

Death Sentence – A Multi-dimensional view in India

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“Government alone will never be able to do it. It is only the people themselves who must utilize law for the purpose of bringing justice at the doorstep of the large masses of the people.” - Justice Bhagwati

Abstract: The primary object of criminal jurisprudence is to ensure peace and regulate social order. In order to achieve these objectives, the criminal is codified i.e. Indian penal code 1860 and Criminal procedure code 1973. Indian penal code defines offences and defenses and provides for the punishments in various sections. Criminal procedure code contains the criminal justice mechanism i.e. Police, Public Prosecutor, Judiciary and Prison authorities. Further it contains provisions regarding Maintenance, security for keeping peace and good behavior. The punishments are of different types – the death sentence, Life imprisonment, Rigorous imprisonment, Simple imprisonment, Fines, Forfeiture so property. The Death sentence is the highest punishment, which is not reversible. The sentencing policy with regard to the death sentence is to be analyzed as to the constitutional validity, judicial discretion, with relevant case law. The main object of this article is to analyze the concept of death sentence as a punishment in different dimensions in order to create awareness among the people and provide effective conclusion and suggestions for the suitable changes in the legislation for the proper implementation of the death sentence.

In this context, the article contains various provisions relating to the death sentence in the constitution, IPC and Cr.PC. Further, the article discusses the constitutional validity of the death sentence, judicial discretion in the death sentence in depth.

Key words: IPC, Cr.PC, Constitutional validity, criminal justice mechanism..

Introduction:

If a person commits grievous offence, which is so violent and socially abhorrent as well as threat to the nation, he will be convicted either with life imprisonment or death sentence. The philosophy behind the death sentence is to eliminate the criminal so that he will never repeat such heinous crime.

The Death sentence is based on two theories. The preventive theory, to prevent the offence and the deterrent theory, whereby it not only deters the convict, but also the future offenders.

Under Indian penal code, 1860, several offences are punishable with death sentence like...

The new criminal law amendment bill, 2023 includes Mob lynching and gang rape of minor under the above category.

The constitutional validity of death sentence

It is challenged in several cases under Art14, 19 and 21 of the constitution. Important among them are as follows:

The Supreme Court held that the death sentence does not violate of the Constitution under Article 14, 19 and 21. Because under the following Articles the Constitution provides for various fundamental rights apart from other fundamental rights. The provisions of Art 14, 19 and 21 are as follows:

Art 14 provides for Equality before law and equal protection of law:

Art 19 of the Constitution gives protection of rights as to certain freedoms relating to:

- (a) speech and expression

- (b) Assemble peacefully without arms
- (c) Form associations or unions
- (d) Move freely throughout India
- (e) Residence and settle in any part of India
- (f) Deleted
- (g) Practice of profession, occupation and trade or business.
- (h) These freedoms are subjected to reasonable restrictions.

Art 21 provides that no person has a right to kill another person even though that other person kills a family member of that person. The rule of Lex talionis i.e., “eye for an Eye, Teeth for teeth” rule is barbaric and not followed now. The State takes the responsibility of keeping peace and regulate order in the country. Hence the State will be one of the party in criminal case, where the Public prosecutor will argue on behalf of the victim through the State. The other party to criminal proceedings is the Accused through the defense counsel. In Art 21 of the constitution, it was provided that the State alone has the right to execute the convict of murder through following the procedure established by law in this regard. The rights of the accused as per the Constitution under Art 21 will be adequately provided for including fair trial and all the avenues available to the accused like appeal to High court, Supreme Court under Art 22 for mercy petition to the Governor under Art 22 and to the President under Art 72 to prove his innocence. Hence if the case is proved beyond reasonable doubt, comes under the rarest of rare category, then the State may execute the death sentence. Therefore, it was held by the Supreme Court that the death sentence is not violate of Art 21 of the constitution. The landmark cases challenging the constitutional validity of Art 21 are as follows:

In the case of Jagmohan Singh v. St. of Uttar Pradesh,¹ the Supreme Court addressed the subject of imposing death sentences rather than life terms in an authoritative manner. The trial court found the appellant guilty of killing Chhotey Singh, and the High Court upheld their decision to execute them. The Supreme Court stated that judges do not have unlimited authority and that while deciding whether to sentence someone to death, they must strike a balance between aggravating and mitigating circumstances.

¹ 1973 AIR 947, 1973 SCR (2) 541

In other cases, the Supreme Court has ruled that there is no set definition of "special reasons," leaving the decision to sentence someone to death entirely up to the judges' judgment. The special reasons for the death sentence are examined in the context of fundamental rights. The rarest of rare doctrine is outlined in Bachan Singh v. State of Punjab, where instructions for applying unusual situations are laid forth by mentioning aggravating and mitigating circumstances.

The Indian Supreme Court has held that situations involving the public interest, social defense, and public order merit the use of the death penalty. The murder of Ram Bharosey and his buddy Mansukh was allegedly committed by the accused over a dispute between two families. The death sentence was handed down by the trial court; it was later changed to a life sentence. The normal life of the community being disrupted because of the crime causing absolute social disorder, the accused not feeling regret for the crime committed, and the accused's motivation being taken into consideration are just a few of the criteria the Supreme Court set forth to determine whether to sentence someone to death or life in prison commits murder will be punishable, when the case is proved beyond reasonable doubt and the case comes under the rarest of rare category. The facts and circumstances are considered in each case. If the aggravating factors and more than the mitigating factors, the death sentence may be imposed. It is not mandatory upon the Judges to impose death sentence. Hence the death sentence is not violating Art 14 and 21.

The doctrine of ‘rarest of rare’ was applied in the following cases:

Macchi Singh V State of Punjab²

Vikram Singh and ors. V. the State of Punjab³

Channula Verma V. the State of Chattisgarh⁴

The Governor has the power to commute sentences under Article 161 of the Constitution, which is a sovereign duty, and the President's has to grant reprieve and pardon under Article 72 (1) of the

² 1983 AIR 957, 1983 SCR (3) 413

³ On 25 January, 2010 in the Supreme Court (reportable)

⁴ On 28 November, 2018 Criminal appeal in Supreme Court

Constitution. The President's and the Governor's authority to pardon and grant reprieves is broad enough to include the authority to commute and remit sentences for

Art 72: The President has the power to grant pardon, reprieve, and respite or remit the punishment or to suspend, remit or commute the sentence convicted of any offence by Court martial, all cases relating death sentences. The object of conferring judicial powers to the president to correct the possible errors.

Commutation means substitution of punishment to a lighter form of punishment

Remission means reducing a sentence without changing it's character.

Respite means awarding a lesser punishment on special grounds.

Art 161: The Governor has the similar powers to Pardon the convict.

Delay in execution of death sentence: Delay caused in execution of death sentence especially in judicial process or Pardoning power by the President may condone the death sentence as was held in *T.V.Vatheeswaran v State of Tamil Nadu*⁵.

In *Triveniben V State* (1988), it was held that if delay from the side of the convict i.e., in exhaustion of remedies available to prove his innocence, the death sentence will not be condoned.

In *Mahendra Nath Das V Union of India*⁶, the court held that twelve years delay in execution of death sentence amounts to inordinate delay may be a ground to commute death sentence into life imprisonment.

In *Devender Pal Singh Bhullar v State of NCT*⁷ of Delhi, the court held that for terrorists delay is not considered as a ground for commuting death sentence.

⁵ 1983 AIR361 1983 SCR (2) 348

⁶ On May, 2013 Reportable

⁷ On 12 April, 2013 (Reportable)

Judicial discretion:

The criminal case will go through different courts. The Sessions court, whereby the conviction and sentencing of death sentence will be decided. The Judge of a Sessions court must be confirmed by the High court. If the accused appeals to the Supreme Court under Art of the Constitution, the Supreme Court will decide whether to convict or acquit the accused. In

At the first instance, the Sessions court judge will decide the case after taking into cognizance of the case through inquiry, whether the accused has committed the offence or not. If the accused has committed the offence, whether the act comes under the defenses under Sec 300 (1 to 5) of IPC. If it is established that the accused is not covered under any of the defenses, the Judge will convict the accused. In this context, the judge has the discretion to impose Life imprisonment or death sentence by considering the aggravated and mitigating factor, 'rarest of rare' doctrine and other facts and circumstances of the case. If the aggravating factors are more than the mitigating factors, the Judge may impose death sentence. In such a case, the Judge must give special reasons for awarding death sentence besides giving reasons for arriving at the judgment.

The Judge must think judiciously, without bias, so that there is no error and arbitrariness while exercising the judicial discretion in imposing the death sentence.

The Judge faces so many issues and challenges in the process of conviction and execution of death sentence. The interpretation of the statutes, the precedents etc. must be done judiciously. The emotions of the Judge will also have an impact on the judgment. Therefore, utmost care must be taken in deciding the death sentence.

The High Court must confirm the decision of the Sessions court. If the High court acquits the convict, the State can appeal to the Supreme Court, otherwise, the convict can appeal to the Supreme Court. The High court and the Supreme Court will entertain the case only if there is a question of law involved or gross injustice to the convict. It is the duty of the lower court to inform the convict of the right to appeal. Any arbitrariness or negligence on the part of the judge in exercise of judicial

discretion will affect the life of the convict is executed wrongly, his life cannot be returned back.

Landmark cases decided by the Supreme court are as follows:

Death penalty as a last resort: Ediga Annamma V, The State of Andhra Pradesh⁸

The Andhra Pradesh state's Ediga Annamma V case highlighted the positive impact of post-sentence hearings on death penalties, taking into account the circumstances of both the crime and the criminal. Considering both the crime and the criminal circumstances.

The judgements of Supreme Court in awarding death sentence in various cases are analyzed as follows:

The Supreme Court altered the death sentence to life in prison in Shankar Kisanrao Khade V. the State of Maharashtra⁹

Alternatives to death penalty: Rajendra Prilhadrao Wasnik V. the state of maharashtra,¹⁰

The procedure that follows death sentence: Shabnam V. the Union of India (2015), Yakub Abdul razak Memon V. the State of Maharashtra (2012)

Same day sentencing: Santa singh V the State of Punjab (1956), Ad. Mannan@ Abdul Mannan V. the State of Bihar (2011)

Death sentencing and its procedure: Mukesh and Anr. V. the State of NCT of Delhi and ors (2017)

Public opinion concerning death sentence: Dhananjy Chatterjee alias Dhana V. State of West Bengal¹¹

Associating mental health with death sentence: Shatrughan and Another V. Union of India and Others(1947), Accused X V. State of Maharashtra (2019)

Unsolved cases: There are number of murder cases which are not reported. Even reported they are not solved till now. Few of them are mentioned.

⁸ AIR 1974SC 799

⁹(2013 5 SCC 546)

¹⁰ On 18 January 2022

¹¹ 1994 SCR (1) 37, 1994 SCC(2)220

Rajesh Talwar And Another V Central Bureau of Investigation (Arushi Talwar case)¹²

Sunauvvar V State of U.P¹³ (Unnav rape and destroying the body)

Pratim Alias Peter Mukherjea V Union of India And Anr (Sheena bora case)¹⁴

Naveen murder case (the case is still in the investigation stage)

Sugali Raju Naik V State of AP ,(2018)

Priyanka Singh And Anr V The State of Maharashtra And Ors (2021) (Sushant singh Rajput case)

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Provisions of Criminal Procedure Code:

Sec 235:the judge has to hear the accused while passing the sentence.

Sec 354(3): if a judge imposes death sentence, he must give special reasons for death sentence.

Sec 366: Confirmation of death sentence by High court.

International perspective:

Several nations have abolished the death sentence and several international conventions recommended for the abolition of death sentence. There are pressures on India to abolish death sentence. But India did not sign on the conventions for abolition of death sentence.

Conclusion:

Hence it can be concluded that India being a country with highest population in the world, cannot risk for abolition of death sentence at present. Death sentences is an abnormal punishment which should only be used when life in prison seems like an insufficient penalty, and in rarest of rare categories.

¹² 2013 (82) ACC 303

¹³ Criminal Appeal No.-90 of 1997)

¹⁴ 2018, Bombay High Court (cr Appeal)

Suggestions:

It is not the legislature or Judiciary which is purely responsible for ineffective deterrence in death sentence. Political parties, NGOs, entire legal community and the society as a whole must strive to reduce crime rate especially the serious offences, so that the death sentence as a type of punishment be retained in statutory book only.

Our education system and family members must impart moral values to the students, so that they may not commit offences and make the people aware of the consequences of death sentence for heinous offence.

Death sentence must be retained until the crime rate reduces to the lowest. Till then it must be implemented will no arbitrariness, without any bias on the part of the criminal mechanism as well as the legislation. An alternative punishment to death sentence could be restorative system.

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