act of which death is’ the  
probable consequence, According to the well  
fslablished judicial rule, every one must be pre.  
‘fumed to contemplate the probable consequence of  
His own act, Neither "there any” difference.  
between the direct intention to kill and the inten:  
tion to do some great bodily harm short of death  
such case being within the immediate operation  
‘of the principle. just adverted to, a5 no one can  
‘wilfully do great bodily harm without placing life  
fn Jeopardy.”  
TS BG, Report paps 37 wd «38 parapet 15, od  
an'ad Bcpmaraie 3 andy os ue  
128, GMa, pegs 161163. parapahs so—h  
  
  
  
Page 257:  
ms  
  
and later  
Uk 4s the wilfal exposure of life to peril that  
‘constzatee the rime”.  
  
Forts years later, the of the Criminal Code  
‘Bit Commission contained the following pessage:  
  
Seine if'a person tetends tll at dows kt  
ber, or i witheat absolutly unending fo ik  
setae tases any bodily Injury Kaew 2  
Be YRuiprta fause: death being reckless whether  
ath exstey er he oognt. in. our opinion to  
teipeaidered murderer it Seah ensue | For prec:  
EesPoaiases we ean make po distinction between  
so eae a SiS who aes  
el Rm 9 ae  
Piciher a violent bow with a sword, careless  
Shots he dies tit or ot, ad's mm whe i  
Yenuing for some object of is own, 10 step the  
fassugd S's rallway tain, comtiver an explosion  
‘qaiporrder dynamite uaner the exgite, BOP.  
‘hefindecd thot death my. not be caused. but  
Scletmined to effect is purpose whether tls  
fused oF not"  
  
AOL We find ourselves in entive agreement with  
the views. expressed in thee ‘avo Reparis which  
Spocar to vs to be stil valid. We should agree that  
{hee yay no nde Be cases where dant re  
sults from fn act ‘only to cause va  
Be tet fren a ak done Sith reckless lle  
ree whether such harm fa caused, (n which the exect  
tion of the capital sentence would not be justified, but  
the samme will be trae of cases where there was intent  
to ball els equally certain that ao long sx capital  
‘purishment ie maintained there will be cases in each  
DB these categories which call for the infietion ot the  
Sesth penalty, and that no definition ex  
tery which is not based om 2 recognition that this is  
  
Conversely, evry cnt of intention (Rt were to be  
teelted a Serving esi njsice would resi.  
  
1 Sr es 9, Hedin Pron Gale and 5 en 4 ane,  
  
  
Page 258:  
Eard  
  
‘There ay be an intent to Ran ot eter factors  
ray reduce the moral eulpabiity of the came’, eg, provor  
ation though hot "grave and sudden” “The tet at Intent  
{0 Hill connet, therefore, be adopted.  
  
‘CHAPTER IX  
NORMAL SENTENCE,  
‘Toric No. 39(@)  
Replies to Question No. 7  
728 Question No.7 in our Questionnaire was a5 Qustix  
follows: oe  
  
"t(a) Are you in favour of the view that the  
normal sentence for murdet should be imprisonment  
for life. but in egurevating elreumstancen, the court  
‘may award the sentence of death?  
  
(b) It so, what, im your opinion, should be the  
aggravating circumstances”  
  
21, Conficting replies have been received to this ques- Reie2  
Unt One troup of ropes suggeets that impeonmenk for Goats K  
life shouldbe Phe norm sentence for muréer. Another  
  
‘iow in that: the normal sentence for murder ahould. be  
  
death, Sind the lesser sentence should be awerded only tt  
  
the fae of extenuating circumatances, A third view te that  
  
the matter Should be left to the dlveetion of the court  
  
‘There is no strong majority in favour of any of these  
various views, and opinion Is sharply divided.  
  
728. According to the frst view, the normal sentence  
for murder should be impriscament for life This view  
hhas Been expressed by a few High Court Judges! a State  
Government’, some members of the Bar, « Ber Counc  
fand several others  
  
729, That the normal punishment for murder should  
be imprisonment for life 4 also the view of a High Court  
  
OLR. © Report, page 176, paraganh $08  
  
23 Panga 726, sr.  
  
38. No tar  
  
45. No.9  
  
4 Ae eminen member ofthe Ba, S.No 160.  
  
GA Momber of he Bae Com of Madea 8 Mes 14  
7 A Bar Counc, 5. No.5  
  
  
  
Page 259:  
2s  
  
Judge’, of the Law Minister of a State, a Member of Par-  
iamenty some Members of State Legislatures and several  
  
790, A High Court Judge’ has stated thet the normal  
punishment should be imprisonment for Ife. and that in  
Sggravating circumstances the Coutt may award the sent  
cence of death ‘The aggravating circumstances, in his  
plsson, afe—Deliberate murders, evidencing moral turple  
tide and brutally.  
  
BL. Many replice suggesting that the normal sentence  
for'murder should be imprisonment for fe have ‘ean  
received from Distsict and Sesion udges'.- One of these  
Feples state? hat etual judicial expsienc shows that  
the sentence of death is awarded i few cases In cases of  
‘murders, and henee there is no harm fm prowsding that fhe  
formal sentence shall be imprisonment or life  
  
782. Certain other District and Session Judges! and  
‘Additional Sessions Judges" are in favour of making  
imprisonment for lifs the normal sentence for murder  
  
"89. In the reply of 2 District and Sessions Judges®, i  
has been stated that impriscament for life should “be the  
normal sentence. The reply points out that after the:  
amendment of section 267 of the Code on Criminal Proce-  
te, 968 the eaten i be dele on ie  
{acts of the case. "Tho reply also states that the cou  
miust state its reasons for awarding the sentence of death,  
and advance the following reasons for this suggestion:  
(), No court is bound to pass the maximum sen-  
tence. and the scheme of the Tndian Penal Code. siso  
indicates. that “the ‘maximum’ sentence should be  
awarded only in exceptional cases;  
  
(4) the presiding ofcer shouldbe given a prtct  
crace of deing ebro Gon or eb  
  
TA High Cour fades, © No.3 -  
3 Law Miner fa Sine 8. Ne 83  
  
2 A. Menber of Rafe Sata, S.No. 24,  
  
{Members fSuteLegilaater, . Now 285,397,241 20, 8, a53  
  
45 An Inspector Geoeral of Prisco, 8. No, 364.  
  
6.3" uney Profan. No 324  
  
7A High Court Jugs, boder question 7(8) and 7 () SNo. a6,  
  
Dinner and Sesuane Judges 5. No. 30, 341.355 389 396 37,  
ara Steir ie ata ae  
  
‘FA Dat and Sears Je, S. No 388  
  
195, Now see  
  
1 S.No te  
  
1 Reply 10 guests 20) and Na, £No 355  
  
  
  
Page 260:  
236  
  
(Gu) inca the death sentence negatives reformas  
  
‘he court oust have adequate reasons Sor consi.  
Hering that the offender is not corrigible oe that the  
reonmetery method would do te good to him:  
  
(dv) cogent reasons mutt appear on the record of  
the case to justify the extinction of human life;  
  
() the court must show caution in exercising its  
diserstion in awarding Sentence in caSes of VicaTious  
constructive Uabiity.  
  
‘4, On the ether hard, the view states that  
the normal sentence £0r murder should be death, and the  
fener sentence should be awarded only when there are  
xtonasting exrcumstances. Thi view has been expressed  
by certain High Cours", some igh Court Judges, a few  
Slate Governments and’ Administrations, some Bat Asso-  
ations, ete! and a fow ofcers,  
  
726. It isthe view of the Chlet Justice of « High Court?  
that if capital sentence is to serve its primary purpose of  
acting as 9 good deterrent, the normal sentence’ should be  
ihe copital sentence, though the lessor sentence of impri-  
‘senor frie can beamed for aden rsnons In  
the existing law.  
  
196. That the normal punishment should be death, is  
‘lo the view of several High Court Judges. Tt is the  
‘ew of a State Government!  
  
"791, The view of a very senior Advocate of the Bombay  
igh Court Ip that the formal tentence of conviction of  
Jurier should be death, "unless there are circumstances  
Extenusating, or pallisting the offence. Aggravating as well  
Se extenuating Circumstances it is stated aifer, and are  
peculiar to each cave.  
  
TSNe ne  
  
2S.Ne wt  
  
3S. Ron ma, 854 164, 06  
  
4 nian Feleraon of omen Lays Poona Ba Assia. 8. Not,  
  
inte  
  
4 tmp General of Plc. A Home Sexeay tp Sue Govern  
  
ine aS Shee of ae Ne  
6 Oot Joie of High Coat, $. No. 17  
  
seg? NBIGACam ales, $029 Tw Hie Cou Je 8, Ho  
  
1A sie Goveramene, $. Naat.  
9 A sey senor Aico the Remar High Cour, : No. 318  
  
  
Page 261:  
or  
  
TOR, Some District and Sessions Judges have also ex:  
‘oreseed the view that death should be the nomal punish  
Sent  
  
1789, Some Members of Parliament have expressed, the  
‘ew that death should be the normal punishment®. This  
thee 'the view of an Inspector-Ceneral of Palle  
  
Fetaining st in the statute”  
  
‘TH, Several others have expressed the view that the  
‘normal punishment should be death Amongs! these are  
Fome District Bar Associations!  
  
742. One reply? adds that where the case is heard by  
Division Bench and one of the Judges expresses a dissent:  
ing view as to the offence or the sentence, the appropriate  
emer punishment should be awarded  
  
749, According to the third view, the matter should be  
teft to the discretion of the court. ‘This group. comprises  
several eatogories, namely, those who beiong to this group  
Because they would like t9 emphasise the discretion of the  
fourty those who take this: view subject to thelr answers  
  
‘other questions, (particularly questions 4 and 8); and  
those who content Uhemselves by merely disagreeing’ with  
the suggestion made in the queeticn  
  
144, Under this group fall replies received from certain  
High Courts!, some High. Court Judger, one, State Law  
Commisson’,” “certain. State Governments, certain  
‘Members of Parliament" and Stat  
feline! High Court Judge”.  
  
5 Be Sei os Ne 24, 34 63 2.27  
TE Mime [pater S So. ae ane ass Member of Site  
  
an Topesion Genera of Poti, S.No. 263  
  
IS Nese  
  
5S Bistncs Rar Anson, S. New 226, 33 20d 239  
  
‘Tecan Federion of Women Lawyer 8. NO. 1  
  
TSINe tr and  
  
ES. Non fon 90,17 a 26,  
  
5.8 Stas La Conemasion 80.18  
  
10 A Sia Government 5. NO. 163  
  
168, Now aor sto an 208  
  
15 A rated Judge ofthe inh Court of Bombay, 8.10 98  
  
  
  
Page 262:  
Ey  
148, Several other replies’. express the same view.  
  
6. Many other replies are in favour of retaining the  
sing provons (6 he Geran of te our ope  
Impelsonment for Ife shall be the normal sentence can Be  
Feyorded a9 falling under this group.  
  
78, A help elucidation of thls view is found is the  
reply of one High Court, end we quote the relevant por-  
  
If the death sentence is to serve as a deterrent  
to the fullest extent that itis expected to, It wall hot  
be desirable to make It appear that the normal punish-  
iment for murder is imprisonment for life and death  
Sentence will be evarded only in extreme cases. But  
‘we ate of the view that Capital Punishment should be  
Iarded only in extreme eases of murder. Murders  
Committed after cool calculation or sth 9 bad motive  
Stlended by excessive cruelty or bestiality ste inst:  
ances of such extreme cases".  
  
749. The reply of the Chief Justice of « High Court? ex-  
presses the view, that there should be no such thing os @  
hhormal sentence, whether the capital "sentence oF  
lesser sentence of Imprisonment for life. The reply makes  
{four points  
  
(0) the sentence is in the discretion of the court;  
  
Gi) the discretion being judicial reasons should  
be, and, as a matter of practice are, given for ime  
posing one sentence or the others  
  
the aigoretion should not be fettered in, any  
way. by prescribing any particular sentence ss “nor  
  
iv) praveribing the sentence of im t  
for ite af the nornal sentence my Sesult hn Amin  
‘ion of the deterrent effect of the death sentence.  
  
4 Lae Mininer of Sie, §. No 253. :  
  
3.A'Menber of Paismentsnder questions 6 (a) and ie) S.No  
cy  
  
"TA Member of State Lagi, 5 No. 24  
  
{Toe ae 100 mameror to be enomered  
  
{6 Under reply to guein 7 (A High Cou 8. No. 19.  
  
7 Chit fice af» High Cour. 8.0 968  
  
  
  
Page 263:  
790, Some of the replies which we have received under  
‘question 7(@) or question T(b) smmply that & "normal sens  
tence" for murder exists even now. Thus, in the reply of a  
High Court Judge’, it has been stated that the “nortnal seme  
tence" for the offence af murder is death sentence, std If  
there are extenuating circumstance then the lesser sen-  
fence inay'be awarded: existing provisions, it =” stated,  
are sullicient, and no change fs neceseary  
  
781, In the reply of a State Government, it has been  
simply stated that the existing provisions afe sufficient.  
  
732A State Government’ has pointed out, thet the  
sentence must be left to the disefetion of the Judge,  
Because in a given situation whether the death sentence  
fr the lesser punishment to be imposed, must be a matter  
for the diseretion of the Judge who decides the ease  
  
759, Another State Government’ states as follows: —  
  
Although the extreme pena i the normal  
  
nalty to be given, in practice iti given in very Tare  
  
Eover he law and practice nev so" walrsenled ist  
1 lsvunnecessery to make any’ change”  
  
754, The reply of a Principal Judge of a City Civil  
‘oan secs Vadge cpa hat ae  
siiments should be zegatded anormal punihments, with  
4 loeretion Jet the court {0 award sath pshment  
  
785. The reply of a Judicial Offcers? Association’ states  
‘hat it should be left to the Judge to decide whether capital  
sentence is, to be patted or ‘not. ‘The reply edas that if  
fone attempts to codify the law for Imposing capital sen-  
tence for murder, and to enumerate the aggravating elt  
cumstances, "then the Judges are bound Yo consider the  
‘aggravating circumstances ‘as one of the grounds for  
‘awarding capital punishment. But, then, aggravating cre  
‘cumstances in relation "to 2 particular’ murder depend  
‘wpoo the facts of « particular ease. "So Ite not proper to  
define what aggrevating circumstances are. If you define  
It im any form in, particular case, it moy appear in. a  
different form and thereby it might, prejudice the conchir  
sion to be arrived at in a given case”  
  
1S. Ne 263, reply under quenions 7) and 70).  
  
2S. No a6t reply under query 7a) ant 7)  
  
3S.No se  
  
5 Principal Juipe of « Cay Col Core and Setons Jaige S.No,  
  
6 An Auciton of Joti! Semice Oficen, . NO 373.  
  
  
  
Page 264:  
Ey  
  
ig GES Bhs ply of anctber Judicial Ofer Agsosatiot  
also opposed to any provision that the normal sentence  
should be imprisonment for life.  
  
707. A District and Sessions Judge? has stated that  
there should be nothing like a “normal” sentence for mur-  
der. The facts of te particular case should decide What  
4s the appropriate sentence.  
  
758. The reply of another District and Sessions Judge?  
points out that there is discretion in the court In award-  
ing the punishment, and if imprisonment for Ife te made  
‘the normal sentence, it would whittle down. the whole  
‘object of the present provisions and it would lsd do away  
‘with the object underlying capital punishment.  
  
769. The reply of an Additional Sessions Judge states  
that the existing law is the only’ provision to meet the ends  
‘of justice The reply adas that Indian Judges are slow in  
warding the death sentence becauce of theit spiriteal  
‘backgrotind, and thet they do seek grounds for, awarding  
the lesser punishment of imprisonment for life. The reply  
‘opposes the making of a provision that the imprisonment  
{or life should be the normal sentence, beeatse, in that  
cite, a practice may setin the Sessions courts of awarding  
‘nly the sentence of imprisonment for life.  
  
762. he reply of an Assistant Judge, while stating  
that st presont the courte award the semtonce of death  
fase of dehiberate murder, "in canes where's murder” iy  
fosnited to feiitate the commission of seme offence ot  
{avoid are  
  
‘What Js an aggravating eircumstance under  
‘one condition may not be so in other eases,  
  
“161, The reply of the majority of the Presidency M  
trate in Prewency Town has tated. tht Conidoreg  
‘the variety of tuman methods and motives for’ the com:  
Taision of murder, it could be eft to the court to cons  
der what-under the particular clreumstance of each case  
Ss the proper sentence to award: Iti pomtble that in the  
‘beence of any law laying dows the aggravating ciscums.  
fances under’ which the sentence should. be death, the  
‘Various Judges trying murder cases might dies and! one  
  
4 Dist ant Sestone Judge. S.No ae  
4 As Aisionl Sinn Jaige, No. 36,  
Tae, 8. No 45  
  
  
  
Page 265:  
En  
  
judge may hold a particular set of circumstances 10. be  
‘Sggravating, while another may not. But all the circum  
stances cannot be provided for by any law. and, therefore,  
ho provision in the law enlisting those aggravating che:  
‘Cumetances can be exhadstive,  
  
162. The latter part of question 7 of our Questionnaire  
dealt with what should be. aogravating | circumsiances.  
‘This was intended for reply only by thove who wore of the  
‘view that the normal sentence for murder should be ime  
Phisonment for life, But in oggravating circumstances,  
the court may award the sentence of death, Therefore,  
those who were of a different. view on that point, ie,  
celther those who regarded death ag the ordinacy” punish:  
‘ment, or those who were against eny punishment’ being  
Fegarded as the normal punishment, naturally would not  
betoncerned with this part’  
  
768. The replies on this point may be said to fall under  
three groups. The first group comprises those who are of  
the view thot aggravating circumstances need not be. de-  
fined, This view has been expressed by one High Court  
‘One State Government” has. in its reply, emphasised that  
nno exhaustive lst of either extenuating or mitigating ci  
  
cumstances ean be prepared.  
  
‘G4. It has been pointed out in the reply of an Advo-  
cate? who is also a’ Member of a State Legislature thet  
is not possible to give en armchair definition of aggra-  
‘ating elgcumstancee,  
  
165. Several District and Sessions Judges have stated  
that aggravating circumstances cannot be codified’:  
  
766, It has sleo been pointed out by a District and Ses-  
ons, Sadge that agcravating crcumstances cannot be fe  
‘Gace to mathematical calculations and that they. will de-  
pend on the facts of each case. Ae long az the ingenuity  
Gr brutality of @ criminal cannot be put forth in certaln  
terme, those circumstances also cannot be mentioned"  
  
767, Another District and Sessions Judge\* has stated  
that if one codifes the law for im sentence of  
Gesth for murder, the Judges are bound to consider” the  
‘egravating circomstences a one of the grounds for  
  
7 A High Coon, 5 Neo  
2, Ste Giprmen 8, oa ener gin 7 10 ey  
  
aodict S25 SRRNESGs toma somes Shots bg ea  
35 No. 36  
45. Now a8, 989 an 30m  
$5 No as  
  
65. No. uo  
  
  
Page 266:  
By  
  
‘awarding the capital panishment. Aggravating circumst:  
‘ances, itis stated, depend on the facts of each ease, and it  
snot proper to define them. If one defines them’ in any  
form in 2 particular case, they may appear ina diferent  
form, and this might prejudice the conclusion to be arrit=  
‘eda tna given ease  
  
788. A City Civil Court and Sessions Judge! has also  
stated that extenuating circumstances esanot be form  
ated and must depend on the facts of each case  
  
769, The second group comprises those who, while sug  
fResung certain aggravating circumstances, make it clear  
{in some form of other) that the situations’ which ‘they  
4uggest are merely eemples, and not Intended to be ex-  
Raustive. The majority of the replies seem to fall under  
‘this group. “Thus, certain High Court Judges\* have sug-  
  
‘as examples of aggravating cincumetances, murder  
people standing th 2 Aduclary’ relationship” master  
‘thd! servant), murder involving family relationship, sabo-  
tage and espionage, and political murders.  
  
‘770. A High Court Judge? has suggested that the nore  
ral rae relating to the Secretion “fogardng, sentence  
‘hould be not to impose the sentence of Jest saless there  
dre aggravating circumstances, Examples of aggravating  
Sireurgtancen given, im hisreply are-normity of the  
grime, the sifonce being cold-blooded snd ‘premeditated  
fSccomipanied with unnecessary brutality, ete, ot mer  
‘salle convict under secon 302, or a'daclty with mare  
‘er under section 398  
  
71, Another High Court Judge Bas (without lai  
to extsstivenen) ated thatthe following mayer:  
{sede as factors which gat be taken Ino conieration  
e'dctermining whether the ofence of rrr has been  
Santi in aggravating eieumstaneer to juty te  
Sentence of death He his. a te se time, pind cat  
{hath presence of ae ingle factor ty notte autent  
but all some of them may jastify the extreme pont  
‘eat. ‘The factors which Fe has mentioned are  
iil Moder was unprovoked, dla ad pate  
i) murder was motivated by greed or ober cone  
siderations ”  
  
i) unfair advantage taken:  
  
1 S.Noae  
  
ia 10) Bat te ey 0 oe 7  
"Smid ea” °  
  
5S. No. er cept to gestion 7 (9) red wh goon 6,  
‘A High Chart Jade 8. No ye  
  
  
Page 267:  
Bey  
  
dv) murder forthe second time after conviction;  
(s) unusual eruelty;  
(vi) murder by hardened criminals  
  
Another reply gives, as examples, xtreme crusty  
‘or ttzeme depravity of mind, accompanied. by extreme  
isregard of the interests of he ancely, premeditation,  
‘allberntecolcblooded, brutal murders and she key  
  
I. however, makes it cleae that this ma) be counter  
Telancel by extenuating Gteumslances,  
  
‘73, One of tho Bar Councils states that the aggravat-  
ing circumstances would be such at tinnecessary “cruel,  
cola:biooded ‘et, planning and. pre-meditation  
  
‘TT. A State Law Commisson\* has stated that aggrava-  
ting circumstances need. not be catalogued,  
  
TTS. According to a District and Sessions Judge', no  
‘numeration of aggravating circumstances can be exhaus.  
re ot Wee of tal an elated mde  
rmurder brought about by design or bY creating 9 felin  
St confidence’ in the. vitim, “then “capital punishment  
Wwould be justifed. Similarly, if'a person. is" murdered  
merely oe money op 1 i ane bel inde By 8 fet  
ing of revenge. not with a lsudable o .  
ment may be justted. Peck cepial pun  
  
778, According to District and Sessions Judge in the  
Stele of Maharashtea’, sqgravating circumstances depend  
upon the singular facts of each particular case and cate  
fot, therefore, be enumerated.” Phe paramount consldert-  
{ton according to him should be the threat to the comm:  
nity if the lesser punishment were to be iposed. Wanton  
Aisregard tor human life or-2 challenge to” the Govera:  
mento its officers, when resulting in death, may be uate  
‘hable’by imposing the death sentence  
  
TT, Another District and Sessions Judge? has, stated  
thal some of the aggravating circumstances can be dea  
cribed ae  
  
{@) beinousness of the offence:  
1) no provocation;  
ji) revolting nature of the crime:  
Gv) fithy Ture which motivated the crime  
  
1 Tae Sere to 4 Sse Goverment,  
3 Nhe Sonah Shas  
  
3 foshesame afer i che rene rece fam an eminem member of  
ne bar Goan at ini, 8 Nat  
  
148 See Low Commision 5 No. th  
4 S.No ue  
cracers  
3S Ne ase  
  
Na os  
  
  
  
Page 268:  
Ey  
  
728. We now come to the third group of replies, namee  
ly, those who state the aggrevating crcumstonces olthout  
stating that what they suggest are mere examples, Vari  
us stggestions have been made. For example, ageravat-  
Ing, <incumstances have been listed as profeesinal tars  
et malie, acquired habit snmate inset and company  
‘in the commission of murder, spelling the chastity, ‘pre:  
blonsed murder, motive of gin and advantage, cfuelty  
Snd ike condones, end danger of Surther “revengetal  
aeton"  
  
779. In the view of a distinguished Member, of the  
‘Rajya Sabha’, the normal sentence for murder should be  
imprisonment for life and the sentence of desth may be  
awarded for aggravating clreumstances. Aggravating. c=  
cumstances would be caldcblooded murder, but the reply.  
points out that very specialised opinion will Iave to be  
Sought before coming to any conclusion that the cireums-  
fances have been so aggravating that capital punishment  
has been called for. “Phe reply sso emphasizes that the  
iudscary shold fly conslt experts in the medial and  
  
held to And thet physical, mental and emo-  
tional imbalance im a murderer before the Inwy could de-  
fide the course of maxiniur action, namely, the capital  
Punishment.  
  
28, Aiding he py of Lew an of  
{a 8 aps  
to) ne  
of duty; and iinet pul ve  
i) ei seo ring  
  
‘71. In the roply of the Law Minister of another State,  
it hos been stated that, generally speaking, the aggravating  
  
5 SNe.  
2A Pheter, Madea, S.No. 05.  
  
EX Monier, Bar Couto of Madris §. No.1,  
5 Ae Impacto Gener f Pen, SN 13,  
Qs Nome  
  
78. Nea  
  
FSNa as,  
  
  
  
Page 269:  
os  
  
circumstances should be extreme eruelty or extreme dep-  
Favily of mind, accompanied by extreme disregard of the  
Interest of he’ society, premeditation, daliberate cold  
Blooded and brutal murders and the like. The reply, how  
fever. takes care to point. out that aggravating  
Greuimstances could be eounter-balaneed by extenuating  
  
302, te reply of 9 Member of 4. State Lepiative  
ones n bee placel ule aig the  
fggrovating circumstances) on =  
SER crgiead and brat) eostece  
  
768. In the reply of a Member of a State, Legislative  
Couneit, pre-meditated murder, decoity combined with  
‘murder and. group murders are enumerated as aggravate  
Ing. circumstances  
  
784. In the reply of a Member of the State Legislature  
sn the Ub! "oh aggravating eceumtanors are eumerat-  
on  
  
()) pre-planned and caleulated murder;  
i) murderer being a habitual eximina,  
  
785. In the reply of an Inapector-General of Prisons it  
ss sated'that IE Negravatng “circumstances shouldbe  
Premeditation or deiiberstion and the brutality accom:  
Panging the offence  
  
786. One reply’, though not strfctly falling under ques-  
ton T(b), states (hat murder ‘elf is the highest aggravat-  
ing ciccurnstance, and thet by boing overenient we bave  
cctinge a ike of alles whercande private, venge  
  
fast replacing publi retllatign. Ong murac 1 s  
ated, py another murder, and thie vielows  
Chain goes on, ald sn" court iti ao pane to prove  
{tu pasteuar murder i the result of «previous mar  
  
107, In the reply of a Dstt and Sendons Judget it has  
oon dated the the ggrvaing ccumstances ld  
lade the degre of steely accompanying’ the murder,  
dere, eldtuoodel murders ad arden of tance  
fersoas who have tet given any cout or guevance,  
  
45. Noy  
{5 Aint ant Selon Jae in ula, 5, No 312  
6 S.No a7.  
  
  
Page 270:  
78, According to the reply of another District and Sea.  
stons “Judge, "aggravating circumstances would be mar  
{er"echtating dacsy ables or eh and meses  
‘which are commited without any extenuating ‘Tessone  
thd with cold ealeuation  
  
789, In the opinion of another District and Sessions  
‘Judge’, the aggravating circumstances sre—when death is  
‘caused in furtherance of a felony of violence: when death  
‘is caused to a person who comes to make a Iawful arrest  
heinous murder specially when after the commission of  
‘murder the dead body is disposed of in such a manner  
fot to get a chance of decent burial ot erematian  
  
‘Toric Nunensx 39(b)  
‘Whether normal sentence should be imprisonment for life  
  
790. We shall now consider the question whether im- whether n=  
  
prisoment for life should he the normal sentence and the ma peter  
  
Sentence of death should be imposed only’ when aggravat- maul te  
  
ing citcumstances exist, For the reasons given below, we matteie,  
fot tm favour of tuck a change. Ta the fst place, the  
  
‘existing scheme hae Worked satisfactorily, and no seri008  
  
fviticlam has been made thereot. In the second place, It  
  
‘will be dificult to define. aggravating circumstances, and  
  
in the absence of such a detntion, ion would  
  
not serve a particularly useful purpose. Ifthe sentence of  
  
‘eath Isto serve as a deterrent to the fullest extent, 1€ will  
  
fot be desirable to make it appear that the normal. sen-  
  
fence for murder is imprisonment for life and death sea-  
  
tence {s to be awarded only in extreme cases. ‘Moreover,  
  
fan enumeration or illustration of "aggravating clrems”  
  
“ances” will be open to the same criticism that the divi-  
  
slon of murders Into categories is subject tot  
  
‘Torte Nessnen 40  
Whether normal sentence should be death  
71, The other alternative, namely, whether a provi- whetber  
sion should be inserted to the effect that the nozmnal sen- orm r=  
tence for murder shall be death, may nove be considered. Seepee  
‘Some of the replies received io question 7 have suggested  
the insertion of such a provision  
  
2 5.Na gto  
2S. Ns. rents wo quel 9 (0 and 7.  
5 Sue dina Fling to. cmegrie f mater, parnraps 704—705,  
"Reps 19 Question 7 have Sees sunrise! sepuwely. Ser  
parents 337, ee  
  
  
Page 271:  
an  
  
“02. There are certain objections tothe adoption of this  
outse. In tho frst place, would not be in accore with  
the change made section 887(), Code st Criminal Pro-  
cedure in 1038," Section 367(6) of the Cate of Criminal  
Procedure, az it stood befors the amendment of S285, ne  
‘Guired the court fo give feasone for imposing “the. hosser  
Sentence "Though thst sub-section tid not ay nso many  
tworas that the hocmal sentence for a capital offence shall  
bedeath, yet many courts had interpreted it ae having  
That eflch. That provision war delotes in 1095, and it  
Would now require Song grounds to support a deciion 9  
Insert the suggested provision. Secondly. it would const  
Iie eter te dsretion ob the ou We  
ote that large number of replies received to question 4  
the Questionnaire are in favour of retaning the dive:  
tion: Thialy, thece appears to be some fore in the ar  
nent, thatthe highest penalty of the law should not be  
Impoied ‘a matter of sours. Fourthly: if such 8 prow  
Sion ie imsertd, siicalies may arise whare there ate e  
tenusting circumstances  
  
105, We are not, therefore, inclined to recommend any  
such’ change tn the’ la  
  
704, There is, we find, a conflict of decisions as to how  
for death is the normal sentence even sfter the smend-  
vo of aeetion 987 (8) of the Code of Criminal Procedure  
in 1955. “In a recent Bombay ease, the High Court consi-  
dere | in detail the effect of, the nmendment of section  
'367(5), Criminal Procedure Code in 1068. The High Court  
took the ‘view hat tbe amendoent did not affect “the  
‘Question regarding death sentence, In Its view, in rege  
to the exoretse of the discretion, even section 361 (3), a5 it  
Stood. before the amendment, did not offer any gurlance,  
land therefore the deletion of that portion of the section  
‘ould not affect the eercise of discretion. "A. diceretion  
hhas tobe exereised judicially.” It must aluo appear that i  
‘if so exercised. This can be done if reasons for the exer-  
se of the discretion are gwen ia the order given in exer  
fing the diseretion. ‘Whether the statute requires ft or  
‘ot, Feasons have to be given. The section could, there-  
fore, have no relevance on the decision itell”.  
  
785. The court ststed, that the view taken by. the  
supreme Court nape, thot unless. there are exenust=  
ing ccametancen the formal “puiehment for murder  
‘Belo Sathorn te ote rene  
{F855 section 3070)" Ceven though the Sprerve Court  
‘lee related to am ofence before the amendment)  
  
43.V. Thea ¥. Ste f Mado, ALR. 1957 SC. 6:4  
16-122 M of Law  
  
  
Page 272:  
28  
  
706, The court cited certain Bombay decisions before  
the 1855 Amendment whore the sew as ake tht for  
‘purer tie normal sentence is death’ Tt dot accept  
{he argument of the counsel forthe accused “thst the  
Smendment of 1954 war intended to chang the old pos  
it that death i the moraal sentence for egptal otc  
Ir agrecd with the decane ofthe Allahabad” and Mudra!  
gh Courts on the point in the Allahabad case, the Vey  
“as taken thatthe amendment cf action 367 did not  
fect “the inw regulating punishment” under the Penal  
ode and! that the amendment related to the procedure  
Seah ra couts re fo inger rguied to laterat the  
Feasons for not awarding the deoth penalty, but they cane  
ot depart from sound judicial eoidertions a prfer-  
Zing the, Tes punishment. A. court may not "record  
Feasons for not ‘pasing’ the ‘death sentence, tut Wt  
Swaess Ie imprisonment for 9 cold-blooded ond revtt=  
fg murder. the absence of reasons wal not save Sts pre  
{efence trom being unjudita.  
  
78 In the Madras case, the Sessions Judge had not  
siege any renuen for trosing the tener ‘sentence, The  
  
igh Court didnot interfere with the sentence, as there  
‘wae no application for enhancement. But it observed that  
the case was one in which the extreme penalty of the law  
Gefinitely appeared to be called for,  
  
708. The Bombay High Court's attention does not  
‘appear to have been drawn to an Andhra Pradesh case’  
holding that, after the amendment of 1955, the theory that  
death is the normel sentence for capital offence does not  
held "good.  
  
709. The conflicting views ag to whether, after the  
‘amendment of section 967 (3), Criminal Procedure Code  
Jn 1985, death sentence is the “normal sentence”. are fure  
ther usted by the cae-law ‘docu in the unde:  
Inentioned. decsion®. ‘provision which: we propose?  
‘wiht is hoped, settle this controverty algo, at we are re-  
Commending! that reasons must be given 19 elther caso—  
Sind that will jise that tho sentence is entirely  
in the dlaceetion of the court  
  
TY Same w. dironing, 1956 Bom. 231  
2 Sue Powdeane, ALB. 1956 Bom. 711,  
3 Ram Sigh x Sia, ALR. 1980 AR 348  
4 Bere Viohoni, ALR. 1985, Mh a  
45 Alla Kolakoar Ra, in rt ALR. 1963 AP. 245  
4 Raha v. Sut, ALR. 8967 Gow 21 CFB). panerph 3, and  
saagabae dos  
2, unemiienprooved t eeion 967(9) an eicumienrepuing  
‘onion  
  
  
  
Page 273:  
Ey  
CHAPTER X  
REASONS FOR SENTENCE  
‘Tone Nestoes 41  
Replies to Question No. 8  
800, Question @ in our Questionnaire Was a5 follOWS:—~ oon  
  
“Should there be a provision in the law sequising  
‘she court to state Ks reasong for Imposing a sentence  
of death oe the lesser punishment of iniprisonment  
{or Bte?™  
aoe  
  
0), The replies received on this question may be said oS  
  
nile Tour groups. Firs, those which take the view  
provision should be inerted requiring the court 10  
state its reasons for imposing either of the two sentences;  
fel the whe exes ce i at renin Sad  
  
even only wi th sentence is. thirdly,  
‘ioe which express the sew that seasons thould be given  
‘only when the lesser sentence ls awarded: and, "  
this wit aitain that rensone Reed not “be given  
  
Perhaps the largest number of replies fell under the  
first group, aod suggest that there should be a provision  
‘nthe law requiring the court to state reasons for ime  
Dosing the seatance of death or imprisoament for life, This  
‘Mew in shared by certain State Governments’, Bar Coun-  
ll High Courts, some Members of Parliament or State  
Legislatures’, one retired High Court, Judge’, several  
‘lees, certain ‘Assoelations? and several members of the  
Bar and other gentlemen’  
  
202, tm the reply of 4 State Government, it has been  
stated that reasons are normally given tn both cases, but  
that it would be desirable to insert a provision that the  
nidge should give the reasons for the sentence which he  
  
| A Sis, Govenmang, au Gowramen ofp Unica Toery See  
tho teh a's Howe Scesy 8 Net 14 ob 13  
  
30 Bat Comets, 8. Now 1 and 59-  
  
2} A High Cot, S.No. 187  
  
4. ADs: Miner the Union. No 210 54 member, Raya ste  
g QS SCi Rites Mims at tee SBS Se TAL  
  
SA toed Jag, Ugh Cot of Bombay, 5. No. 95  
Genta oars Sa4c1 TScingecantenand Wt Pale” Sten  
Smet Genera of Proce” 8.  
  
7 The Ilan Felersion sé Women Lawyers, Bombay, S.No. 12  
son 8 aa ogee nae sah Be Gael. fa of  
SPEIRS NOMS PURSES ra  
  
95 No 2  
  
  
  
Page 274:  
20  
  
rs, whatever be the sentence. According to another  
State Government, the court ordinarily gives reasons, Bu  
there fs no objection to» provision es suggested.  
  
One State Government’, while not stating that a statue  
tory provision Is needed, has emphasized that when the  
‘maiter 1s left to the judges it means that it must be judie  
Cally determined, based on reasons and or the facts of  
the ease, "This ls especially so When the decision is subject  
to appeal  
  
Another State Government” is in favour of a provision  
roquiring reasons in both eases.  
  
829, One of the High Courts! has stated that in view  
of the fact that the discretion is to be vested tn the court,  
It would be desirable that reasons for awarding or not  
fawarding the death penalty should ‘be stated, so that the  
‘higher court can examine whether the diseretion has been  
properly exereised: at the same time, the High Court states,  
HNe'not necessary to make any specif provision in the  
‘matter, ag it it wollckrowm to Courts exerelsing discretion  
In sppeslable cases that they should give reasons as to why  
the discretion hap been exercised one way or the other  
  
04. A Sh Court Sue wei tating ta he normal  
senance cate sal ede MS aa deteg  
‘Seance he cut ay sod er es Bo  
Sree ease Wane Ne dpa ence it  
Sess ling tte een St'e  
Broa acad Unk dar ethateef iabeenses oie  
Ray ines he ae be ple tee  
aug et eer pg  
sng cn eee a em  
eisai cea wich Ra cea as  
Sati Spal ais Merete ae  
ie cTaoee hela een Nees ps  
‘he partcalar sentence that he has Soe?  
  
205, According to the Law Minister of a State, the law  
should provide "that' the court "should record. adequate  
ressons fo avarding any contence whotsonver: that fey  
eerie and woul tos large extent, prevent miscarriage  
of juste,  
  
1S. Ne yo  
28. Ne sto.  
  
4A Hg Cou, S.No. ah  
  
55.19 396, in ey fo avenions 74a) ans  
65. Nase  
  
  
Page 275:  
"The Law Minister of another State is also in favour of  
such's provision! Several High Court Judges are in  
Iavour of such # provision?  
  
806. It is also the view of a distinguished Member of  
the Rapa Sabb an of ster Members of Sass Logie  
Intures! that reasons should be required to be given in both  
cases.  
  
‘07, According to a Judicial Officers’ Association’, there  
should be s provision f the law requiring the court to state  
{reasons for impoaing either sentence.  
  
oh, tn te rely eral Distt an Sessions Jude  
4 provision “requiring "reasons for ether” sentence  
{a¥oured on the ground that this would furnish material  
Ge Appeltate Curt to conser the reasons  
  
20, Acording o » Disc and Sesons Jue i th  
sate of lohan st'the Judge, y ade tp ive eat  
Seu fr th ria ein wich be wed yy,  
sting Wate ob Sapien sad the Apprate Court wil have  
  
ng based on cape, ste Court wil  
Proper mesa ieee whether We reson are in axa:  
nce withthe prinaptes oe not  
  
In the reply of a Judicial Office, it has been pointed  
cout that'2 judgment is an indivieble whole, and when the  
fhidge convicts or scquits, he rivets his eye on every cite  
Gamstance. A plea for requiring reasons fs ‘etter  
than an inalstence epon the estential requirements of a  
  
be stated here that thote who belong to the  
first group have advanced various arguments in support of  
1 provision requiring statement of reasons. It iy stated  
‘that such # provision will enable the Appellate Court, when  
reviewing the quanti ot punishment to appreiae the  
correctness of the punishment’. Tt is also stated that it  
Sill show that justice is done on the basls of satisfactory  
Gvidence’ and loge and reasonable, eonclusions™. One  
‘epls! pointe out, that it would be guide to the concerned  
ttuthorifies in desling with petltlons for merey.  
  
78 Nas  
  
35. Nosh age and 306  
  
38. Noses  
  
2S. Now a, 24,248 and 249,  
  
fs. Nese  
  
65. Nou 3 and a7.  
  
7 No.3.  
  
BSN a.  
  
9 Ap Tnspecer-Geneal of Plc, S. No. 121  
  
een  
  
34 Acecad Je of the Bombay High Cor, 5. N95.  
  
  
  
Page 276:  
232  
  
B21, The second group comprises those who take the  
view that Feazne shld be geen oly where fhe soanes  
Gt death is posed. "This view te expressed by a State  
‘Government several High Court Julges", some Mombers  
ot State Legislatures; State Law Compssion' (which  
Mas sugested tht section 9679) of the Code of CSminal  
Proceddfe le should be amend aceordingly)a Juailal  
Otiers! Associaton,» some Judges of City Chil Cours’,  
Distt and” Session Juages''¢ Bar Astociatlg’ a Bat  
Conic dome Members ofthe Bas! and ethers  
  
812. The argument advanced in support of this view"\*  
fs, that a provision, requicing statement of reasons for im-  
posing death sentence ie necessary to ensure that the courts  
{fp not impose the extreme penalty arbitrarily without a  
Sotiris of the extenuating cecumstaees mitigating  
the offence.  
  
20. hed rou cms apn wi hee  
et oR RE Te "hat  
SUC Sint le Ba eee  
‘Sele banat s iP Cece eles  
Soke es Sao ts aes  
Showing ces este se  
  
SORES See ora ahs  
  
‘Ihe Chek Justice of » Mh Court hay suggested that  
cu nstlon Sei) ofthe Cade of Canina Breseaure, 168,  
Sho Be ror  
  
Curtain High Cour Sugen® have sated that «rl,  
capil ponsinent sotld'be awarded nies the Jude,  
Fee ee ete te neordad ces  
SMnon Wa ca Mrene. where te den snc  
SEES We araca ache td group log Sra,  
  
Te Ne om  
  
TERS an ots eto  
  
pkms  
  
er  
  
Pacey  
  
FEN sat ot oe  
  
oo Ne soca an kc a  
  
1S. No soa  
  
BS, nent  
  
15. Ne jeu  
  
1 A Swe Govenmes. 8. No. 135  
Cine a  
  
6: Twohigh Court Jadose, S.NS. 155  
  
  
Page 277:  
‘other High Court Judges’, a few State Governments, and  
‘Administrations, and some Bar” Associations, and ecraain  
  
BIA, One State Government has stated that such @ pco-  
vision (for. giving ressone when “awarding. the: (esse?  
Dpunshimect) will exchude the possibility of a Judge acting  
Sizarly tn the matter of imposition of sentence tn any  
Dartcular ens,  
  
Several District and Sessions Judges’ and others’ are of  
the view that reasons for impoting the lenient sentence  
should be given  
  
815, The fourth and last group comprises those replies  
which take the view that there is no necessity for requiee  
ing reasons t0 be stated in either cave’ One High Court,  
fone State Government 'Member af a State Legislature!  
8nd others)" are of this view.  
  
16. According to the Chief Justice of a High Court" the  
‘question of ving reasons for a particular sentence would  
Arise only if that sentence Is regarded ax not the “normal”  
entence. According to him, there should. be no. such  
thing as a “nocmal” sentence for murder, The sentence 1s  
in the discretion of the court, Tt would not be proper for  
the law to select any'particular sentence for the purpose  
of prescribing that reacens should be giver. for imposing it.  
  
Some High Court Judges have stated that no specific  
provision is necessary  
  
Ar7. Tt has been stated by the Home Minister of a State"™  
‘hat it would not be advisable to make the lew rigid in  
manner suggested. The reply of” an. Advocate Gener  
States that no special vulo heed be erated for death sent  
‘ence, Reasons. it is atated, must be given for awarding  
‘ny sentence  
  
ES. Nos 9, 238 and 30:  
  
2A Sime Government. S.No, a,  
  
3 Adminsesion of = Union Terry. $. No. ee  
  
4A Done Bar Asociaten, & No. tes  
  
3 An Inectr General of Pole. Na 1.  
  
(Raph of «Sate Government, © No.3, ener quettan  
  
7 Silo 21S 8p 535 S.No. 5 Noses 8.8 eH,  
  
me fSNOHE  
1 An Tnpecor ever of Prams, S.No 264  
8 A\High Coun S.No. v4,  
A Sire Goverment, SN 14  
Be An SLAW Liou, § No. td  
12 Ateeed Dott ad Seaton Joes, Nogpr, 8. 82,139.  
15 A Dounce Bar Amnciatan, §. Nest  
14-8. No gon tely to quetions 7a) and &  
15 Sno bon  
  
  
  
Page 278:  
co  
  
24  
  
S18, A principle Judge? of a City Sessions Court is also  
of the ve ha there no nee foe a provision requrng  
reasons to be stat  
  
819, Some replies state, that courts invarisbly give  
reasons, but ne separate provision is necessary"~=-!) Some  
Distlet and Sessions Judges have expressed a view to the  
seme effec  
  
‘Torte Numan 42  
  
Conclusion regarding necessity of provision requiring  
‘eotons for later sentence ""T"@  
20, Toe replies to question 8 show a considerable body  
of opinion wie i in avour of « provision Requiring the  
  
ourk to state ta reasons for knposing. the  
sat Cher of denh or of imprisonment fr hte” Farther, is  
  
would be a good do exsure that the lower courts  
‘examine the case elaborately from the point of View of  
fentence ae from the point of view of guilt. Tt would also  
rovide good material at the time when a recommendation  
for mercy is to be made by the’ court, or a petition for  
rmerey ig considered.” Again, it would increase the. conf-  
  
‘ance of the people in the courts, by showing that the dls  
ston ie Judicllly eyereeed.” would ale facttate the  
tsk of the High Court in appeal or in for coe  
  
firmation in zespect of the sentence (where the sentence  
awarded is that of desth), of in ie revision  
  
‘enhancement of the sentence "(where the sentence  
awarded is one of imprisonment for life)  
  
621, Tas, there to be. suficient justifontion  
Jorta providon regutag the Court to wate fe toe  
(heer i sands ether athe to sentence in seat  
  
inion of sch 8 provi  
  
‘ce, We Tecommend the  
the Code of Criminal Pr  
  
822, Tt is potsible to think of an alternative, namely,  
thst the court should be required to state its reasons o  
  
when the nemtnce of death fe “pated Or,” the oppalte  
iterative can be thought of, namely, the court should be  
required to give its reasons only where the sentence of  
imprisonment for life i passed, Neither of these alterna  
tives can, however, be recommended. ‘The edoption of  
  
of Pati, 8. No. 26  
Discs Magra, 8. No 386.  
  
4-4 Sute Government 8. Ne. 31  
  
4 Adminiemin of « Usion Tet, $a. 303  
  
4 tee wet Sesions Jas. 3. Ne. 30 £8. Na. aap» 8. No 2406  
s.Noge7s8No 3978 Nese? S Naas 5S. Noa  
  
7 Parganis 61668 wpa  
  
  
Page 279:  
cither alternative would meen, or would be construed as  
mets legaative deteraton that the sete fap  
thie Teacone are to be given i to  
  
Thevotner sentence iso be the ele urther We sdopion  
st the second alternative would meant she virtual restora:  
Mis of section 3971S) of the Code af Criminal Procedure,  
18," ston Helore the Amendment of 155,  
  
TT Be Resp rim I99, Sore  
  
  
Page 280:  
236  
CHAPTER Xt  
EXEMPTION IN PARTICULAR CASES  
‘Tore Nonanes $3  
Replieg to Question 9  
825, Question 9 in our Questionnaire was as follows:—  
“Do you consider that even f the sentence of death  
fs retained certain classes of persons should not be  
Bunised with death. chilren teow a patinular  
  
Bae, women, etc? “lasses of perscns  
our opinion, be exeluded from the sentence of deaih?  
  
eplie ro $24 The replies received on this question’ mostly ex-  
‘Woon. press views about granting exemptions in respect of—  
() children;  
(i) pregrent women;  
(Gi) women generally;  
(Gy) old persons;  
(0) diminished responsibity, and  
(ot) others  
825, Tt will be convenient to deal with cach category.  
separately." But before dealing wth these categories  
Seoul be usefal te t that there are certain repiles  
Which state that ‘he statutory provison fa necessary and  
Gat De matter shoul be He tothe" aacretion ofthe  
  
06. A State Government is of the view that women  
and Ghiden cna elude lptir om the dean  
Penalty, ait is dificult ty conceive of any extenuating ce  
Eimtarces merely because of now-oge OF sex  
  
1 Paar 23, re  
2A Hiph Gown, 5. No. 16  
  
2A Hp Cour Judge, 8. No. gt  
  
{1 State Govern 8, No. Bota,  
  
5. Sine Gorenmen, 8. Not.  
  
5A Member, Madras Bar Coun. S, No. 19.  
  
1 Awe Jose oft Bombay High Coa, 8. No. 95.  
¥ An Adve, (Original Sle) Bombay, 5. NO. 92  
9A Member ofthe Rain Sha, S.No 07  
  
10/8 Meme ofthe Riga Sabha, S.No. 3p,  
  
11 Reverse Miner of State, 5. NO  
  
BAR MLA, Litnos, 8. No.1  
  
{3 Bara Sonat Sam. Now Det, S. No,  
"SNe sty  
  
  
  
Page 281:  
ot  
  
Another State Government’ has thus expressed its  
view  
  
“The differents treatment of offenders who have  
committed similar offences punishable with death is  
Sifeady aftected by courts or by Covertanents acting  
{n'pursuanse of sections 401-4024 of the Criminal Pro-  
edate Code snd articles 72 abd 101 of the Constitution  
St india. Sine clemency where extenuation can be  
shown Ts move ual tha. pot iS not mecaiy  
lasaify persons 2s lable fo be senten ‘  
  
rot linble to be 20 sentenced  
  
21, According to. the view expressed, by the Chief  
Justice O€ a Migh Court the matter should be Heft to the  
“isecetion of the courts because the age of the offender Is  
ttways taken a2 6 good ground for not passing the expltal  
Setence, and (a fegards. women), women are not ordh  
ery sentenced ta deat eneep ceriin case of ld:  
blooded murders like murder by polsoning.  
  
828, A High Court Judge? has stated that itis not desir  
able to exempt any particular classes of persons from the  
penalty “of death, but the. conventional standards re  
Beraitg swarding of death sentence operate quite ‘satis.  
factorily-for example, a qwegnant woman or child of  
immature or emotional age not being sentenced to death  
  
229, Acconding to several High Court Judges' no excep.  
tion is necessary, and no change is required ir: the present  
Tw.  
  
290, According to the Administration of a Union terri-  
tory® discretion fn the matter may be left to the courts.  
  
S31. A City Civil Court Judge in Bombay has stated  
that if wil be highly dangerous to. exclude women ard  
‘children from death penalty, because intending criminals  
ST then employ women and chidgen to commit plonned  
fnd calculated murders, ‘The reply states that the em=  
Blonent of tlden inthe tans ion and poweon  
Bf iliet Nigsor Is common, partielarly’ inthe city of  
Bombay.  
  
S22, According to 9 District and Sessions Judge In the  
‘State of Mahorashtra\* no provision in law should be ink  
  
for exempting particular lasses of persons, because it  
‘would be unjust to lay down rules of law excluding certain  
  
precers  
35. Na aes  
£5. No 33  
  
  
  
Page 282:  
28  
classes of people from the operation of desth sentence  
merely on beeoune of their ag@ and sex Its stated tat  
11's not possible for the Legislature or forthe Legal Draft  
man’to envisage every. posibilty or coutingeney in the  
Infite complexity of huaan lif  
  
883. Several District and Sessions Judges als think that  
‘2 statutory exemption ir not necessary!  
  
4884, One District and Sessions Judge in the State of  
  
gen ettegory” of persons to “be exempted,  
Giming, ise to childeen we thay note that 2 vast number  
of replies have favoured & for exempting child-  
  
ren below a particular age from death penalty.  
  
898, A State Law Commlssion\* has suggested that =  
  
rae ho Pas net ataied the age of yeas shoal not  
‘entenced to death, exeept in ease of  
  
the bec envied ofa stir peecusly or whe user  
  
flog sentence of imprisoament for having commited  
  
£59. According wo the Chief Justice of 2 High Court,  
perots elo the age of 31 may be exchaded  
Operation of the sentence of  
  
40, 4 High Court Judge, the  
nc ould ot Be ipod on 8 ars Below 250“  
  
YS Re ss 97. aon a  
2S.No gn  
38. Ne ao0  
  
4A High Gown, S.No.  
{A Site Law Conmiin, S. No 0.  
6 8. No. 363  
  
78: No  
  
6, 8h a and a  
  
  
  
Page 283:  
241. A State Government! has favoured exemption of  
cehildten below 21 yet  
  
242. Exemption for children has been favoured in the  
reply of a Minister of a State Government? on the ground  
that the brain of a child ig supposed to be immature. "He  
fg unsophisticated. “Even murder’ is committed without  
thinking of any consoquentces So this is a state of izno-  
cnc aa, theteore, death sentence may be too hash =  
Purishment.  
  
43, According to the Law Minister of another State’,  
persons under the age of majority should be exempt  
  
S44, Some Tigh Court Judges. a High Court® and a  
State Government have replied that the death penalty  
should not be impcsed on chikiren below 18 Years Of 980.  
  
4 Mo Several ther pres and tdi have sl feveur  
‘ed the grant of exemption to children, though the ages sug>  
ifested differ. Certain replies suggest the age of 10° Cer-  
{Sin replies suggest the age of 18 Certain replies suggest  
the age of 1 Certain replies suggest the age cf 1  
  
36. According to some District and Sesions Judges",  
persons below 21 should be exempt.  
  
Many District and Sessions Judges have suggested  
exemption for persons under 18.  
  
847. The age of, 20 has been suggested in certain ve-  
plies!) ‘One veply™ suggests that 2 person under the age  
  
Wht Can,  
  
7 Aa Advocae-Cenerl, $. No. ig) j A Bur Counc, No. 1334  
‘Adicts S:'Na tag's An impactor Sener of Pea, 8, Note,  
Api ing toe et The Eon be  
  
re cera, amg negees nan aneee  
rage Gera tie ate marta etait  
ERS ao on a  
Be ae re  
LEAS tie Seo  
  
  
  
Page 284:  
60  
  
of 20 thould not be sentenced even to life imprisonment,  
Some other replies” merely suggest that children shoud  
be exempted, But de not epecily the age  
  
inked out slready’, some of the replies, to  
question 9 te opposed to any statutory provision relating  
{othe grant of exemption for any clase. A few import=  
fant poults may be stated. Thus, a State Government has  
Pointed. out. that if any provision is made in the law  
Fexempting particular categories of persons), a, habitual  
{ciminal woulé employ the services of exempted persons  
to commit serious crimes.  
  
582. One High Court, while opposing, the, suggestion  
of fai ef exelption to eitdren, haa stated that even in  
‘he!absenee of sich stemption, the sentence of death is not  
lel epee fo a offender below 16 exept in are  
or exceptions cases.  
  
848. As  
  
890, A senior Advocate of the High Court of, Bombay  
is of te opinion that while the death sentence should not  
cerdinacily ded to persons under 18 except in ex-  
teva garavated cases of murder yet crimes of ros  
nd brutal violence by young people have become extre  
ely. common, snd any ‘general exemption on the ground  
Imeray of age egaedons of ater cigeamstances, ight  
Encoutage this tendency to stab'or shoot’ on the part of  
oung persons for'a sight cause.  
  
51. A Bar Astociation® has stated thet sex and youth  
need fot, in all eases, be a ground for a lenient view, and  
bas raferred in this connection to 2 Madras case of  
Llcoded murder of a boy aged 18 years for, gain, com:  
mitted by two boys between 15 and 17 years!  
  
852. The second category of persons which we may.  
siscass fe that of pregnant. women. A large maber of  
feplies hae suggested the exemption of such women from  
{he death penalty. Such replieg have been received from  
various sources, #94 State Government’, High Court  
  
TA Depay Minter of te Unlen, 8, No 21  
2 Aa MILA in Madhya Pradesh, No a03,  
4 Sue paraqrape 635 195 ma  
  
4.4 Site Goverament, Nor Ht  
  
$A High Cour, 8. No 167  
  
SNe  
  
7 S.Ne a  
The rlrenge sccm us  
  
aad! 2 (GSS Sete af ae warn, bower ounce tha ae  
tence of sion teen the Jape he Bess ich  
  
  
  
Page 285:  
2a  
  
udges, Bar Counts Members of State Legalatute, Wor  
‘ArsSiabons: Sessoms Judges and eminent membees of  
the Bar  
  
853, One State Government” has suggested that women  
‘with small children should be exempt  
  
S54, Exemption of peagnant women from tho death  
nally has been suggested by certain Ber” Assocation"  
High Coure Judger’s Law: Rinisier of x Siato™ Govern  
ent os State and Some High Court Judges of the sme  
State  
  
155, The Judicial Section® of che Indian Officers’ Asso  
cistion in'a State favours exemption of pregnant women.  
  
98, As against, this, a State Government™ and a State  
Law Commission regard: the existing provisions of sec-  
‘ion $82. Code of Criminal Procedure ss'enough And. as  
Stveady roted™, a general opposition to. exempting any  
‘lass of persons fe Siso evidenced in certain replies,  
  
887. Coming to the third categorysoomen generally. Were  
swemay’ note that several repli are fn favour of exempt: me  
ing women generally from capilal punskinent. ‘These fe.  
  
ics have been received trom, various sources, ¢@ some  
igh Coutt Judges", OMtcers", "Bar Councls™, indie  
<duate™, and members of the Ber \*  
  
1 Some High Cour Talos. 8. Now. 97 and a7  
2 A°Bir Caine, §, Now 116 and 199,  
  
SAB MLA, Mathya Prater, 8 Neat  
  
4 The Bar Atscltion of Ton. SNe 83  
  
4} A'Disrict and Senate Jade Get Sate S.No 2  
4 Ap ennent meer of he Ba hong ce Bat Coot of I,  
47 A Sine Gorenet, $. No.1  
  
4S. Now sy and 7  
  
95. Nose  
  
re 8 No ash  
  
13'S No 36,  
  
TAA Sine Government, S. No.3  
  
18.8 Stwe Law Commisnin, 8  
  
1 See pwrgrots tos —3. pre  
  
Ren  
‘rw igh Cort Jug, 8 Now ge 00)  
An tnigecra-Ceneral of Pelee and 4 Home Secetry  
Governments Seige  
19 A Bar Conne, S.No 215  
  
1 An Advocate, tough the Bar Cou of Ii, S.No 16  
  
  
  
Page 286:  
‘st, xemptign for women hag alin been suggested  
a MEEPS SC igi Rated s Bae Asoc  
tion’ a Siate Government, = Member of o State Legisla-  
ire ia U4, Ghlet Minisler ofa State, an Advocate  
‘who wae formerly « Member of the Lal 'Sabha’, and by  
{veral Diseit and Seasons Judges,  
  
‘850. A District and Sessions Judge in Maharashtra’, who  
favours exemption of women has, however, expressed the  
pretension that it might be regarded as unconstitutional  
  
880, Certain District and Sessions Judges in other States  
are'siso in favout of exemption of wo  
  
tn, ot my oh epi on ae te  
wl eae le Ba a  
scien is le Sas ete a  
Tor te did has ac  
Sea ip Sac at ae ene  
sae  
  
$62 A High Cour Judge” has stated, that there 8 05  
justification for makig a distinction between men and  
‘women 20 far as crime and ment are concerbed,  
par from the fact that ue tinction would fend the  
  
fonetitution.. One officer ™ is opposed to any exemption.  
being given to women, on the ground that they are part  
onetin murders, and itand oa equal footing with men  
‘he conduct of murders.  
  
‘The reply of another High Court Judge points out that  
the heinowsness of crime i not reduced merely by the  
{her iat i he somtetsd by woman ad that there have  
ten numerous cases in arbich women have been found  
Bully" of mundevning thelr husbands Te col-bload, Such  
Somtn ‘vmod, dene any mere, "Thee  
Dies are in addition tthe general oppstion {othe grant  
Brexempton to aay clas Gf perso evinced in mony  
replies.  
  
SNe se  
BSNe Be  
raed  
[15.339 (eeng women cme in eae  
  
vo  
5 8. No ass.  
aes  
3S Net aoa ne a6 3H 9 5a  
Nasa Dae loos Jae ia Ors 5. Naess  
a Ban tl Se fsb ie kee S Meats  
0 A vere Dist and Seton Jae, Nagur, S.No. 199,  
He A High Court Judge (Ast High Cour, 8. No. 97  
1 Aa tonper-Oeerl of Pes, 8. No 14.  
15 A High Cour Sates, 5. No. a7.  
  
  
Page 287:  
863. A. High Court Judget, who has opposed the grant  
‘of exemption to women, has Stated that women ight get  
‘exemption either on the ground of age or general extersint-  
Ing clreuratances, but women as such stould not be ex-  
empied He has stated. thet the popular notion that  
‘women are less Mkely to commit murders is not based on  
experience, “Actually, some of the most eruel and preme-  
Gimed murders have been committed by women  
  
General exemption for women hag been opposed by an  
“Advocate General.  
  
A distinguished Member of the Rajya Sobhat has sated  
that there Should be no diference made between 1  
in the case of capital punishment.  
  
64, A senior Member of the Bombay Ber has exprese~  
edith oie whale opposing the exemption at" women  
general  
  
‘There sao ground at al for exemption of women.  
If anything, a female filler is more brutal and malig  
nant than a male murderer. I ix not merely im Betion  
ord drama thet female friends of the type of Lady  
Hacinth commit or bey diabolical muriect.. Besides,  
the present generation of militant women might resent  
‘such discrimination a8 derogatory.”  
  
365, The Pricipal, Judge of a City Civil Court and  
Session Judge n'a Presidency Tow has stated that there  
$ioald'be'e excl fren and ren, a thee  
She intsnding criminals wil employ women te  
{oreommit uch crimes  
  
286, A. Judicial Officers’ Astociation® has stated hat it  
hse been their exprieney that women are equally feresous  
fs men.if not more, and that if they are exempt from death  
Sentence, they might be made a tol in the hends of men  
to commit murders,  
  
in 007.8 Dist a0 Sesons Judges! has sited out that  
in actual experience it ls not Impossible thet cases may  
frise where» woman may be found to be deserving the  
spital punishment.  
  
VS Mo. as  
  
38, No as.  
48. No. 31h  
s5.Ma ae  
68, Mo. a9  
175. No.3  
19122 Mf of Law mo  
  
  
Page 288:  
0 pee  
  
Diminise”  
oe  
  
58, A District and Sessions Judge in the State of Mal  
rashtrat he expressed this stew ==  
  
“1 would not include women in the, coegory. 1  
  
bngv> strong opinion aa regards women. ‘Thee crtmes  
  
ci murders soeties tes | iit tated  
  
Snmoral causes ap Sstingulabed fom ot  
  
atom somtimes obtaining ic the case cf men, ah  
  
it the sme time Unry ae able to swallow and conceal  
  
luletiy the poison and after effects of thelt erimes  
  
ey should igo be met such circumstances. with  
‘eat stene  
  
909, A District and Sessions Judge", while stating that  
generally courts are not inclined to sentence | women to  
earn and‘it ls oply in serloug types of cases that such @  
Sentence i= awarded, is opposed to any statutory exemp-  
tion  
  
£70, Sevoral roplion would ike the exemption of a par  
ticular class ‘of Women, eg, women with nail uldzen,  
unmarried mothers killing the unwanted child and wornen  
Comiitingourders undor extreme snd tensed cond  
  
811. We may now come to the question of exemption  
shot garons Ths exemption “hasbeen asggsed na  
few replies. Various apis have been ‘suggested, eg,  
ents 70 years! 60 years and 85 years’  
  
2, Teepe wp he elec of “mii reps  
lity we note hat ty adoption bas been suggested in tw)  
Gogol oF elton oe Be fa ee  
TH coe tke Ss Ramat ees et  
A ince se Rot ened anos  
oe Fi Ctl NS get Meg okey ct  
41S. No. 367, -  
ove ae, 6  
ROME emake Prdterea Osten, cite ce  
«ROLE rien  
IEA Ih Ce 8.86 en rion 8,  
  
  
  
Page 289:  
265,  
  
the lines of the Honsieide Act, 1987, Adoption of the yro-  
‘isons of the flemicige Act nas been Suggested in another  
reply abs’  
  
Reply of a High Coart Judge! is as follows  
“phere is the existing structure; sections 299 and  
Indian Peaal Code and the different punitive sec-  
{yout 802 ard 304, Indian Penal Code. Perhaps, a8 in  
  
the Homielde Act in United Kingdom, we could sntro-  
Uice an. exception for sbnormality of mood viz,  
Dychot state, where the requirements of section 64  
Indian Penal Gods cannot be satisfied. “This could be  
purishabie under scetion 304, Indian Penal Code.”  
  
‘The Chief Justice of a High Court? has stated that per  
sont of unsound mind should be exempt.  
  
‘A provision for exemption for abnormality of mind on  
the lines of ths (Englah) Homicide Act, 1967 has "been  
“ggerted by a High Court Judge’.  
  
572, Apert from the categories of parsons to be exempt- Othe  
  
cd on the ground of oge, sex, mental state or pregeancy,  
‘not many Other cstegertes have been proposed. "One such  
Trina of persons kiling others ug to Reeesiy, daress and  
fastahe! "Srotes nezgeaton is that '@ on who Sala  
fis bem ‘commendable, oF whose intelligence quotient is  
Below average. should be exempted?  
  
Amongst the other exemptions su are, old per  
fone above the age of 6D” and “very old” persons  
  
Tt has been stated by a State Government® and by 2  
High Court Judge in the game State” that the Criminal  
Rules of Practice of that State provide fer recommenda  
tion to the State Government for commutation of death  
Eentence in the case of women convicted of infanticide, and  
that sattory provision for such eases may be made ithe  
Indian Penal Cod  
  
1A Rear i Criminal Law, S.No. 107, wader quation  
{2A High Cot Jaige, 5 No. 22, under question 6,  
  
38. No ao  
  
45. No 262  
  
An Inspesor-General of Poe, S. No. 131  
  
65, No. 7  
  
7A Dict nd Sesons Fade, 8. N39  
  
"VA Wigh Cour Jae, 8. NO 997.  
  
98. No. 26r  
  
weS. No ta  
  
  
  
Page 290:  
266  
‘Tore Nunes 44  
Exemption on the ground of young age  
  
Exmion 2 Whether a person, who is below a particular age,  
Shr lly should be exempted by statute trom the penalty of death  
mets oune iy question which requires detailed Investigation, in View  
cof ‘the abundant material available om the subject. The  
‘question has fallen to be decided by the Courta more than  
‘ice, and~though It is not easy to reconcile all the deel:  
Sions—the position seems to be, that young age isa factor  
‘which is taken into secount by the Court along with other  
factors, winen considering whether the sentence of death  
  
‘Should be awarded  
75. There are decisions which take the view thet young  
age by act a extomaningcheumatance Buti oak  
of those decisions, the age was tender,—say, not mare than  
TO years? Tea Calcutta case” a girl of sixteen years Wat  
charged with the deliberats kilting of her husband "by  
Poisoning. and Was sentenced to transpotatie: in view of  
  
fer aoe.  
  
8. On the other hand, there are decisions that youth  
fs not a considecation for giving the lesser sentence tal”  
S77, The majority of the decisions would seem, how.  
ever, to take age into account along with other” circumm=  
{878, In this positon of the caseaw, a statutory provie  
sion—awhatever "may he. the ‘content af that provision  
‘would be useful es" clarifying the postion. “ft may. be  
poted that the number of eileen or soung persons ivolv=  
iin cases 1 homicide is not small andthe reatter 1s  
  
1 Se Ante of eaten aves umber 79 (ge and provocation  
doy ota Sahel no ap uevarcatngance eee  
io ic scent for heen)" aege og wd ks cc td  
  
con  
  
SERGE rindi acest ok Cerone aaa  
  
‘estethe cine were rors nd nor shoen tole damsnrd nan  
age of 32 vere a ened  
  
2 Sat Ansys of cme euro, dacs ten the ft  
ae eet Ri Se Cet SN  
gedaan (927 18 COO. edn Ran La Law of Crimes  
Seif; Rem, LL. 1943 Mad. 1: A.LR 199 Ma 69 Moc  
seu in Hope 7 ‘90 Mas 69  
Se fires 'reawing tamber of ave oflendes iota in tom  
oe, thes’ Sepa.  
  
  
Page 291:  
28  
  
fe provisions in the Chiicrens’ Acts of  
several Statest) prohibiting the awarding cf a sentence of  
eath In the cate of persons under a carta age. The a  
{sia down ‘by those’ provisions vary. The insertion of  
provision. appticable "to the whole of sud, would serve  
the purpose of bringing uniformity also  
  
Further, the replies received to. our Questionnaire!  
snow that avast sumer of persons are in favour of such  
un exemption  
  
‘80, tt may be noted that, in England, a person under  
the age of 10 cannot be tentenced to death, Dut has to be  
dcained duviag Ber Majesty's pleasure  
  
9, There  
  
251, Similar provisions | are centained in the laws of  
many other countries 30%  
  
Under the English provisions i is the age at the time  
of the commission of the offence thats taken unto account.  
Seotion 85(1) of the Childcen and Young Persons Act,  
1053 as amended by section 16,\_ Criminal dustice Act, 1048  
and by section B15) of the Homies Ac, WET, peovides ax  
  
=(1)—Sentence af death shall not be pronounced  
fon on recorded "against a person "eonvicied of an  
silo ho epost the Catto ave en under  
age of eighteen years at the time of offence being  
committed. Nor shall any such person bo sentenced  
{o'imprisoameat for life under section 8 of the Homie  
ide Act 057,  
  
£22, Whether the age of 18 should be enhanced to 21  
was a guetion imo which the Hoyal Commission weat in  
reat deta!  
  
‘The Select Committee on Capital punishment, 1930, had  
rected thatthe ge sould be Ete to 21 othe  
round that that was the age when full civil responsibilty  
Sas nesumed:Belore the Hoyal Commission of 188, cone  
Ficting views were expressed about the rising of the age.  
Iimit Most of the medical witnesses were in favour of  
iorag fh Sue Erte tn he opin, eteons under  
the age of 21 should not be regarded as Rly meture a  
the brain ie not fully developed until after that age. The  
Sei Labour Lawpers seed these tat  
4 person was so immature an ie tht he oul  
fot vote or own a legal estate in land or settle an action  
  
1A smrnary of he ponioos i Chien Acta aven\_ehewtere  
  
2 pi toga 9 suman arene 317  
  
Sr eto 3, Salter and Youty Pees As 1933, a amended  
  
in Rate RBG TS apse ie  
  
"Tomine mona == he mej ven serrate  
  
SRC. Repo, pees 65 (0 7, pemsta 18209.  
  
  
  
Page 292:  
‘without leave of the Court, he should not be subjected to  
The exteume penalty. The younger the otender, ie tore  
Banc tet a of seer an reba Winer  
ppining the proposnl, however, thewsht, that bey  
{EP car ot 1 ate da be ete te erin  
‘Of the Crown in exercising the prerogative. of mercy.  
Suny. embers ofthe Raye Commission were ofthe view  
that of al proposals that could be mace for reducing. the  
‘Rumoer of caer in which the capital sentence 1s executed:  
there oe ha had one gd cleager a  
ipport. thar the proposal to raise the ayecimit™ How-  
ExEE tome’ of the'members were not in davour of this  
Feccinmendation They ought that the Commission  
cuit veo th tat grave scream len  
Sfimec since the beginning ofthe war had wot yet passe  
feat sy far as parsons between 17 and 21 were cone  
CScfedand fiat public opinion "would not favour the  
Semoval of the retraining in fuonce of the death sentence  
Snuch persons’ Uitimatsy, the Commision recommen  
2h by aremaperity" of 6 10° thatthe statutory age  
min Blow hic pan inayat be senienend 1 det  
‘Mhoutd be rte to  
“ad, It would be interesting to trace the history of the  
provision fn the Brglish Acts The Childrens) Act 198,  
Provided shat a perean, under 16 years of age atthe time of  
Ronvieton,sbotld “note enlebeed to death but should  
Seemed to be detained Gung Hig Majer plore,  
PheChikdcens “and Young Persons’ Act, 190, vetion 88  
enacted ths provision n substance, with one change of  
5 yong replack ty the age of 18 atthe tine of conve  
tion Section Ie ofthe Critinal Justice Act 1048, extend-  
22" scope of this provision to persone under 18 at the  
fine Moher? the ofente was commied: Section 9(8) of  
‘he’ Homicide Act. 108%, amendea the provision in’ the  
185 ASE the important change made being that 8 person  
Linder the age of 18 years was not only not to be sentenced  
{o death but he oral not to be sentenced fo imprison  
‘ent for life, "Ths change was necessary because othet-  
‘wise, under section 9() ot the 1957 Act whenever a court  
isiprecidea “torn pasting a sentence of death "ie «sens  
fence thall be one\af imprisonment for Life's Iti sated  
{at'no person ser 8 Yeerg of age hain fect been  
‘Stecated in agland since 1657," Ie would seem, however,  
that before that Uhre had been uh cases, For example,  
tte aged a rs pty henge, or breaking  
{tos hotse snd stealing » spoons and in 1808, « rl  
fal PS HEP it NGAP 95; a oe a 3 om  
Por tomlin. we RC. Rest pep 9620  
ie Macca, Me,  
sphfler Sate ets Rne ew  
Fr BENS Wegener a8 Rader  
3 RE: Reps pu 4, pene 13  
S.C Repo Pe pana  
  
  
  
Page 293:  
4 was hanged at Lyne, and in 131, 3 lay of was hanged  
at Chemsford for having set fice to # house! \*  
  
204. We may also refer here to the provision adopted ia  
‘ganada on the subject. ‘The Canadian Committee" noticed  
that the invariable practice in Canada had been to cota  
‘mate the sentence of death of all persons under 18, “and  
that, since 1045, the sentence” tad ‘rarely been. executed  
‘against a" person 20 years and under. ‘The Committee  
Balanced the consideration thet youth "must alwaye be a  
‘mitigating factor against the fact that some of the most  
fallous crimes are committed by young offenders, showing  
a total disrespect for life or property. "Alter. taking note  
Gf the discussion in the report of she United | Kin  
Royal Commitsion, the Canadian Committee concluded  
that 3t would he proper to amend the law to provide that  
the death penalty shouid not pply to 8 pern of the age  
‘Ofeighteon years oF lesb at Une time of commission of  
‘ffence. "The Committee also recommended strongly that,  
except in exisnordinary cases, the prevent practice of  
‘commuling most death sentenoes passed on persons under  
21 should be continued,  
  
885. The recommendation for amendment of the law  
has been, easried out by amendment of the Criminal Code  
6 Canada. made in 1961! ‘The relevant section pow pro  
Vides follows —  
  
(8) Notwithstanding subslause 1, a person,  
who appears to the court to have been under the age  
‘of 18 years at the time he computied a capital murder,  
‘hall not be sentenced to deeth upon conviction there  
for but shail be sentenced to imprisonment for life  
  
888, We feo} that having regard fo the need for uni- Recammea-  
  
formity to the view exprested on the subject, and to the  
‘consideration that a person under 15 can be regarded as ages  
Inteltectualty immature, there is a faily strong case for  
‘adopting the age of 16 as the minimum for desth sentence.  
‘We ave aware. that cases will occasionally are where @  
[person under 1 ts found guilty of @ reprehensible Killing,  
fr, conversely, a person above 18 is found to be immature  
‘tnd hot deserving of the highest punishment, “A Tine ha,  
however, to be drawn somewhere, snd we think that 19  
an be adopted without undue risk  
  
881, We, therefore, recommend that 2 person, who ie Secommen-  
under the ige of 10 years at the time of the commission of Sane  
the offence. should not be sentenced to death. A provicion  
tnvthat effect cam be conveniently inserted in the Indign  
Penal Code, of section S38.  
  
“T See Chricoph, Capiet Pusismese and British Poli, (963), age  
2 Ganasiae Report, pase 18, smh 76.  
4 Sasson 35}, Grima! Cae (Cannan  
  
  
Page 294:  
270  
"Forse Nusanex 45,  
  
Exemption to women generally  
  
EGRET \_\_ S53, We hove consldered the question whether women  
  
SeSIge general be exempted trom the sentence of death.  
ie we appreciate that it would be a natural desire to  
avois the death sentence on females in most cases, ice do  
ot tink the general exemption cle for A woman  
fay be gully of a brutal cold blooded murder, and. the  
fate, therefore, may Be one deserving the highest penalty  
Gf the law. In a case before the Supreme Court that Was  
the situation’. Sex may have to be Weighed against other  
circumstances,  
  
889, The matior was gone into by the Royal Commis  
sion alsor ‘Their consluion wat that, i tere wes avail  
ate for the retention of capital punishment, ft Must apply  
team aswell so oun abou psubly not oan  
‘ison forthe Iaw to dterentiate between the (wo sexes  
t'atso nosed that murders by women Included atrocious  
and cold blooded cases of bagy farming. and of polsoning  
overs ling peried. ‘This conclusion of the Royal Commis:  
Slon Sas states by che Canadian Comittee sa  
  
90, In India, the ease for generat exemption of women  
is stil iess strong, the death penalty hot being mandatory  
‘The question ef women placed in a particular sitsion,  
such a pregnant women or omen 'uilty of munder  
‘heir own children withis, parcular period alloy Ml  
Selivery, isa separate onc.  
  
‘Tone Nosuen 46  
Exemption for pregnant women  
  
femme aot Th  
Tne questlon whether any exemption. should, be  
Solon" given by satite to pregnant women may be considered. A  
frouaion on the subject tn tome forms ot" he etter  
  
feand im the lef sriain counties law i Some  
  
Counties provides that he vstene af eats al net 6e  
  
fuss om'prepeant women, “In come counties the sere  
  
Erne of thts not tobe hotded tl te lope of 10 dag  
  
alter childbirth, "in some sounties, the extewion of he  
Sentence Se mercy 10’ potted The ered ot bose  
Ponerent iso spcied bythe laws of certain’ dean:  
  
Eien, For cxamplerin. Greece postpned forse  
  
rnin in ate ef Ureatfecdig and other Tor 96 das.  
  
1 Anayus of caesar. Coe No 4, (Ai See, ALB. 1684 S29)  
2 RG Report, pe 6s, pairs 19/186  
5 Canasan Report, pgs 18. Door 7  
  
'$ Conparnive mater t Srea sembere,  
  
  
Page 295:  
om  
  
{2 ‘The English provision on the subject is contained  
in the Sentence of Death (Expectant Mothers) Act, 1831,  
stelions I'and 2 of which fun'ss follows: —  
  
‘Section 1—Where a woman convicted of an  
offence punishable with death is found ip accordance  
‘with the provisions of this Act to be pregnant, the  
Sentence (o be passed on her shall be sentence of ime  
Pissonment for lie instsad of a sentence of death”  
  
Section 2—) Where a woman convicted of an  
cftonce punlahable with death alleges that she Is  
pregnant, or where the court bifore who's 2 ‘woman  
Even convicted thirke RE eo. 09 order, the “queation  
‘wheter er not the woman is pregnant shall, before  
Sentence Is passed om her, be determined be a jury  
@), Subject 10 the provisions of this sub-section,  
‘all be the teal jury. that Is i say, the  
Jury to whom she was given i charge to be tried for  
the offence, and the members of the tury net hot be  
  
Provided that—  
  
(2) Mf any member of the trial jury, aither  
before or after the conviction, dies or is discharg-  
fed by the court as being through sfiness. ineapa-  
ble of continuing to act oF for any other cause,  
the inquiry aa te Whether of not” the woman is  
pregnant shall procest without him; and  
  
(b) where there is no trial, jury have alte  
  
agreed a to whether the woman i of is aot preg  
  
Inint, or have been discharged by the court withe  
  
out giving s verdiet on that question, the Jury  
  
Shall be constituted ag if t0 try whether or not  
  
She was fit to plead, and shall be” sworn in such  
cow may direct.  
  
(8) The question whether the woman is pregnant  
cor not shal br letermined by the fury om such evi  
Sence as may ve laid before them elther on the part  
of the woman, or on the part of the Crown. and the  
Jury shall find that the woman Ie not pregnant Unless  
tls proved affirmatively to theltsatlsaction tht she  
is pregnant.  
  
(%) Where on proceedings under this section the  
jury find that the woman in.question is not pregnant  
the woman nay gppedt ‘under the "Ceiming “Appe  
‘Act, 1907. tone Court of Criminal Appedl, and that  
oust, satiated that for any’ reawon the. fndin  
Shout he sot aide, shall qusdh the sentence passed  
  
Fe See api Make AS, pat Bo  
  
  
  
Page 296:  
fploacte  
  
a  
  
on her and intend thereof past om her & sentence  
imprisonment for lite ® “  
  
(5) The sights conferred by the section on @  
woman convicted of an ence punahae with death  
Sil bein substation Zor the rght of such 2 woman  
fo atiege tp lay of exocution tht ane ie qulee with  
Chul abd the last mentioned right shall ctade a from  
the commencement of this Act®  
  
898. The provision in India is contained in section 382  
of the Code of Critsinal Procedure, 1008, which may te  
quoted’:  
  
be pregnant, the High Cour: shall order the execution  
of the sentence to be postponed, and may, if It thinks  
ft, cammute the sentence to imprisonment for life”.  
‘This section leaves the matter to the diseretion of the  
‘nigh “Court, whieh ean—  
(1) either postpone execution of the sentence, or  
Gi) commate it to the lesser one.  
  
804, Detailed provisions aso medical examination of  
the woman, or as t0 an appeal bY her from a finding that  
she is not pregnant which ere contained in section 2(4) of  
the English Act ce in the laws of certain other countries!  
fre not found i the Indian Code. Since, however. this haz  
fot caused any practical difficulty, it does ‘oe appear to  
Bernecessary to make any change in the izw by tiserting  
elaborate provisions,  
  
‘Toere Nusszen «7  
Infonticide  
  
105, There Is one specifi type of homicide by women  
hich requires tome detalled consideration, That ig intan~  
ticide by a seomen of her own child. within a certain  
ppeniod after the delivery. Tete believed that, within cer-  
fain period after delivery, the mother would ‘not have  
fully recovered fom the effects. of giving bicth to, the  
  
nd the balance of her mind would. therefore: have  
  
‘been disturbed. In such 9 situation, it would be just not  
to impose the sentence of death on her. In fact, though  
there ig no satutory provision on the subject ‘in Indie,  
touts have, in Ube few cases of this type that have been  
reported, exercised their ciseretion in favour of the Lesser  
sentence’  
  
Tr Secon Sa, Cale of eimial Poste,  
  
2 Compare ume given sehr me bef.  
  
2 For enone sce aah of com, Case No, 5 Ale, Bi, Case  
wo  
  
  
  
Page 297:  
mm  
  
£96, This subject as had along history in England  
rivate member's Bill, “The Child hiurder Thal “Bult  
1980", was passed into law as the. Infanteide "Act, i922  
‘That Act provided that where a woman, by any wilful act  
mission, causes the death of her nely-20yn Cdn  
ich creanistances thet but for taal Achy the alten  
Sibert woud Hae emote fo Toute, ht atthe  
time she had not fully Fecovered from the fect of giving  
birth to the chi ent by reacon thereot the balance ‘of  
her mind Was then disturbed, then she would. be guilty  
of intantielde and might be dealt with and punished ey if  
she had been guilty of manslaughter. Dificltes score a8  
{othe seope and meaning of the expression, “newly host  
child and the Iniantiide: Act of 1836 repealed this act  
Sd sigtituted «provision, whereunder wom wie  
Sftse death of her Sild under the sge ef 12 mom's would  
Bet the protection where the balance of er mind was cit  
firbed by reson of Ser not having flly recovered fom  
the ffet of «2° tah “Bven in cases where toe Act af  
1980" does not apply. for example, where the child is more  
than year old, the pracice i England is to commute tae  
sentence  
  
Section 1 of the Infanticide Act, 19984, 4+ quoted  
below  
1. (1) Where a woman by,any wilful act or omis-Ofanse a  
son causes the deata of her ehild being a child umier Lattice.  
the age of twelve months. but at the time of the act  
occomtale the Kaige of Nr nd wae ditched by  
Teason of her not having fully. recovered from: the  
‘ect 'of giving birth to the child or by feason ol the  
tect of factation consequent upon the birth cf  
hil, then, notwithstanding that the crcursstances  
were such ‘that but for this Aet the’ offence “would  
have amounted to murder. she shail ‘be guilty “of  
felony, t0 wit, of infanticide, ahd tay for suth offence  
be dealt with and punished at if she had been ‘guity  
of the offence of manslaughter of the chil  
  
(2 Where upon the tial of a woman forthe  
rte of ie old Sng td 'under the age ot  
fteelve months, the jury ate of opinion that eb  
any wif actor exosion caused ite deaths but thst  
1 the time of the act or omission the balance of het  
Find war ditrind by reno of her nat having uly  
recovered from the effect of giving bitth t the itd  
of hy reason of the fect of lactation consequent shor  
one aces we RE Repo. page 57 tw NR  
[The Inte Ac, 1626 (1 & 2 Goo. 6 6.26,  
RG. Rens, ae sn aaah 1s a page 377 aah 6  
44 The Inlecie Act 198 Gr and's Gene 3  
  
  
  
Page 298:  
mm  
  
the birth of the child, then tho jury may, notwithe  
Standing that the clrcumstances were Such that but  
for the provisions of this Act they might have return  
fed a verdict of murder, return in lieu thereot "3 ver~  
‘het of infanticide,  
  
(3) Nothing in this Act shall fect the power of  
the jury upon an ‘adietment for the murder of a child  
tocelurn # verdict of manslaughter, ora verdict of  
Guilty but insane, or a verdict of conceaiment of birth,  
{i pursuance of dection sixty of the Offences against  
the’ Person Act 1661, eseept that for the purposes of  
the proviso to that section, 4 child shail be deemed to  
have recently been born if tt had been born within  
twelve months before its death.  
  
(4) The sald section sixty shall apply in the case  
lof the nequitfal of a woman upon indictment for infan  
leis as it applies. upon the” acquittal of woman.  
fupon an indictment for murder”  
  
‘Mere age of the child is not suflefent; the balance  
of gang ofthe moter sould) Sho have been le  
  
207, 1t may be noted, that a provision reducing. the  
ppunishracat in the case of Infanticide existe in the laws of  
Bow oeher countries! "A, typical provision is that found  
in‘the Crminal Code of Canads’, Sections 204 and 208 of  
Which are quoted below:  
  
“Section 204—A. female person commits infantl-  
cide winen by a wilful act or emission she causes the  
‘death of her nowly-bora child, at the tine of the  
Set or mission the is not fully recovered from the  
‘ilects of giving birth (0. the Child” and. by. reason  
thereof or of the effect of Iaetation consequent on the  
birth of the child her mind iy then distur  
  
Section 20@—Every female person who commits  
Infoniieiae 4s guilty of an indictable offence ‘and. is  
ial to imprisonmen’ for five years”.  
  
8, We have considered the question whether it is  
nnecesiary to insert any provision in the Indian Penal  
Code on the subject’ In'ndia the question of sentence  
for murder je in the discretion of the courts and it's open,  
{o' the court to Impose the lesser. sentence of imprison-  
nent for if, where the iad of the afender epee fo  
Ihave been intuenced by the effects of recent. childsbirt  
  
1 Ry Som (vo) 1 All ER ate  
  
2 Sv RC. Report page 47, pangrph 2, and sacceing paresis.  
  
3 (Caans) Criminal Cade, Sets 00 nd 28  
  
4 Seen ea, Indian Pe! Cale  
  
{See Anais of Cisebaw, Cte No 55  
  
  
  
Page 299:  
Eo  
  
ve  
  
CHAPTER xit  
DIMINISHED RESPONSIBILITY  
‘Torte Nexeven 48  
  
899. A topig which merits some detaled discussion is Diniaabed  
the concept of “diminished responsibility", in relation to {seo  
the faw ef horaicide. Thig concept, borrowed from Scot.  
  
land, has found a piace in the Homicide Act, 1997, see-  
  
tion 2 "The section’ runs a follows.  
  
“2 (1) Where & person kills or is a party to the Peron  
Jaling of ‘another, he shall not be convicted of murs feat.  
der it he wes sullering from such sbnormslity of mind silt "te  
(whether arising from condition of arrested oe retard Poms.  
‘ed development of mind or aay ‘aherent’ causes oF  
  
Induced by’ disease or injury)” as substantially io  
  
paired this mental responsibilty for his aets and otni-  
  
Bion in doing or being s party to the killing  
  
{2,00 ares of murder, sab a he de  
fence to prove that the person changed is by virtue of  
{bir section not Hable be eonviche of tnurder  
  
(8) A person who but for this section would be  
lable, whether as principal or as azcessory, to be cone  
vieted of murder shall be listte instead to be convict-  
fot of manslaughter  
  
oe Cresta tog te  
SRN aha Ree sea, ee  
  
of di epi  
Sti not come within the sees Teatloe ts beens  
4 Selon 2 Homicide As. tos  
SESS cr gage  
9st) aca Howe of Line Babee Cat. Jan arc Signe emt  
  
  
  
Page 300:  
76  
  
901, The Royal Commission on Capital Punishment  
stern hater, cso the date” wr ura  
{o recommend its adoption in England ‘Tavugh he doce  
‘eine go known to the Sootsh in was confined fo nus-  
Gir. the doctrine ag inown to the laws of several Euro:  
Deon country fourhed all ertnes, and not merely murder,  
  
02, The conclusions which the Roysl\_Commisslon  
reached on the sibjece may be this sinmarised  
() Diminished responitilty as known in Europe  
4s a concept af general appllestion relevant "for il  
mes and not guly for murders of for capital afer  
Exe The forme, of tesal sboornality: incudng pays  
hopathic personality, which may cate diminutin of  
Feoponsiilty. are of common accarvence and ae ef  
Importance th relation to'n wide range of afenees  
and to consider whether the doczine of diminished  
Eesponsbty in this we ange should be Sdopied ia  
England would take the Comision far beyond it  
terme of reference”  
  
four to take account ofa special category of mig  
ting circumstances in carey Sf murder “an to avoid  
passing of sentence of death in cases where ach si  
Exrmstances exist So ratical an amendment of toe ls  
Of Bpelond would not be usted fortis mites pur  
eve  
  
«,\_i) ‘The jury should, however, be empowered to  
tke account ot extenusting cireumatencen, 30 a8. 19  
correct the rigidity which the outstanding defect St  
the then existing law of capital punishment  
  
909, However. the doctrine has been introduced by the  
Homicide Act 1057.” Under that Act even ita peruoa ie  
not technically insane within the mesning of the MPNagh=  
ten Rules, he is entitied to a lesser punishment if he shows  
that he wae suffering from such "abnormality of ind  
(ohether arising from 2 condition of arrested or retarded  
development of mind ge any inherent causes or induced by  
‘disease or injury) as has substantially impaired his men  
{al responsibility for bla acts and omisstors in doing OF  
party to the killing  
  
(6 RS REPT OME 1 8 48 paGh IIA, lo we BREE  
  
RG Report, pues 143 nd 144 paar 4n2—it3.  
  
+ RC. Report, poe 4g parapet 41  
  
+ RE Report, page 14 paragraph 42  
  
\* RC. Repos, page 208, waren ss  
  
\* Senioa 2 Homie Ac, 157 (5 & 6 Biz 2 12),  
  
  
  
Page 301:  
a7  
  
904. As has been observed?, the effect of proof of dimi-  
hlahed rerpansbiity i to reduce the quality of the crime  
from murder requiting the obligatory sentence of death  
{it capitel murder) or hile” imprisonment. (non-capital  
musders to manslaughter, where the sentence. is in the  
‘iscretion of the court, and may’ range from fing to any  
term of imprisonment io life imprisonment. Zhe aiiference  
betiteen this defence and that of ansansty is—  
  
() insanity results jm sequittal\_and Is a defence  
  
ty every crime, hile diminished responsibility is a  
der, and merely seduces te crime  
  
(li) @iminished responsibility covers not only,  
lesser forms of insanity but also different forms of  
‘saniy and meatal abnarmoallty not covered by the  
nical AE Naghten rules.  
  
955, As would appear foom the lading Scottish e852 of St Li:  
HM Adrocate ¥. Broitheite, even ita man changed with  
Jutder ig not insane, stil the Sectsh law recogmrs tat  
ithe was suflesing from some insemity or aberration of  
mind or impairment of fatellest fo auch an extent dy not  
foe fully aeountable for his aetione, she Pes s 10  
ihc they of hs eeneesom order to nee  
mice, “Approving 9 passage from the change i  
  
Coan ot Snaps the cou tated ha tage mst De  
State of mind which is bordering on, though nat amoucte  
ing to. insanity. and there rust be mind's afected that  
responatlity 1s mised trom fll responalty 40 pare  
Sal responsibility. "Again, citing previous cases, the court  
fald that the qusaton ta be pat tothe jury was. "Was he,  
Suing to his inental state, of such inferior responsibilty  
fot his act should have aitibated to ie the quality not of  
smurder but of culpable homleide™.  
  
906. As the court pointed out, streas had been laid, in  
all the formulations, upon the weakmess of intellect. aber  
ation of mind, menial unsoundness, partial insanity, reat  
peculiarity of mind, and the like  
  
807. This exposition of the Scottish law has, after the  
pasting of the Homicide Act, been expressly approved  
{for the interpretation of the defence as adopted Inthe  
Homicide Act) by the Court of Criminal Appeal.  
  
and SERS SEAS AL Rea 497 Ca  
2, HLM, Ado v Braise, 1965.0. 55 exe i9 RC Report,  
3 Sots, 1653 EC 48.  
  
gfe \* Bene 95? 9 LR. 8: 38) GFE 2A ER  
  
cs  
  
  
  
Page 302:  
78  
  
208, An English ease of the Court of Criminal Appeal’  
ray be cited to iustrae how the detente tay been seta  
Iy" applied tn practice im England. ‘Teens. the appellant  
was charged with the murder of a young gi whom he  
isd strengied and hove dead body he “had mutilated  
He adnattes the git, bu pleedet the defence of dim=  
ished responsibilty, ‘The unconteadited evidence of the  
Senior modical ‘witnesses Was that the accused Was. 3  
“terval payehopatl’, and ffered from sonormality” of  
mind, ta that he bad wiolent perverted “sexual desces  
Which Re found it aiticalt or sponse fo controls Exe  
Sept when under the falluenes of such perverted sexta  
esos. he might be normal “They (the medical witnese:  
3) were of the opinion that the killing’ wag done ner  
the influence of those desires. and that though lhe was not  
“Insane” in the technical sons, his sexual” peyehopathy  
could be desribed ag Sparta insanity" "The Jaage direct  
fh the jury that ifthe appellant hiled the git Under sn  
Shpormal SexUal impulse” whieh he found stpossble to  
eset tue pr ethers norma the sect "gold ot  
pple! "The Jury found him gully of murder, On sppea  
Gh the grolind af minsiecton, the court slowed hist the  
Setence’ of diminished responsiblity. and pointed out that  
‘Saynormality of rund” sb wed inthe Homicide Act ad  
to be contrasted with the time-honoured expression “ee:  
{ect of reason" Wed in the MNaghten ees and speared  
to be wide enough to cover the mind's activites nal Re  
‘Sgcets not only the perception” of phvsical’ acts and  
‘matters and the ability to form a Fational judgment 23 t0  
Whether gn set 16 right wrong. but abo the abikty fo  
Sxercae hs wil power to contol physical acts in acterd  
Since ith rations! juégment "The" court pointed out that  
‘ctone'the passing of the Homicige Act s'perao could ex?  
sve lihility for'munder or anyother. crime, reasiring  
rene ew if ha war Insone that (oy. "he way lobe  
Re'under such > defect of reagan from disse ofthe mind  
fa notte know the nature and quality of the act and wht  
fie ae doing or ithe did now i that he didnot knows  
That he wor doing Wrong” That testa rigid one  
besa eft wily fo alpen. inte ey  
{o arprecite the physial act hat he is doing and whee  
‘ther it is wrong. If he has such intellectual "sbuity. his,  
bower 19 contol his physical sets br exercise of his wll  
E'eretevant Diminished responsi. “on the other  
Hand tok note of ever mental abnormality  
  
£99. The court proceeded to Tay down certain other prox  
nstons (apart from the interpretation of "abrsality  
min iva noted) which may “be ‘vmmarsed  
thas  
  
scl, Whether the cused wag sffring, from  
abnormality of mind, as go loterpreted. Ys a ques  
for the jury. On this question medical evidence fs no  
  
TUE Re Bim, (580) 3 WLR. a 444 CCAD  
  
TR  
  
  
  
Page 303:  
Py .  
  
doubt of importance, but the Jury is entitle? 10 take  
{nto consideration ail the evidence and not bound to  
‘accept the medical evidence,  
  
i) The aetiology of the abnormality. of mind,  
namely, that itatoee froma, ‘condition of arrested  
‘evelopment, ete, seemed to be a matter \* bo deter=  
‘mined on expert ‘evidence.  
  
(i) Assuming thet there was abnocmality of  
mind from the specified eause, the crucial question  
nevertheless was, "Was his responsibility for bis acts  
In doing or being a party to the killing substantially  
Impaired? This was 8 question for the jury. Medico)  
evidence waa. of course, relevant, Dut as a question  
Involving a decision of “substantial impairment’. i  
Was a raatter upern which Juries may quite fegtimate-  
Ip dilfter with doctors.  
  
(iv) When the abnormality affects his contro} the  
distinction between "he did not resist his impluse™  
find "he coud not resist his impulsa” is one which | is  
Incapable of selentiie poot problems, inthe  
[Present state of medical knowledge, sre scientifically  
Ffsolubie, and’ could ‘be approsched only in a brood  
common-sense Way.  
  
(v) On the evidence im the case. the accused wos  
achat would be deserived in ordinary ta  
  
the border time of insanity." "The test of | “horder line”  
has been expressly approved by Lord Goddarc | He  
  
fisy pointed out that one cannot go into mice aistine-  
  
tions Retiven mind and emtion, of inlet nemo.  
ten,  
  
910. Another illustration of the application of this de-  
  
ste at be hed. In ets Mathevon" the appellant who ©  
Re red  
  
oShfte-tco years old and a confirmed sodomite, murde  
tov ofiiteen by smashing his head. He was convicted of  
Cipita? snurder. Out on appeal. the Court of Criminal  
Spneal accepted the defence 0! diminished responsibility  
Gee prison mesieal offeer-- one Phisleal superintendent  
“a ane consulting pavehiairist agreed that, while he was  
ese rnd as arma and subuanialyYe  
sired his ments) Yespansibiit:. Giving the reasons  
CiSonciusion. the prison medical officer stated that the  
Renee's sateltigonce (measured. by certain tests) a5  
Sat more than 7 while that of neemal person woutd be  
Sud "the consulting. peveniatist called attention to. the  
‘scords showing that the appeliant had, on many occasions,  
BsSilowed razor blades and inserted nails in his body. The  
  
1 Sins (499) 1 AIL RE 00,968 4 (ECA.  
  
Be Mathom, (938) 2, MUL ER wt, HB (Lord Galtaed CT.  
sieontdl,aAhe™BOi CSE as Maw TES (BSS  
  
20-122 M of Law  
  
  
Page 304:  
Regs ins  
Stic  
  
physical superintendent agreed that the mentsl develop-  
‘ment was rather less than what one expects of 2 child of  
ten Since this evidence was Unrebulted, the defence had  
been “satisfactorily proved. Evidence. of premeditation,  
could pot rebut the defence, because “en abnormal mind  
{s'ss capable of forming an intention and desize to kill  
fone that ig normal; it" is just what an abnormal mind  
‘might do.”  
  
911, A negative ease, R. v. Walden’, in which the de-  
fence was not accepted, may be cited. There, Walden. =  
lecturer in'a, college, had proposed marriage 10 Jove,  
{rl employed in the office f the college. The gi declines  
the propo and avouzed s student ofthe cology Neil -A  
Week Inter, Walden left class which he-was taking, and  
in the corridor on his way’ to his locker, he passed” Neit  
wha wan talking to doyen, Returning tir hi Toker. he  
shot Neil through the back. went into the office and shot  
‘oven through the back six times. the last threw shots  
boeing fired into her beck as she lay on the ground. Both vf  
‘them died. “Walden then ran up to his ear, which be later  
abandoned with the pistol whith he had used. ew.  
found three weeks later by s constable in a shelter.  
dence about the murder Was overwhelming, but: Waldce  
Iried to prove abnormality of mind impaiciig lg mental  
Fesponsibiity” While one. constlting payeliatrist wes tt  
the opinion thst Walden was suffering trom a severe type  
fof abmermality and was suffering from Paranoia atvi Was  
frossly” abnormal. the senior prison medical "ofe!| Und  
nother consulting pevebiatrist disegreed and. said thet  
the accused had imo abpormallty of mind. The Jury seject-  
‘ed the defence. and on an appeal on the gevtind ut Tis  
“direction, the court dismissed the appeal. The oujection 4  
‘appeal was to the summing up by the Judge to jury to the  
effect that the jury had to decide whether the accused  
‘was Wandering on the Derder-line-“being between sane  
land insane”, s0 that he was not fully responsible for whet  
fhe had dane. ‘The Court found nothing wrong in this  
slimming up, on the facts of the ease,  
  
912. Regarding onus, section 2(2) of the Homicide Act  
41967, provides thet it should be for the defence to prove  
that the’ person charges (by virtue of this secon ot  
Table to be convicted of murder. ‘The Court of Criminal  
‘Appeal? bas held, that when a plea of diminished respon  
‘iby is put forward, the butden of proof on the accused  
is not s0 heavy as the burden which reste on the proseet  
ton to prove its case beyond reasonable doubt. and thst  
the burten on the defence ig discharged if the evidence  
justifies the conclusion that the balance of probabilities is  
  
Walden, (ggo) + WLR. voobs (tose) 9 AMR. sez  
  
wos  
3 Rv Dindr, (1952) 3 WLR. $0: (1962) AIIER. 737  
  
  
Page 305:  
Ea  
  
fn favour of the defence. ‘The court followed the Jeading  
ese a to burden of proof, Rv. CormBriart  
  
Sets Timon etter  
(for the Crown), however, said that he was “shamming™.  
  
914, Irresistible impulse hos also. come up. In Rv:  
Kings, the defendant. a Ugandan, wes charged with the  
‘murder of four persons. His defence was dininishe ves.  
ponsibihty within s.Zof the Homicide Act, 1957, "to an  
Eifresietible. impulse”. On his behalf. a doctor gave  
  
Taye would be a stimules such as might well enase a person  
Of his racial type to lose his self-control. The defendant  
Suffered from to abnormatity of mind. either before or  
‘Miter the killings. MeNate J. directed the jury that inre-  
Ssble impulse was po Gefence to 2 charge of murder,  
find that ifthe defendant's conduct was merely the normat  
Fesetion for his racial t-pe, it Was not an -sbnormall(y at  
OIL. The defendant was convicted of all the murders. and  
‘Spplied for leave to appeal, The Court of Criminal Appeal  
(Lord Parker C. 3. Winn and arkinson J3.)- aism'ssing  
‘the sppliation. heid (1) that the Judge's direction wae  
entirely correct; and (2) that there sas in any event no  
fevidence of abnormality arising from ane “causes thot  
‘Wonld tring the ease within s 2 of the Act  
  
Irresistible impale, if ering from abnormality of  
‘mind. would perhaps, be covered”  
  
Cech artis EAN 098) 2 ATER, BT. or  
othe ena nel i sh arte, Rian Spe  
(Daa RMT wes a aaa  
BR. vs Yer, 960) 2 WLR, 9 CCAD  
ARF, Doser 5 16g) Pe tthe fom 1963) #2 Caren  
Lae! fom i93 Deeser WAN IECA 198) 12 Co  
SRE MHS OF he Hamte Ac (167) Cah La Fmt  
  
(See sto Rawal on Crime (964, Vel, page.  
  
  
  
Page 306:  
232  
  
S18. In a recent ease the meaning of the expression  
“substantall)" was considered” ‘The facts "were hese  
‘The detendent, “who pleaded diminished responsibility  
under section 4 (2) of the Homicide Act, 1957, wan charged  
wee mater of wie he ay’ cone a ak  
Thutéer, and he was sentenced to ie imprisonment Te  
‘ppesied'to the Court of Criminal Appeal in appeal, the  
‘round taken as thet the Judge had ss the jury.  
End that had it not been, the verdict of the jury would  
Ie! bean that of manslaughter wise diminished spore  
stats  
  
816, In directing the jury, Ashworth J. of the Birmin-  
sham Assizes had said that according to medical evidence,  
the accused was suffering from mental abnormality, but  
Wine the erased must alo show that the mental abo  
imalicy substantially mapa mental iy  
explaining the word “substantially”, the Juoge said  
  
am not going to try to find a parallel for the  
‘word “Substantial”. You are the judge, but, your ows  
commonsense Will tell you what It means. This far T  
Will go. Substantia does not mean total, that isto  
  
the meatal responsibilty need: not be totally impair:  
ced so to speak, destroyed altogether. At the othe: end  
Of the seale substantial does not mean trivial or min  
imal. Iris something in between, and Parliament has  
Jet ig to you and other juries to sa on the evidence  
‘was the aental responsiblity impatred, and if =  
Was it Substantial impaired?”  
  
917. The Court of Criminal Appeal said that the direc.  
tion given to the jury on the meaning of the word “tube:  
Uuntially" could not be valid llesed, ‘The direction,  
hough not identical with, was in substance quite the same  
fs that given in Reg ©. Simeow'.” (The Times, February 21,  
18cd), and approved by this Court. The Court went on %0  
‘quote the observations of Lord Parker, C.J. givsn in the  
esse of Simeor, as follows:  
  
“AI four experts were of the opinion that this  
‘appellant suffered from an abnormality of mind, and  
{Bat abnormality of ind are fram inherent cause,  
the narie given’ to the “abnormality” being. eran  
personality  
  
[Not one of them however, would go to the length  
fof saving that as a result of Voat. abnormality the  
‘oppellant's mental responsibilty. was substantially  
Impaired. They sed words #0 the effect that the ine  
ppalrment was moderate, that It seas harder Cor lum To  
Sontrol his sctions. thatthe degree of paranoid’ per  
‘Shnality Was, as one doctor aalds persistent and strong.  
  
Lie (960)? WLR 13 CCAD  
eg. Sim, "Tae Tine, Bbrary 34, 1964 (CCAD  
  
  
  
Page 307:  
2s  
"us nd ter expres were usd, ul nt ne  
the mental experts elt that he could say thatthe i  
Prirment was substantial, In thowe circumstances the  
Tors after what this court considers to be a 00st ade  
Iniable and fir summing-ap refused to return a vere  
CoE anther but eared a verdict of ca  
  
818. The Court of Criminal Appesl further quoted the  
civetion of the ‘sia Jadge Finnemore Jin Use case of  
‘Simos about which the Court of Ceimiral “Appeal ed  
Stated in tie previous cage that it could not ‘be vals  
iced, "The direction was ax fllows:—  
  
“Members of the jury, the real thing you  
think here i ths word “eubetantiae and ee Wl  
Econ whit a moment. Relther doctor celled fr the  
fence obviously Tiked dhe word, “and fe may. be 70  
tt thas the word in the Act of Pusiament that 8  
the word you have got (o use and T expect Sou tll  
hot have Se much difcuity “as some “peopla might  
Raver “There lho seentiie preie test That cane  
ot be and never cain human sonduc otherwise we  
Ihoal ot eed snes analy and ou wl  
Slow me to say aot thine ou shoul Tole a 1  
Brond Commoncense way" and ase yourselves, having  
heat ae the doco tne si hing ade op  
Nore minds about i, Knowing what this man aid  
Knowing’ the whale tory, do we think Joking itt  
sual ay ‘common people, thee wat. sub  
Cantal inpparment of Ris mental respontbity in  
‘what he did? Ifthe answer to hat fee, then you  
Fost nny murda. but gully  
Sitaghter. "the snswer to thit fs "ah the may’ be  
Some mpaitment, but we do not think Ie wae sube-  
Sofas eet eet a ee  
Inade any great difference, although fe may have ma  
whacdet ircentrl PRmsa oveeraln fom rine  
  
you woul lity ase is charged in as  
nly Sharge tthe indicnent  
  
‘tes approving. the direction to the jury given by  
Ashworth Jin the assize Court, the Court of Criminal Ape  
peal dismissed the appeal.  
  
‘919. Tt would appear, that the defence of diminished  
responsibility 1s recognised "in the laws of ‘some of the  
‘Commonvwealth countries also. Recently, it hag been ine  
corporated in Queeneland?s  
  
1 Bo he postion i Tos ee RG Report pass oS od a  
3 Section $4 Criminal Cade of Queens  
  
3 Se yea Atwratan Law Jonna 17%  
  
16 Coun rowan Aosr a Ciimin "aw (1965. pags foe  
  
  
Page 308:  
cy  
  
820, The necessity of using care while employing the  
Dhrase “borderline insanity” in connection with leninishe  
‘responsibility was emphasised by the Privy Counell in  
‘case! which arove under the Homicide (Special Defence)  
‘Acc ioeo of the Behana islands, an Act which is sumllaz  
to the Homicide Act. 1987. The Privy Council pointed oot  
that the distinevon between egal iaanityand. mental  
  
be ne fh and moto Segre, or &  
i recognise that he Is doing second, but  
Aovertheless be unable to resist the teinptatien to set o8"  
ing to abnormality of mind.  
  
921. Opinion i not unanimous as to whether the provi-  
son on the subject in the English Act has worked Well  
‘Though WW has not been aa ungualifed success, it woukd  
‘Sppear to have served some Useful purpose. The provision,  
ile not abolishing the M’Naghten Fules, supplements  
  
‘where thers cannot be said 10 be  
  
‘Perhape in counities where the sentence of  
ory "and the application of the MNaghten rules  
{5 felt to cause hardship, the provision would. come. ia  
andy ax saving the Judge from having to passa formal  
Sentence of death in case Of hasanity outside those rules,  
‘where the sentence would not, in any case. be cartied out,  
Sha also to give s measure of recognition to mental abnor:  
malities short of insanity  
  
922. The defence of diminished responsibility may how-  
ever te abused. Sometimes persons, sentenced 10 a Teseer  
frpraGnment under this provinon, aay come out of pesca  
and commit the same kiling again Again, » person,  
{Peay Insane, may, instead of taking’ the defence fs  
Sanity. put forth the defence of diminished responsibility,  
Invordee to obtain a fixed sentence and avoid detention in  
the prison sseant for lunatics. ile may thus, escape the  
treatment which would have been given to him ia such  
a prion  
  
423, Wowever, the defence wane 10 have seve same  
vseful puspose io many’ ease, for example, eases of inane  
{iste duttas the Tnfatieide“Act™. One suggestion bas  
  
1 Ree v. The Que, (161 AG. 496, (0961) 2 W.LR. $06 (PG)  
sw note an Homicide Asi (194) 20 Mader Law Review, 31  
vy Je Hil with  
sen With, Cemina Lathe General Pe (98, parrot  
"5% the ene of age ew  
(oo pa SS panera  
Sorthe vr ote, Penk McGrath (48) 1 eth Mica ourat  
a5 Steshin Gadde Wine Ena iene Genet Bat, GED)  
ie it apa nt  
muta CAME Gatien Cet poe 19 Fo  
  
Cea Le  
  
  
  
Page 309:  
205,  
  
een to delete the requiremens of “mental sbnormalits”,  
Siras to leave to the Jury discretion t0 reduce the cotvi  
tioned manslaughter in all cases where the culpability is  
substantia. diminished’  
  
‘924 Since, in India, the question of sentence is enticely  
o the diseretion of the Court, and the sentence of death  
12 not mandators, tuch @ provision does not uppear to be  
‘evessary. Couris ray, while considering the question of  
Sentence, be expected to take into secount the mental  
  
Of the nocwed. even If it falls short of legal insanity  
  
‘A change in the law is not, therefore, suggest.  
  
‘Torte Nuneeen 49  
Other exemptions considered  
  
925, We have already discussed’ the categories of per~ Ober  
sons to be exempted on the ground of age, sex. mental sranmtions  
Bate. or prognanes. Certain other creunmstances” have ="  
een put ‘orth as justifying euch exemption. But we do  
  
Sot think that an exemption fom death sentence should  
  
be granted in respect thereof. Elements of nesessi, dur-  
  
ss Sd muistike, or excellent earlier record of the offender  
  
ind other personal circumstances, can be taken. into 2c-  
  
Souint bythe court, Tt acoald not be desirable to lay down  
Sigeneral vale that in every uch ease, only the lesser sen  
  
ence must be limpesed  
  
(CHAPTER XI  
SOME PROCEDURAL QUESTIONS  
"Tonic Nomen $0(a)  
Replies to question 10  
  
928, Question 10 in cur Questionnaire, after referring Question 10  
to article 134 of the Constitution and geelion 411A, Critic Sofas  
sal Procedure Code, sulieited views of this point =  
  
“Are you in favour of enlarging the powers of the  
  
Supreme Court so that an. appeal  
  
Supreme Court ae s matter of right in all cares  
  
‘which a seatence of death hag been passed or confirm:  
  
ed or upheld by the High Court?”  
  
Conflicting views have been expressed on this point  
while many replies oppase the enlargement of the powers  
Of the Supreme Court az suggested In the question. many  
Sther replies faveur such enlargement  
  
1S Gage Witam, Crinal Law—ahe Gener) Pat (9 pe  
  
ssh rage De Genera a os  
2 Se Amis of entdan, Coe Net 26 36 7 6  
3 Sa aio fn we Sanapps Sky, AER tag! Madr 36,  
See purses Bru 92a.  
  
  
  
Page 310:  
288  
  
927, Amongst thove who favour the enlargement of th  
appellate jurisdiction ate a few High Court Judges™,  
Shite Governments, many Bar Astociations and einila:  
Dosties!  
  
Some Bar Counel) have favoured it’, Balangement 1s  
davoured by several wembers of the Dac‘, several Men  
ines of Parliament and State Legislatures! and eertato  
coffzers". The Law Minister of a State is in favour of en~  
langersent'” A distinguished Member of the Rajya Sen  
tala favour of enlargement"  
  
[A former Member of the Lol Sabha, who is an Advo-  
cate tava  
  
“The Principal Judge of a City Civil Court in a Prese  
dency Tost ia tale of elargemen  
  
Some Ciiy Civil Court Judges ae in Lavo  
  
$28, The majority of Presidency Magistrates in a Presi  
oncy Tenn’ age tn favour of enlargement nthe 4Four  
  
‘that no person should tose hi Iie unless the highest Coat?  
noe considered his ease  
  
An Inspoctor-General of Prisons is in favour of ex  
lasgement™  
  
1 hel sie of High Cour and ie of tb High Cour, S.No 17  
ve somes eet pes oe tant:  
{Noo A Member, atsaSobasS-Norsoy See  
  
wt RDM 2 Sine S.No, 26; A ALLA MB G8  
  
cou mgs g Sate Gpummmam, Sone Inger  
‘Re intpetter General 't Poder. "Nen tay “ “se  
185, No. 245.  
sss. Na 290 ab oh 5  
148. Now 396.379 398 39m a8 and 9H  
20, No 3k,  
  
  
  
Page 311:  
27  
  
929, The udicial Scetion of he Indian Officers Associa-  
Won in 9 State has stated that an appeal shout! le es 8  
ratte of right fn all cases where the sentence of death haz  
Teen confirmed, passed or upheld by the High Court Fute  
ther. 1 hes suggested that appeals” against. acquittal on  
hasges of murder should also”be permissible up tthe  
‘Supreme Court. “While the deterrent of death sentence is  
rpecessars im the interest of society. no consideration of the  
lime er labour involved in scrutiny with the utmost care of  
ll the evidence available should be spared even up ta the  
bighest teibunale of lend, Tt is a miscarringe of justice whee  
ther itis a conviction or ap acquittal. when it 16 00% iste  
fed No effort js 2» small to render imponble ths 1  
Cerviage of justice even in a single instance," Many D:  
Int and Sessions Judges are in favour of enlargement  
  
880. One District and Sessions Judge’ who favours en:  
Jncgement bas stated that though such a right would  
‘amount to a seeond appeal in some eases, ‘yet It would be  
justified in the case of a death sentence,” and the accused  
must have right to get his ease decided by'the highest ta  
‘ual in the country  
  
821. Another Disivict ard Sessions Judge! has supported  
fenlargement on the ground thet = person condemned should  
fhnve a eight ef second appeal to the highest Te.buna.  
  
£32. An Assistant Judge? has favoured she entargement  
of the spetote upton. on the grup tat wank  
give a guarantee that the punishment has been rightly  
fivent “He eds m "  
“In some of the cases the Supreme Court bas re  
Wiewed even a finding of facts. because it" granted ©  
eave to appeal. in some eases a certificate “has been’  
sven by the High Court that the ease ira fe one. to  
Sppeal,” There cannot be a sound bass for discrimina  
tion of these cases from the cases where no leave Wat  
siven by the High Court or by the Supreme Court"  
  
Some Bar Associations are tn favour of enlargement  
2382 unseated a Distt Bae Association” in  
  
‘Madhya Pradesh that iife is precious to every humaa being  
‘every buman being does his utmost for survival. The  
  
TS No 8  
  
ce ENE BE BE NO MT Ian 81 195 98 44 58H S84  
  
45 Nats  
#8 Rosen  
65. No.8  
7S. @  
  
  
  
Page 312:  
23  
‘Supreme Court being the highest and fal judicial author  
ity for pronouncing judgment on important matters per  
{ining to life and property and other matters of public  
interest. a man condemned must also have an opportunity  
sro-right of puting ha eat before the highest jit  
‘ribunal of the fand by Way of appeal.  
  
804, There are some views favouring a limited enlarge  
  
\* ment, Thus the suggestion of a High Court Judge’ is that  
  
{he Supreme Court should Nave only a limited jurisdiction,  
namely. where questions of law are involved,  
  
1935. The suggestion of a District and Sessions Juda’ in  
Mshnrashtra Is-that an appeal 10 the Supreme Court be  
jrovided but only to the extent of the propriety of the  
Bath sentence, where the senteneo passed by the Court of  
‘SeSslon Is fe impriseament and is enhanced to death by  
the Tigh Court.  
  
30, 8 Dist and Sesions Judge is in, favous of  
timated Tight of appeal, where the High Court imposes the  
Meath sentence for the frst time, the prineiple being that  
{hit would eliminate {from the feld of appeal as of right  
{o'the Supreme Court) all death sentence cases in w!  
  
the Trial Court and the High Court have concurred in the  
matter of awarding the death sentence,  
  
897, Some repliey expressed no views on the question’.  
  
93, Those who favour enlargement have advanced 2  
‘number of arguments in support of their suggestion. One  
Segument is that a further chapee to the accused 10 agitate  
Une uestion of sentence should be given in all cares of  
Seah Spence, including Confirmation. The Supreme Court,  
sis meted, har found sn a few cases, that while the Binding  
Sethe High Court indicated that a particular type of culpa-  
fle homicide was comenitied, the sentence happened to be  
Seated ong aifferent (ypel-. A few decision® have also  
Sen referred to in this context.  
  
939, The point has also been made in one reply’, that  
consilering She impossibility of ractfeation of mistake, 9  
[Utther precees of serutiny by a supecior and more expert-  
Coed judicial authority i always desirable, (In fact, the  
  
es  
UA. on as, 8.3,  
Se Sig coe ste of ah a  
SN ode Rane 9, Ste of okra ane y SG nh  
te ia Sg, Mal lt ak  
yes sg a ae Sage Seagate te la Pe  
yn ona “nmprorcenra of Puke, 8 Nah  
  
  
  
Page 313:  
reply suggests that every sentence of death should be sub-  
Jee'se Snitrmation by’ Divison Borah ofthe Supeeme  
GSvistt he Gated that as death isthe highest sentence  
fan upportnity of appeal should be giv  
  
940, Amongst those who have opposed the proposed  
‘enlargement of junidicuon” are some High Coutts and  
fetal High Court Judges"  
  
i. A State Law Commission?, many State Govern.  
roots, Sod) Administrations “of Union Tecritories and,  
hae’ others are oppose! to enlargement.  
  
282 A High Court Judge és oppoted to enlargement  
boeatie  
(2) 4 will mean, permitting a second appeal  
cas:“ot concurrent decisions of two. Courts trac  
seat sentence, which i not ordinasily contempt  
inthe criminal laws  
() nother countries there it zo such power  
  
Git APBUPMate casee aioe 308 and 196 ae  
  
943. Siveral High Court Judges are opposed fo enlarge:  
  
944, Anatler High Court Judge” Is opposed to enlarge  
rent on the ground that It would shifton the Supreme  
{Gout Toure which shoul appropeately ie in the High  
  
‘343. The Home Minister of a State!” Is opposed to  
‘enlargement  
  
846. The Law Minister of a State", who ig opposed. t0  
enlargement. has expressed. the view that ths provisions  
relating to merey are enough.  
  
FA Sere Goceramant, S.No.  
  
2 Two Migh Gore Sow 167 amd th,  
SGweE farce ef a High Coots S.No, 36  
4 Several High Gout Je: 8. Meng, 47 or  
5. Sone Law Comiminen, Nov 9,  
  
ESN eon gg tan ae 8h Be ad,  
  
1) d94 06  
  
Sra  
  
  
Page 314:  
20  
547. A Minister in a State Government is opposed to  
  
‘enlsrgement, on the grotid that the procedure will become  
‘ery lengthy and expensive  
  
248. Some members of Parliament are opposed t0 c=:  
Aecgement® So are some members of she State Legislatu-=  
‘oppined to enlargement”  
  
34), An Inspector-General of Police! as stated th.  
cenlatgemett would Inad to delay.  
  
ltt. Sei, Adwoate ofthe Bamby ih  
cutthas, while opposing enlargement, stated that get  
Tolle speaking the Fight of appeal to supseor court shoud  
For be extended ond that i enourages ltgaton, protracted  
[Proceedings and inordirate delays, and Keeps the condernn  
ELCs a sae of suspen fr an idee period  
Jn his stew, the eight of multiple eppeais im America hae  
{ea to tortucus and protraced proceedings, He has obs  
flithat in Americ tbe unfortarate eppelan bot al  
Sept ina wtae of sgontsing suapanse for ears, but, in some  
[ck tie case ot Secon ad Vanget fot instance), It ends  
in ake inhcman spectacle of the man being executed af  
Poits of aspense and expectation  
  
8), Certain District and Seasons Judges are opposed  
to enlargement.  
  
$52. A District and Seasons Judge’ has opposed enlars-  
rent om the ground that theoretieally there canbe 29  
‘End to the sucecrive appeal which We can provide. He  
fits pointed out that bath the Seasons Judge and the Hi  
Serf stan da ae ekierernest odd i  
Cea ee dest ont ned efiegerett wd ihr  
Grease the work im the Supreme Court with no corres  
Ponding benefit  
  
8 Siveral Distriet and Sessions Judges are alse  
‘opposed to etfargement  
  
964, A, small number of the members of the Bar ore  
againgt i.  
  
18 No. mt  
  
2S. No 27  
  
B'S. Now 10,298 an 209  
  
48. No 38  
  
FS.No.ath  
  
78.80.36  
  
18.3539 29m 96,386, 38,  
  
4 A Plater, Cow, 5.612,  
  
hy 5 an 98  
  
  
Page 315:  
Bay  
  
855, Some others are alo opposed to  
156, The opposition. to enlargement is based on severay  
voint, The Batis thc the Courts Smpie  
ower wo rectly mscareage of funn; scopy: tat oe  
Supreme’ Court ie not court a erminal appeal it the  
Srdinary sen, a a unconditional ight of tpl would  
rot be juste thirdly tha a depart fromthe exist  
"4 astm i not necenary Beene fasts not harper  
‘lier te ramp ater fee alder  
labing justice an Inceahng the sot ou  
sake the High Courts lose their poestige ant would  
“taken the deterrent ect of the death penalty and  
iE that weld anneotsarty Intense the oak  
TS Sipreme Cours  
Tonic Neanen S06)  
‘spe of eppeat in erimnal cues cher 0 sentence of de  
{5T. We propoe to consder in detail the present at  
ss i appsal cases here the stance f death in  
‘se. The Courts we can pasta mente of oath are  
Sither the igh ‘Courts inte exerci of thelr origin]  
Sia fuudeton ot the Cosy of Seoon ‘he os  
“lah God ohh now exerees auch erminal jrldiion  
"yahe ondinary gina aide, the Clete Migh Cost  
alters High “Chueh wat can ‘be deseited a  
~tagrecary egal ceiminal juisicen” which may  
¢ Sle elher by totam of withdrawal ea Sam ube  
line Court in the igh Gout? under arse 28 ofthe  
‘Canton op by tandler of cae fe a saborinats  
SUH tthe High Court nder section 5361) of the  
Code of iminal Procetue, 1008 or by. an onder pce  
the Mien Cour dieetng tht “tn Socted peck be  
‘Cmunitted ne Wai to ise er ‘ction S280HU8) ot  
ram Code or by tanaler ofa ase im a eaberinate  
‘ota tthe Bh Coust ‘under the Leirs Patent et by  
“tetele of the Tigh Court extsordnaty tinal Jn  
Sichon\* under he Later Patent or a der ander se  
sti the, Cote of Criminal Brosare, whet he  
\*NML AY bectad to be eld the High Cour otto?  
2 Geta ess tothe High Cour under seton SBA  
Sceton si of that Cade  
{5% So far as cates tried on the original side by the  
igh Court aye conceea ro "prowidons fice "No  
‘wats may be noted. The Art i etl SHIA of the  
  
Fitge Gidea Soe ath N® 139 4X Dot, \_  
‘Roenbay, Magcas and Calcutta, -  
  
LE aes ine ee cone  
omibey: Misia od Cosas ‘e  
  
Scere of  
So where  
ocak  
  
ask"  
‘co.  
  
Appa rom  
ste  
Figen,  
  
  
Page 316:  
22  
(Code of Criminal Procedure, 188, which te quated below  
  
ILA. (1) Any person convicted an a etal held bs a  
High Cont in the xereise of iis original citminal  
Jurisdiction. may, notwitheanding anytiong eortained  
in section 418 or section 423, subsection (2), o¢ In Ihe  
Leiter, Patent or aw by which the High Court is con-  
ituted or eontinund, appeat 0 the High Court—  
  
(a) agaicst tho conviction on aay ground of  
‘appeal which involves a matter of law only;  
  
(b) with the Ioave of the Appellate Court. oF  
uupoa the certifeate of the Judge who teed the  
‘ctee that itis a ft case for’ appeal, against the  
Conviction on any gcound of appeal which involves  
2 aner of fact only, or a etier of mixed law  
ind fact of any other ground which appears to the  
‘ppllote Gout floes sufein® grou pea  
  
(6) sith the leave of the Appetite Court  
tthe sentence’ past Unless te sentence i  
  
(2) Notwithstarsling anything contained in, sex  
Jon “7, the State Government moy direct the Public  
Prosecutar to present an appeal to the High, Court  
from sey order of acquittal passed by the High Court  
In the exercise ofits ariginal criminal jurisdiction. and  
atch appeal may. notwithstanding anjthieg contained  
‘n-seetion 418, oF section 425, subsection (2), or In the  
Uniters Patent or law by which the High Court iy  
‘constituted or continued, but subject to the restrictions  
Imposed by clause (b) and clause (c) cf sub-section  
(1) of thie section on an appeal against a canviction.  
Reon a matter of fact as well a5 a matter of law.  
  
(3) Notwithstanding anything elsewhere contain  
‘ed in ary Act or Regulation, sn appeal under this sec:  
ton shail be heard by a Division Court of the High  
Gourt compos of ot Jas than two Judge beng  
Jodges other thes the Judge cr Judges by  
arigia! tre wo held an tho orstiotion of sar  
iision Court is impracticable, the High Court «ball  
eport the clreumstances to the State. Government  
which chal! take action. with a view to the transter of  
the appeal under acetion 823 to'another High Court,  
  
) Subject to sch rules as may from time ta  
time be made by the Supreme Court i thi behalf an  
torsuch = ‘eRe Bah Coy mny ex  
Fequire, an appeal aba ie tothe Supreme Court from  
  
‘onier made appeal under sub-oation (1) bea  
Bisson Crt of the High Court ip reepect cf whic  
fprler the High Court cerites thatthe ee les At one  
for such appeal”  
  
  
  
Page 317:  
288  
  
959. It may be added, that sector, 411A applies to  
‘extraordinary erminal Jurisdiction a  
  
Subsection (4) of section 411A of the Code of Criminal  
Procedure, It would have been Noted, dealy with appeals  
to the Supreme Court.  
  
969, The second is the group of provisions contained Aapeleg  
  
in Sricler 134 Vana T96 of the" Cons  
guoted belo  
“134, (1) An appeal shall te to the Supreme Court  
{om any Jedgrnent inal cede ot sentence Ins cr  
‘nl proceeting of w High Court inthe trnitory of In  
Ifthe High Court  
(a) bas on appeal reversed a. order of aguit~  
talof an aceused person nd sentenced him Yo death:  
  
Cy) has withdrawn for trial before itself any  
  
‘case from any court subordinate to its authority  
  
[and has in such trial convicted the accused persany  
  
‘nd settenced him to death: or  
  
(certifies that the ease isa ft one for appeal  
to the Supreme Court.  
  
Provided that sn appesl under sub-clause (c) shall  
Jie subject to such provisions as may be made in that  
[behalf tnder clause (3) of aricle 1 and to such condi  
tens 2¢ the High Court may establish or require.  
  
(2) Parliament may by law eonter on the Supreme  
Court any'further powers to entertat. and hear appeals  
From any judgment, fnal order or sentence in a imi  
nal proceeding of = High Court in the territory of Todi  
Sibject to such conditions and limiations as may be  
Specified In such lave  
  
196. (1) Notveithstanding anything in \*his Chapter.  
the Supreme Court may, in is dlscredion, grant special  
leave to appeal from any judgment. decree, determina  
lier, sentence of order in any calise oF matter passed  
pease by amy Court or irbunal inthe tersory ot  
  
61. So far a5 Courts of Session are concerned, the  
  
for. which ate heeiaon  
dons Which ate Mean  
  
present pestlon is this.» Any petson convicted at a trial C=  
  
Feld by the Sessions Judge or by the Additional Sessions  
Judge may appeal fo the High Court” When the sentence  
;passed by the Court of Session is he of death, the proceed”  
Ings Rave to be submitted to the High Court for confirma  
tion of the gentence, and the sentence cannot be executed  
unless { is confirmed by the High Cou!  
  
2 Seon 4, he Cale of Criminal Procedure,  
4 Sein 374, tbe Cote of Criminal Proedre 898  
  
  
  
Page 318:  
208  
  
962, The powers of the Migh Court on auch reference  
are very” ide, both in texpect of procedure  
im respect of "the substantive "order fo" be  
  
The High Court ean rake or cause to. be made  
4 fats ery ni, oF take, ae to be taken a  
{tonal evidente upon. any point bearing upon the Ewlt or  
Inrocence of the convicted person Tt tay” contfan. the  
  
Sentence, of pass any other sentence warranted by iat, ot  
annul the conviction and conviet the accused of "any.  
‘offence of which the Sessions Court might have convicted  
fim, or order new trial on the same of an amended  
charg, of acquit the accused person, The order of confirma:  
‘ion fs not to!be made untl the period allowed for pretert-  
ing an appeal has expired, or, fem appeal is presented with:  
Insuch peried, until uch appeal s Jksposed af In fact the  
confirmation proceeding ana the appeal, i any, are heard  
together,  
  
96, Where the Court of Session, while convicting the  
accused of a capital offence, has imposed the lesser sent  
{enes, the High Court may, in exereise ofits powers of revi:  
Sion, enhance he sentence", after gWing the accused. aa  
‘opportunity of being here  
  
‘A rovision cannot, of course, result én alteration of an  
‘ogitil inte conviction. Whefe the High Court confirm  
Tin sentence of death in condemn procecdinge  
‘mainfaing i in the appeal (it anv), or enhanees the lest  
Sentence to a'sentence of death, further "appeal tor the  
Suioseme Cont ie governed by articles 134 and 136 0f the  
  
4, Whece the Court of Session tas acquitted the  
ceed the ‘State an appeal to The High Court ad,  
Sevan cans ate Sty nan be alowed”  
{pea “in such appeal rt can reverse the  
ser of acautal est that futher ngury be ade,  
Sr thot the aenuied be neties. or commited for tal of  
finding and pat sentence on hin according  
™  
  
1 Setion 39§ (2, Cole of Cominal Prceone, 158  
2 Sesion 376, Cale of Criminal Pardue 198  
4 Seton 376, Prov, Cale of Cetminal Meccan, 898  
  
4 Senn 439 (0, Cate of Criminal Procedure, 198. A 0 appeal se  
sete A a he ae  
  
4 Sesise 49 (2) snl secon 439 ( Cade of imine Pree  
eet  
  
6 Sect 4394 Cote of Criminal cedure 98  
  
We meal noe ds, ee aisle 123 of the Constaton  
  
1 Sesion 417 a the Code af Criminal Procedure, 1898  
  
{Sation 7 13) of the Cale of Comins Procure, st  
  
18 Sesion 43) (040 of he Cate of Criminal Prowse 1996  
  
  
Page 319:  
965, It an appeal from conviction, the High Court may Appes  
‘enhance the sentence after the accused has had an oppos- SIs  
tunity of showing cause agunst the proposed “enbence-  
  
966, Thus, whatever be tho venue of the tral, every  
case of 2 capital offence, where the sentence of death is in  
issue, must ultimately come up before the High Court.  
  
967, Article 134(1) of the Constitution sets out  
extent Gf jurisdiction of the Supreme Court in criminal  
‘matters. The appeal lies in three cases  
  
(2) where the High Court, on appeal, reverses the  
‘onder of acquital by # Court of Sesion and sentences  
The’ seus to deat  
  
()) where the High Court withdraws a cage from  
the Sessions Court and, on conviction, sentences an  
‘accused person to death  
  
(©) where the High Court certifies that a case is  
St one for appeal to the Supreme Court.  
  
‘This right of appeal under (©) above is not rostricted  
to eases involving sentence ‘of death, but extends ‘all  
srirnnal eases: it i however subject fo rules mae by the  
‘Si ‘eine Court under article 148 of the Constitution.  
  
Parliament has the power to confer on the Supreme  
‘Cosel anv further powers to entertain and hear” sppeals  
from judgments, fal orders or sentences in = criminal  
broceed'ng of a High Court under attics 14(2).  
  
968. The appeal. therefore, les as a matter of right  
sere tbe High Coat, fr the st hime imposes» Sentence  
of death, elther when the maller comes up in an  
  
to the Court or when it ties a mater Teel butt dow net  
Iiv-as a mavter of right in caren where the sentence ig en  
hhrneed under scetion 439 of the Criminal Procedure Code.  
  
194). the pings Have becn lad down by She Supreme  
e principles have been lid down by She Su  
Glee noe ots odgment Wek we ‘all Bly  
  
‘There is still another provision io the Constitution which  
confers juristiction on the Supreme Court. to entertain  
Sppeals Sn that i atiie 196 whieh alto we shal dices  
  
4, Sesh 3 (ah oe othe Sal ea owe  
‘in 295s, ‘  
  
reviog 1 apyel o High Cour in eta cere snen  
1122 M of Law  
  
  
  
Page 320:  
tutlon an appeals tte Spree Cousens  
an appeal lest f  
  
‘matters where a certificate hag been granted by the High  
our of ts tng’ Rt ise for “appeal tothe’ Bapreie  
  
970. As to when a certificate can be granted under  
article 184, the Supreme Court’ has, laid ‘down certain  
Siteria for the exercise of discretion’. In Haripoda Dey  
¥. the State of West Bengal, where a certifcate had been  
{granted in spite of the fact that the question involved was  
{ne of fact, the Supreme Court held that the grant of eerti-  
Beate was improper, and that the High Court had no juris  
dletion to grant the certifeate in Uhese cicumstances. "The  
Imere fact that the High Court was unable to remedy any  
  
‘Supreme  
  
i  
:  
  
Coure when there are no complexities of law involved in  
{he cast requiring an, autheriative interpretation by hig  
Court. On the face of the judgment of the learned Chief  
‘Tastice, the leave granted cannot be sustained”  
  
spill, 1x Khushat Rao v. State of Bombay’, where a cer:  
tiscate was ‘ot on a dificult question of law snd  
ocedure Which required to be setled by the Supreme  
Bours but on a question which wee esentally one of fact  
namely, Whether thete was aufclert evier.ce of the gull  
‘of the accused, the Supreme Court, folowing ite previous.  
Judgment in Horipada" Dey cave, mde these Stree  
  
“tn other words, this Court does not function, ord.  
‘nary, as 2 Court." of Criminal Appeal. Under the  
Constitution, it has the power. ara itis its duty, to  
  
+ hear appeals, as a regular Court of Appeal, on facts  
fnvotved in cases coming up to this Court on a cert.  
Sento under article 1M40){a) or (0). To the same  
  
Tar Sigh © Soe of Une Prada 8) x SER. 398 aon  
  
3 Hanpads Diy. Site of Wet Bea (1950) SCR. 639  
  
gag Sbear Grey Sher of Wet Bgl (958 SER. 1,  
fer Se of at Baga (93 6p, and ce  
  
catia Bo % Soe of Wet Bigs (996) SER. 639, and  
“SK Rao ¥. Sa of Bambey, (1998) SCR. 554, 595.  
  
  
Page 321:  
effect are the other decisions of this Court, referred  
{ein the reported decsions  
  
mos embetter  
to be vigilant in cases omit ace tar, by Wad  
Sion WEplcatien for 9 carifete of Atpess under  
Stacie TAG) (©) of the Constitation”  
  
In this case also, the certificate was held to be ilegal,  
  
‘Therefore, a certfeate under clause (c) of article 134(1)  
‘can be granied ‘only where the question is one of great  
Importance™.,  
  
72. Thee ng aor ron nn Conan  
which gives to the Supreme uriadicton  
  
Tppenifin criminal matters, and that is sccle 196 of the  
eeistiution Several tests have been lid down as to when  
‘he Supreme Court will entertain an appeal under article  
136, NR eatiy as 1080, in Pram Singh State", the La  
‘wes thus stated. The Supreme Court sll aot grant special  
icave to appeal under article TREC) of the Conseution wm  
  
Ge'Siate 9 Madey VAs Voldyonatha tyer the Coutt  
tela thatthe Supreme Cour wil not ready interfere with  
i finaing ofthe et gn y he igh Cour, a i he  
High Court or otherwise inproperly, inter  
ference wil by called for \*  
  
The Supreme Court refuse give leave under artiste  
10 in Wer'Stngh Sate oF UPS where the ste gestion  
‘Posie aplicbity of section 1 of the Tain Penal  
weet lato hte orbit aefton Wh hd tee oped  
cnt’ of ve persons In seeion on  
  
Sint the ny qonon ras tae ras tone of ve  
Jorvns and heteone cuanto of fact.  
  
ES  
  
73. Thus. in our opinion. there Is adequate provision ig  
the Contitaton to Safeguard the intrett of an sccused  
ire brevet any msarriag of rc or the impose  
  
om of tapltal sentence not eafled for  
  
1 Nor Sigh «Te Sar oF Pet SER  
  
2 late The Suse C PLATR. tans S18  
  
3 Sim Sigh The Sue J BPLAIR. 90 SG. ae  
  
4 Bowd Prd «Rae Bin 38 TA, 138 BOD.  
aad Sr Eee a Re Engr, 1A ISL.  
  
rm Sigh Str, (930) SCR 8  
  
Sum of Matra A. Vadnais yo (99) SER st.  
  
EN Sieh 9. The Sie of CPCS) # SER. 2%, 2,  
  
  
  
Page 322:  
28  
  
‘The decisions on the subject of interference by the  
‘Privy Coun in Criminal cases were reviewed in. Arnel’  
‘case, where it was pointed out that the Judicial Committes  
‘Was hot = court of Criminal Appeal. Tt was alio stated  
thot the practice of the Court. of Cruaiogl “Appeal in  
Englan’ Would rot be ecessarily relevant regarding the  
procedure of the Privy Council in advising Interference”  
  
SrA. Im a recent decision of the Supreme Court’. the  
scope and afmbit of article 136 way considered. “After  
Pointing out that an appeal urder article 138 Was not 25  
BE right, nor by spectal certieate of the High Court, the  
Supreme Court made the following observations:—  
  
“Once a decision is given yy the High Court, that  
4s inal unlese an oppedl is allowed by" apecial lave  
ff this Courts No dat this Cours has grehted special  
isave o the appellants, but the question is oce ef te  
Prieipes which this Cour wil ordinary follow in  
Rich an appeal It hag eon ruled in many cases  
Before thet this Court wil not reassess the evidence  
at tage poral hom its bon ccaentiy  
ih Court ‘adhe court ore  
cise In‘ other words, thie Cour door not form 8  
Acczed” Tt accepls the aporsical of he evidence 12  
ft wccepte the ce in  
the High Court and the court or courts below There:  
{ofe, before this Coun interferes something more must  
te'shown, sich an that there has boon i the tal 8  
Wolation of the peineple of" natural Justice or 8  
tttion ofthe rights of the teed ors misread  
ing.of vital evidence or an improper Teception  
evidence which I cacarded or Fectived, would leave  
the conviction “unsupportable, ot" thatthe court oF  
Sr lag proces or procedure by whic fuses foal  
ot ga ‘or procedure by whi ‘tlt  
bos fed We ‘os i apptonching i cae, borne  
se principles fn it fre the principles for  
the exercise of juradiction in criminsi ‘eases: which  
this Gourt brings before islf by grant of special  
  
575. This survey of the constitational and statutory pro-  
istons shows, thet st present there are certain altuatong  
  
iieaew wherein, ever If the sentence ig one of death, a right of  
  
spre without certeate ot High Court have of  
  
lipremne Court, to the Supreme vermis  
mn-of the High Court, fr nor ovailebe,  
  
V Chanting lel = Baer,  
  
eer  
svete ete ed ea 93}  
ug bbe cates eared ot  
wees Sees eee  
  
citer dats me a a So  
  
poy  
> Sealine 9s) SEA,  
Ak ETC mc OP ™  
  
  
Page 323:  
209  
‘These are a8 followes—  
  
() Where the Court of Session has convicted the  
accused of capital offence and sentenced him to death,  
‘apa the sentence is confirmed by the  
‘proceedings for confirmation;  
  
Gi) where the Court af Session has convicted the  
acedsed of a capital offence and sentenced hima to death  
‘and the sentence is upheld in appeal by the High  
Court;  
  
(ii) where the Court of Session has convicted the  
accused of 2 capital offence, tuk sentenced him to the  
{Keser sentence, and the Tigh Court has zzhanced the  
sextence to one of death, elther in revision or mm the  
fppeat from the convletion fled by the accused under  
  
sections 411(1A) and 439(2), Code of Criminsl Proce  
‘are, 1800;  
  
00), where, Judge of the High Court, siting on  
  
the Orit ede, senteces the aefeasd a eat ant  
  
{he sentence Is iaintaped by the High Court “an  
eal under section AIA € the Code of Criminal  
duce, 1800  
  
(2) whore a Judge of the High Court siting on  
the Crgna ide, convicts the "aceuses of 2 capital  
ce, sad the gh Cour ian appr) ‘by the accused  
once sam appeal  
  
Shain the convitlon, eahances the. betence.to one  
Fest ndor sete 4A rend with scion 3008)  
tf the Code of Cximiral Procedure, 188  
  
96. The next question to be considered ig whether 20 qheier  
hange inthe law to required. ‘The necessity for consider. Sie  
ing’ suse of the fact that the move sures  
{or abolition of capital punishment hes raised questions a  
to|whsther the existing Taw ensures that & persor sentene-  
  
ce to death gets adequate justice  
  
917. The Lew Commission had occasion to consider this aecanmer-  
question previously. when examining generally the retorm ato  
  
SEScei sdministaon. Tey observations on the subject Bares  
swore as folows" fs observations on the eubleet Ror  
  
roi We qhase na before, any eaten Boy yy  
opinion calting for the enlargement ‘of the furtado. emi  
{Gone the Supreme Court under aricie 138A view Nati  
tat, however, been expressed by the Government of  
  
colts SE,  
  
a Faure Repro the Lam Comming (Retr of Sadi AS  
sanendont Val ops Stands pow soy NA  
  
jer eon 417A Gh Cini Prcare te, Bato  
  
  
Page 324:  
ES  
  
300  
  
that the limited right of appeat now conferred  
of persons sereneed to death by clauses (3)  
  
of ariele 154(1) should be enlarged and that  
‘all cases in which the accused persons are sentenced  
to death, there should be a right of appeal to. the  
Supreme Court, without the need of a certificate trot  
tthe High Court. “It was suggested that Parliamentary  
  
tion 0 thie effect ‘article 134(2) should  
  
tog  
belundertaken.  
  
41. In our view adequate grounds have not been  
‘made out for the proposed enlargement of the right  
Lappeal. Even in cases not covered by clauses (a) and  
(@) ef article 134(), the High Court has the power  
to certify a case as ff for appeal to the Supreme Court  
under clause (¢). There is no reason to suppose that  
Eases in which accused persons are serenced to death  
Stic than thas fling under lau () and (ot  
‘slice 124, if they are it ones for appeal, are not being  
Sertiied a fit cases under elause (@) of article 134().  
‘There Is also the safeguard cd by the, wide  
powers of the Supreme Court tinder artile 196 whieh  
‘Wil not fall to be exereisad in caves of death sentences  
where 4 miscarriage of justice bay occurred. "The pro-  
posal of the Madras Goverzment is based on the view  
{hat all cases, where the extreme penalty of the law  
hhas been awarded, should be examined by the Supreme  
Court "We are not inclined to accept this view. For  
‘over & century such eases have been dealt with by the  
High ‘Cour mibjct othe" maperintendence of the  
Privy Council under ite special leave jurisdietion and  
there is 10 Teason, Why the High Courts should not  
  
aig for Of frictions mend. eae  
fhe Cimmasion Srught thet thre was o reas te  
inc cer whe ware at oe opel sot oa  
Eerie oder dee Sango and tual. Seemoe We  
Srl eta the fend under are 196 would  
SSNS Wetted o ey natigs of jot,  
178, nas, dub, tbe noted at sae ths Report  
veal mined here his esr’ ito tanking gene  
reset ot cop pnatment wn pry ot  
ih hs ec aopcts tcp ene Durng th at  
Ieydas pre sh guerdon sf soliton as ne debated  
Uptsnd ants any ous we al and  
See he bate gas the senna cpt  
frets Peale of error epic,  
Pentel, ech no ust have Beene  
  
  
Page 325:  
ao  
  
‘sent to the minds of the framers of the Constitution’, has  
‘how come to the fore, and ir would mot be mpi  
  
IP the question of tight of appeal Io reexamined te ths  
Uht  
  
$79. We may, inthis connection, refer 9 the views of Views  
the Canadian Committee. “That Commitice noted" thet Gait,  
ie the Inn ores the, x perm one cotton as  
  
Upheld by « Provincial Court of Appes, might appeal as.  
  
‘Haht‘to the Supreme Court of Canada: where there was  
  
“dfsent ‘om « qucetion of law in he lower Court ahd tha  
  
‘therwse he could appeal toa single Judge of the Suprems  
‘Court after obtaining Teave of appeal on.e question of Taw  
‘After notteing that under the law in force then, Courts  
ould not grant an extension of time for leave to appeal in  
‘Ertan cases, and siting that thin might cause tnjuatlce  
‘ied embrasoment and the sccused may be deprived of his  
Fight to appeal en a technical tip, the Commitee recom  
‘mended, rst an “astomatie appeat to's Provincial Appel-  
Inte Court fier every capital eviction, (eo thatthe record  
Wwould be transnited to the Appellate Court sutomateal  
Typ: secondly. that competent Counsel should be: provid  
€2 to the appellant ip such cases, and thedly, bat an  
SSpocal should be allowed. trom the Provincia Court t  
ppeat to the Sopreme Court of Canada as of Fight to  
ety pertap subject to a capital sentence. Tt isthe last  
‘comigendaion thst © of inferest to un ‘The Commiltes  
‘made this resommendation "because of the gravity of the  
time snd entence™ We quote Below the relevant part  
apn  
  
“04. At present, appeals to the Supreme Court of  
Canada are fimited to appeals as of right where there  
Ee. digent on a queton of Inw in he” Province  
Gourt of Appeal. ge an peal may be taken  
fon a question of law if leave ip obtained frem one  
funige ofthe Supreme Court of Canada" Because of  
theagavty f the tie and sentence, the Common  
onaidered it proper that an, opporturity to be beard  
By the court of last fesortshovid be open to. ev  
Subject toa capital sentence” and recom  
at the law be amended to provide for an appeal at  
  
atright in such "event to "he Supreme Court of  
  
880. Accordingly, the law has now been altered In cxsas.n  
Conada by the amendment made in 106) tothe Criminal sora  
‘Cede. Sections SHIA and SOTA, of that Coe inserted it  
  
Siva 14 (1) an of the Contain  
2 Cinna Repeat, pae 4 pte 9.  
2 Conan Repo, page 4, sagan 3a 84.  
  
  
Page 326:  
me  
oan.  
  
ier  
Ha  
  
on of  
Bp  
  
Sealine’ lew  
  
5 of the Commonwealth?  
  
02  
  
1961) (dealing respectively with fist and sccond appeals)  
are quoted below"  
  
“SEA, (1) Notwithstanding any other provisions  
of thin Aci person whe has Bean sentenced dosth  
‘may' appeal tothe court of sppeai—  
  
(0) against his cocvietion on any ground of  
  
appeal shat involves a question of law Or fact or  
mie law abd fact and  
  
(c) against his sentence unless that sentence  
4s one 8xed by law.  
  
(2) A person sentenced to death shall, notwith  
standing he has aot given notice pursuant to section  
508, be deemed to have given such mntice and to have  
appealed against his conviction and againat bis sent  
fence unless that sentence is one fixed by law,  
  
(8) The court of appeal, on an appeal pursuant to  
this Section, shall  
(6) consider any ‘of appeal alleged fx:  
  
{he notice of appeal, if any notice has been given;  
  
eat eonsie te raged tsi, wining  
(her ae’ present anyother ‘pon  
{he corvicton ought fo be st aed oF the settener  
red an the cat many bo  
  
“SOTA. Notwithstanding any other proviston of this  
‘Act, a person  
  
(2) who has been sentenced to death and  
  
whose conviction is afirmed by the court of appes!,  
  
(2 wh, spe of ee pant  
  
‘may appeal to the Sopreme Court of Canada on a  
round of Taw of fact or mixed lew ond facets °° 8"  
  
981, Tt must, now  
  
i nod hat fo oer contig  
cepting Canada, the Sight  
appeal hae not been vwidened, end readly speaking. its  
iimite to questions of law extept with tne eae tte  
srpsine out Tome eto abate eh ocd  
{Sdpeal i a crinal ease, on a question f fet even whee  
sentence of death Ss pased.  
  
962. The question now is whether any change in the  
required. This question has #0 many aspects, a  
  
‘Sesion! SGA and 7A, Giminl Cale (Gealol  
2 Compirnve rmetal gen sepa,  
  
  
  
Page 327:  
303  
  
‘uch can be ssid on cither side. On the one hand, the  
‘widening of the Junediction af the Supreme Court fh 0  
‘doubt, bound 10 inereage its work.  
  
883. On the other hand, there aze certain points, stated  
below, whieh require to be considered.  
  
824. First, the replies! which ws have received to our  
Questionnaire show that there la a considerable body of  
‘pinion in favour of proposed enlargement of the jurisdic  
tion of the Supreme Court  
  
Sreondly, the risk of an erroneous cor.viction is a fact  
which has to be considered. The Taw should make. the  
‘utmost efforts to see that sll safeguards that are reavonably  
ractcable are made available for avosding en erroneous  
conviction, in & Case where the sentence of death hag been  
awarded,  
  
fe hn comer hua t om\_snp  
snd ti Sa, ei ee a  
sory egg oe, ae othe ete  
Tank diene Sep Eon  
Sater Ss tie oder a eon  
Sp mrecnenres Pirie ead apes of te ent  
ina Sit OR cane care  
Som ere nd Mk aang oe  
  
‘The generat principle behind article 194, is that a per-  
son who hag beer condemned to death ve at  
Teast one tight of appeal "This be iusteated with  
sckecce arte HEC a an’ ("mau the ring  
‘on which ariele 134(1)(@) proceeds is that where Fete  
Som scquitted by the Court ef Sesion (on, in the cad of  
High Court exeresing orginal criminal uriedetons at the  
High Court tessions) {som an. appeal against acquital  
genvicted by the Appellate Bench, right f sppeal'ta the  
Supreme Court Is nawded, because the inti! Rresumpiion  
cof innocence is. in this case, further strengthened By the  
fact thatthe trial judge has found him innocent It apanat  
this double Dresitmption, the “Appalate Bench fads hea  
sulltand' sentence him to death it fy ceraialy & matter  
  
4 Repl [0 gue 10 tae Boon arama sarah. So pa  
fants bol 8 sre  
  
  
  
Page 328:  
4  
  
mich ose earmr, Sele te  
air rerum, Sua, ce  
Rice ris Soa Seo an  
Tepes Miers Steen re  
  
WPS RSS 2 Sree  
  
908, Thee consideration do nat\_apely fo the cases  
seus rbseovee ithe sgt Seagate  
Scpeme Coast's Sutton Mf cts fer tan those  
vere by article 19) a) and (te fate of the ese  
Sold ae rected tae eoeraton tthe bande  
nota of Cert of Senaen ato he gh Court  
trek the hg court goes Ugh the whol eden  
her ain In cation goveninge oat  
thecied” ha ten iiiy cond ont even,  
thet are conaren dingy fact I ach 8 as  
  
sr be wrong alow an'appal tot Suprema Cort  
leach Upped wll amount 6 appeal en grounds of  
fic  
  
987. Lastly, there is no reason to believe that the appel-  
late jurisdiction ofthe Supreme Court is not suffclent  
safeguard against the miscarriage of justice  
  
‘¥8t, The fact that the Suprome Court had, in a majo-  
sof cases, to refuse leave to appeal, further shows that  
t Court has not found any serious flaw in the present  
  
scheme. Tt is, no doubt, true that no human agency can  
be infaltible, "and it can be ated that & person  
sentenced to death may be is of having hie ca  
  
f  
  
‘ai  
Rix" however, to br drawn somewhere: te exiting In  
Assis the line a the level of the High Cou ann co  
Sincing reasone have Jet boen made-oat to shift hat lire  
ier op.  
  
900, Further, the existing law provides adequate sfe-  
arsed again an error om fact  
  
For thes reasons, no change is recommended.  
  
Tone Novem 51  
Plea of uty,  
  
0, How far» pes of pully should be accepted by the  
cout ia's Capa casa, Cqueaton which may be dacs  
Sek in view ofits mportatee ‘The preset’ practice  
iia fh not to acnpt' Pen of Bully in such wees The  
  
i ey § CAD. uth  
3Ee Sean eS nl a ec  
etn cnte One. ft  
SEDs Sete Sa a  
  
‘considered at the hands of the court of last resort. A line  
  
  
Page 329:  
relevant provisions of the law as to a ple of guilty in tials  
Selo High oa Sad Eats of Sento are contain  
hin sectone 271 and 12 of the Code of Criminal Proce  
‘Sire: fon “These are quoted below =  
tna Te Date? ea Se be euent betoe  
the ae or re  
Jed the charge shall be'read out ip Court and ex:  
Fisined ‘to him 'and he shall be asked whether he ib  
[Fully of th offence charged, ox caumg tobe teed  
  
(2) if the agewed pleads gully, the pea shal  
te dete and he may Be coneoted thereon.  
  
712. It the accused refuses to, ot does not plead,  
oxi ls eel ie C,H Ee  
Sia ” proeed to choose jurors ay hereina  
‘Tvected haw Ey th cave, but in any tr ease, the  
‘Hidge shall proceed "0 ry the case himsel.  
  
Provided that, in cases (lable by jury, the same  
sary may abject to the ht of Sen heeinater  
renuoned, try ao many accused persons saccessivel  
  
ine Court thinks it ” ¥  
  
991, 1k may be noted, that these provisions leave a dis  
cretion to the Court to accept a plea of guilty. Ordinarily,  
fowever, the glea fs not actepted in a capital case, though  
those ating ga ing be Cort sated  
that the sccused Understands all the essential elements of  
{he crime and the effect of the plea. It will not be a wise  
lxercise of the diserstion to sczept the plea of guilty ina  
Capital case. Charges of rurder, it has been pointed out,  
EEequently invlve complicated, gusto: 3 tthe now.  
Teds and intentions with  
  
caf Elle my wife She had abused  
me. Called me ‘ware. No one Was present. I  
  
her with = Kulhsri™  
  
1 dahor Sang. Bp, ALR. 93g Sind 94, 305  
  
2 Quen Empresa Pao, (een) TLR. 33. Maem  
5 Dali's. Bap ATR. 192 Alshabed 233 (0)  
  
Lgrgecbagcet fimo HAR. 19 Ap, 35 ar lee  
  
  
  
Page 330:  
306  
  
‘We are not clear whether the word “guilt” in the  
Bg ar Bia oe was the interpretation of the  
judge of the meaning of Bhadu’s plea In nny event  
Jc Was not an ‘unqualified ples af gulty, and ekthough  
the words of obuue which Bhadu said’ had been used  
might not have effet to take the case out of section 302  
‘of the Indian Penal Code, they put a qualifeation on his  
Samission and made it heceseary im our opinion that  
‘the tral should proceed and evidence should be tsken,  
In this country Tt ts dangerous to assume that & pri  
soner ofthis class understands what are the Sngredients  
ef the offesce under ection 902 of the Indias Penal  
ode, and what are the maters which might reduce:  
{he act committed to an "offence under section 304  
Even in England, it used to be the practice of some  
jdges, and probebly is stil, although they were not  
‘outa do to, to advise persons pleading guilty toa  
capital oftenes to plead not guilty and stand thet? tal,  
‘One of ts had known that course followed in numerous  
  
{cate as set bck the Court of Son, with 8  
wetion tothe Judge to lence ahd poset on  
{he tans of the plea not being unqualified lek sf pully,  
‘hs ie a Salou, ed on cen taken fare  
the some’ Setione ‘sceused convicted  
  
dentenced 0 death’ ‘The anbtence was conizmed by the  
  
Hips Cour)  
963, 16» ple of cepted, the accused cannot  
appeal rom ise cocoa’ “He capa ony st  
  
{found ofthe extent or the legality "of he sentence. By  
Pleading guilty, he is considered to have waived nis right  
‘of appeal” "The intention of the Legislature Woule appa  
to be to trest the plea of guilty as a waiver of the right of  
appeal except as to the justice and “Tegalty of the’ een-  
IEE och cent, of ours, does not spy tthe  
High Court acting io revision under section 408, Code of  
Celminal Procedure!  
  
804, The practice tn England is this: Generally, where  
‘an acoused pleads guilty and it appears to the saflfection  
of the Judge that he rightly comprehends the effect of his  
Dlea, the senterce ‘can be forthwith passed on his after  
‘eeording his confession’. In a cate of serious crime. the  
‘ourt is usually reluctant to accept the plea, and ‘will sd.  
vite the prisoner to retract i But, if the’ prisoner ci  
‘ofuses to withdraw his contoston,thete Is n> alternative  
1 Seon 412, Cade of Gmina Proeore  
op M, ale eto) LER s ‘Bombay 35,  
Trident Marre Ces Ace ane Cae  
3 Kei Chand» Ep. ALR. 1943 Pat 13 Ran J.  
44 Hoorn Bmp. ATR. 193 Ranga 30, 50  
5 Archiv, Cina Pleading ee. (es), peraph dd  
  
  
  
Page 331:  
3  
  
but to accept it even in the eave of murder, of which  
instauces have cegurred even in recent times  
  
995, The matter was considered by the Canadian Com-  
mittee, ‘The Committee noted= that it was Possible for sn  
‘ecuved to plesd gully ts change of murder, "Om rare  
Seeasions, = parton convicted of murder has insisted on  
Sern» ‘pen of guy. thae ce, the cours bave  
nasted on the production of sumicient crown evidence (0  
fture {at the charge Was well founded” The Committee  
believed that it was extremely undesirable 19 admit pleas  
Of guilty in capital cases, "becauss the capacity of the  
{ecised must always be taleen as doubtful and the accepts  
nce of the plea almost makes the court privy to a scheme  
for selladestiuction I therefore, recommended, that the  
lbw be amended to provide that all murder tris should  
proceed as if a ples of not guilty were entered  
  
996, Accordingly. in 1961, section $15 of the Criminal  
Code of” Canada was amended. Section $15, sub-eection  
(G3) soe Cot at "Cade amended, “are guted  
“2 accuse who t charged with an oflence  
inishable By Seath and Ia called vpon to plead may  
‘liad ot guller or the spelel plese authorised by ths  
Bart and no others  
2b) Where an accused who is charged with an  
ceftence punishable by death does wot plead, not guilt  
Grvone Of the special pleas authorised ‘by this Pact or  
Goes not answer dicecty. the court shall order the  
Stork: of the court 10 enter a pleo noe gully  
‘We have to conser shether any such mandatory pro-  
vision Is needed "Since, in India, a sentenos of death has  
to be confirmed by the High Cour, which would certainly  
See that no Injustice fs cased, by the acceptance of a plea  
of guilty without very strong reasons. We do not there.  
fore recommend the tsertion of @ rpeciRe provision  
‘Tone Nevroen 62  
  
Medical Examination of the accused  
  
997, The topic of medical examination of the accused  
in & capital caso, which wae considered by the Royal Cam-  
lsiont, may be dealt with, as it Is of interest. to cur  
  
1. whit en" Aepead Repos 3"  
{Craton Rept page paren &  
5 Canasi Repot pose 1 pcgrphH  
{Canney Gmina Cage, at amended i 196, sein 5  
{Seven 974, Code of Criminal Preelure, 198.  
{ERC Report, pies s,m wd Arend 9, ine g16 ot,  
  
esis  
  
Esra  
  
te  
Sock  
  
  
Page 332:  
country also. The importance  
Information about the mental state of am accused charged  
‘itr murder, need. not be omphasioed  
  
Wsione of the Tow may’ be veered, to  
Under the Code of Criminal Procedure! if  
malted for tial before a Court of Sexson,  
Speers fo the court atte tal (9 be of Mansour  
s2F° Consequently Incapable of making is  
Sry or the court shall in the first instance,  
2 Fads unsoundness aca inapatty: and tthe  
Soar i stale of the tact the Judge shall record a Bind  
fing to that effect and shall adjourn further ‘t  
the case It'such person “ia found to. be of unsound  
tnind and incapable of making bis defene, then, ueder the  
dame Code'r he can be. released on sreurty boing given,  
‘Ge. or may be ordered fo be Getained in safe cunts.  
  
S98, Now. twill be ote that thee provions are de-  
endent upen it "appearing to the court” that the sc  
[ctumouad miadcte: ere is no eulometc examina  
  
Royal Comsntasion had two objects, rst, to recogrise the  
fact that where 2 person fs charged for a crime for which  
the fixed penalty is death, itis the duty of the State to  
‘obtain the best advice an his mental condition as a ude to  
the conduct of the ease; and secondly, to ensure thet the  
‘evidence presented on the point by the State, should have  
‘the weight that can be given only by authorities of “the  
highest skill, fle experience and manifest impartiality”  
  
990. Tn this connection, mention may also be made of  
what ts known ‘as the Bripgs Lew, enacted in the Stato of  
“Massachusetts, under which an accused charged with 2  
  
State Department of Mental Health  
  
1000, Provisions on the sublegt exist {n the laws of cer~  
tain other States of the United States of America, and also.  
in countries of the Continent also  
  
seat © Repo, aes ah, Darrah 436, comin « dete dices  
  
ptt lle coin a RC Rep, pe 6 604, pag  
  
  
Page 333:  
300  
‘CHAPTER XIV  
MERCY  
"Tore Nunanen 58(2)  
Existing powers of commutation  
  
1001, Coming to what i known as the tive of Esa,  
mercy", re may note the proviaions on the subject come  
{ained in tices 72 and Idh ofthe Constitution and, Sox fa  
lon Soy 402 and 4024" of the Code of Criminal Procedure™  
‘These ate quoted below:—  
“8 () The President shal have. the power te  
4 eves, repites or remissions ol  
Fniskinent or to suspend, reat or commute tho sn  
Ence’of any pervon convicted of any  
(3) in all casos where the punishment of sen-  
tence ie by's Court Marta;  
(©) $n all cases where the punishment or sen-  
tence is for an offence against any law Telating to  
‘inaier to which the executive Power ofthe Union  
  
extends  
(6) im all cases where the sentence is 2. sem  
  
tence of death  
  
(2) Nothing in sub-clause (a) of clause. (1) shall  
  
‘affect the power conferred by law on any oller of the  
‘Armed Forces of the Union te euspend, remit ox com-  
mute a sentence passed by Court Martial.  
  
() Nothing in sub-clause (c) of clause (1) shall  
allect the power 10 suspend, remit or commute a sen-  
tence of desth exercisable by the Goveraor of a State  
Under any law for the time Velng in force  
  
161, The Governor, of Sata shall have the power  
to grani pardons, reprieves, respites or remissions ol  
punishment or to suspend, remit or commute the sen~  
fence of ny peron onic of any offence agaaat  
any low relating to a matter to wi  
  
power of the State extends"  
  
401. (2) When any pergon has been sentenced to  
punishment for an ofenee, the “appropriate Govern:  
fen may at any ie without condiigns ot upon sry  
Conditions which the person sentenced ac  
  
pend the execution of his sentence or remit the whole  
SF any part of the punishment to which he has been  
  
1 Seco 44 al 34 ofthe indln Penal Cade may ako be sen,  
20 to eaeutive power ofthe Union, me arice 7 ofthe, Cones  
  
tea,3M © ete omer of se Se te 16 th Can  
  
  
Page 334:  
S sentence, the (appropriate Government). mes fee  
fauire the presiding Judge of the court before ce Uy  
‘Which the! conviction was had ot confirmed to stste hi  
pion st whetine the application should be gan  
fed or refused, togetier with his reasons for such opl-  
hon (and also to forward with the statement. of sch  
Opinion = certified copy of the recoed of the trial er of  
Stich record thereof as exists)  
  
MB. (Remaining eubssections nat quoted),  
  
402. (1) The eppropetate Government may’ with-  
cout the consent of the person sentenced,” commute  
Sy one ct the following sentences fr anyother men=  
toned after it—  
  
death, imprisonment for Ife, rigorous Imprison-  
ment for a teria mot exceeding that to which he might  
‘have hen sentenced simple imprisonment for  
  
(2) Nothing in this seetion shall affect the provi-  
sions of section 54 or" section 38 of the Indian Penal  
Code.  
  
(@) In this section and in section 401, the expres  
lon “appropriate Goverment™ shall mean—  
  
(a) in cases whore tho sentence is for an  
‘offence against, or” the order referred to, In sub  
Section (GA) cf Section 401 is passed under, any  
‘nw relating to-a” matter. to which the execative  
ower of the Union extends, ‘the Ceatral Govern-  
ent: an  
  
(0) in other eases, the State Government  
402A. The powers conferred by sections 401 and  
  
402 upon the State Goverament. may. in the case of  
  
ggmtece of Seth, also exercand ty the Central  
javernment™  
  
‘Torte Nuseex 54  
[Replies to question 11 (2)]  
  
AOBSW 02 Question 514) incor Questionnaire was as fle  
  
~ (a) Have you any suggestion to make with res  
pect to the power of the President and the Governor to  
Sine putinedt af “death at" tsp Soni  
a ihinent af death orto suspend. remit or  
commute the sentence of denth under arieles 72 and  
{ei ot the Constiteion and the power of the Govern-  
ment to suspend, remit “or commute. such’ sentence  
‘under sections 401-82, Criminal Procedure Code™  
  
  
Page 335:  
au  
  
A very large number of replies to this question express  
‘general sausigetion With the powers contained in the exist  
  
But it must be noted that certain replies suggest res-  
ckions on Uioao powers in matters of deta etl e000  
‘Such replies have been reoelved from various souccee’  
cluding’ fev State Government and High Courts also), it  
‘would be desirable to state here the Important potsis made  
in those replies,  
  
1:08. The principles on which these powers are exercised  
have been sated It epi cosines very hnowledge-  
able source’, te gist of which is ae follows. —  
  
‘The exercise of power of the President to grant  
pardon to oF commute "the sentence of death, under  
frtile 72 of the Constitution, of that of the Governor  
lunder article 161 and sections 401. and 402, Criminal  
Procedure Code, depends upon certain extenuating cir~  
‘eumstatices such as the following'—  
  
(), where the murder was committed without  
premeditation, in a sudden quarrel, or without  
ny intention to kil; or  
  
(ii) under provocation, oF in furor brevis, of  
(ii) where the offender was a person. of  
‘abnormal mind  
  
1004. One of the High Courts? has stated that the Presi-  
‘dent and the Governor should not exercise these "powers  
‘nls they receive zatsaclory prot that the conletion it  
lageinat facts, or that the courts have not properly exercised  
their diseretion im awaeding capital punishment. ‘They  
ould take the focts found by the courts as coreect, and  
Should not “sit in judgment” over the courts.  
  
2005, A suggestion made by certain High Court Judges’  
4 hat some provon should made laying "down the  
‘Conditions under which the President or the Governor cam  
commute the sentence, ete, On legal sspects, itis stated,  
the decision of the court should be Anal, and a mercy pelle  
ton should be entertained cely on some other ground.eg.,  
changed circumstances,  
  
1008. Some High Court Judges! have suggested that par~  
don oF eve sould te granted om very rare secotna  
on ‘and in very hard eases, and not for poll  
fica reasons and certainly not for cold bioodad murder,  
1 soit GSettament oa Reeeary te he Besides Novas"  
A High Coe, S.No 87  
2 To Sih Cour alge, 8  
{Two High Coun Jadge,  
22122 M of Law  
  
ios  
  
  
  
Page 336:  
a2  
  
1007, One suggestion ss to the effect that the judiciary  
ghoul always be peeing, ai the pow of pation shoul  
  
1008, 8 Bar Association? hae stated that these powers  
should no longer remain with tho President. or the Gover:  
‘or, and that while the petition may be addressed. \o the  
President or the Governor, it shoul (if the executive ed  
thinks ft be referned to the last court which sentenced the  
[person concerned (with recommendation, if ang). and  
‘he decision of that court in the matter should be fal  
  
Certain other points have been made, which will be  
dealt with Inter  
  
2009. An Inspector-Genera} of Police" has suggested  
deletion of seetions 401 nd 42, Criminal Procedure Code,  
fon the ground that in the interest of administration of jus"  
Lice, itis not necessary or desirable to empower the Gov.  
erninent to exercise powers almost similar to those confer:  
red by the Constitution on the President and the Governor  
  
1010. Another suggestion’ is that the power should be  
exercised by the President only (who is elected “a3. the  
‘supreme authority of the couniry), and thet to avotd clash  
andl confusion, it would be better ff the Governor is. aot  
gives the power. One Bar Council hae stated. that the  
provisions in sectione 401 and 402, Criminal Procedtre Code,  
feed not be retained, and only the powers under the Coas:  
‘tution may be continued.  
  
1011. The Judicial snetion of the Indian OMcers' Associ  
tion’ in a Stote has stated:  
  
“The President, being the repository of the supreme  
temporal power aud grace and the symbol of all fat It  
Kereta ul ave unttred Seren  
the exeelse of his power to grant pardon. The grant o  
pardon by the Governors, however in respect of sem-  
fences of death should te limited to comamtation to  
Imprisonment for Ife. This Ie necessary’ to preserve  
{he element of deterrence and\_(to prevent) chance of  
Etre than gc goa ing nn  
‘render sone of the  
EeBunay of the tak  
  
TSNe ny  
2 Supreme Cou Bis Anssaton, S. Ne 16  
2 See dso tlating to gvstion 11  
40 Inspector ener! of Paice, §. No 38  
[5A Bat Coun, §, Xo, 138.  
  
65. No.2,  
  
  
  
Page 337:  
313  
Torte Nosnen 55,  
Dual prerogctive  
  
2012. In connection with the power to commute death Me  
sentences, reference mst be made to exe important point Som.  
Winn requires discussion, Under “article TSU) of. the  
Cons:itutton, the President has a power to grant pardons,  
etc, to commute sentences, etc, (Co far ap is relevant) Nok  
‘only in all eases where the punishment or sentence for  
fan offence against any law Felating to a mater whieh  
the executive power of the Union extends  
  
Paragraph (b)—but also in all cases whers the  
sentence ira sentence of death —  
  
Paragraph (c)—but the Iater power Is not to afect  
the power to suspend, remit or commute a sentence af  
death exerciable by the Governor of a State. under  
“any law" for the time being in force  
  
Under arte 11, the Governor of 2 State sal have a  
  
wer to grant pardon, etc, or to pardon, remit of come  
rut he entenge of aisy person cbuvicted of any cffence  
‘against any Taw relating to'a matter to which the exceutve  
Dower of the State extends ‘The extent of the exect\*ty  
ower of the Union is dealt with in article T8(1}.. The exe  
feat of the executive power of the ‘State is regulated by  
atl 1 er Whe extends all air wy ee  
  
ct to whith the Legislature of the State has power to  
Pinke lawe-cwhlch would include criminal law. "The peo.  
viso to erticle 163, however states shat in any matter with  
expect 10 which the Legislature of a State or Pasliament  
hhas power to make laws. the executive power of the State  
shall be subject to and limited by the executive power ex-  
presly confersed by this Constitution or by any law msde  
iy Patliament upon the Union or authorities thereat  
  
1018. It would be obvious that, s0 far as the commutation  
fof the sentence of death Is concerned, i fais both within  
ihe power ofthe President and witht the power of the  
Govbinoe under the Constitution apd none of the provie  
Signs of the Constitution eted above seem to have the  
effect of taking away the power of the Governor.  
  
1018, We say next refer tg the provisions of the Code  
ef re ei. “unde econ at  
Code. the “aporoprite Government” may conditionally ot  
Sinconditcnally suspend the execution of sentence or Perit  
Behe ‘of the sentence, Under section 4020),  
  
  
  
Page 338:  
ma  
  
the “appropriate Goverment” may eosamute the sentence  
of deatn to Imprisonment for ife or other lesser essence,  
‘The definition of “appropriate Government” fy containca i  
section 402 (3), out wis unnecessary to consider i, Because,  
lunes sestion ¥02A.'the powers conferred by these sections  
lupon the Stste Government raay, in the cago. of” tie set  
tence oi death, also by exereiod by the Central Govern:  
-ment. The vesting of the power in two Goveraments, found  
4 the Constitution, i thus reflected In the Code of Crirainal  
Procedure also  
  
1018. Lastly, powers of commutation, ete, are conferred  
section $4 read with section SEA. of the indisn Penal  
‘ode, in respect of the sentence of deat and the sare dual  
ower exists under these provisions". ‘These sections are  
Saved by section 402(2) of the Code of Criminal Procedure,  
1898, which was inserted "by the Amendment Act of  
1923'in view of the fact Uhat” doubts had been expressed  
whether section 402, Criminsl Procedure Code was not in  
conifict with section 64, Indian Ponsl Code  
  
1016, This dual power\* existed In section 295. of the  
Government of Toda Act, 198 also!  
  
1017, Thooreticaly speaking, the vesting of this power  
fn two authorities may be objectionable, "because it may  
result in the following austin:  
  
(i) The petition may have been granted by one,  
bt an independant petition may have fen rejected Bp  
the other  
  
i) The petition may have been rejected. by one,  
but granted Uy the other  
  
(id) The petition may have been accepted by one  
ang th seni commuted fr, inet oe  
shite ik may have been eccepted hy the other and the  
Sentence commuted to some other Taster sentence  
  
(iv) Where there is @ petition by several persons  
petitions of few persons may have been accepted. By  
ne’ and the petitions of other persis rejected, while  
  
Fasten Seo cae rns 9 pe  
oc pra nia exit note nari  
3 See Guzete of Ini (ar VY). Mar 38, 1314, page #38 DINOS  
Lo Rae hi fe ae AX Yate  
aR RE es PURE  
  
  
  
Page 339:  
as  
  
‘he pttny of he ots may have been scp  
Pedant ” met oy  
  
‘ivese situations can cause practical embacrassment,  
‘aud, justher, where the commutation is granted 0 Nereathy  
Under (is) above, by the President and the Govern, Tegal  
  
L018. The suggestion of the Chief Minister of a State  
with reference {0 the dual power may be quoted!?—  
  
“Governor should be left with this power when the  
crimes had been committed in his tormtory. If com.  
initted in the territory under the Central Government,  
President should he vested. with this power. But in  
cases where the Governors reprieve’ or spend ot  
commute or remit the sentence, they should get the  
approval of the President.”  
  
1019. 1t may not be necessary to go to the length of sug-  
esting any modifications In the articles of the Constitution  
Or the sections in the Criminal Procedure Code.  
  
‘The matter Is one which ean be left to sdministrs  
instructions,  
  
CONCLUSION  
‘Torte Nunanen 86  
Need for retaining the Powcer  
  
YA. 8 crestica thts often pute whsthe> the Presi  
dent ond the Governor should have ths power cf commu  
‘Hon, Gnd queries are raised as to whether. the executh  
should be allowed to override the decisions of the judi  
ary. ‘When the case of a person hag reached "the highest  
{tibunat in the land, an fm ewnvtetion and the sentence  
ff death Have been upheld by thae tribunal.” woul # nos,  
1 is asked, be derogatory to the prestige of thet tribunal  
‘to commute the sentence on whatever grounds  
  
1021. Answer to this question requires am understanding ena  
  
of fhe easel nature of this power. Te isa “prerogaives atte, of  
fe sn Tiuatraton of “that special pre-eminence; which free  
{hs Neod of the State poswsoey Its exiatence and exercise  
Meyda RY gonad wt “lrtrecy wiht  
jtihry. Secondly the expression “meres” indicates the  
  
ope of aswell asthe justification for. the power, With the  
  
‘eat precantions inthe world cages mist secur where facts  
  
tot known to the cour, exist wich Justify the exerci ot  
  
1S Nic 355, under gstion TL  
  
  
  
Page 340:  
‘his prerogative. ‘The following observations, in an Ameti-  
can eave’, express, in & beautiful language, te nature of  
this power:—  
  
“xecutive clemency exists to afford. reliet from  
‘undue harshness of evident mistakes in the operation  
fof enforcement of tbe criminal law. ‘The administra-  
  
‘of justice by the courts ts not necessarily always  
‘ive or certainly considerate of elzeumstances “which  
may properly maltigate guilt. To afford a remedy, it  
Iins alwarye been thought essential In popular govern~  
ments, as well ae in monarchies, fo vest in some other  
authority than the courts, power to ameliorate or avoid  
particular eriminal Judgments. It ie a check entrusted  
Bp the Executive for special ceses. To exereise it to the  
xtent of destroying. the deterrent effect of judie  
‘punishment Would be to pervert it; but whoever i to  
alte t uosfal must have full diseretion to exercise it.  
Gur Constitution confers thle discretion on the highest  
Beer he nation. condense thet he wil wot  
abi ie  
1022, The meaning and significance of the prerogative of  
  
rmerey hes been vere Well deveribed by Sir Frank Newsam,  
who was Permanent Under Secretary of State for the  
Hame Department, in these words:—  
  
“MAINTENANCE of, the Queen's Peace demands  
careful ad impartal enforceroent of the law by the  
Sodiciery. But law is made for man; justice ts more  
han codes and precedents; and” there are occasions  
sehen Justice and humanity demand that there shall be  
Tnterforunce with the due course of law-—that i, exer  
se by the Crown of the Prerogative of Mercy”.  
  
Joseph Chitty put the matter thus  
"Maman ihatittons are faible, and must fo many  
seaports te prio No haan fe can at  
ie the various temptations which may urge a tan  
Ete mimmsion of an offences" or foresee all the  
Shades in the eizcumstances of 2 case which may ex  
{ouste the gull of the acused” An offence may be  
‘Sithin the iter, bat fore to the general scope and  
SEAR he Aa, orl et at  
Sentiy provide for every ‘Gannereasion of  
Sraindndun and meamire by antilpation the degre of  
Sune which may attach to the offender, He hos enrest  
Ei the Hine withthe power of extending mercy to hin  
Fhe King isn legal contemplation. inured by, the  
rnmision public oflencest "Ms peace sad to be  
  
aed Fa  
  
re choomtade AER. 135  
ase tiene Nemam, The HonecOtee (The ew Whi  
cogs dae 1:  
  
  
  
Page 341:  
at  
  
iolated thereby, and the right to pardon cannot be  
Nested more properly than in the Sovereign”  
  
“The use of the prerogative i not conned to mitig  
unfearnable frie fe extends oot ahtng rong:  
‘conctions  
  
1028, The observations of Holmes J. in an American eo  
ray also be referred to as explaining the true nature of the  
‘power. In that case, the death sentence of a convict had  
been commuted to Tifa imprisonment by President Taft in  
160d, “After nearly two devades of prison life, the prisoner  
‘concluded thet "he would be better off dead”, and attacked  
President Tait’s action a3 a pardon which he had not ac-  
cepted" Holmes 3 observed  
  
‘A ponon in ove days is not a private act of grace  
toss ay via} iappering 10 possess power, ICs  
uct of the Cousitut Snel setemer When granted, iis  
{HS deverminstion of the ultimate euchoriy ht the  
pub welfare will be better served 1 inficting. Tess  
har what the Judgment fixed (Lie Imprisonment  
we ata to be less thar desta).  
  
102i, As observed sn a leading study of the American  
  
President, it 1s demaned that. the capacity to torgive  
{ill be the strongest of his impulses  
  
105, 1k may be argc that in. countey ke Indka, Rezonmene  
where the sentence "Gf death is ot mandatory "and the #3, 06,  
[otitis fee fo conser the clcumstances relevant fo the fhe pore  
{Question of sentence, this power Is not needed, We are  
a yottever Ineamed to agree wih ins ew, ‘There are  
Thang” metters whic may’ not have been considered by the  
ine hands of the court are ted down by the’ ev  
Src placed betore {A sntance of death, pasted By 8  
coist clitrconsderation ofa the materials placed before  
{Cinay jet require reconsideration because of () facts  
for plese befeee the court (a) tacts placed before the  
oust, bat notin the proper manner; Ci facts discovered  
ier the puesing of the cone (i). events which have  
Aecelopad ester She posing 2: the geatenee: and () other  
Specit weaturer, Morea ane codus- tnd. elect heve  
SBISEa feauuess: which would! be too numerous to lee  
  
‘Gage Pisies he Crm 30 Bo ied Sie Prk  
Nerkse a Eea" Oe, anh oor  
  
72'S Prank wma, ‘Te Hone OBO, (959), pat 8D.  
  
SOS NN Gianl ange 7 eve awh at pas 4" foro 8  
Sahay Moan, de Ase Print (980  
  
  
  
Page 342:  
a8  
  
themselves (0 codification. For these reasons, we do not  
‘recommend any change tn the scope of these poisers'  
  
Tone Neves 57(@)  
  
ncn pn ei  
as  
seis uate 110) ects  
“ya sn te  
maceiceeesyco  
sre pee mee  
leat tat these prinaphes can’ be taken only aa a good  
ac Se a ace Re ee  
Se ee chines oe  
See oncom ila  
  
1008, The roy refers to the views exprewed in 1907  
by Herbert Gladstone, Home Secretary emphasising that  
‘numerous considerations are relevant and thet it does not  
pend on principles of strict Taw and fostice, atl lx of  
Sektiment. Tes 4 question of policy and judgment in each  
  
“The seply also points cut that Mt the seratiny of eve  
dence shows that there is, seta of doubt about the  
{Bait of the pooner ie would be at case forthe exercise  
Sf clemancy  
  
1028, Some ofthe consderations that may be taken into  
account have been thus enumerated by ene State Govern-  
tment age, sex, montal defcleney of the acetsed, eircom.  
tances of the cise, (og, whether the offence was commt.  
{6d under prave and sudden provocation et).  
  
Some High Court. Judges have stated that some ofthe  
principles when nny be Borne in mind seem to be these  
‘The power may be exercised:  
  
1G) where there are mitigating circumstances  
whi no oe reed sufclet attention Inthe  
courts  
  
T Biorss aswy nevis ate en sear.  
Rvs Dhrct aod Semone fale (Former Lay Setar 10  
suad Gost ted eta tous Preset SNe  
  
The tfereee see 1 het the pen of Me, Herert Gi  
(tae Bee a Gi Ap Yoox aomentrs Bebo  
Geom VST Made ane te I ‘vee  
Eietad kpc “Bi? Pasamen Been Ve ae  
SS  
  
“UA Sue Goverment, S.No. ">  
  
‘Two High Court Jataey, © 80047.  
  
  
  
Page 343:  
319  
  
(9) when, after conviction, chicumsiaioes ace  
brought to ight indiesting that che emvtioa was  
wren  
  
(ii) speaking generally, 29 harmonise the dictates  
Iw” en Justi where tng tay operate verge  
Bo pig i eer words 10 prevent lear  
miscarriage of justice  
  
1000. Some High Court Judges! have suggested that no  
teprieve ahould be granted unless it is recommended by  
‘he High Court, That this Umitation should ordinarily be  
‘recognised, is a suggestion made by another High Court  
Judge’. Tt has also been by one State Govern-  
Iment® that these powers should aot be exercised to shor'-  
Circuit the legal process of the court. “Megarding princi  
ples I am to suggest that some directive principles may be  
Rasued by the Central Government for the guidance of the  
Slate Goverment, Such execute dhreatve principles  
  
pe  
  
‘may include the clecumstances which should be bas  
Usual distinction Between crime of murder invol  
sonal dispites snd crime savotving security ot the State”  
  
anal, Ot of he State Gonsrnnene ay potted, cat  
  
fers celaling to grant of pardon are coselated to  
the gentiments of meres. and the principles emnot be  
coated  
  
1082, Another State Government? has suggested that  
while the procedure does not call for a change, 1t would  
be better if certain principles are indicated to serve 3s 0  
Bulle nthe dispacai of auch petitions, and tates that there  
fre no fixed principles in these caber whieh ‘snot a very  
  
happy state’ of oflars, ‘The points made. in the reply  
  
(a) 8 generat principle may be laid down that the  
fining of fact recorded by the High Court or the Sup-  
reme Court ar the case thay be, should be accepted  
cormect, {ushile dealing "with the petition of mercy),  
Sind no attempt shold be made af diluting the effect  
ff tho finding’ of fact recorded In'the judgment;  
  
() brosdty spesking, « commutation may be por  
vite om the proud of  
988  
(8) pro~eatons  
Gil) peat cond  
  
2 AHIE Govt Juee  
3A StmeGoreceme  
4 AStee Goer. 9 Ne. 16  
  
  
  
Page 344:  
m0  
  
(Gs) the fact whether the aceused at the Ume  
  
‘of the commission of the offence acted under the  
  
fluence of another in circumstances in Which {ie  
  
Soult ox pony exercise is independent judge  
(similar other grounds.  
  
2033, An eminent member of the Bar! has stated that  
le principles which ‘should guide the President, ele, in  
the Axereise of their powers should be either humanitarian  
‘OF should enable Use Fespective authorities to Lake into con-  
Slecation what ots, he esting state of Sew,  
‘Wout not be entitled to consider,  
  
oo. Me has sisa expressed! the view—an opinion  
os Bae Counedl hat neither the President Or  
le Covernos should have power to give pardon, reprieve,  
  
‘gs, It ss so boen stated® that in extremely revolt-  
ing aeons est of mud, ie te mie  
result Nf conspiracy, one should have the power 0  
Commute the sentence,  
  
1Wa6, One of the principles? suggested ax a guide ts  
‘whether the condemned person was, in the first instance,  
sguted by the taferfor covet or whether there was any  
‘Gifference of opinion in the Judges In the High Court oF  
the Supreme Court  
  
1037. The view of @ State Government\* is that the  
theory of "ecintlla of doubt in the matter of exercise of  
the prerogative right of pardon need not be introduced in  
this countey. All selevant circumstances must be taken  
Into consideration, but the doubt as to evidence in the  
ase stioald not be taken into consideration, and must be  
eft exclusively to the Judges. If, however, there are  
Taeices, which show thit the evidence recorded did not  
fccurstely select the tue state of facts, and these cle.  
Gomstances fad been #9 manipulated that detzction of  
Such manipulation was not ponsible during the trial, then,  
deer iss hat State Government, the power of Ferd  
thes b> exercise  
  
“Ine shes abe Ter Wines the Ba Gonna oP  
  
see of he Ta, $e. 16  
  
  
  
Page 345:  
1098. Another State Government! as expressed th  
view that Its not possible tw stale he” principles  
  
that the matter should be left‘to the “wie couneel and  
superintending exhort of the President, the Gover  
  
199, According to another State Government, there  
should be no fetters on the powers, as these powers are  
{n'the nature of prerogative and the Legislature need sict  
Afanegress on these powers.  
  
1049, According to the Chiet Justice of » High Court,  
‘the principles Wht ehould be observed by. the Pres dent  
the Eocemors andthe ‘Government in. the exercise of  
these pewers shoud be, that if no new fact gnd crete  
Seo ho alana om ihe retoed of the tarde eke te  
Stesed in tie mercy patition, tem the power of pardon  
Feopite, and remision should not be exercised "Where  
few fies and ercumetoness are sought to be sdzkced,  
eps shouldbe taken. to record such evidence, andthe  
ecard should be placed belove the Judge who convicted  
the ccused or confirmed the sentence, for hie views 8  
{o' whether, im View of the fresh evsdence, he would ee  
‘ctmnend: hy remission, oF pardon, ety aad aston shoud  
Be'taken according to the view of the Tudges tn thi Te  
ira, no Particular procedure is necexary 20 far 23 Oo  
Sultaijon with the Judge is concerned, But, where facts  
fre alleged or certain evidence “sought to" be adduced  
Which re not on the record of the murder case, it would  
be edvieable tor the Government to appoint «| Commis:  
fone: 8 Tabunal to reed fh nd saben  
Ste'report, and thie report should be sont to the Sud  
Wwhile'conzlting them ia the matter of remission, pardon,  
tte  
  
1041, According to, Tigh Court Judge’ these powers  
sh ct be fetiered by #logatve ensclneny Bat the  
ciples whch sould guide the exntive ia the exe  
Bie of the powers are to'correch posible ficial errors  
ee'theed cone fom 9 tent which i mistaken,  
  
2h. oF disproportionate to the crime, Ia a proper cre  
Hasan Too pues hy policy comideratons no s0 13  
rect the fastice of the ease  
  
‘Thot the gulding prineipes should be to meet the jus-  
Aico the ee whee HE preceminetly Reennny  
Sp" se>\been emphasieed in'the Feply of "another Wish  
Got sage  
  
  
  
Page 346:  
Ey  
  
100, A High Cour Judge, who is no im favour o  
‘the coditication of the pind, ‘has stated that as ioug  
ste executive acts it a bona Re eanner, i Wl OE  
aing comet  
  
1043. The Law Ministor of a State? hag stated that it  
4g nol possible to state the principles, but generally the  
President or the Governor should exercise the power to  
{grant pardon whenever there is cvicence of some elt  
umstance which could not be admissible in a court of  
{aw or when there are some over-riding circumstances  
‘which can cubwelgh the evidence on which the courts  
normally act. He has added thai, as the circumstances  
ccennot be anticipated, complete discretion should be left  
to the Executive.  
  
1044. The Law Minister of a Stato® has stated that the  
xising provisions are adds, bat hat If the pon IW  
18 to. be changed ‘so as to reduce the incidence of the  
pat poner, hen tw be proper te provide that  
the sentence of “death confirmed. by the Supreme Court  
should not be interfered with except in the larger interest  
of the society.  
  
2045, A distinguished Member of the Rajya Sabha  
While’ expresing! the ww that he, principles cannot be  
{fiven oft-hand, hes stated thot there it need for examining  
the’ principles which should guide, "and. the procedure  
“which shoud be followed in, the exereise of these powers  
  
1046, A Member of Parliament\* has stated that this  
power should be used very sparingly  
  
1017, A senior Advocate of the Bombay High Court?  
bas stated. that these powers ate necessary to enable the  
Executive Government to take into account extra judicial  
Considerations of poliey and humanity. He has, however  
Slso stated that the Home Secretary in England Js boand  
by certain rules, precedents snd conventions. 90 that there  
4g sanall scope for the free unfettered exercise of indi  
‘dust will, and that some sich rules or conventions. are  
necessary’ in India. He suggested thet it may be useful  
{tb establish such conventions ag the President consulting  
1 high Judicial or Tegal authority like the Chiet Justice  
of India or the ‘Attorney General, and reports from the  
ftiginal court as ell as the High Court may als> be  
called for  
  
TRH Goer Dae, SNe a  
  
Xo  
38. No  
1 Sxe  
3 8.Na ae  
  
  
Page 347:  
Ey  
  
1048, A District and Sessions Judge’ hes stated that  
respeat for public ‘sentiment und safety of the sooety  
SHEN bebe Ging pegs fe ok tte af these  
  
2849, According to another District  
Suage, sehen Hes felt that some loss to society would be  
‘nse’ or the fatally of the accused would suffer itxepar  
Sabie loss or when there are circumstances invoking a  
high degree of sympathy, or when itis felt that the death  
‘sentence. hes been. passed in complicated legal circum.  
tances but 2 practical view could be taken for lesser  
Punishment, then the sentence should be commuted.  
  
1030, One of the Districe and Sessions Judges” has  
stated that in eases where ail the three courts have con-  
‘curred in the sentence, there should be no interference.  
  
191, Important suggestions with reference to prine Procdare—  
pler hive been, noted above, “Certain. suggestions tn Rete.  
fnsttars of detail with reference to procedure are contain- “6  
‘cd ia some of the replies, which may now be summarised  
  
‘One group of suggestions consists of those replies,  
wherein i has been’ “stated. that the President of the  
‘Governor, ete, sould refer every case (2 an Adouory  
Board or Committe,  
  
15, Te Chi ac lh Cae ated  
onal Mes eh Gal ne  
nee te an Sen ca Be  
Rae ncareNt se sami bey Eine  
BRUNE Gian te Pe Raith  
Bad) SRNP isl eee mae oe  
Sac iting eee F-  
  
Fekay Sat ed ete taco nt  
Ue? ceo Sani ede cS" a Sa  
Setoncurers oferta  
  
Be Sn,“ AP ae ata  
i Suh atoll We G's Sat ee  
SEs SSR ars une Ce es,  
Shc me Fe a dT  
Pont feat wnt olan heme  
  
1058, 16 has been slated by a High Coury Judge, chat  
ne tint st URE adee wks pase he death Senanee  
fd othe Judge who confrmed the death sentence ia  
  
13. Noten  
  
4 Che fase a « High Cour. No.3  
SSNs ays cole to gates 10) ant  
  
o  
  
  
Page 348:  
m4  
  
appeal or at @ later stac. should be savited by the execue  
tie arhoray 9: in England, before the final decision ie  
taken,  
  
154, Anwhor High Court Judge’ bis ewphase vgs  
soma potedite of Undepentent donation woul lp  
proper exercise of this high prerogative of mercy ot  
Elemancy ‘suitable casey, to dlford relief from waidue  
Farshness or evident mistake in the operation or entorce  
fect of the Simin aw or fo amelorate the deters  
‘ties of 2 particular jedgment considering all mltgating  
Circumstances all of which could mot be considered oF  
{alen”into sccount in'a court of law  
  
1055, Some High Court Judgest have stated that there  
‘ought to be Board of Advisers of 2 high calibre to ad-  
‘he the President or the Governor, the Board may party  
consist of a relired Judge of the Supreme Court of of 3  
Hin Court. “Another High Coust Judge" has expressed  
the opinion that this power should ordinarily be exereis-  
fed only in caves in which the court makes Fecommends-  
toss im this behalf.  
  
1°58, The suggestion of a Member of a State Logis:  
lature! i that the powers should, be exercised by the  
President om the baus of the advice given by an Ex:  
hie Soe fhe Supreme, Court. ang by the Gare  
thors, oa the basieof the advice glven by an Ex-Chiel  
Sastice of @ High Court  
  
1057. Certain District and Sessions Judges have state:  
fed thot the spproach shoul be judicial and objective, and  
{hat the “High Court or the Supreme Court’ should be  
‘consulted  
  
1058, A District and Sessions Judge has suggested.  
that while deciding “the question of exercising of such  
powers proper matecal on the poim should be eotected  
from the District Superintendent of Police and the ise  
fet Magistrate of the district concerned, as the atrocity  
of the crime. and the effect of remission of the sentence  
‘of death would be properly known to these officers.  
  
1058, In qne reply’, emphasis has been ald on the fact  
‘that the real agony 1s im the expectation of death, and it  
  
ee —  
2 Get Foren of ih Coun, ante Mh Cour SH, 8, Nes 1  
3A Fah Couce Joie, © Nes  
  
S. Nou 366 6 ant 32  
FSI No-aae ones qucsions a and  
  
  
  
Page 349:  
Ey  
  
has been suggested chat a mercy petition may be provide  
splot ia Satu ose atter the nal "det of the cobrt hae  
  
samunicsted to the condemned parson  
sete the siteaee of deaths danied  
  
1090, In some of sho avplies', it has box siiced that  
there ia suese delay in disposing of the petitions  
  
1061, An eminent member, of the Bay" sta’es iy. nis  
reply that the President or the Governor ot tse Stste  
Government should act vx consultation with the Supremes  
Court or the High Court, ap the ease may be.  
  
1092. A Bor Association in a High Court! has express  
fed ts anxiet about the delay in srtiving at. the fnal  
Geciion about sentences. Tt has Yound numerus snstane-  
fs where’ prisoners sentenced to death have been Kept ii  
the condeinned cell for 2% to 3 years, before a final deci-  
sion is taken either to commute the sentences oF t0 0  
cite "them. Te has cugeested thet” the Judgment tn  
murder eacs must be given within g fortriht o° th  
Weeks, snd. the eopeal” in” the High Coast or in the  
Supreine Court andthe subsequent exercise of ‘the yr  
ropitive should be Gnished within thres months,  
  
1023, A District and Sessions Judge” has stated that  
the manner and processes of consideration and. decision  
by the Presttent, Governors and the Government in the  
‘exercise of these powers are hardly known, and abliss=  
fed literature is not avaiable in India, He has suggested  
that it would be better if research scholars deal with the  
‘subjects, and the files are made avallable to them.  
  
004. Tt hos been suggested by a District and Sessions  
Judge in Gujarat® ‘hat the procedure should be defined  
by the Ministry of Law, that! the remarks of the highest  
court which daalt with the ease should be obtained and  
considered, and that the petitioner should be heard in  
person (and pot through a lawyer oF representative) by  
Some authority. or ificer as representing the President,  
the Governor or the Government  
  
1085. One reply? suggests, the creation of an Advisory  
Board. selected from the judiciary” “Another repls\* states  
gendy Faky FHE OF rnc Fes of ly CoCo nx Pree  
  
7 A'Dincis Bar Assit, S, No 430  
  
3, Ranta merer ofthe Bar hrogh the Bar Comet of Ts  
Ma "  
  
1 Tn sep 0 gention 10, S.No. a9.  
SNe a,  
  
6S. No se  
  
7A Plater, Calouta, . No. rat  
  
8 a TapostonGenertof Pac, © NS. 98  
  
  
  
Page 350:  
that there should be an ad hoc enquiry committee com:  
  
‘of 2 High Court Judge, a psyeniavist and a socla-  
cals, and the comenitice should make w case-study of  
ee ailender and extenuating circumstances, f any.  
  
other ciggestion’ is to the eflect, that the  
‘General of india should be consulted. Yet an-  
  
al wellore workers, religiods letders and others, Who  
‘in contidsr the humanitarian axpect of the case  
  
067, 1 es been suggested by a Bae Associction® that  
the petition should: be referred 29. tho fast court ehich  
od ie persce’ concerned (with a Fecomendation,  
any) and the courts decision should be Anal, end that  
inet py e aprgoment we wat A  
gh Court Jade ‘har made an claborate suggestion, the  
Ei of which tas follows’ = ™  
() The High Court concerned (or the Supreme  
cout iA has Ranly dealt wth hs cae on thee)  
Should tbe consulted ‘before scuon "ig tale "undet  
Sttcte 2 ce arile 101 of the Constitution oF sections  
GOL ‘ot the Code of Criminal Procedure except  
‘Shore the President sets on grounds of high public  
poles.  
salina Pe, Sinn of the High Court or the  
Should tate the reasons, "whith should be siiabiy  
public  
(lid) This would operate se a wholesome check  
ageinat Government Interference on politcal ground.  
(Gs) This safeguard should be there nat nly In  
cast St Tech setence Baha in case of hea  
prisonment.  
  
1088, An Inspector-General of Police? has also made an  
  
ctoborate suggestion st follows  
(i) The merey petition should pass through the  
sie Ginernment with thelr comments on each points  
alse I ang, but wltbout Uelr secommendation for  
rape the "si peter, togter wih ther  
  
a  
  
(Gi) There should mot be any asope for simalts-  
cs sey petion fate Breer “and  
  
35.50 ue  
53 The Supreme Court ar Amacinion, 5, Mo, 11,  
{LA rte Jug ge of the Bombay High Coun, 8. No.9.  
  
4 Aw Impstr Genera of Par, 5. No,  
  
  
  
Page 351:  
a  
  
ii) Once the petition has been disposed of by  
thy President, no'peton shoud e to the Governor  
  
(iv) Priority at all levels should be given to those  
petitons 50 a5 to snare their expects depose! by  
Fe athorities concerned.  
  
1089. The Government! of a Union territory bas sug-  
  
at the recommendation of the court awarding the  
penalty, and of the State Government, and of any social  
Body euncerned with welfare, may be token {nin sceount  
  
‘Tone No, 57(b)  
Prineipleg jor morcy—whether codification desirable  
  
Wom Te pcp on mach he grng of co De  
Jae ree cui grees owe  
‘cates Pets, ee aie Pah a  
SR Eh ent re ih ee te  
Soa ar eine, “Coan ig oo moe,  
  
1012, The cases in which commataton is granted in Prete in  
England cam be guid fromthe discussion i the Report Dias.  
ot he eal Comendant tating tat im oe of  
murder by a'mother of her of eh under he infuenee  
GE strong emotion and distress of mind (where the ase  
egino onder the nt de Rey he aman  
{s'simost invariably granted. the Royal Came  
tia te the cet which are repadsd af ME fot  
cNerclse of the prerogative, a8 follows!  
  
“Among such cases are unpremediteted murders  
committe in some sudden excem of frenzy, where the  
‘rutderer hse previously hed no evil anima towards  
  
Yeeminded emo.  
  
i victim, pecially uF he  
tionally ufstable to" an abnormal degree: murders  
committed under provocation which, ‘nau  
lent to reduce the crime to” mansiaughter, may "be  
Strongly mitigating circumstances: murders committed  
  
‘without intent to kill, especially where they talze place  
in the course of 2 quatrel; murders committed ina  
state of drunkenness falling short of a legal defence,  
‘especially if the murderer is a man of hitherto. good  
‘nusacter. and ‘murders committed by (wo or. More  
people ‘with differing degrees of ‘No  
person under eightean has been executed since 1887,  
‘or can now (since 1988) legally be sentenced to death:  
‘shove that age youth, though not in itself a sulfelert  
round for repriave In @ heinous ease, is always taken  
1 Tremane af 9 Union Tears, 8 He ea  
2 RG. Repu. pge 13, pangrah 36  
28122 M of Law  
  
  
Page 352:  
28  
  
{nto account with other mitigating circumstances,  
‘Tere isa "natural reluctance" faery out the death  
sentence on a woman, and “there have been ovcasions  
fon which the Home Secretary of the day has expressly  
hhed'regard to the prisoner's sex in deeiding to recom-  
mend commutation”. Finally there are three rare  
lasses of cases in which repricves may” be granted.  
‘Gow is where the Home Secretary feels thet despite the  
vile ofthe Jr thee i ene of Sub’ sent  
the prisoners guilt, Secondly, although | there have  
been’ many cases in which the sentence of death has  
Been “carried out “despite strong. and persistent  
fgiation for clemency", it has occasionally been fet  
htt commute the setence in deferens to & widely  
Spread or strong loeal ey ‘of public opinion, on  
erground hat i woud Se more bart than good to  
‘corey out the sentence If the result ras to “arouse  
SSmpathy for the offender and hostility :0 tho Taw.  
Easy, iis occasionally, thu rarely, neces:  
tary 26 commate the setince ifthe phys Cindi  
Sf the prisoner is uch as fo give ground for thinkit  
fiat oat not be coi “at “erpediosty  
  
1072, tn thie connestcn. we would aso Uke, to quote  
the reply’ which Mr. Herbert Gladstone gave in the House  
‘of Commons to a. question by Mr C.D. Hat  
{Worceshershire, Dreitwieh)"  
  
“Mr, Gladstone: It would be neither desirable not  
th iy der a end fe ale oe  
Rae of the royal prevogative cf mercy. Numezous  
‘considerations the motive, the dey ‘of premedita~  
imo dean, he sine of prvecion,” he  
Sate of mind of the pricoer, his Physical condition,  
  
Character ‘and antededents,'the ‘recommendation’ of  
sheence of recommendation from the jury, and many  
‘thers tive to be taken into sccound in ‘every case;  
Sn the decslon depends on full review of a complet  
febaon of create: and en othe ate  
  
conficng’ considerations. "Aa  
‘Win Harotrs sin ths Hews, he exer ot  
Drerogative of merey doss aot depend a  
  
of ce fron janice, lf dee 1 pend on  
Sentiment sn any way. "TCH a question of policy a  
  
Stelament in each case, and fniny opinion capital  
Srecaton which in He” circumstances creates horror  
Sshd companion for the culprit rather {hen a snge af  
indignation at his erie [sa great ev”. ‘There are, it  
iS'tiue, important priniples which 1 and tay advisers  
  
7 Paiiamoray Boban Fear ees, Wal  
‘vel, ae  
  
  
  
Page 353:  
38  
  
have constantly to Bear lad: ut an tempt te  
Feduce these principles to formulae and to exclude a  
Ecnrideratons which are incapable of being Formulated  
iShele ee wom Reeve a, ay Home  
‘Secretary n the conseleration of the diffcult questions  
Which he has to decide”  
  
1079. The discussion in the Canadian Report shows that Bs  
the pracie followed in Canada ie not substantially aier-  
font feom that in England  
  
nce 0  
Soa  
  
1074, The Ceylon Report! discusses this matter inciden Prin in  
tually in connection with the possiblity af erroneous ean. C=  
  
vietions, It states that while In Ceylon the verdict of the  
Jury of 7 persons divided 8 to 2 in favour of conviction ts  
‘cepted. in exercise of the prerogative of merey, the Min-  
ister of Justee, prior to April, 1996, took, into account, a  
one faetor on whch his advice to the » Govern  
‘Would be based, the fact that the jury were divided. The  
‘Report adds that nevertheless there Were cases Where the  
figeied murderer was executed dap 8 fo 3 civon  
inthe jury  
  
1o7®, Wile desing with the commutation of death Gaal:  
  
SRS Eat eer ete eve aed pe a ee  
  
[rave and rudden provoeation, a ve and po a teen  
‘onsidered  
  
‘editat‘on and the like) would fall to be  
  
1076, Having regerd to the fact that the circumstances Rigi  
of each case must. differ from another, 1¢ would not be Si  
esirable to attempt f0 ley down any ripid end ezhauctive  
  
"on which the sentence of death may de com=  
Iced  
  
{In fact, it isthe very nature of the prerogative that itis  
  
a discretionary authoritys-- “The description "given by  
lackstone® showe that the eegentiol characteristic of the  
  
royal prerogative ls that i 1s “unique and pre-eminent”  
  
‘As has been pointed out, the prerogative of mercy is an  
‘executive power of = very ‘special Kind and is almast the  
  
1 Reogtet pp Gomution of ngaeyoeCapal onsen (Coen,  
‘Govtgnal Pages ZIV—1930) pages $3—s4, paragraphs 3334, and ‘Page  
coved) Ke aes Ah BH Rep ook ne Eo” Me  
  
{Sao ay, Bg Vo a 4  
cond ZW ESE SR Ba SE sa ae ES  
esa non, Commonweal Lt 9)  
  
  
  
Page 354:  
only permissible, and indeed, essential, means of interven  
ton by the executive inthe administration by the cours  
of criminal Ia  
  
wewions 1077, It may be stated, in England, the Home Secretary  
Bect\*tiee may not be questioned about the exerise of the prerogs:  
Fherel Pe live of meres: in canes where persons have been sentenced  
Feeuiv” to death, before the execution oF commutation of the  
  
1078. Halsbury gives these references on the subject:—  
() The Speaker's ruling of 10: March 1947 in 49¢  
House of Commons, Feport $f and his sate  
ment of 1st May, 1947 in 496 House of Commons Of  
al Report 2179' (A. Minister ls responsible to the  
‘King. ghd not to the House, for the advice he proposes  
to tender to His Majesty though he is reepontie. to  
the House for the sdvice once it has been tendered”).  
(i) te aucasion on a culled motion seating  
  
to the’ pretogetive of merey in the House on  
Typing T0810 House of Commons, Ocal Report  
  
‘0808.  
1079. The following extract from a recent study Ie also  
setae  
  
“On February 7, 1961, the Speaker ruled thet a  
question sgn be pu down by Me. Symcey Sve  
‘han acking the Home Secretary to onder an ingaiey  
Inte whether» miscarriage of justice had occurred i  
the case of George Riley. a man convicted of capital  
murder, wos not in ordei’s\_On February 16, 1960,  
‘motion dissenting from the Speaker’ rang as tmpos  
Ing “new. unnecessary snd undesirable Timitaton on  
the ability of Members to dlscharge tele public duties”  
ee dof”. “On Febrary 2.09, the Prine Mine  
sr nan oral anewer, 1 tke steps to  
ttanster the responsiity for advising on the exerctne  
si the Royal Prerogative Srom the Heme Secretary 2  
3' Committee appolted by ‘nd responsible to Paris  
ent  
oh Bi, ph Cows Sema ne Home of Com DS,  
ond EET Neha sane at ee eae of Me 96)  
  
ana Stig t® Hous, 4 Bln Vol, pase 28, pereaph 37  
  
4 Hasrs, sa Ess, Vol 7 page 26  
From (196) Pubic Law, paper 197i  
654 MC, Debares ate  
  
7.634 H.C Debs 17  
  
8635 H.C Debts 1370-13 /4  
  
  
  
Page 355:  
31  
‘Torte Nuntumn 57(€)  
‘of merey—tehether any provisions  
  
Procedure for exere  
nected  
  
1480. We may now cousider whether ary provisions are Prete op  
needed a3 regaide the proved for tbe exercice of the exit of  
Drevogative of meres ‘Sher ony  
  
poe  
  
Wel, In the replies received! as to the procedure to be Cemsataion  
followed by the President and the Governor in the exercise Som the  
‘Of the prerogative of mercy, one of the. ws made fs Seem,  
‘that the court should be consulted as to whether the case Figicear +  
It Gt one for the exereise of this prerogative, In this cone  
nection, it may be of interest to refer to the statutory  
Drovisians on the subject in India and in other countries,  
  
toes. So far as India is concerned, we may refer to the  
provisions of section 401 (1) and (2) of the Gode of Criminal  
Erocedure’:whereuinder, when. application i made for  
{he ruspendion or remission’ of sentence by the apptor  
Priate “Government, that Government may require the  
Presiding Jaige of the court betore or by which a conve  
os ae onkemed to sate i opinion a whe  
the application should be granted or refused, to  
stn fla for euch spins ea le to ecw with  
the statement of such opition 2 certified copy of the record  
of the tral or of auch record thereof aa existe  
  
1083, In England, there is a provision in section 19(1)  
of the Criminal Appeal Act (as amended by the Admninis-  
{ration of Justice Act, 1900}, whieh Is quoted below  
  
19, Nothing in tig Act shall affect the preross-  
‘oy a mere a the Sacretary of tae oa aR  
‘ation made to him by @ person convicted on ind  
‘ent cr without amy sich application, may, fhe inka  
Bit any time, either  
(G) refer the whole case to the Court of Crime  
ys Aba ti ial thn‘ ene foe  
all purposes 88 appeal court By the person  
Sontieta or ms  
1 clue es the astance of the Court  
of Criminal Appeal on any point avsing. in  
‘ase, reer that’ point to the Court of “Criminal  
  
1 Se pararapt 1051, pra  
{tae Coste Crna Prose, 185, stein  
2M owtng of “aniaion” ander weston  
ve Ronen, ALR Tyas Al S9y" 30, partgegbs Te  
roach DCm Ape AS 97 (be 9,639), a amend im  
5 Toe \minseaon of sce Ac. 1960 (6&9 Blin 2 «69,  
  
  
  
Page 356:  
‘Appeal for their opinion thereon, snd the court  
SURV Shade the plat go related sod tori the  
Secretary of State with ther opinion theron  
accordingly."  
  
The se to which action 190) ofthe Cain Appeal  
‘Acthgs been put can be gutheed iam hot, WH oe  
quote  
  
“There have been a number of instances of reler-  
  
‘ence of the whole ces, including & murder cae [R. v-  
  
Gray ‘(oi 12 Cx. ap eae dep hPa ly  
  
Ci Ape. Rep 30 referred  
  
id ty wer, appeals {fe v; Dickmes (1910)  
Scr The object of the reference is 10  
‘ssst the Home ‘im respect of the exercise  
  
ct Royal Prevogative evidence which’ might  
‘Sse ta ebjest can be co re Mora  
  
1084, It is understood that im one case heard on such a  
reference, Lord. Goddard admitted further evidence of  
the merits, resulting in an acquittal at law, thus  
the matter beyond the necessity of further’ consideration  
by the Home Secretary\*; Lord Hewart had a similar situa  
‘on in the case of Ry v. Wm. Knighton in 1027 or 1928  
(hreported), in which evidence af the condemned man's  
re, ‘vas led which, if believed, must have resulted  
  
‘ah acquittal on the merits, The evidence was no! bellev«  
  
1085. Somexhat similar provisions would be found in  
seet'on 396 of the Crimigal’ Code of Canada, and section  
400 of the Crimes Act, New Zealand.  
  
We do not, however, think that any statutory provision,  
1s needed requiring the President or the Governor to cone  
sal the Supreme Court or the igh Court "Such a pro.  
‘Sion would not stricly speaking, be in harmeny with the  
‘stential nature of the prerogative’  
  
1088, We now consider the question whether thera  
sholld bes Boaed of Advisers to'sdvise the Present ot  
‘the Governor in the exercise of these powers. Various  
se ‘have been thade as to the composition of such  
  
Weare not, however, inclined to. recommend  
  
1 Sten nn 109 La Fuel.  
2.48) Wharton ina leer tothe Ear, (499) 109 LI. 73  
ATA. Wonton. in seer tthe Eo, 1099) 400 LI, Yo  
{Aa stn auce ofthe pretpwivevne Dangers teat  
  
ro24! pra oe  
  
sep eho ag. apa TN 1  
  
‘qwton 1, pte  
  
  
Page 357:  
Ey  
  
inst peer  
SMa emcees Ses  
onion tb te atte as ashy  
Bev Cras Saat a, pa ua  
Bocas Sits cmt San pr  
ee hep eed  
ePivpemehe wagrarnes Pabeaae ede  
ahs meres lerpea aa oe a  
Sek iened Pears skeet tat  
EUR sual Gena tt  
Sy ets ay me wears  
See rad at meee we  
  
1087. Tt may be noted that the Royal Commission also  
considered 2 similar suggestion, and rejected itt. The  
Royal Commission ovserved, “The Home Secretary is now  
feo to congule the tial Judge and anyone else he thinks ft.  
Bu the exercise ‘of the Ral Prerogative fax amine  
‘trative, not judicial act"  
  
1088, In some of the African countries, Advisory Boards  
hnave been created. We quote from 8 recent book! —  
  
omy, Marae and Jade the, aden  
ten 's body with an wnoficlal and’ potentially  
Sopeooiseal majority. in Malaysia a Pantone Board,  
find in Jamaica the Privy Counclt tn Sierra Leone  
the Prins Minister sesames respenability he Is oblige  
rae eel am sconce fate  
{Gain anita cases and is ‘maul  
Inher ens, but he is not obliged to fallow thle  
ct ATS per lowed ther oat  
{tone estopt nao Taras the respons usual  
‘unfded in finer other than’ the Prime Minster  
  
See paraeraphs rots, pra.  
Rein pr ee  
coh  
  
ee ine men pet Sea Ge he  
aie AR  
  
Soy Oe ihn Ge  
  
Sti anima cya  
‘SynaeTeSiene! fetter to ap tat the Pony Caml ba potaaly  
cRaseke  
  
Frionbanl  
  
  
  
Page 358:  
334  
  
ad the advisory Conamitice will include the Attorney  
General and will exclude other Ministers and polit  
Gans. In Nigeria and Uganda the unoficial members  
  
Gf the advisory committee hold office for a fixed term  
  
hd are removable only for inability or misbehaviour:  
  
fn Nigeria one.of the members must be a medical  
‘Tanganyita ‘has retained an  
  
Emmittee of what the republican Constitution  
  
falls the “prerogative” of mercy”,  
  
‘The composition of the Advisory Board or similar bodies  
fn ome of the countries Is dealt with in another recent  
publication.  
  
1089. The provision in the Caylon Constitution’ is alo  
‘of interest  
  
a  
Of his Ministers. Where any fender shall have  
condemned to suffer death by the sentence of  
Scart the Governor-General shall cause a report  
nade’ to him by the Judge who tried the ease: sn  
Shall forward such report to the. Attorney-General  
Sith snutructions that after the Attorney-General has  
‘sdvised thereon, the report shall be sent, with  
fhe Attorney-General adviee, to the Minister whose  
fanction it to advise the Governor-General on the  
‘exercise of the sald powers”.  
1030, We have carefully examined the question whether  
the reason for granting commotation of sentence tn eapital  
  
‘cares should be required to be published We aporeciste  
fhe esgtment that when a sentence of death is commuted  
  
See Saad Ste ice iS eo  
Sh Fay igs get eter  
Seay ke Seabed gee SH cnet  
re Sn lan mcs oer ik  
SSS Sans See  
  
Th apeton peti of etry ch me  
st nea zeta tea a  
insect Sanus etion rts teu wth  
Iie See he os Rs lend  
  
ar ed Com a 9 tl  
chet anette it  
ood Keng Rasen wis, ‘Commoneskn and Colonial Lee, (1966),  
ge pst ST Gent  
  
Seer ya mts One Ginn Penn Cate  
  
zal  
  
  
  
Page 359:  
35  
  
feaen case whether the decision granting or rejectug «  
betition for commutation was Justited tnd water” h  
President oc the Governor thouid or should not have agreed  
‘withthe fal verdict of the couny in tne paruedlar “case  
Boteaver, adopting ine expostion of the fabject made by  
Sir Jahn ‘Anderson hi evidence before the Royal Cor  
Bisson, we may pount out, hrs, that would be catreme!y  
hal aie fae would arcsariy ave toe  
ommparatively short statement, “an adequate. impression  
of tne cumulative efect of the considera  
  
Se arate areca  
Ses ne le eee  
‘mut be-mon) other situations wherein an Splanation ot  
  
AWOL, We have also considered the suggestion that com tecanmen  
mutation should not be granted unless its recommended by San 9h  
the court. 80 far-as commutation from the sendence Of SH  
death to one of imprisonment Jor ie 1s concerned, we spre!  
Deliews tat cases of such recommendation by the court eu  
‘ould be infrequent, ab courts themselver have the power  
  
te Substitute te lesser sentence in view of the discretion  
  
‘enjoyed by them in the matter.” So Tar ag commutation of  
Siveatencs of life imprisonment to ene of imprisonment for  
  
4 Specitiea period ty concerned, a recommendation of the  
  
court would certainly be ui the greatest value, and, where  
  
Such a recommendation is made, st will always be taken  
  
lo aecount. We do not, however, think that the making  
  
of auch a recommendation should be maze a condition pre  
  
Eedent to the exercise of the power of commutation, "Facts  
  
‘ot Known a: the Ume of tral or events which took place  
Subsequenty, would be ruled’ ott {rom the considerstion  
  
‘of those concerned, if svch a condition precedent Is. laid  
  
ov,  
  
1092, One of the replies received on the subject\* makes Canstatica  
the suggemion, that the Attorney-General should be con- 3h te  
Sulted In these matters, “The power to consult tim ls Ast”  
‘lready there under the Constitutions, whereunder iti “the  
  
See RG. Report pase 36, pa om.  
  
2, 5 Anat ofthe Cre Low, Cot No.4 (Fob) 3,94 36.46  
eee  
  
3 See paragraph 3086, mgr  
  
1 Artie 3) of in Contin,  
  
  
  
Page 360:  
336  
  
dusy of the Attorney-General w give advice to the Gove  
trmment of Indi upon such legal matters. and to pecforts  
een itso he hare ay aye  
ime be teferred or asigned to him by the President". It  
  
\e inneceseary to go beyond that  
  
CHAPTER xv  
EXECUTION OF SENTENCES  
‘Tone Nusuen 56a)  
Method of execution of eth sentence  
  
Medel fot 106. We now come to the questo of the method ot  
SFE. execution ot the sentence of death At present, the sen  
fence" erce of death is carried out by hanging. “The Code at  
Criminal Procedure, 1838, requires! that when any. person  
JS sentenced to death, the sentence shall dwct that Bebe  
  
hanged by the neck til he fe dead  
  
1a. In the grat marty of countries, there ae thee  
methods of eatrying out the death sentence, namely, hang.  
ing. pleccic-chatr tnd ganchamber" Ianging Wed to  
the United: Kingdom, certain countries on, the, Continent,  
Cloada, Australia and generally throoghout the Connon:  
‘wealth six States of the United States of America and some  
  
1095. Blectrocution is used in 24 States of the | United  
‘States of America, and in Philippines” and ia Cuba\*  
  
1098. Gas-chamber is used to carry out the sentence of  
death in eleven States othe United States of Ameria. In  
  
Spain, strangulation is  
1097, The modes of execution in the various stats,  
  
the  
  
United States of America as io 190) were as follows! —  
By electrocution—Alabama, Arkansas, Connecticut,  
Florida, Georgia, Wionois, Indiana, Kentucky, Louie  
siana, Massachusetts, Nebraska, New Jersey, New York,  
io, Penmayleanie South Caroline, “South Dekots,  
‘Tennessee,  
  
Roxas, Vermont, Virginia (2).  
  
TT Sesion SGD, Cade of rine Prosee, 198.  
2 For cut se UN, Panton, Capital Punishment (960) page 23,  
  
rete ropcy, rvion x mae x hanging i te meceey eaie=  
2 ane, ea  
  
sent fr Siestaculad wen tenable.  
"¢ Soe UN. Palonn, Capt! Pune  
  
1UIN, Pubion, Cape Ponsmes (902 rie 2, pee  
  
ewer  
Sa US, News a edt Report March 7, io, poet $2 rte  
saced in" Me Caan” Capea Punsent, C98 Dae  
  
  
Page 361:  
a7  
  
lethal gas—Arizona, Calitorni, Colorado, Mary.  
spp, Moan Nevade New Hes, Nah  
Eitolina, Otevema using elsiocation wal pt  
haber i completed), Oregon, Wyoming (12),  
By hangingidaho, Towa, Kansas, Montana, New  
Mampinive, Washington. (0.  
  
By Hanging oF shooting (condemned man's ehice)  
  
Since 106, thee more Slates spent, have adopted  
cictecudont ‘Betaplitan socio “the  
  
{een Fane adi nn ober coi. cut  
tytring squad i proctoe by some counties, portant  
mons whach aro Moroes, the Centra Afsican Hepsi  
  
Chile, Thailand, Indonesia,” Cambodia, Greece, USSI:  
eas ‘and in Utah (US.A) the person sentenced  
ovdeath has the cholee—between hanging end” fing  
  
{in Canad, the Altoroey General othe Governor an  
4 appears, order execution by the Reing squed in cases of  
twcaton oF crimes against national defence  
  
‘Though hanging stili remains the most prevalent  
‘method, it must be Noted that the course of events in other  
countries shows that itis being slowly abandoned. Thus,  
‘while in 1860, 12 States of the United States of America  
Used to employ it, only six States have now vetained it  
‘Again, while was in foree in Yugoslavia before 1990, It  
‘was replaced by firing squad in 1990  
  
1098. in England, the Royel Commission went into this  
‘question In\_ great deta ‘Commission stressed the  
Selena wha had to be taken into aunt in deciding  
which method should be ‘ramely, huresity,  
Xelnty and" decency “Under” Shtimaniiy’? further there  
‘were two essential requirements, namely, fist, that the  
preliminaries to the act of execution should be ag quick:  
End as simple as possible and free from angting that un-  
ily sharpens the polunancy of the apprehension of  
id secondly, that the act of execution should  
f° dnmodie“unccjacouanes pane Quik nly  
Aer studying the actual Gabe taken “at various  
sch EE RISE, Coie Pin, oA ae, FRE  
22 Sig, US. Pdlction, Capit Panshment (i963), pat 23  
uit ow  
33 US. Pastenon Capa Pashmest (963, ane33,pararanh  
  
5S UN. Peslowion, Capital Punakens (969), pa 33, pare  
ek  
  
"6 RG, Ron f  
Hi PAH 269 6, sa aman pte 26%,  
SE Ssteme Dae  
  
"TR. Rapor, page 24, paren 707  
TRE: Rape page 2, para 76  
  
  
Page 362:  
38  
  
places in cavzying out the proces of hanging and other  
Ietiods of execution, the Royal Commission came 19 the  
onelision that so far as experience in the United King-  
dom went, hanging took less time than the time taken  
clgewhere in other methods and caused immediate uncon  
sciousness, and was followed quickly by death. The Royal  
Commission had not full evidence about electrocution and  
Jethal gas, but there was nothing in the evidence placed  
befare ft fo justify the conclusion that elther of these two  
‘methods was Tess humane than hanging, in terms of the  
Speed and painlessaegs with which unconsciousness Is  
Induced, AS regards "certainty", the Royal Comission  
Stated that the equipment regulred for hanging. was  
Simpler than that required for electrocution or fetzal #25,  
dag eh hed taken, pag, in England ating Se  
[ast se years, “Tasty, regarding “decency meson  
ated that because of the distortion caused to the body,  
the pain caused to the relatives on seeing it, would be more  
severe in the case of than that caused by ther  
eihods” But. while hanging was tainted by the memory  
fof i barbarous history, “gassing” was tainted by more re  
ent but not less borbafous assodlations!  
  
009, We may now refer to the discussion in the Cana-  
dian Report. "The Canadian Commuttees considered the  
iments of four diferent methods af execution, namely,  
hanging, electcocution, gas-chammbsr and. lethal injection.  
‘The last mentioned method which was stated. to ensure  
ingtuntaneous and paintess death, could, only. be. accor:  
plished by intravenous injection, for which skill was te  
fired, and’ the Committee considered that 1¢ would. not  
Ge'veascnable to cxpoct « medial doctor to perform a task  
S@ repugnant to the traditions of the medical. profession  
Moreover, uo intravenous injection could not be administer:  
fd unlest the condemned person was entirely acquiescent  
Hence it was rejected, As regards having, the Committee  
noted that hangings in Canada were not conducted with  
the samme degree of precision as in the United ‘Kingdom,  
and “hat someumes there was no'way of Knowing how  
‘death was egused and whether the logs of consciousness had  
been instantaneous Moreover, the Conanittee sensed froma  
the evidence given before it that hanging’ was vegarded  
  
erally as a cbvolete, f nota barbaric “method. Tt,  
fherefore, proceeded to ‘consider "electrocution and. gas"  
chamber.” fn ts opinion, which was based on the evidence  
of independent medical experts electrocution was the mast  
Satistactory method, and the Committee recommended that  
{he law be amended to replace hanging by electrocution  
‘This was based on the premise that modern metnods of  
slectrseution could produce instantaneous unconsciousness  
‘nd patoless death, Sithout the evil effects traditionally  
  
1 RG. Report, page 255. Para 733.  
2 Cana Report, page 2t nd 22, prersbe 8-94  
  
  
Page 363:  
associated with the electric chair (like burning and muti-  
Eitioah However, if further investigation created doubt a3  
{5 possibility of employing electrocution, then, the Com-  
initire considered, i would be preferable fo substitute the  
gevchamber,  
  
1109, The relevant section of the Criminal Code of  
Carta 2" section 822, Shieh provides that the sentence of  
Genth thoold. divect that the person gentenced stould ve  
Senged by the acek until he fe'dead ‘The section does nat  
Spten eave been amended to cary out the reebemenda  
Ey a the Committee  
  
‘Torre Noman 58(b)  
  
Replies (0 question 12  
  
G1. Question No 12 in our Questionnaire was as Method of  
fesows Ean  
  
se Seep hs sentence of death ig ced out  
iy henging. Have you any svggertions to make will  
PSspect to she manner In which a sentence of death may  
be cated out?™  
  
Divercene views have been expressed as to the method  
of exe on “Aboud clacton of these vs 1 re  
  
1102. (1) The fret group comprises those who would Ike  
to replacs hanging by eleetzoeation  
  
A. large number of replies belong 10 this  
group"  
  
7 Sesion 64a, Criminal Cale of Canad.  
  
2 Caran ther renmmentons of the Commis haw Seen catia  
cout Sythe esses made Tit Inthe Criminal Case of Can  
  
1 AHigh Coat, No, 1: Cael Jostice of 9 High Court and &  
gyigs SBM GG Site Re, Go Ary ot “ne Fataes“er &  
HAS Sinn, Ens No wes aorty ote  
  
Nu'Somes S.No 143 4 Government of 2 Union certo  
atonams § of 4 Union eetory  
  
5A Stee Ler Comnisina (Basroion get dante, §. Na  
  
“6A, Drguy Minige i= obeUnion, & No 20 5 Maer  
ge elog SEMIS Se een OF Sa BR  
  
Seni Dewy Abvocne General of « State, 8. No. 146s Inopstor  
Gente ct Rokets oarwerS Host  
  
T's. No. tye, 8. No. 135, 5. Ne-Ur  
9 Mar Counce, §. Sos 158, 5 a8 6  
  
Nt Auominen temose othe BagS. Nov ty GA Meaber of 19  
  
‘ina Sa Bas 8  
tea\concienon of Dah cits (antag Tas, died t+  
sake “ a 2  
  
  
  
Page 364:  
0  
  
1403, The Chiet Justice of a High Court! is in tavour of  
electrocution, provided Taelities can be provided.  
  
{Ub Sere igh Cour Judges are in favour of elesvo-  
  
05. A High Court Judge? has stated that modern  
methods, such as ceetrozution, should be followed  
  
108, The Chiof Minister of a Stato isin favour of lec  
tocution. "So also ig the Home Minister of @ Stato. "A.  
Minister of another State is in favour of electrocution’  
  
107, The Law Minister of a State? fs of the view that  
the sontence of death may be carried out by some method  
Which is more instantaneous, lke elestrocuion, than BY  
hanging whenever postible,  
  
2108. The Administration of a Union territory\* is of the  
view that electoeution may be a better way.  
  
1109. A Member of Parliament” has suggested that elec-  
trocution may take time, but a beginning may be made with,  
‘one chait In each State at least in bigger States, Another  
Member of Parliament ie in favour of electrocution’  
  
110, Some Members of State Legislatures are ia favour  
of electrocution ve  
  
1111, The Principal Judge of a City Civil Court? ts of  
the view that hanging is Raver ‘rade, and electrocution  
shovld be substituted  
  
1112, Certain City Civil Court Judges ave suggested  
sleeteocution’ .  
  
IB. A Judge of City Civil Court bas suggested that  
tne conrea pation be ven some Tug ie make hn  
unconscious snd then the Sentence ca be executed "by  
  
19 8. Nou 396 377,399 nd 8  
145. Na a7  
  
  
Page 365:  
an  
  
2114\_A Judicial Omicers' Association’ has sugested that  
the gaschainber or electric chair may be introduced  
  
LIAS. Certuln, District and Sesslon Judges favour electro  
ution’,  
  
1118. An Advocate® hes stated, that with the spread uf  
‘education, soungmen are getting "tender in body, mind ond  
Shabits. ahd that itis quite possible that hangmen tay ‘ot  
De avalable; be suggats electrostion are more ccemife  
{and loss expensive than hanging  
  
1117, A District and Sessions Judget has suggested that  
Wis necessary to substitute an electric chair ih place sf  
hhanting. and iC that is ot possible a firing eouad may: be  
resorted to.  
  
1118, Several District and Seations Judges\* are of the  
view that electrocution may be considered. One Sessions  
Suge has suggested that the electric chair may be pro-  
vided but ‘the eholce should rest with the convict whether  
hhe will prefer hanging to electrocution.  
  
1119. The substitution of the electric chair has been  
suggested by a Bar Associstion®  
  
1120. The reasons given are that hanging is crude and  
quel, while electrocution is instantaneous “and humane  
Sa athe eplie qute. tom the Reval Commisone>  
Report, obeervatons to the effect that hanging wes ine  
Zena more fo i advrtteiet value than au eve  
  
fective way of taking life. and suggests that t  
epiaced by electrocition, which ia ered sn several States  
of the USUA" and in the District of Coltmbie: fe is stated  
that (in electyocutign) a current of 8 to 10 amperes Is pase  
2 throukn the body, and unconsciousness Tests nt ess  
than’ Dédth of second’ before the nervous system of the  
bod ean tecord any sensation of palm,  
  
1121. 1¢ may be stand bere. that gome\_of the replies  
which suggest eecteoention im place of hanging do ot Te  
Suv any other paistess meted.”  
  
£5. Nore  
  
2 Ditectw Sewioas Tatar, 5; Now 38 386, 988 415, 40h  
ee ae a ae eee  
ons 5s.  
  
Ae Aavooue, 5  
45.No. ae  
rsh BOS BH 308 398. IK 96. 0, 36H aD, rE aM  
  
65. Nos.  
7S.No a  
TR Report, page 246 pareraph rer  
  
  
  
Page 366:  
122. Some  
  
of the replles suggest substitution  
sad li2, Some of the replles suggest substitution ot the  
  
1128. According to the Law Minister of a State’, while  
‘hanging is s most barbarous Way of exectting a death sem  
tence, electrocution Is no Test “fevolung. tor human om.  
Science. He suggests gas-chamber,  
  
1124 A Judicial Officers! Association” hes suggested  
lestrocution | or gos chamber. A District “and. Seasons  
‘Tolge” is of the same view.  
  
2405 Somme of the replies suggeat lethal injection, ‘Thelt  
umbe> ie not very  
  
1126. It has also been suggested that some kind of  
euthanasia on the advice of medical doetors be adopted.  
Bectrocution or poiscaing, as far as possible in g mariner  
whieh the victim may Hot be able tar nnticipae, hss been  
‘Sggasted by a District and Sessions Judge  
  
TE A group of replies, while not commiting  
‘Ratio tes han shoul by spina: by ete ped  
fetion thas hanging shou iced by see pat  
find imnce humane ethos. Most of these replies would  
‘ike the mater to be deeded alter ascertaining, media!  
bd cher eapert oplnion  
  
1128. A Stare Government™ has guggested that the mode  
cursing out the death sentence should be carefully exa-  
‘ined by doctors or experts in this lon, and that  
Inethed whieh te least Inbuman should be adosted  
  
1 A Sue Government 5. Wo. 19.  
2A Stace Law Commision, Blcroctio or gat camber) 8.2.  
4 Bhar Sewak Sama, New Dei, 5. No 145 (@estrewtin oF  
eechane  
“fw Sertry (oa Sate Goverment, 8. Ne 163  
tske ea.  
#5. No. 354 esting elt by Indian Canteen af Sal Wand,  
‘wes Bengal Bfnch on yeh Ape 4965 n Eales)  
9 S.No ae,  
= Aste Gvermat, $, No. fe nung olde renee  
SSS Stich Sovtd fe een pastel method  
11 The tndan Feieraen of Wemce Lawyer, S. NO 13.  
15 A Meter, Bar Court of Mates, 8. Na. 18,  
v5. No 4  
  
  
  
Page 367:  
us  
  
112. Another State Government! is of the view that  
there is need to have some more humane and instantaneeus  
‘Process than hanging, Where possible,  
  
1190, A District and Sessions Judge\* has suggested that  
the question should be decided on the advice Of experts  
and surh manuer of carrying out the death sentence should  
ie adopted which involves ne oc minimus possible phycal  
‘etvous and psychological pain and torture  
  
1131, Some of the replies? merely state that the matter  
relates to medical opinion, and that death sentence should  
be carved out in a way least painful  
  
1132, Some replies are in favour of the retention of haag:  
ing'-\*7."""Same of these rephes point out that hanging.  
is quick, bas no comolications and ig not more painful than  
snyothy meted few af the relies Delsaging tote  
‘Eroup also emphasise that the deterrent effect of capital  
Funishment vad be achieved oniy ty haying, “tts ali  
  
i carried ext  
  
1138. Two other State Governments? would like to re-  
‘ain banging.  
  
34 The Chief Justice of a High Cour has expressed  
thei tga aiding othe ave inmate  
SSnucnce “arred out. by ‘practically  
inctontaneous, and it lo not shown that any otter method  
cVexeeution prevaling in" any other” countrys more  
  
1135, To the opinion of a High Court Judge", the mode  
sari ote arte of det (by MeN) ye  
ght of the present knowledge of Stence, Boss  
aha the moat homane method. and no other knows method  
  
£2'ce glk efcont or painles asthe present one  
  
TS.No ste  
25. Na ait  
Two Hig Cou Jags, S.No. ts.  
4 Two High Goat Jaspsy 8. No. 97  
amend, 2 Sno BR E'S Unlon Beco, 3. Nor tose  
{Bar Aucinion of Indin, 8. No 182  
17 Sancene Cour Bar Anvatlon, S.No. 180; A Reafer im Gioia  
a SINS ee  
 Aiminvraion of « Union Tersory, 8. No. 106,  
4 Sete Governments, . Now 261 and 381  
WS No gon.  
HS.Ne 396,  
212 Law, -  
  
  
  
Page 368:  
um .  
1136. A High Court Judge! has stated that when all i  
said and done, hanging doce not seam to be in any mancer  
mote distressing than the guillotime or the electte chai  
and therefore, this form of execution may continue,  
  
LST. Several High Court Judges’ sre in favour ot  
retaining hanging,  
  
1138. A distinguished member of the Rajya Sabha’,  
while not suggesting 4 particular method, has emphasized  
{hat if capital punishment must remain on the statute book  
{Ema Be meray give inthe quickest an east rin=  
  
1199, According to @ senior Advocate! of the Bombay  
High Court, certain degree of terrar ig inevitable and  
{ndlpeneabie in the grim paraphernalia of jusical execu  
lone and ae fara fe nwiadge gon cond to ex  
medical opin, dewth by regulated drop {rom  
[ibbet Is as tntantanect as that by electric shock  
  
Wi A ero Sata Legare (nh es a  
aa ee zt ana ae at  
  
1142, Retention of hanging has been favoured fn many \*  
other replies  
  
1102, The majority of Presideney Magistrates ip a Pre  
sideney Towne ate it favour of retaining hanging, because,  
Sgpart from the stigma involved im the idea of hanging  
acting as dierent t's lo sad fb te quickest means  
of ending Life”  
  
1143, According to a gentleman® who is @ socal worker  
and a State Jail Visitor. the present postion may contin.  
Since even im modern Techniques the preliminary prepara:  
{Goss do not in any way mitigate the mental agony.  
  
1146, Apart fiom the actual method of execution, sux  
festions have been received on a few other points perta:t-  
ng to the mods of execution  
VS Noose  
28 No  
38. Nous  
18 Ne se  
$5.No 26  
4A Darra al Sesion Judge S. Xo. 96  
JA Bac Ancien + Higs Cont S.No. 493.  
TS. No. wo  
3 S.No a  
  
  
  
Page 369:  
a5  
  
1145, Thus, it has been stated that the dread of the sen-  
tence of death should be given wide publicity, to minimise  
ccimes! ‘One reply' “has suggested» pre-publication of  
‘execution,  
  
1146. It has been suggested” that the law should pro-  
‘vide for an autopsy t0 be performed immediately after the  
‘txceution, to provide complete assurance  
  
1147. It fe stated’ that the sentence should be executed  
publicly, to ve lesson to the public in general  
  
1148, Tt has been suggested\* that exceution should be  
siven wide poblicity.  
  
‘Torre Noman 88(0)  
Conclusion as to method of execution  
  
1149, We Gnd that here s a considerable body of opl- Contain  
rion which: would ike hanging to be Feploced by somne- fj omthat  
{hing more Iomane and” more painless. Quite » number  
St replies received to our questionnaire on the subject are  
in favour at sbsuttton of electrocution’ for hanging. on  
the ground that the former is mstattaneous and humane,  
hl Tee cue nd rue han het  
suggested in some of ‘while few suggest  
Jethal injection or enthanasn# "On the other hand, some  
Of the replies are in favour of the retention "of hanging’,  
fand a few belonging to this group are of the view that the  
deterronteffce of the capital punishment could be achiew:  
only by hanging  
  
1180. The matter is, to a certin extent, one of medical  
‘opinign. ‘That's method which is certain. humane, quick  
find decent should be adopted, is the general view. with  
‘which few can quarrel Tt Js true that the really agonizing  
part is the anseipation of impending death. But society  
‘west to itso that the agony’ at the exact point of exectr  
‘ion be kept to the minimum. It is, however. diicalt to  
‘express an opinion positively as to’ which of the three  
‘methods satisfied these tests most, particularly when the  
An lnwpeseesGenerat of Prone, SNe. 16  
2 A Diet Bor Assan, 8 No.3  
racers  
nah RG AIRE Rape Se sear  
‘gn MILA. Lucnom, SNe. toa  
6 A'Bu Comes 5. No. 196.  
  
1 See parapeghs We2—I13. spr  
4 Perraphe tas—13g, pe  
9 Parngrpbs 11251128 pe,  
  
  
  
Page 370:  
®, England unt! it wa  
  
two other metoods ae stil untried We are not, at pre-  
sent, ia @ position ta come to e. frm conclusion’ on Skis  
iia. garne in the mene of amet on bet  
of the various methods, 2¢ well as the ex  
  
fathered in other countrice aad developenent and retin  
nent of the existing methods would perhaps, in future,  
farnise a frm basis for conclusion on "this controversial  
pubject.  
  
151. We dy not therefore recommend a change, in the  
tad On this polnt We should, however, sate here Tat we  
do not subscribe to the wiew that the substitution of any  
Other method will reduce the deterrent elect” of the  
penalty of deaih.  
  
‘Toric Numan 58(2)  
Execution in public, and publicity 40 be  
‘gen £0 execution.  
  
1152, We have considered the question whether execu  
tions should be held an publie™ This was the practice in  
indeed. in 108. There wore several  
Tenatsfacory features anociateg with execution i= Pub-  
Jie which led tots abolition in Bogland®  
Disorderly behaviour of she public, atempts to inter~  
forge, ect, nd oneal expres  
ccling of reolcing, weve the principal evils which ‘were  
AUPE SG Sith the pectces fasten of enhancing the  
dtevrent influence of the. death peoslty—which, was Dlr  
‘Soin Supposed justiicaton’=-hey. became’ the parent  
Sd nat tbe destroyer, of cre  
  
1153, We think that an execution in public sould be  
repulsive, and that u a rafigentrgument apainat ts  
Iehedicton inthis eam" oe recommend, tbe  
{Bving of any publicty before ov after the event, td an  
aang a a ee ee cerain pavvsons on the ber  
and regarding he afeaton of tie ten the  
prison gate of impending execution. and of exeeution have  
{hg taken place. "The Royal Commision® considered these  
‘visions and. secommended that. while -poblle olla,  
Eon Sclore execution "should continue, the pasting’ ot  
otics on the prison gate was unnecemary and shout be  
  
Sg ooseer A eo Aan  
Fe eoaonsite mao mee fame Mae  
wo fe aieaseeammeter Sea a  
Pieters a ia  
epee Go plese pc pe  
eg SRS SE LE  
  
aod EEO Cava Paint mentee As 86 r  
's RG. Repo, pages 272 aad 27a. paragraphs 786—89.  
  
  
  
Page 371:  
un  
  
replaced by the issue of Prese notice, before and \_ after  
‘Grecition of the date fixed for execution and of the exe  
‘Sution ‘having taken place respectively.  
  
‘The announcement of execution dates In England is  
now governed by the Homicide Act  
  
We do not, however, consider any such provisions to  
be netessary in India  
  
(CHAPTER XVI  
‘MISCELLANEOUS  
‘Torte Nowe 59  
  
‘Other points made in the replies to Questionnaire  
  
tt Bets relent he pce, gunn ne cn  
  
ucsionaite some of the tele expetae sits ot thet aoe  
  
eteearising’ tn connection with capital punishment. gage  
1188, Thus, one suggestion i that of a State Law Com Retna  
  
risiton’ to the eel that the quesdon of retttion to  
  
The viet of enre should seeeve atention lang with  
  
thie of bettas "The renee, fe suggested nay Be  
  
Pi tne property of the accued or trom tee State funds  
  
JR gut hogeer dest Sut be wale  
  
Aefed Si the’ bolton or retention of eaplal posh  
  
efiae such, Whether or not capital ponent. ee,  
  
Wists Seta for wh tenitation can be conser  
  
Ident oe qos not coded cal  
  
thereon the commission of a rime may cause, dann  
  
iiging csutston, even where the crime i note  
  
Lagi coin provisions for reritation are comtaited  
  
{aS coe ot titel Procedure 4908. The matier It  
  
Seat polly, not arising oot af abolition.  
  
1186, A for rehabilitation of the families of  
criminals ned. to. death has been received. Tt is  
Stated that this is essential, Jest a murderer's children  
shoald themselves become delinquents.  
  
3A State Law Cominen, S.No 101,  
4 Ses 545, Cale of Comte Proedre, Ho,  
  
4 Opinion of mic th, quae in be “Hindatan Tame”  
ave Sel ie ass STH wet  
  
  
  
Page 372:  
8  
  
UIST. The question’ of engagement of counsel to. belp  
‘the court in eriminal eases has been raused. This ga  
smatice which ts Usually dealt with the rules made force!  
‘minal courts. We have dealt with the matter separately  
  
USB. A suggestion hss been msde" thet, on conviction  
for murder. the property. of the, person convicted abcd  
Yeot in the Collettor, and should ‘be isposed of in fuvour  
[OF the heirs of the person raurdered, It is stated that this  
Swill act as a great deterzent. Present provisions for fine  
fre, # tg stated. not adequate, because 2 fine is not im  
  
od when the fentence of death. or imprisonment of  
Ie w awarded. Tn this connection, it may be noted chat  
sections 6 and €2 of the Indien Penal Code contained  
Iitelted provisions for forfeiture, but these were repealed  
by Act {6 of 1921,  
  
Tonic Nomnen 60  
  
Intereal to be allowed between death  
rentence and execution.  
  
BS, The gastonow much tee haul be aio:  
‘eq between the pronouncement of the death sentence and  
ite Sotual execulion=may be Considered". Usually, “on  
eceipt of confirmation by the High Court of 2. ckpital  
SShtenoe, the Court of Session speciieg in the warrant,  
[iurewed ‘to the jailer, thatthe execution is not to be  
Giricd cvs Until a'day thevela named. Thus, according 10  
the instructions istued in the erstwhile State of Boral  
‘he Court of Session has to fx the period, between the  
She tthe naeip by i of te ade coneming the ep  
fence of death. and the date of the execution, as from 21  
0°25 days  
  
1160, The matter was considered by the, Royal | Com=  
isson’, In England, the date of execution is fixed by the  
Sheritt for a cay (other than Monday) im the week. fol  
lowing the thied Sunday alter the day om which the sen  
{ence is passed. If there is an appeal and it Is unsuecess-  
[atthe Sheri: appoints a new dave of execution, which  
te a0 Axed ag to allow a petlod of aot less than 14 and not  
more than Tt leer dayeo glapee betwean the dering  
tion othe appeal and the date of execution In Seouand,  
the date and place of executign ate appointed by “the  
Court while: passing the sentegce of dewth. Details of the  
Scotish provision need not ‘dstain us here. ‘The Royal  
Gap ad and cio Serie, Mateos  
  
2 Se pargrapn TEI if  
  
A’Divnsr and Seniors Jadge im Oda, S.No 213  
  
{Ac prsent, teze ae no ates  
tne AEE See ae settied y Sa  
  
3S Cin Mata Ie eh Ct Bony oh,  
  
"ERE, Report, parses 252 amt 78.  
  
  
  
Page 373:  
Commission suggested certain changes in the Scotish  
‘provision, but no change in this eapect so fat ss England  
‘as concerned. The Commission specifeally ‘constiered  
the question whether the length of the period between  
the dentence of death and execution shoul be reduced Sp  
order to shorten the period of strain‘on the prisoner and  
‘hose about him. ‘Bet the. Commision felt that, the  
those about him But the Comision” fe hat tis  
might amount to running’ the Fak of handicapping. the  
prtioner and his advisets in arranging for an Sppea) sed  
ringing “eeward information hat ight fut re  
‘prieve Tt also pointed out that the Secretary of the Stave  
Should have enough time’ to make necessary inquivies  
  
before deciding whether the sentence should’ be cated  
oat  
  
161. In practice, the Interval between the confirma:  
‘ton of ‘the! sentence by the High Court and the actual  
‘arrying out of the sentence may be tuch longer ‘than  
‘that contemplated in the rules, because of an appeal or 2  
enue ere, tego ied up ah ie  
eneral question posal” of criminal ‘pe  
‘Phough. of course. in the ease of a capital. crime, lnaye of  
‘Tong’ time is naturally undesirable, because the toavicted  
man “dies 2 thousand deaths"  
  
1162. We du not sug  
  
gest any statutory provision on the  
subject in this Report  
  
Toric Numaen 61  
  
Conduct of prisoners after release, and  
‘lec regerding remission  
  
1165. The aftercare of prisoners, sentenced to tmpri- Canta,  
spent sc le aa’ releated rom, ptt, isa byes eve  
Ghich requires seperate sua, and we do nee propase b>  
  
cal tithe whole subject. ‘As hac bese observed tthe  
  
Report ofa Committee that dealt withthe subject  
  
Tog rare of prone refers to ase of se  
vices and programmes that are organised for the care  
supervision and guidance of the prisoner and also, 13  
EBNanous activi that are aiteeted towards Bs  
acceptance by the family and the community”  
  
Fors waly of he pon in he Unit Sines and  
‘Spal Ue gta Mined Ber Ruste!  
  
‘Gund ee  
Seated Coe,  
("Foun page op.  
+ The poson i Engand ig del with in RC. Report, pues aye 10  
ap baa Sa Rae fues. E SpBas Le pale  
SPuE Te sioeagh Si cal  
  
rrgment of Ena, Carat Soil Wale Bord, Repert ofthe  
-aavhry Soman te on Ace Props Coase Te RR SE  
  
  
  
Page 374:  
380  
  
But one point of some importance deserves to be noted.  
[A prisoner sentenced to imprisoament for if tor a capt  
{aPotcse sy afer ees frm he Besant  
zain a copia crime or'a erie involving violence.  
ures of tach “eedivism’ would be of interest  
‘Sezsing how far the sentence of imprisonment hae work:  
Savas atdcterent. "We recommsend that these figures be  
Sublished and made availabe Im'a conveniomt form, ‘ot  
cluded in the oflelalpublietion “Crime iy India” watch  
2E‘brought out samualgy ae the Agures would prove "to >  
very well  
  
FSi ele ite detalles os tne periods for which e  
  
Feine einen the detaled aes to 1 the ‘eh  
  
‘Femasioe. earns remission are laid down in the Jail,  
State. ‘These comprise rules made under the Prisoss Act  
Jeo and samimitraive Inst  
tion for the temision hae {0 be Iesved  
Urder under section wl of the Code of \*  
dire, 00m as has boen wade slear by a Seclson of Ore  
Supreme Court  
  
1165, It is unecessary to consider bere the question  
whether any amendments are needed to the Fules rogare-  
{hg remission of ite sentences of Imprisonment  
  
Tone Neen €  
Leg id prs cme in eit ne  
beet st te We may sow spe th etn el 0  
ERE eta atest atts at  
siale Wovmna cade Pine elie ce i  
ms Court of Session and in the Court for the defence of  
ce Set Penne pbs “sian  
ays Seep why teat ene  
SSUES ae a ARS Bae  
1, In all cases committed for trial in a eriminal  
ces oa SEN Se Ba aa  
Tas co Engl Iw, relating vo Umpeivanmment foe Tie eo  
SBE emspmarnettens 5P an  
ary nd  
spot tt cea tn pe ot  
1 er  
RR Ae em verrnn  
  
eg ike bat Emo Va pags 703, Pt Pe  
FE Es wuss Repor, Vo page $99 mil, and page 61, pare  
woh  
  
\* Ecminal Maral mes by the High Cour, of Bemba. (94.  
‘ TS eat Gah amar.  
Seedid sa ,  
  
  
Page 375:  
351  
  
snd cormation even, reference tom the vic  
tne Sry appeals irom aepattiae and enbancement  
proceeding in ersin nj which any. ern able  
WS sentenced to ath ie intr  
aby the smontsng agitate atthe tie cf ct  
Ih oie wc a atendy been ted Ur  
Suge by the Sra court thet Unlese ‘he tend,  
fake his Sn arrangement for lgataaetanc he  
igher"cour wal "engage leader. st Goverment  
Npense to appear betore it of his bohalt.  
  
2 IL he 0 desires, a pleader shall be so engaged  
4, he foes prsribed by the relevant oles shalt  
tbe pdt the plendey 2 engeged  
  
4. The pleader is appointed in sufficient time. to  
‘enable him fo take copier of the depositions and ether  
ecessary papers, which are furnished. ftee of ‘cost  
before cammencement of the trial He is also allowed  
{5 make copies of these papers doring the teal, ithe  
ut fees  
  
espared bythe copbit ta Whe eolablichment ad  
azo peep bythe cophat he ealbishment of  
{ne Bablic Proseewtor ofthe Dinict who may, if  
necemarys even employ am extra copys forthe DU  
poe  
  
6, Fees chargesble under the Court Fees Acton  
the copies have been remitted.  
  
167. The subject has en  
  
Sia.” For the purposes of thi ope dated cons  
  
‘eration of the position in the United States of America  
  
‘eqarding counsel in erimipal cases Is upiecesary' There  
  
be"provbion in the Feaga and Gute consis  
to, due peosess and also specical  
  
ff Sthich ate diferent from the provisions in India.  
  
Hention in detait in Retin =  
  
1168, The Sixth Amendment to the Constitution of the  
United States of Ametica (co far as is relevant) provides  
  
the accused thall etjoy the  
Re glee the aatnce of crams! for, he  
ad af'nelenry 1 ane the pot stlaciogy  
  
Te ass a  
vo aR AS ag ees  
  
sean ee ect cts, 1963 American Bar Action  
  
ical die tpn) Ren Bar oda Foams  
  
  
Page 376:  
169, Ia the USA. the right to counsel in eximinal  
casts is derived from various sree, These sources are  
afuiory eo well ag constituuonal it la enpecesssry to  
{Slot 10 thee provisions and the prolfe eapelaw thereon.  
SiSting the’ pontion very Broads one may soy that ths  
Bigit i ered  
(2) in the Federal feld—  
() for capital caes, fom statute, and  
Ui) for capital az well as noncaptal case,  
from the ‘Sixth’ Amendment’;  
(6) in the State Bele  
4) for capital cases, from State enactments,  
  
li} for capital ax well as ponccapital cases  
from the “due process of law", clause in tne  
Fourteenth Amendment  
  
1170, So far as the Sixth Amendment is concerned, the  
interpretation Fased on “ausltance of counsel” has been  
{wide one, 30 as to embrace the right to have the effective  
Sasistance of counsel—what is known as the right to  
  
pointed counsel ™  
  
HIT), So far as the due process of law is concerned,  
the leading cares are Powell ¥ Alabama! and the recent  
Gave ch Galoon’ ‘The former was a capital exime; the  
Tater related to a non-capital crime. The effect of the lead-  
{ng esses” (stated very roughly) i that falure to furnish  
‘counsel fo an indigent person, accused of a crime. is a de-  
pirivetion of due process, and’ may be regarded as fatal i€  
the trial as been prejudiced.  
  
1 an Sorc, fr fens a een ef  
appeal trom 'ncomvition for felony, as  
  
2Ptfcnal ct the gual proveton of lous’ Threaten,  
several ort. ‘dealing with pre-trial right to counsel have  
  
4 Chav ay We 963) 372 US. 35.  
1 Poo Aisha, (932) 287 US. 48  
nea om re ach far US 385 ovine  
‘6 Dug ¥. Calomia, Mach 18 1963, 372 US. 353  
rosy ashes ene are Scud in 1963 American Bor Asocion  
sot Da Tas ~  
“Eo erie of the postion 0 Sie  
cane TSAO ew Lae Poca a  
SBOP Hated fat Rete Fok “Supe Cou i  
1 Se "Develo te Law Conte” 90) 9 Haryed Le  
> evi S55 950 EH a oa a Hn Plan eames  
  
  
  
Page 377:  
353  
  
1172, Any provision, however, om the subject, will  
remain a ile formola, securing ho practical benef, unless  
‘hat the sepresontation proviced  
tis. commonplace. thet the  
Particular counsel who ie assigned to the accused would  
Sot be able to render anitance Wo the best of his ablty  
Lnless he sets suficient time and feclities for preparation  
Und ts adequately paid.” Pooe payment. will not-attract  
nel “ot Teasonabie talent. "The quality of counsel wil  
‘SKio'depend’ upon the appointing agency, Having rega  
So" ineieationn werk Sat the mate factors  
tn Which the adequcy of ansstance in the shape of couasel  
Sepends, woule be=  
1. The time a¢ which counsel is provided  
2. The tine up to which counsel is provided.  
3. The agency by which counsel if appointed  
4. The agency by which counsel ig paid  
5. The faclites allowed to counsel for preparation.  
& The remuneration allowed to counsel.  
71 The awareness of the accused that he is entitled  
to counsel,  
  
At fist sight. provision for appointing counsel  
would Seem tobe mater of mpage 8 eau  
Conctsion allowed ‘on grounde of compassion. "A'cioee  
tidy wil, however. show that such 2 fey & not  
Fars Heer to gto the Tot of the matter Without  
tho guiding hand of couse; layman esamet present thait  
‘Ske ropes” Crom-evaminaton, which all remains toe  
‘tose tol for tening te veracity of a witness,  
S'wespon which no laymans however teligent he may  
ie!canordineny"employ te the skmesphere of 2 cout  
fotem and wth econ counel pitched ne oder ed  
iF from thi print of ew thet we attach te pretest  
Importance tothe aoustance of counsel In epital crs  
  
17S, We would, therefore, recommend? very\_ strongly,  
shat a State Governments nid High Courts Sibu reeks SS  
the grote regu te eaten 9 une ca  
  
(a) whether the right is efctive in practic, with  
reference to the critena which we have” indicated  
Stove. and  
  
(@) particularly, whether the foes allowed to  
counsel are adequate to attract good talent  
1 Far the purpose of this Report, it & unnecessary to dows bow  
sued gt Saale sable a cept eae a" SAE PO  
2 Reso Report o he Law Commis, Ram of  
Aderaation Wok Lope 87 fo . paca  
  
  
  
Page 378:  
354  
  
oF thove commitocs” \*  
  
SUMMARY.  
oF  
  
MAIN CONCLUSIONS  
‘AND  
  
RECOMMENDATIONS  
  
1. The szsue of abliton or retention hag to be decided  
‘4 balancing of the various arguments for and agonst  
‘stention, "No single argument for sboliton or retention  
Go ce th tau "in atreng at ay. cocingn  
  
sibjee, the need for protecing sclety tn general and  
iniitsdualhursan beings tout Be Borne fs mind  
  
tis diicut to rule out the valiity of or the srength  
  
‘hinds may ofthe arguments for salon. Nor dees  
  
the Commision treat lightly the afgument based on  
  
‘olin sppcoach, Se seve of capital putiinent, and  
approach the seve ,  
  
{ev strong” feeling shown by carain sections of pubic  
{inion iv tency Sooper questions of human vas.  
  
Having regard, however, to the conditions in India, ¢o  
the! variety of the social upbringing of its inhabitants, to  
the disparity in the level of morality and education in the  
‘country, to the vastness of ite area, to the diversity of 1%  
‘Population and to the paramount need for maintaining law  
Erdem he couniry at the present juncture, india  
Sng rn the experiment of ‘of capital punish  
  
‘Arguments which would be valid in respect of one area  
of the world may not held good in. of another area,  
in this context. ‘Similarly, even if sbaiition in some parts  
‘of India may not make 9 material difference, it may be  
fought with serious consequences in other parts  
  
Con condraton of th ima nae te Co  
rision fof the opinion, Dniahment should  
Tiielia the Present tate of ie Saunt  
  
Te Fommeens Rept of ee Une Comminion Reform of Pict  
Sdnineeisg ws poe 3 Yo  
  
2 See paragraph 26,  
  
4 See pansah 26,  
  
2 See prngah 26,  
  
3 Panera 266  
  
  
  
Page 379:  
88  
  
42, (a) The detercent object of eapitil punishment is the  
most Stmportant object, Indeed, ie would seem to coo.  
‘tate fee strongest jusifeation..” Even if all the other  
‘objects were to be kept aside, the deterrent object would,  
by iacit, furnish a rational basis for its retention,  
  
“The retributive object cannot, however, be totally ruled  
coat, "Retribution", as used here, does not mean the pri  
Initive concept of “eye for an eye", but connotes the  
‘Cupression of public indignation at a shocking erime, which  
tan better be described as “reprobation”.  
  
“The retributive object is also reflected in its negative  
aspect Where the catumstances of crime aze puch thot  
‘ERY cacte not a gone of shock but a feeling of ply, the  
‘Poison ion ye eremating lamar  
“hibdued sympathy place of reprobstion;  
iecing sides fat in faveur ofthe sftender te In bows  
‘Sun te this feeling whether throug the court or through  
the preogstive of erey or by express provision in se  
  
‘Byen atter all the arguments advanced to support the  
abolition ‘of capital punishment are taken into. sccount,  
sieve dee seal a ed of cae whe i eae,  
iy impossible to enlist any sympathy on the  
  
iminal, of to postulate any mental abnormality on is  
part, of to seeert that the deterrent. effect is counter  
Ellanced by any external factors te, factors. other than  
‘Will and determination of the criminal  
  
‘Atos dagnion in deta of the various arguments  
pertaining 60 the deterrent sect af captal punishment  
fhe" Commission has reached the gnelusion thst capt  
ponishmient docs act as a deterrent®.  
  
4 (2) On the foting that capital punishment i to be  
retained, no motertal changes aa regards the sentence of  
Seath ate recommended in ‘Of the offences which  
  
present punishable with death under the Indian,  
  
  
  
Page 380:  
356  
  
Penal Code, sections 12, 11, 194, (econd paragraph) 92,  
303, 305, 307, 396. poregreph)  
  
(b) The Commission does not recommend, in the pre-  
sent report, that any” other offences under the Indian  
Fetan Cade’ or anyeer law Should be punishable with  
  
sth  
  
44, The relevant provisions in the Indian Penal Code  
which veet in most cases a discretion in the court to award  
the sentence of death or the lesser sntence of imprison  
iment for life have been considered. The vesting of sich  
‘Gscretion is necessary. and the provisions conferring such  
iscretion are working sdtisfactorly™  
  
Section 309, Indian Penal Cade, under which the sen  
tence of death Ig mandatory for’ an offence under the  
‘Sceilon, need not be amended by lewving the question of  
‘Sentence to the discretion of the Court, or by confining the  
  
ration of the section to eases where "the previous  
  
nce ls a offence for which the offender could. have  
been sentenced to death”.  
  
5. The considerations which weigh or should weigh  
‘with the court in awarding the lesser punishment of  
Emprooument for le in tespeet of tenes for hich  
  
[preseribed punishment is death or imprisonment  
Iifey cannot be eodifed.” The cireumstances which should  
‘or should not be taken into secount, and the circumstances  
‘which should be taken fo. account slong with other cir=  
Cumstances, ag well se the clrcamstances which may, by  
  
Se ola. No. 4, summary, eaeing set 3e, ndion  
eal Cole ™ aa  
  
3 Sue pecagoh 293 Sat ah parte 7,28 3.84 ot  
pee SS rate ge Tp So eae a i, Peak  
Ser Ptah al beiae on palpate ais eal 398k  
Paragraph 463 (Adulecton  
  
Pace 464 (Aries Poet)  
  
Pace 465 Anon)  
  
Paragraph 473 Espionage  
  
Pargaph 476 (ourding, Prottecing and Waskmasting.  
Paneaph 177 Keon  
  
Purges ht—so1 Oueglignce—tomde by)  
  
ead with pargraph 4 Sabo),  
1 Penraph $29 GSecenionpreaching OD.  
  
1 Pangraph $30 musing  
  
14 Paragraph $34 Crain Robbery and Weetng)  
15 Paragraph $39 Ties.  
  
16 Parnranbe shots.  
  
17 Parag S179.  
  
  
  
Page 381:  
37  
  
themselves, be sulicient, in the exercise of the discretion  
regarding ventenee, cannot. be exhaustively enumerated.  
Further, the exercise of the discretion may “on  
Toeal conditions, future developments, evolution of the  
moral sense ‘of the community, the state of crime at &  
fariculer time oF place, and many other unforseeable  
features, Codification ‘of these “considerations may. if  
attempted, be too wide and too narrow at tbe same time’.  
Ho’ change tn the law i therefore, Feormended on this  
point  
  
6 nol delet de, mare nt det  
categories forthe purpose of regulating the paushment for  
Shure, oc to divide murders ito capital and non-apia.  
The cine of murders one of atkaite variety Many  
fectrs ve fb akan dre Gonsdratin and alin  
frequontiy «careful Balancing of sonfleting considerations  
Isto be undertaken. No, amount of verbal dexterity ean  
irmount these diiculles  
  
‘1. The Commission does not recommend any proviskea—  
() that the normal semtence for murder should  
  
tbe smpeisonment for life but in aggravating ciream=  
stances the court may award. the sentence of death’,  
  
(®) that the normal sentence for murder should  
be death but in case of extenuating circumstances the  
faurt may award the sentence of imprsooment for  
  
8. There should be a provision in the law requiring the  
‘couft to state its reasons for imposing sentence of  
  
cor the lesser sentence of imprisonment for life, In respect  
ff any olfence which is punishable with deeth or Imprison=  
tment’ for life in the alternative.  
  
‘The Code of Criminal Procedure, 1898, be amended  
‘accordingly’.  
  
8. Assuming that the centence of death isto be retained,  
the question ‘of exempting certain clatses of persons from  
  
+ Paragraph Gp  
  
2 Pages S363)  
  
3 Pareraphs 672634  
  
4 Remap 702705 (Gener dlacon  
PE LE PAN, F16Petemationys\_  
  
1 Ee SPT a NRT  
  
> Paneraph 751.  
  
1 Pasa oti,  
  
  
  
Page 382:  
the sentence of death was considered. The conclusion res:  
sched with respect 9 each class of persons 19 as follows!  
  
() Children—Persons below 18 years of age at the  
time of the commission of the offence should not be  
sentenced to death." A provision to that effect can be  
Senvenitly meee in the Indian Pena Code, a ee  
  
(i) Tes not tp exempt women general  
from the sentence of death\* m « 7  
  
(i) Regarding pregnant women sentenced to  
death the cising ovatons re Socassel Wes not  
exesiny ta Ye ening proving by ineing  
SSE pene spn da een  
athe Ionot peognaee foding  
  
(i Tt snot necesary toad any provision in the  
law for exempting from the sentence of dent, cases  
Sis ue lig fe an cha wii eran  
  
[period after the dalivery\*.  
(0) tis a to insert a. statutory provi-  
sion ts to casos of "ai responsibility,  
  
(vi) Te is unnecessary to exermpt, from the sen-  
tence of death, the other classes of persons mentioned  
In some of the suggestions  
  
10, Enlargement of the appellate jurisdiction of the  
‘Supreme Court, 50 a8 to provide that an appeal shall Iie to  
‘the Supreme Court as a rhattr of right In all cases irs which  
2 sentence of. death has been passed, confirmed or upheld  
by the High Court, i not reeaimended’.  
  
11, (@) No changes ste suggested sith, respect to the  
citer fe ena ra ie Goer tant pen  
  
sieve, respite of fe respect! en  
‘itdeath or to suspind remit or commute the bentence of  
‘etn re ae 1 of the Contin, or wih  
‘espect to the power of the Govecnment to remit  
‘or Gommate sabe sentence under sections 401 and S08, Cole  
  
4 Pangraph 98  
5 Pargaph 924  
4 Pansat 928  
1 Paget 92985.  
| eragrph 1005 cent  
  
ts peragaps tou and rome,  
  
  
Page 383:  
9  
  
(6) Having regard to the fact that the circumstan-  
cea‘ exch cise Mist diler trom another, jt mould not be  
esirabie to attempt to lay down ony migtd and. exhauetive  
provisions as tothe print which should guide the exer  
Ee of these powers  
(6), As regards the procedure which should be follow.  
{neko exersiae of these powers is ot necestry to  
have any statutory provisions for  
(0) compulsory consultation with the Judges";  
(2) an Advisory Board;  
(3) requiring publication of the reasons for exec  
cise f the powes, faa partcuise case"  
(4) requiring prior recommendation of the court  
befote grant of cormmitation  
  
(8) compulsory consultation with the Attorney  
Genera  
  
12, (a) The opinions ceeived on the subject of the  
rotad'o execstion of the tenance of death ate connie  
Saget whi crn Raman, qc a deen  
Should be adopted. But sponcveopion cannot be enpret  
Sn is oot paste torecrmnend ang change In he eee  
Sn tt ot pombletorecormend ar change in the  
  
Sint toethod Se hanging’ ¥ o  
  
{o) The question, whether executions should be held in  
publi i considered. "An execution in public would be re-  
paleive, and that is 2 sufcient argument againat its intro-  
Ettlion in India’ Ie is not necessary to give prior oF  
Subsequent publicity to en execution?  
  
(©) The present positon as to the interval between the  
sentence of death and the actual execution ts discussed,  
  
(No statutory provision recommended).  
  
1 Paragraph 17 eat wi paraaph 1h  
  
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eget 8s Hts).  
  
lo Prag 164 an 116  
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Page 384:  
12. Some of the other related toples discussed are—  
{i) Plea of guilty in a trial for a capital ofence.  
  
(No specific provision recommended).  
  
(i) Medical examination of the accused In a eapi=  
tal cane, for determining his sanity?  
  
(Wi) Restitution to the victim of crime, | (The  
matter is one of policy, not arising out of abolition)\*  
  
(Ww) Rehabilitation of families of criminals, cone  
denned deat (Suggestion soted. No shane in aw  
  
(¥) Forfeiture of property of the oftender—and its  
igpooal in favour of heirs of the person murdered.  
(Nerrecormendaion ade for” change-Suggeston  
oted®)  
  
(vi) Atter-care of prisoners (sentenced to life  
{imprisonment}, after thele release from prison. Recom=  
Imendation made’ that figures of recidivism may” be  
published and made available in a convenient form or  
Teed the fea annua publica, "rie In  
  
Figures iviem (€, 2 capital crime or  
crime invelving violence committed by a prisoner sen-  
{enced to imprisonment for ife, after his release) would  
be of interest in ‘how far the. sentence of  
Enprioonment has wocked’ a's deterrent.  
  
(et) es sling remo of eid of  
cstmtnt it case of persons sentenced to imprison  
Berit” fered to Che question of mendment  
en nt Coiered sn ti Report)  
(il) Legetobd—Alt State Governments and High  
cout tay Seow the provisons regarding te a  
CAE" P Gouna Capit Coen order to cons  
  
(a) whether the right (to be provided with  
counsel) ‘is effective in practice, with reference t0  
the eriteria indicated in the Report, and  
  
() particularly, whether the fees allowed to  
counsel are adequate to attract good talent.  
  
1 Pages IE.  
2 Pararpin —re08  
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4 Parma 156  
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1.5. L KAPUR—Che  
2. K.G, DATAR, i  
3.8.8 DULAT  
41K TOPE  
5. RAMA PRASAD MOOKERJEE  
  
P.M. BAKSHL  
  
Joint Secretary and  
Legislative Counsel. Secretary,  
  
New Deus,  
The 30¢h September, 1987.  
  
COMO ND —TS¢—tan M ot La, Va ag rete