



JUDICIAL DISCRETION ON DEATH SENTENCE IN INDIA – AN ANALYSIS

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Abstract: *The judiciary plays an important role in the interpretation of statutes and the adjudication of cases, involving pretrial proceedings, convictions, sentencing, and appeals. The judicial interpretation will be based upon the criminal jurisprudence, which in turn depends upon the current legislation and precedents and changing dynamics of the society. The law relating to the death sentence and the judicial discretion on death sentence be analyzed from the introduction of rarest of rare doctrine, which was introduced in “Bachan Singh V State of Punjab¹” from 1980 till date. This articles aims at highlighting the rationality of death sentence, and the judicial trend in imposing the death sentence with relevant case law, with effective conclusion and suggestions.*

Key words: Judicial interpretation, criminal jurisprudence, rarest of rare, legislation, death sentence.

Introduction

Death sentence is the highest form of punishment, which eliminates a criminal from the society along with his crime. All killings are not punishable with death sentence. IPC under sec 53 provides the grounds on which death sentence may be imposed by the judge i.e.

In 2013, the parliament has passed new criminal law amendment bill, whereby certain offences were added for mandatory award of death sentence like mass lynching,

Other laws like Arms Act, SC ST atrocities Act etc. also provide for death sentence for various offences.

Role or Judiciary:

The Judiciary at the first instance, must take cognizance of the offence and depending upon the facts and circumstance, evidence, witness, and arguments will come to a conclusion, whether the case falls under culpable homicide under sec 299 or murder under sec 300 and pronounces the judgment of life imprisonment or death sentence respectively. In this context, it is relevant to cite the judicial trend in imposing death sentence since 1980 vide Bachan Singh case till now.

Bachan Singh V State of Punjab¹ case is the landmark case, wherein the Supreme Court has affirmed the Constitutional validity of death sentence and provided legal framework in awarding death sentence by introducing the doctrine of ‘Rarest of Rare’ cases, whereby, it was provided that the death sentence may be awarded in brutal and heinous crimes. Further, in a situation where the alternative to death sentence i.e., life imprisonment is undoubtedly foreclosed. Meaning that if the life imprisonment is not sufficient punishment for a murder, death sentence may be imposed. The decision in this case is a foundation in the history of death sentence jurisprudence and is followed even now.

In Maachi Singh V State of Punjab², the rarest of rare doctrine was applied in awarding the death sentence by considering the aggravated and mitigating factors. If the aggravated factors are more than mitigating factors, then the death sentence may imposed.

The circumstances of the criminal and crime thus played an important role in determining the punishment. As there are no uniform standards as

¹Ibid

²1983 (3) SCC 470

to the rarest of rare doctrine and aggravating and mitigating factors, the decision of one judge is entirely different from that of another judge, for the same facts and circumstance, there is no equality in the judgments leading to arbitrariness in the judgments. This can be seen in the changing judicial discretion in different judgment in the following Land mark cases:

The cases where delay in death sentence was condoned to life imprisonment was decided in T.V. Vatheeswaran vs State Of Tamil Nadu³

In the recent case of Pariveran V State⁴, the convict was released for the inordinate delay in dicing mercy petition with the President.

G. Perarivalan is a prisoner convicted in the killing of Rajiv Gandhi. Along with Murugan and Santhan, two other prisoners from the same case, he was sentenced to life in jail. Case was pending with the Governor and the President for a long period of time. For this reason, The Supreme Court ordered the release of Perarivalan on 18 May 2022 after he spent over 30 years in jail, by Nalini V State.⁵

These two cases give a historical example of Indian judiciary, where Judicial lacunae, leading to release of accused due to delay.

The Supreme Court, in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, devised a process with two stages to decide whether a convict should be executed.

1. Whether the case falls under the "rarest of the rare" category
2. Imprisonment for life is not adequate punishment.

A criminal case will pass through different stages in different courts. After the trial court, pronounces the judgment awarding death sentence, the High court will confirm or acquit the accused. The High court of Allahabad has recently acquitted the Nitari killers, which were awarded with sentence, for lack of evidence. If the high court confirms, the Supreme Court must confirm or acquit the accused on appeal/ special leave petition. Curative petition.

Certain cases of murder are pending execution for issue of Black warrant like Shabnam v. Union of India⁶ is a 2015 landmark judicial case in India that established that all legal remedies must be exhausted before a "black warrant" can be issued for execution. The case is considered a judicial milestone that protects the sanctity of fundamental rights and the philosophy of justice.

In some cases the Supreme Court released the convicts for lack of pre-sentence hearing, insufficient evidences and witness, having found the convicts innocent. In certain cases, the Supreme Court granted bail to the accused pending the judgment, released on bail, like Rajesh Talwar case, Sheena Bora case etc. for a long period of time. Certain cases of killings, are unsolved mysteries, whether suicide or murder due to controversial forensic reports like the case of Sushant singh Rajput, Ayeha Mira case.

In 2015, the Supreme Court requested the legislature to provide a suitable mode of execution of death sentence in the place of hanging, which is less painful.

Recent application of rarest of rare Doctrine: The Nampally Metropolitan sessions court awarded death sentence to a person who killed her wife brutally.

Conclusion:

The awarding of death sentence does not depend upon the judicial discretion alone, but on several factors like pardoning power of the President or Governor, the delay in execution of death sentence, judicial lacunae etc. The arbitrariness, bias on the part of judiciary must be avoided by taking care of, while exercising of judicial discretion. The Legislature and Judiciary must establish uniform standards in awarding death sentence, for once execution is over, it cannot be reversed, if the convict is for innocent. The inordinate delay in execution of death sentence must be avoided. If an accused is released from jail for lack of evidence, the judiciary must strive for punishing the real killer and the status of the case must be updated from time to time till the execution of the convict.

³ AIR 1983 SC 361(2),

⁴ Cr Appeal No. 835 of 202,

⁵ 1999 (5) SCC 253,

⁶ AIR 2015 SC 3648