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DEATH SENTENCE AND CRIMINAL JUSTICE IN HUMAN RIGHTS PERSPECTIVE

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"More than any other single factor, the discovery that dozens of people sentenced to death — some of hem coming hours within execution — were actually innocent of the crimes charged, has driven a wedge in public thinking." Tanya E. Coke

Abstract

Punishment is imposed for social discipline and to do justice. And if the punishment itself becomes unjust on account of unbridled and unregulated sentencing discretion vesting in the judiciary, it would breed contempt about the justice delivery system and violate rule of law. Punishment may have retributive (just deserved) or utilitarian philosophical underpinnings depending upon the leanings of the governing class. But there is no denying the fact that it should be proportional to the crime irrespective of the underlying purpose be it in the 'just desert' model or utilitarian and individualised punishment. Proportionality is better secured in utilitarianism than in retributivism. While the global trend is towards abolition of the death penalty altogether, where it is still applied international law, jurisprudence and practice require that certain minimum standards are applied. How can we strengthen these international minimum standards on the application of the death penalty?

Keywords: capital punishment, death penalty, legislation, capital offence, crimes

1. Introduction

Capital Punishment is to be very sparingly applied with special reasons in cases of brutal murder and gravest offences against the state. About retention or abolition of capital punishment, debates are raging the world over amongst social activists, legal reformers, judges, jurists, lawyers and administrators. Criminologists and penologists are engaged in intensive study and research to know the answer to some perennially perplexing questions on Capital Punishment. A. Whether capital punishment serves the objectives of Punishment? B. Whether complete elimination of criminals through capital punishment will eliminate crime from the society? C. Whether complete elimination

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of crime from society is at all possible or imaginable?

Human beings are neither angels capable of doing only good nor are they demons determined to destroy each other even at the cost of self destruction. Taking human nature as it is, complete elimination of crime from society is not only impossible but also unimaginable. Criminologists and penologists are concerned about and working on reduction of crime rate in the society. Criminals are very much part of our society and we have to reform and correct them and make them sober citizens. Social attitude also needs to change towards the deviants so that they do enjoy some rights as normal citizens though within certain circumscribed limits or under reasonable restrictions.

But we also have to think from victims' point of view. If victims realise that the state is reluctant to punish the offenders in the name of reform and correction, they may take the Law in their own hands and they themselves may try to punish their offenders and that will lead to anarchy. Therefore, to avoid this situation, there is a great need for prescribed and proportional punishment following Bentham's theory of penal objectives that pain of offender should be higher than pleasure he enjoys by commission of the crime. But this "higher" must have proportionality and uniformity too; for example, for theft, trespass, extortion and so forth, capital punishment is not reasonable and even life imprisonment is disproportionate and unreasonable.

2. International Scenario

The United Nations (UN): Capital punishment is one of the most debated issues around the world. The UN General Assembly recognised that in case of capital punishment there is a need for high standard of fair trial to be followed by every country. Procedures to be followed must be just, fair and reasonable. For example the UN Economic and Social Council (ECOSOC) in resolution No. 15 of 1996 (23 July 1996) encouraged member countries to abolish death sentence and recommended that those countries who retain it must ensure defendants a speedy and fair trial.

Article 5 of *the Universal Declaration of Human Rights 1948* provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 7 of *the International Covenant on Civil and Political Rights (ICCPR) 1966* provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. By several resolutions the United Nations suggested protection of human rights of the persons facing capital punishment which were again approved by Economic and Social Council in resolution No. 50 of 1984 (26th May ,1984). These may be summarised as follows:

(1) Countries which have not yet abolished capital punishment may impose it only for the most serious crimes;

(II) Capital punishment may be imposed only in case of serious offences according to established law for the time being in force. There must not be any retrospective effect of the punishment;

(III) Young persons at the time of commission of crime, whose age was below16 years, should not be awarded death penalty;

(IV) Death penalty must not be imposed upon pregnant women or on new mothers or insane persons;

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(V) Capital punishment must be imposed after following fair procedure according to Article 14 of the ICCPR and when guilt is clearly proved leaving no room for reasonable doubt or alternative explanation of the fact;

(VI) Any person sentenced to capital punishment shall have right to appeal to the higher court and steps should be taken to ensure him right to appeal;

(VII) Any one sentenced to capital punishment should be given the right to seek pardon or commutation of sentence;

(VIII) When appeal, pardon or commutation of sentence proceeding is pending, capital punishment shall not be executed;

(IX) Execution of capital punishment must be by way of minimum possible suffering.

The European Union:

During 19th century due to work of Prof. Beccaria and other criminologists, political and economic changes as well as due to initiatives of Central and Eastern Europe, the European countries almost became capital punishment-free area and recognised death penalty as cruel and inhuman, which imposes psychological terror and gives scope for disproportional punishment. The 6th protocol to the European convention on Human Rights 1982 provides for the complete abolition of death sentence in peacetime by all members. The Assembly of the Council of Europe in the year 1994 with further protocol to the European convention on Human Rights recommended for the complete abolition of death penalty even in war time and under the Military Laws.

On 3rd May 2002 the 13th protocol to the European convention for the protection of Human Rights and Fundamental Freedoms was open for signature of member states which provides for the total abolition of death penalty in all circumstances. Most of the countries in the European Union have abolished death sentence. Capital Punishment has been recognised as cruel, degrading and inhuman punishment which infringes upon the basic human rights of the accused as expressed in article 3 of the European Convention on Human Rights.[1] Article 3 of the UDHR also provides for right to life, liberty and security of human beings.

Following the resolutions of the European Union and the United Nations, several countries abolished death penalty completely. For example, Germany is a death penalty-free zone. However, China imposed maximum death penalty. Saudi Arabia, Iran, Iraq, the United States of America (USA) are also in the first row so far the application of capital punishment is concerned. In England it was abolished by the Murder (Abolition of Death Penalty) Act, 1965 though at the end of 18th century about 200 offences were punishable by death.

In Warwickshire (England) a person was prosecuted on the charge of murder.[2] A little girl was under the care and custody of her uncle due to death of her multi-millionaire father. Accordingly she was about to inherit her father's property when she would become 16 years of age .The uncle was affectionate to her about her food, shelter, education and other reasonable necessities. When she was

[1] For details see 13th protocol to the European convention for the protection of Human Rights and Fundamental Freedoms.

[2] A. Felicitla, Human Rights and Capital Punishment, in Human Rights and the Law: National and Global Perspectives, (Snow white) 1997, 207.

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about nine years of age, one night the neighbours heard her cry which was quite unnatural saying "oh good uncle, please don't kill me" and so forth. Just after this incident she disappeared and could not be traced. The police were informed about the matter. The uncle was suspected of committing murder of his niece and disposing of her body as in her absence he was her father's heir apparent and would inherit his huge estate. He was arrested immediately though was released on bail on condition to produce the girl soon before the court. He could not produce the girl and he was sentenced to capital punishment. But after several years of the execution of death sentence, the girl returned to Warwickshire. She said that due to fear of punishment for her mischief, she had escaped to the neighbouring town for those years. Death sentence once enforced is irreversible and irrevocable and the life which is lost cannot be brought back and the injustice done is irreparable.

Penological aspects

There are several theories of punishment such as deterrent theory, preventive theory, retributive theory, reformative theory, rehabilitative theory and so forth. Deterrent theory of punishment emphasises more on protection of society from offenders by eliminating offenders from society.

According to this theory, there are certain objectives of punishment that criminals should be deterred from breaking the Law, and deterrent punishment such as capital punishment should be an example to society and persons who have tendency to commit similar crime; and that if any one commits such a crime, he will be punished in the same manner. In this way it prevents people from breaking the law and it reduces crime rate in the society by elimination of criminals. Therefore, this theory has four justifications (1) Prevention, (2) Isolation, (3) Elimination and (4) Exemplary threat to potential criminals in the society.

Indian scenario

Legislation: The Indian Penal Code, 1860 (IPC) is the Public Law and substantive Criminal Law which defines crimes and prescribes punishments. Section 53 of the IPC provides for death sentence and imprisonment for life as alternative punishments. [3]

In Mithu v. State of Panjab[4] the apex court declared that section 303 is unconstitutional because it is not in tune with articles 14 and 21 of the constitution. In India, non-governmental organisations as

[3] These are as follows: (1) death sentence or (2) imprisonment for life, (3) imprisonment with or without hard labour, (4) forfeiture of property and, (5) fine. Under Indian Penal Code, death sentence is alternative punishment for the following several offences such as; waging war against the government of India (sec.121); Abetting mutiny actually committed (sec.132); Giving or fabricating false evidence upon which an innocent person suffers death (sec.184) ; section 302 punishment for murder, abetment of suicide of child or insane person under section 305, section 307 punishment for attempt to murder by life convicts, section 396 dacoity with murder; but nowhere it is mandatory except under section 303 which deals with punishment for murder by a life convict.

[4] (1983)2 SCC 277

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well as general people are fighting against inhuman, degrading and cruel punishment and protection of human rights. Nevertheless capital punishment still remains in force. Although judiciary has evolved the principle of "*rarest of rare cases"* and has indicated that it is with special reasons that death penalty must be imposed in cases of exceptional and aggravating circumstances where offences are very grave in nature, the application of the principle itself, as evident from a plethora of cases, is violative of Constitutional provisions.

Constitutional Law: Article 21 of the constitution guarantees right to life and personal liberty to all which includes right to live with human dignity. No person shall be deprived of his right except according to the procedure established by law. Therefore, the state may take away or abridge even right to life in the name of Law and public order following the procedure established by Law. But this procedure must be "due process" as held in Maneka Gandhi v. Union of India[5]. The procedure which takes away the sacrosanct life of a human being must be just, fair and reasonable. So, fair trial following principles of natural justice and procedural Laws are of utmost importance when capital punishment is on the statute book. Therefore, our constitutional principle is in tune with procedural requirements of Natural Law which constitute the inner morality of Law which may be stated as follows:

(i) Death sentence is to be used very sparingly only in special cases.

(ii) Death sentence is treated as an exceptional punishment to be imposed with special reasons.

(iii) The accused has a right of hearing.

(iv) There should be individualisation of sentence considering individual circumstances.

(v) Death sentence must be confirmed by the High Court with proper application of mind.

(vi) There is right to appeal to the Supreme Court under article136 of the Constitution and under section 379 of the Cr.P.C. The Supreme Court should examine the matter to its own satisfaction.

(vii) The accused can pray for pardon, commutation etc. of sentence under sections 433 and 434 of the Cr.P.C. and under articles 72 and 161 to the President or the Governors. Articles 72 and 161 contain discretionary power of the President and the Governor beyond judicial power to interfere on merits of the matter; though judiciary has limited power to review the matter to ensure that all relevant documents and materials are placed before the President or the Governor. However, the essence of the power of the Governor should be based on rule of Law and rational considerations and not on race, religion, caste or political affiliations.

(viii) The accused has a right to speedy and fair trial under articles 21 and 22 of the Constitution.

(ix) The accused under article 21 and 22 has right not to be tortured.

(x) The accused has freedom of speech and expression within jail custody under articles 21 and 19 of the Constitution.

(xi) The accused has right to be represented by duly qualified and appointed legal practitioners.

[5] AIR 1978 SC 597.

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Judicial approach: In Jagmohan Singh v. State of U.P.[6] it was argued that capital punishment for murder violates articles 21 and 14 of the Constitution. The counsel for the appellant contended that when there are discretionary power conferred on the judiciary to impose life imprisonment or death sentence, imposing death sentence is violative of article 14 of the Constitution if in two similar cases one gets death sentence and the other life imprisonment. On this point the Supreme Court held that there is no merit in the argument. If the Law has given to the judiciary wide discretionary power in the matter of sentence to be passed, it will be difficult to expect that there would be uniform application of Law and perfectly consistent decisions because facts and circumstances of one case cannot be the same as that of the other and thus these will remain sufficient ground for scale of values of judges and their attitude and perception to play a role. It was also contended that death penalty violates not only article 14 but also articles 19 and 21 of the Constitution. Here *procedure* is not clear because after the accused is found guilty, there is no other procedure established by law to determine whether death sentence or other less punishment is appropriate in that particular case.

But this contention was rejected by the Supreme Court and the Court held "in important cases like murder the court always gives a chance to the accused to address the court on the question of death penalty". The Court also held "deprivation of life is constitutionally permissible provided it is done according to procedure established by Law. The death sentence per se is not unreasonable or not against public interest. The policy of the Law in giving a very wide discretion in the matter of punishment to the Judges has its origin in the impossibility of laying down standards. Any attempt to lay down standards as to why in one case there should be more punishment and in the other less punishment would be an impossible task. What is true with regard to punishment imposed for other offences of the Code is equally true in the case of murder punishable under section 302 I.P.C. No formula is possible that would provide a reasonable criterion for infinite variety of circumstances that may affect the gravity of the crime of murder. The impossibility of laying down standards is at the very core of the criminal law as 'administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment"[7]

In Rajendra Prasad v. State of U.P.[8] V. R. Krishna Iyer, J. observed

> *"……the humanistic imperative of the Indian Constitution, as paramount to the punitive strategy of the Penal Code, has hardly been explored by the courts in this field of 'life or death' at the hands of the Law. The main focus of our Judgement is on this poignant gap in human rights Jurisprudence within the limits of the Penal Code, impregnated by the Constitution…..in the Post-Constitutional period section 302, IPC and section 354(3) of the Code of Criminal Procedure have to be read in the human rights of Parts III and IV, further illuminated by the Preamble to the Constitution."*

The Court held that it is constitutionally permissible to swing a criminal out of corporal existence only

[6] AIR 1973 SC 947, 1973 Cr. L.J. 330, 1973 SCC (Original) 162.
[7] See supra note 5, at 956-59.
[8] AIR 1979 SC 916.

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if the security of state and society, public order and the interests of the general public compel that course as provided in article 19(2) to (6). Social justice has to be read with reasonableness under article 19 and non-arbitrariness under article 14. V. R. Krishna Iyer, J. also observed that such extraordinary grounds alone constitutionally qualify as special reasons as to leave no option to the court but to execute the offender if the state and society are to survive and progress. He was in favour of abolition of death penalty in general and retention of it only for *White Collar Crimes*.

In Bachan Singh v. State of Punjab[9] the Supreme Court by 4:1 majority has overruled its earlier Judgment pronounced in Rajendra Prasad's case and held that death sentence under section 302 IPC does not violate article 21 . The International Covenant on Civil and Political Rights to which India has become a party in the year 1979, does not abolish imposition of death penalty wholly. But it must be reasonably imposed and not arbitrary; it should be imposed in most serious crimes. In this case the Court held that

> *"Judges should not be blood thirsty. A real and abiding concern for the dignity of human life postulates resistance to taking a life through laws' instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."*

In T.V.Vatheeswaran v. State of Tamil Nadu[10] the issue was whether delay in execution of death sentence violates Art 21 of the Constitution and whether on that ground death sentence may be replaced by life imprisonment. A Division Bench consisting of Chinnappa Reddy and R B. Misra JJ. held that prolonged delay in execution of death penalty is unjust, unfair, unreasonable and inhuman; which also deprives him of basic rights of human being, guaranteed under article 21 of the Constitution i.e., right to life and personal liberty. Mr. Reddy and Mr. Mishra JJ. Observed thus,

> *"Making all reasonable allowance for the time necessary for appeal and consideration of reprive, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 of the Constitution and demand quashing of the sentence of death."*

Therefore, 'due process' i.e. just ,fair and reasonable process as held in Maneka Gandhi[11] does not end with only reasonable pronouncement of death sentence rather it extends till the proper and due execution of sentence. There was two years delay in execution of death sentence. The court reiterated that speedy trial is an integral part of Part III of our Constitution and it is included under article 21 and there was prolonged detention before execution of death sentence and the accused was waiting every moment for due execution of death sentence. Every moment he was terrorised. Therefore, it must be treated as violation of the Constitutional mandate.

In Noel Riley v. A.G. of Jamaica**[12]** the Privy Council held that prolonged delay in execution of death sentence due to external factors is inhuman and degrading. But from which date the period will be counted and whether a period like two years is the yardstick? It is not clear even from the decisions of

[9] AIR 1980 SC 898. See also (1980) 2 SCC 684, 715 para 88.
[10] (1983) 2 SCC 68.
[11] Maneka Gandhi v. Union of India, AIR 1978 SC 597.
[12] (1982) 3 WLR 557.

different benches of the Supreme Court. In Ediga Anamma v. State of A.P.[13] V.R. Krishna Iyer and R.S. Sarkaria, JJ: substituted capital punishment by imprisonment for life not only for twelve years delay of hanging but also on personal grounds such as youth, imbalance, sex and expulsion from her conjugal relation.

In Sher Singh v. State of Punjab[14] (Y. V. Chandrachud C.J.; V.D. Tulzapurkar and A. Varadrajan, J.J.) Chief Justice disaffirmed the decision in Vatheeswaran[15] where the court had held that two years delay in execution of death sentence would be replaced by life imprisonment as binding rule and rejected the plea for replacement of death sentence by life imprisonment. When delay in execution is in issue, the court must find out reasons for delay. Therefore two judges' decision was overruled by three judges' bench. The court held that prolonged delay in the execution of a death sentence is an important consideration to determine whether the sentence should be allowed to be executed.

As the doctrine of *rarest of rare cases* evolved in Bachan Singh v. State of Punjab[16], the Supreme Court tried to formulate specific criteria to determine scope of 'rarest of rare' in Macchi Singh v. State of Punjab[17]. The court opined that while one is killed by another, the society may not feel bound by this doctrine. It has to realize that every person must live with safety. *Rarest of rare* doctrine has to be determined according to following factors

(1) *Manner of Commission of murder:* If the murder is committed in an extremely brutal, revolting, grotesque, diabolical or dastardly manner to intense indignation of the community.
(2) If *Motive for the Commission of Murder* shows depravity and meanness.
(3) Anti-social or socially abhorrent nature of the Crime.
(4) Magnitude of the Crime.
(5) Personality of Victim of the murder that is, Child, helpless Woman, public figure and so forth.

The Supreme Court held in Attorney General of India v. Lachmi Devi[18] that the mode of carrying out death penalty by public hanging is barbaric and violative of Art.21 and that there must be procedural fairness till last breath of life as held in Triveniben v. State of Gujarat[19]

In Madhu Mehta v. Union of India[20] the mercy petition of the accused was pending before the President of India for about nine years. This matter was brought to the notice of the court by the petitioner. The court directed to commute death sentence to imprisonment for life because there were no reasons to justify prolonged delay and speedy trial was said to be included in article 21 of the Constitution. There was nine years' delay in execution of death sentence. Sabyosachi Mukharji J. and B.C. Roy J. approved and relied on Triveniben[21] and again held

".....undue long delay in execution of the sentence of death would entitle the condemned

[13] (1974) 4 SCC 443.
[14] (1983)2 SCC 344.
[15] Supra note 10.
[16] AIR 1980 SC 898.
[17] AIR 1983 SC 957.
[18] AIR 1986 SC 467.
[19] AIR 1989 SC 142.
[20] (1989)4 SCC 62.
[21] See supra note 19.

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person to approach this court or to approach under article 32 of the constitution, but this court would only examine the nature of delay caused and circumstances.... No fixed period of delay can be considered to be decisive. It has been emphasised that article 21 is relevant here. Speedy trial in criminal cases though may not be fundamental right is implicit in the broad sweep and context of article 21. Speedy trial is part of one's basic fundamental right i.e., right to life and liberty. This principle is no less important for disposal of mercy petitions. It has been universally recognised that a condemned person has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture....."

In the State of U.P. v. Dharmendra Singh[22] the U. P. High Court commuted death sentence to life imprisonment on the ground that the accused had spent three years in a death cell after final order of the court for death because he was dying every moment.

In Rameshbhai Chandubhai Rathod v. State of Gujarat[23], the Supreme Court held appellant taking the girl with him on his bicycle. Appellant made an extra-judicial confession that ha had raped and killed the child. Dead body recovered from the place of incident. High court dismissed the appeal and confirmed the death sentence. Case fell with in the category of the rarest of rare cases. Deceased was a helpless child of tender age and the accused being a watchman in the building, was in a position of trust and as the murder and rape was brutal, so the death sentence was the only adequate one. At the same time the gravity of the offence, the behaviour of the appellant and the fear and concern such incidents generate in ordered society, cannot be ignored. Supreme Court confirm the conviction and commute the death sentence into that of life imprisonment.

The Supreme Court of India while deciding on the case of Ramnaresh and Ors v. State Of Chhattisgarh[24] , laid down five principles that are to be followed as guidelines by courts across India for determining whether death sentence is to be awarded or not:

1. The Court must use the standard to decide if this was the 'rarest of rare' cases in which a death sentence should be imposed.
2. The Court believes that any further sentence, such as life imprisonment, would be insufficient and would not serve the interests of justice.
3. The death penalty is an exception rather than the norm.
4. Given the nature and circumstances of the crime, as well as other relevant considerations, the option of imposing a life sentence cannot be used with caution.
5. The technique (planned or otherwise) and manner (amount of violence and inhumanity, etc.) in which the crime was perpetrated, as well as the circumstances surrounding its occurrence, need to be taken into account.

Keeping these principles in mind, we must proceed with the landmark decisions by the Indian courts

[22] Decided on September 21, 1999.
[23] AIR 2011 SC 803,
[24] AIR 2012 SC 1357

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with respect to death penalty, under different headings, as provided hereunder.

Constitutionality of death penalty :

Numerous legal experts have argued that the retention of the death sentence in Indian criminal legislation violates one's Right to Life as guaranteed by Article 21 of the Constitution. However, it is certain that nothing in the Indian Constitution specifically declares capital punishment to be illegal.

Jagmohan Singh v. the State of Uttar Pradesh[25] the Appellant was condemned to death under Section 302 of the Indian Penal Code, 1860. The Supreme Court granted limited leave to appeal on the issue of punishment. Arguments were made that the death sentence was unconstitutional because judges had too much authority as no standards or norms were available, and that violated Articles 14, 19, and 21 of the Indian Constitution of 1950.

Observations made by the Supreme Court of India

A bench of Justices Sikri, S.M., Ray, A.N., Dua, I.D., Palekar, D.G., Beg and M. Hameedullah made the following observations in light of the case of Jagmohan Singh v. State of Uttar Pradesh (1973):

1. Articles 72(1)(c) and 134 of the Indian Constitution, as well as entries 1 and 2 in List III of the Seventh Schedule of the Constitution, reveal that the framers of the Constitution recognized the death penalty as a legal punishment and included provisions for appeal, reprieve, and other measures. However, more significant than these provisions in the Constitution is Article 21, which states that no one shall be deprived of his/her life except in accordance with legal procedures. The connotation is unmistakable. Deprivation of life is constitutionally permitted if done in accordance with legal procedures. Given these hints of constitutional postulates, it will be difficult to argue that the death penalty is seen as irrational or not in the public interest per se.
2. In the framework of our criminal system, which punishes murder, one cannot overlook the reality that life imprisonment equates to a dozen years in jail in most situations, and it may be seriously questioned if that is a sufficient substitute for the death penalty. Parliament has refused to accept proposals to abolish it. In this situation, it is impossible to argue whether capital punishment is irrational or not, in the public interest.
3. Although a crime may appear to be similar on the surface, the facts and circumstances surrounding it are vastly different, and since a court's decision on a penalty is based on a thorough examination of all the facts and circumstances, there is no basis for a challenge under Article 14.

[25] 1973 AIR 947

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4. Courts have the power to impose the death penalty after weighing aggravating and mitigating factors, and this decision cannot be described as unguided. Furthermore, the Code of Criminal Procedure, 1973 lays out certain procedures for when a death sentence can be imposed, and the imposition of a death sentence in accordance with the law cannot be considered unconstitutional.

Vikram Singh and ors. v. the State of Punjab[26] this was an appeal from the High Court of Punjab and Haryana's denial of the appellant's writ petition challenging the legality of Section 364 A of the Indian Penal Code, 1860. The High Court presented the following viewpoints:

1. There are moralists who believe that because God gave life, he alone has the authority to take it away and that no human being may usurp this privilege. Others argue that the death penalty cannot be used as a retributive or deterrent measure since statistics demonstrate that the threat of death has never served as a deterrence to major crime. Taking these two perspectives in view, the Court concluded that as the commonly accepted idea in India is that the death penalty as a deterrent is in the law books, it must be used if the circumstances merit it.
2. On the basis of the foregoing reasoning provided above, the High Court decided that after it had evaluated the nature of the offence and its seriousness, the Court was affirmed by the fact that the appellants merited the maximum sentence specified for the charges brought against them.

Subsequently, a writ petition was filed before the Supreme Court of India, which affirmed the appellant's conviction and death sentence issued under Sections 302, 364 A, 120 B, and 201 of the Indian Penal Code, 1860.

Observation of the Apex Court

A bench of Justices T.S. Thakur, R.K. Agrawal, and Adarsh Kumar Goel, made the following observations in light of the case of Vikram Singh and ors. v. the State of Punjab (2015).

1. Section 364A of the Indian Penal Code, 1860 was enacted in response to an increase in the number of kidnappings and abductions for ransom. Terrorism began to rear its head, posing a threat not only to residents' security and safety but also to the country's sovereignty and integrity, necessitating immediate action to combat what has the ability to destabilize any government. The gradual escalation of the threats posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organized activity for

[26] CRIMINAL APPEAL NO.824 OF 2013

economic gain, but also by terrorist organizations, necessitated the inclusion of Section 364A and harsh punishment for those who engaged in such activities.

2. Given the context in which the aforementioned law was enacted, as well as Parliament's concern for citizens' safety and security, as well as the country's unity, sovereignty, and integrity, the punishment prescribed for those who violate Section 364A cannot be deemed so outrageously disproportionate to the nature of the offence as to render it unconstitutional. The judicial discretion granted to the courts to pick one of the two penalties provided for individuals who violate Section 364A will very certainly be utilised along judicially recognized lines, with death sentences only being awarded in the rarest of situations. But just because the sentence of death is a possible punishment that may be awarded in appropriate cases cannot make it *per se* inhuman or barbaric.

3. The appellants, in this case, were found guilty not only of violating Section 364A of the IPC but also of murder under Section 302 of the IPC. Even by the criteria of the rarest of rare situations developed and applied by the Apex Court, the death sentence handed to the appellants, was found just, fair, and reasonable. The Court went on to state that the present case was not one in which the victim averted his fate and lived to tell the tale of his ordeal. Instead, was a case in which he was sentenced to death, which appears to have influenced the judges' decision to impose the death penalty on the appellants.

4. A death sentence in a murder case may be rare, but if the courts have determined that it is the only penalty that can be given, based on the facts and evidence, it is difficult to review that matter in collateral procedures like the present case. Hence awarding of the death penalty was held to be constitutionally valid.

Conclusion

Death as a penalty has plagued human mind perennially. Death sentence must fulfil the conditions for protection of human rights in Criminal Justice Administration in India. In European countries the agitation against capital punishment started with criminologists Jeremy Bentham and J.S. Mill's writings for due punishment; who maintained that punishment must be just, adequate, fair, reasonable and proportionate to the crime to achieve the goal and should never be excessive. This is also a problem in Indian socio-legal system. Delay in execution is not infrequent which is a violation of accused's basic human rights including right to live with dignity which is enshrined under article 21 of the Indian Constitution and the Universal Declaration of Human Rights. The accused in death sentence who is waiting for execution of punishment is living with terror of death every moment he is waiting for. Delay in execution is another punishment on him which is inhuman, degrading and must not be allowed in any civilised society.

Execution of Dhananjay Chatterjee[27] in 2004, after fourteen years in death cell and thereafter in the year 2006 Md. Afzal's instance of capital punishment again gave new impetus to the debate between

[27] Dhananjay Chatterjee v. State of West Bengal and Ors. (2004)9 SCC 751.

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abolitionists and retentionists concerning speedy justice, fair trial, protection of human rights of the persons under death sentence, their human dignity as well as the victimological perspective to maintain law and order in society.

In India the issue of death sentence is hotly debated and has attracted the attention of general public as well as government and non-governmental organisations. Though India is an active member of the United Nations and has signed and ratified most of the International Instruments on human rights, capital punishment still remains in our statute book. According to our judiciary it must be imposed in exceptional cases i.e. in *rarest of rare cases* with special reasons. Article 72 of the Indian constitution confers on the President power to grant pardons etc. and to suspend, remit or commute sentences in certain circumstances.

In the words of P.N. Bhagwati, J. in Bachan Singh v. state of Punjab[28] *"the judges have been awarding death penalty according to their own scale of values and social philosophy and it is not possible to discern any consistent approach to the problem in the judicial decisions".* Therefore, whether the sentence will be for death or for life imprisonment depends, in a large measure, on the court or composition of bench of the court. We have seen earlier about execution and commutation of death sentences into life imprisonment, there are several judgments which show that there are no fix principles to determine delay and other factors in the similar cases. Even in Dhananjay Chatterjee's case[29] there was fourteen years' delay in execution of death sentence but it was not commuted to life imprisonment although in some earlier cases two years, two and half years, three years and nine years delay in execution was treated as violation of human rights and fair procedure and their sentences were commuted to life imprisonment. Is this not a violation of articles 14 and 21 of the Constitution which enshrine fundamental and sacrosanct rights of human beings?

Due to arbitrary and discriminatory decisions and unjust procedures, basic rights of accused are violated in inhuman and brutal manner which are not only contrary to the National Human Rights principles envisaged in the Constitution but also contrary to the Universal Human Rights ethos. In order to serve as a just and effective mechanism for administration of justice to all sections of society, law should be nourished by and nurtured in human rights. There is nothing to prove the fact that extreme measure of death sentence reduces crime rates in contemporary society; rather death sentence has failed as a deterrent. Life imprisonment is enough for deterrence as well as for mental and moral metamorphosis of a human being.

[28] See supra note 16.
[29] See supra note 23.