

Capital Punishment: A Contemporary Critique of Rarest of Rare

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“The least offenses deserve death, and I can impose no worse for higher crimes”

-Draco, The first Compiler of the Penal Code of Greece.

Article 21 of the Indian Constitution ensures the Fundamental Right to life and liberty for all persons. It adds no person shall be deprived of his life or personal liberty except according to procedure established by law. This has been legally construed to mean if there is a procedure, which is fair and valid, then the state by framing a law can deprive a person of his life. While the legislature has consistently maintained it would keep the death penalty in the statute books to act as a deterrent, and for those who are a threat to society, the Supreme Court too has upheld the constitutional validity of capital punishment in “rarest of rare” cases. In the case of Bachan Singh v. State of Punjab, the Supreme Court pointed out its view regarding the death penalty that the death penalty should be awarded only in rarest of rare cases. This view of the Supreme Court was highly supported as it aimed to reduce the use of Capital Punishment. The Ratio Decidendi or the Rule of Law applied by the Supreme Court in the said case is that the death penalty is constitutional only if it acts as an alternative to life imprisonment. And same shall be applied in rarest of rare case when the alternative option is unquestionably foreclosed. The principles as to what would constitute the “rarest of rare” have been laid down by the top Court in the landmark judgment in Bachan Singh. Supreme Court formulated certain broad illustrative guidelines and said it should be given only when the option of awarding the sentence of life imprisonment is “unquestionably foreclosed”. It was left completely upon the court’s discretion to reach this conclusion. However, the apex court also laid down the principle of weighing, aggravating and mitigating circumstances. A balance-sheet of aggravating and mitigating circumstances in a particular case has to be drawn to ascertain whether justice will not be done if any punishment less than the death sentence is awarded. Two prime questions, the top court held, may be asked and answered. First, is there something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for a death sentence? Second, are there circumstances of the crime such that there is no alternative but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speak in favor of the offenders?

Introduction

“There should be exemplary punishment in view of the unparalleled brutality with which the victim was gang-raped and murdered, as the case falls under the

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rarest of rare category. All be given death.”

-Additional Session Judge Yogesh Khanna in the famous Delhi Gang Rape Case¹

Indian judiciary has brought up their view with respect to capital punishment by decision out in *Bachan Singh v. State of Punjab*², that capital punishment must be confined to the “rarest of uncommon” cases, this perspective of the Supreme Court was especially supporting to minimize the utilization of the death penalty to punish the lawbreakers, however this perspective of most astounding court was repudiated by the enactment by expanding the number of wrongdoings for which the death penalty is granted.

In *Bachan Singh*, Supreme Court communicated some remarkable reasons relating wrongdoing and criminal³. In, *Bachan Singh* additionally noted; ‘...in settling the level of train or settling on the choice of sentence for various offenses, including one under Section 302 of (the) Penal Code, the court should not tie its idea “predominantly” or just to the conditions connected with the particular wrongdoing, furthermore give due regard for the conditions of the criminal’.⁴

In *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*⁵, the Supreme Court got a chance to clarify this further; ‘The rarest of uncommon announcement serves as a rule in authorizing Section 354(3) and digs in the arrangement that life detainment is administered and passing discipline is a special case. It is settled law of elucidation that special cases are to be understood barely. That being the situation, the rarest of uncommon announcement puts an unprecedented weight on the court, on the off chance that it chooses capital punishment as the favored punishment, to complete a target evaluation of truths to fulfill the special cases imbued in the rarest of the uncommon decree.’

Constitution unmistakably states in Article 21 that no individual should be denied of the right to life unless done after the due procedure of law however Capital discipline precludes due process from securing law. Its burden is constantly unalterable – always denying a person of the chance to profit by new proof or new laws that may warrant the inversion of a conviction or the putting aside of capital punishment.

At the point when the results are life and demise, we have to request an

¹ ‘Delhi gang rape: 4 rapists to hang’, *Bangalore Mirror*, Bangalore (14 September 2013) available at <https://bangaloremirror.indiatimes.com/news/india/gang-rapemurder-judge-ipc/articleshow/22557818.cms>, accessed on 31 July 2018.

² *Bachan Singh v. State of Punjab*, AIR, 1980, SC, p.898.

³ Ibid, para 161.

⁴ Ibid, para 163.

⁵ *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*, SCC, 2009, p.498.

indistinguishable standard for our arrangement of equity from we would for our carriers. It is focal mainstays of our criminal equity framework that it is better that numerous liable individuals go free than that one blameless ought to endure. Give us a chance to reflect to guarantee that we are as a rule quite recently. Give us a chance to delay to be sure we don't murder a solitary guiltless individual. This is truly not all that much to request an enlightened society." Since the restoration of the current capital punishment, many individuals have been liberated from death push since they were sentenced.

Notwithstanding the six cases which *Bariyar* blamed for having taken after *Ravji Ram Chandra v. State of Rajasthan* case's the wrong point of reference, it distinguished another situation where the replacement of capital punishment is defended.⁶ Saibanna was an existence convict while on parole, he slaughtered his significant other and little girl. The Supreme Court sentenced him to death on thinking which viably made passing discipline compulsory for the classification of wrongdoers serving the life sentence.

Nonetheless, the Supreme Court had in *Mithu v. State of Punjab*⁷ effectively struck down Section 303 of the Indian Penal Code, which accommodated compulsory passing discipline for guilty parties serving the life sentence. The reason is that if capital punishment is required, then it is pointless to hear the convict on the subject of the sentence, and it gets to be distinctly unnecessary to express the purposes behind forcing the sentence of death. The proportion Decidendi (the legitimate guideline which frames the premise of the judgment) of *Bachan Singh* is that capital punishment is established in the event that it is recommended as an option for the offense of murder and if the typical sentence endorsed by law for murder is detainment forever. In *Bachan Singh*, the court likewise demanded that a court could force capital punishment just in the rarest of uncommon situations when the option choice is verifiably dispossessed. (The proportion decidendi of a five-judge Bench would tie on different Benches of the Supreme Court unless overruled by a Bench involving more than five judges. *Bachan Singh* was conveyed by a five-judge Constitution Bench.)

That Aspect of Rarest of the rare convention, which needs genuine thought, is the translation of last part of the announcement – 'that should not to be done spare in the rarest of uncommon situations when the option is chosen is certainly dispossessed.' *Bachan Singh* recommended the determination of death discipline as the punishment of final resort when the elective discipline of life detainment will be vain and fills no need. Passing discipline, as will be examined in detail somewhat later, subjectively remains on an altogether different balance from

⁶ *Saibanna v. State of Karnataka*, SCR, 2005, p.760.

⁷ *Mithu v. State of Punjab*, SCC, 1983, p.277.

different sorts of disciplines. It is one of a kind in its aggregate irrevocability⁸.

In *Alok Nath Dutt & Ors. v. State of West Bengal*⁹ this Court in the wake of inspecting different judgments in the course of recent decades in which the issues of rarest of uncommon succumbed to this thought.

Earlier Position of the Law Commission on Death Penalty

35th Report (1967)

In 1962, the Law Commission attempted a broad practice to consider the issue of cancelation of the death penalty from the statute books. A reference to this impact was made to the Law Commission when the third Lok Sabha bantered on the determination moved by Shri Raghunath Singh, Member, and Lok Sabha for the cancelation of the death penalty. The Law Commission discharged its 35th report in 1967 prescribing maintenance of capital punishment.¹⁰

Large portions of the conclusions landed at by the Law Commission depended on reasoning's on general components of social and social life as it existed then. Additionally, a portion of the markers considered by the commission, for example, those on instruction, wrongdoing rates et al have definitely changed in the last a large portion of a century. The accompanying tremendously cited perspective of the Law Commission, for example, is particularly established in the social-political environment of the day and to that degree is exceptionally restricted by the way it can be put to use in the present day setting;

‘Having respect, be that as it may, to the conditions in India, to the assortment of social childhood of its tenants, to the uniqueness in the level of ethical quality and instruction in the nation, to the limitlessness of its range, to the differences of its populace and to the fundamental requirement for keeping up peace in the nation at the present point, India can't hazard the trial of nullification of the death penalty.’

The report additionally watched that the proposal that death penalty might be annulled for a settled timeframe as an investigation was full of the hazard as between its cancelation and reintroduction there could be a mediating time of brutality and reintroduction of the death penalty might not have the coveted impact of re-establishing peace. It is to be noticed that India experienced an execution-free time of 8 years somewhere around 2004 and 2013. These years

⁸ *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra* (n 5).

⁹ *Alok Nath Dutt & Ors. v. State of West Bengal*, SCALE, 2006, p.467.

¹⁰ Law Commission of India, *Thirty-Fifth Report on Capital Punishment*, Government of India, Delhi, 1967.

when India did not see any execution could be considered as a characteristic test which approaches a true ban. Amid this period, wrongdoing information from the National Crime Records Bureau does not pass on specific spurts in wrongdoing rate. In any case, in the meantime, we should remember that amid this period, capital punishments kept on being granted or maintained by the Courts at the ordinary rate. To that degree, this period, if by any stretch of the imagination, must be considered as a ban of sorts just on the real executions and not on the use of capital punishment by Courts and impact thereof on wrongdoing rates may be considered accordingly.

The 35th report of the Law Commission watched that the watchfulness of the Court in the matter of sentence to be granted in a capital case must be held and such caution was all things considered being practiced attractively and as per legal standards. The report watched that “the contemplations which weigh or ought to weigh with the court in granting the lesser discipline of detainment of life (in regard of offenses for which the endorsed discipline is passing or detainment forever), can’t be arranged. The conditions which ought to or ought not to be considered, and the conditions which ought to be considered alongside different conditions, and in addition the conditions which may, independent from anyone else, be adequate, in the practice of the carefulness with respect to sentence can’t be comprehensively counted.” The report watched that the practice of caution may rely on upon neighborhood conditions, future advancements, and development of the good feeling of the group, the condition of wrongdoing at a specific time or put and numerous other unforeseeable components. It is apropos to note that the report of the Law Commission originated before the historic point judgment in *Bachan Singh v. State of Punjab*¹¹ which set out the “rarest of uncommon” convention and held that the death penalty ought to just be granted in the “rarest of uncommon cases” when the option choice is verifiably abandoned. The Court held that irritating and moderating conditions identifying with the wrongdoing and criminal must say something the brain of the Court while sentencing in capital offenses.

The Law Commission in its 35th Report additionally prescribed holding of segment 303 of the Indian Penal Code, which accommodates compulsory capital punishment. The commission took the accompanying perspective in such a manner;

‘Area 303, Indian Penal Code, under which the sentence of death is obligatory for an offense under the segment, require not be corrected by leaving the subject of sentence to the tact of the Court, or by restricting the operation of the segment to situations where the past offense is an offense for which the guilty party could have been sentenced to death.’

¹¹ *Bachan Singh v. State of Punjab* (n 2).

It is to be noticed that area 303 of the IPC was held to be unlawful by the Supreme Court in *Mithu v. State of Punjab*.¹² The court held;

‘On a thought of the different conditions which we have specified in this judgment, we are of the supposition that Section 303 of the Penal Code damages the assurance of equity contained in Article 14 as likewise, the privilege gave by Article 21 of the Constitution that no individual might be denied of his life or individual freedom aside from as per methodology built up by law. The segment was initially imagined to debilitate attacks by life convicts on the jail staff, however, the council picked dialect which far surpassed its goal.’

Depending upon *Mithu*, the Supreme Court in *State of Punjab v. Dalbir Singh*¹³, the Supreme Court struck down area 27(3) of Arms Act, 1959 accommodating required capital punishment.

The commission in its report additionally inspected the part of unavoidability of the death penalty with regards to incorrect feelings and watched that the nearness of sacred and statutory defends, for example, the right force of benevolence, the force of offer and audit and additionally legitimate help gave to capital convicts mirrored the on edge worry of the law to guarantee that odds of blunder are kept to the base. While examining proposed shields against mistaken feelings, the commission watched;

‘We trust, in any case, that such cases have not been numerous. Subsequent to going through the sifter of the legal investigation under the arrangements effectively set out, and the examination connected in procedures for the practice of privilege of kindness, it ought to be troublesome - we don’t state it would be unimaginable - for a case to hold components of the material lie. On the off chance that disregarding such investigation, such components survive, that exclusive demonstrates the requirement for keeping the procedural and different arrangements continually under audit. Somewhere else, in this Report, we ourselves have brought up and examined the issue of upgrades in the arrangements pertinent to shields against mistake. Be that as it may, seeing the matter in its legitimate point of view, we are not in a position to state that the likelihood of a mistake is a contention which can thoroughly dislodge the fundamental requirement for an arrangement planned to ensure society.’

This conclusion touched base at by commission relates to pre-*Bachan Singh* period and even originates before the alterations made to the Code of Criminal Procedure in the year 1973. The Constitution seat choice in *Bachan Singh* alongside the new statutory administration makes the fulfillment recorded

¹² *Mithu v. State of Punjab* (n 7).

¹³ *State of Punjab v. Dalbir Singh*, SCC, 2012, p. 346.

by the commission as sees the wellness of standards as existing in the prior administration immaterial.

In 2009, the Supreme Court announced per in curium the law set down in *Ram Chandra v. State of Rajasthan*¹⁴ which held that lone the qualities identifying with wrongdoing, to the prohibition of the attributes identifying with the criminal were significant for sentencing in a criminal trial. In *Bariyar*, the Supreme Court held *Ravji* to be per-incur am *Bachan Singh* dicta on the previously mentioned suggestion which set out that conditions identifying with both the wrongdoing and criminal must be distinguished. When the judgment in *Bariyar* was rendered, *Ravji* had as of now been executed and the suggestion set down in the condemned judgment had been followed in a few different cases. The previously mentioned cases question the ampleness of the current component of claims and force of survey by Courts to protect against mistaken feelings. Two of the convicts sentenced to death putting dependence on the reprimanded judgment in *Ravji* couldn't get away from the noose in spite of the arrangement of leniency power as noted in the before report.¹⁵

Besides, as of late, the Supreme Court drove capital punishment of fifteen convicts to life detainment in a bunch matter of thirteen petitions on grounds of infringement of their central rights because of unnecessary deferral in practice of kindness power in choosing their benevolence petitions and set down rules for the practice of leniency power.¹⁶ Compensation of their sentences as a result of infringement of their crucial rights makes one wonder whether the current force of leniency is sufficient protection against errand

In addition, as of late, the Supreme Court drove capital punishment of fifteen convicts to life detainment in a group matter of thirteen petitions on grounds of infringement of their key rights because of over the top postponement in the practice of leniency power in choosing their kindness petitions and set down rules for practice of benevolence power.¹⁷

¹⁴ *Ram Chandra v. State of Rajasthan*, AIR, 1996, SC, p. 787.

¹⁵ *Ibid*, para. 4.

¹⁶ *Shatrughan Chauhan v. Union of India*, SCC, 2014, p.1. (pronouncing its judgment in a batch matter, the Supreme Court commuted the death sentence of fifteen convicts to life imprisonment in the following 13 petitions - W.P.(CrI.) No. 34/2013-Shamik Narain & Ors. v. UOI & Ors., W.P.(CrI.) No. 55/2013-Shatrughan Chauhan v. UOI & Ors., W.P.(CrI.) No. 56/2013- PUDR v. UOI & Ors., W.P.(CrI.) No. 132- Suresh & Ramji v. UOI & Ors., W.P.(CrI.) No. 136/2013- PUDR v. UOI & Ors., W.P.(CrI.) No. 139/2013-Shivu v. UOI & Ors., W.P.(CrI.) No. 141/2013 - Jadeswamy v. UOI & Ors., W.P.(CrI.) No. 187/2013-Praveen Kumar v. UOI & Ors., No. 188/2013-Sonia Suresh Kumar & Sanjeev Anup Kumar v. UOI & Ors., W.P.(CrI.) No. 193/2013- Gurmeet Singh v. UOI & Ors. W.P.(CrI.) No. 190/2013- Jaffar Ali v. UOI & Ors., W.P.(CrI.) No. 191/2013- Maganlal Barela v. UOI & Ors., W.P.(CrI.) No. 192/2013- PUDR v. UOI & Ors.)

¹⁷ Amnesty International, 'Death Penalty', *Amnesty International Official Website* available at <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>, accessed on 31.07.2018.

The issues identifying with capital sentencing and additionally the far-reaching cancelation world over consequent to the past give an account of the death penalty require thought and point by point examination. It merits saying here that capital punishment was annulled in South Africa through a choice of the Constitutional Court on account of *S v. Makwanyane and Another*.¹⁸

Additionally, a considerable lot of the conclusions touched base at by the Law Commission in connection to discouragement, requital, a profile of wrongdoing, frameworks of disciplines, contrasting options to capital punishment and so forth are dated. These topics have seen thorough and much more thorough scholastic work from that point forward and require new thought.¹⁹

Murder Convictions & Life Imprisonment

For the most part, courts grant life detainment to convicts in a murder case. Just in ‘rarest of rare’ cases, killer convicts are given capital punishment.

Capital punishment is forced on the convict just when the court arrives at the conclusion that life detainment is insufficient having respect to the certainties and conditions of the case.

Segment 354(3) of the Criminal Procedure Code (CrPC), which was added to the Code in 1973, requires a judge to give “specific reasons” for granting capital punishments. The death penalty can be delivered just in gravest instances of extraordinary culpability and in picking the sentence the state of the convict is likewise to be considered.

What is the Rarest of Rare?

In 1980, in the *Bachan Singh* case, the Supreme Court propounded the “rarest of rare” principle and from that point forward, the life sentence is the lead and capital punishment the exemption.

There is no statutory meaning of “rarest of rare”. It relies on certainties and conditions of a specific case, the severity of the wrongdoing, direct of the guilty party, past history of his contribution in wrongdoing, odds of transforming and coordinating him into the general public and so on.

Test for “Rarest of Rare”

The by and large connected test while sentencing a convict to death is whether

¹⁸ *S v. Makwanyane and Another*, CCT 3/94, 1995, p.3. (South Africa)

¹⁹ *Ibid*, para 5.

the survival of a precise society requests annihilation of life of the individual who has submitted the offense and whether the inability to force capital punishment on him would convey to nothing the sentence of death gave under Section 302 of IPC.

Pre-arranged, ruthless, relentless and corrupt nature of wrongdoing, without allowing to the casualty, are for the most part considered to choose whether a specific case falls inside the parameters of “rarest of rare”.

A Concise Analysis of *Bachan Singh* Case

In *Bachan Singh v. State of Punjab*²⁰ the Supreme Court while upholding the validity of the death penalty expressed the opinion that area abiding concern for the validity of human life postulates resistance to taking a life through laws instrumentality. That ought not to be done save *in the rarest of rare* case when the alternative option is unquestionably foreclosed. The aggravating circumstances when the award of death penalty justifies have been summed up as follows:

- a. If the murder was committed after previous planning and involves extreme brutality; or
- b. If the murder involves exceptional depravity; or
- c. If the murder is of any of the armed forces of the union or of the member of any police force or of any public servant and was committed-
 1. While such member or public servant was on duty; or
 2. In consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty, as such member or public servant as the case may be or has ceased to be such member or public servant; or
- d. If the murder is of person who acted in lawful discharge of his section u/s 43 of CrPC, 1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requesting his assistance u/s of 37 & 129 of the code. However, so of the mitigating circumstances which do not justify an award of the death penalty may be summed as follows:
 1. Where the offense is committed under the influence of extreme mental or emotional disturbance;
 2. Where the accused is young or old;
 3. The accused would not commit criminal acts of violence as would constitute a threat to society;

²⁰ *Bachan Singh v. State of Punjab* (n 2).

4. The probability that the accused can be reformed and rehabilitated.

But the state shall through the evidence, prove that the accused would not satisfy the condition in clauses (3) and (4) above.

The question lies as to what are the *rarest of rare* case justifying the death penalty lies in the discretion of judges. Therefore, this rule had led to inner conflict in minds of the judges. In *Machhi Singh v. State of Punjab*²¹, the Supreme court has held that for the motive, for the manner of commission of the crime or the anti-social or abhorrent nature of the crime are some of the relevant consideration to justify the death penalty. These considerations have been summed as follows –

- a) **The manner of Commission of Murder-** when the murder is committed in an extremely brutal or bastardly manner so as to arouse instance extreme indignation of the community.
- b) **The motive of Commission of Murder-** when the murder is committed for a motive which evinces total depravity and meanness. For instance, murder commixed for sake of reward, cold-blooded murder with a deliberate designed to inherit the property or murder in the course for betrayal of the motherland.
- c) **Anti-Social or Socially Abhorrent Nature of Crime-** when the murder of a member of a scheduled caste or minority community is committed in circumstances which arouse social wrath.
- d) **The magnitude of Crime-** when the crime is enormous in proportion. For instance, when a murder of all most all the members of the family for a large number of persons for a particular caste, community or locality are committed.
- e) **The personality of a Victim of Murder-** when the victim of murder is an innocent child, a helpless person or a woman or a person rendered helpless by old age or infirmity or public figure.

The above are only the illustrative cases indicating a guideline for the application of the principle of rarest of the rare rule. As noted in the case; ‘Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past Courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter.’²²

²¹ *Machhi Singh v. State of Punjab*, AIR, 1983, p. 957.

²² *Bachan Singh v. State of Punjab* (n 2) para 207.

The Apex Court on “Rarest of Rare”

‘Death penalty should be imposed when collective conscience of the society is so shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability of otherwise of retaining the death penalty,’ said the Supreme Court in *Bachan Singh Vs. State of Punjab*²³.

The crime has to be viewed from various angles – manner of commission of murder, the motive for commission of murder, anti-social or socially abhorrent nature of crime and magnitude and personality of a victim of murder.

The president and governors are exercising the power “to grant pardons, etc., and to suspend, remit or commute sentences in certain cases”, given to them, under Articles 72 and 161, to save a fairly large number of convicts from the gallows. While the executive has been refusing mercy pleas of only terror convicts, the judiciary is not following the same.

Of late, the Supreme Court has refused to impose capital punishment in cases in which one would have expected it to send the convicts to the gallows. Many were surprised when the SC declined to award death sentence to the convicts in the *Graham Staines, Jessica Lall and Priyadarshini Mattoo* cases on the ground that these did not fall within the category of “rarest of rare”.

It commuted the death penalty of Rajiv Gandhi’s killers to life imprisonment in February 2014 on the ground of inordinate delay in deciding their mercy pleas. A month later, it also commuted the death sentence of 1993 Delhi terror convict Devender Pal Singh Bhullar to life imprisonment on the grounds of delay in deciding his mercy petition and that he suffered from a mental illness.

Are Trial Courts Following ‘Rarest of Rare’ Doctrine?²⁴

But the manner in which the death penalty is being given in a large number of cases raises a serious question. Are trial courts in India giving a go by to the ‘rarest of rare’ doctrine?

The question becomes all the more relevant because not all convicts awarded death penalty are executed in India.

The number of death sentences pronounced has been very high despite the “rarest

²³ Ibid.

²⁴ Satya Prakash, ‘Death penalty: ‘Rarest of rare’ cases are not so rare in India now’, *Hindustan Times* (5 February 2016) available at <http://www.hindustantimes.com/india/rarest-of-rare-cases-are-not-so-rare-in-india-now/storyJxnTLyJ4tPIDBnHhatCcIL.html>, accessed on 31 July 2018.

of rare” doctrine that limits the scope of awarding capital punishment.

According to an Asian Centre for Human Rights (ACHR) report — The State of Death Penalty in India 2013 — Uttar Pradesh topped the list with 370 death sentences, followed by Bihar (132). But sentences for 4,321 convicts were commuted from death penalty to life imprisonment during this period. This, of course, included many convicts who were given death penalty before 2001. The highest number of commutation — 2,462 — happened in Delhi, followed by Uttar Pradesh (458). But thousands of convicts still remain on the death row.

The Crack between the Death Sentence and Actual Execution²⁵

Data show there is a huge gap between death sentences pronounced and actual executions. According to an ACHR report based on National Crime Records Bureau (NCRB) data, there have been several death sentences between 2001 and 2011, but only a few of these have actually been carried out.

Indian courts awarded death penalty to 1,455 convicts from 2001-11, an average of around 132 convicts per year. But an overwhelming number of death sentences were commuted to life imprisonment during this period.

The only convict to be executed during this period was Dhananjoy Chatterjee (2004) who was hanged for the murder and rape of a 14-year old girl in Kolkata. This was the country’s first execution since April 27, 1995, when Auto Shankar, a serial killer, was executed in Salem, Tamil Nadu.

Thereafter, there have been only three executions – Mumbai terror attack case convict Ajmal Kasab in 2012, Parliament attack case convict Afzal Guru in 2013 and Mumbai serial blasts case convict Yakub Memon in 2015.

Punishment Is Natural Response to Crime

This principle is almost universally accepted and that letting off criminals can result in vigilante justice. Also, the punishment has to be proportionate to the degree of wrongdoing and mitigating circumstances have to be considered while deciding the quantum of punishment.

Should India abolish the death penalty?

India has been voting against a UN resolution calling for a moratorium on the death penalty. But in effect, there has been a near moratorium on the death

²⁵ Ibid.

penalty in India.

According to Amnesty International, in India, at least 100 people in 2007, 40 in 2006, 77 in 2005, 23 in 2002, and 33 in 2001 were sentenced, but not executed, to death.

India's figure is minuscule compared to China which executed thousands, Iran (1,663), Saudi Arabia (423), the US (220) and Pakistan (171) during 2007-12.

ACHR director and coordinator of the National Campaign for Abolition of Death Penalty in India, Suhas Chakma, says: "The sanctity of the rarest of rare doctrine has been eroded considerably and awarding death penalty has become routine for courts in India.

Conclusion

Shying far from a sweeping restriction on capital punishment, the Law Commission is probably going to prescribe "progressive" abrogate in all cases, aside from fear related ones, as rehearsed in nations like the UK. As indicated by our antiquated legitimate framework it was specified that death sentence ought to be kept away from notwithstanding for the most prominent offenses unless the blameworthy was a double cross who had revealed in any action perilous to the security of the state, i.e. acts biased to the enthusiasm of the State.

The Law Commission of India got a reference from the Incomparable Court in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*²⁶ and *Shankar Kisanrao Khade v. State of Maharashtra*²⁷, to concentrate the issue of the passing punishment in Indian to "take into account a forward and educated exchange and level headed discussion on the subject."

This is not the first occasion when the Commission has been inquired to investigate capital punishment the 35th Report (Capital Punishment, 1967), outstandingly, is a key report in such manner. That Report prescribed the maintenance of capital punishment in India. The Supreme Court has likewise, in *Bachan Singh v. State of Punjab*²⁸, maintained the legality of capital punishment. In any case, the social, financial and social settings of the nation have changed definitely since the 35th report. Facilitate, intervention has remained a noteworthy worry in the arbitration of capital punishment case in a long time since the premier point of reference on the issue was set down.

²⁶ *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra* (n 5).

²⁷ *Shankar Kisanrao Khade v. State of Maharashtra*, SCC, 2013, p. 546.

²⁸ *Bachan Singh v. State of Punjab* (n 2).

Commission says that capital punishment does not serve the objective of discouragement any more than life Imprisonment. Assist, life detainment under Indian law implies detainment for the entire of life subject to simply reductions which, in many states in instances of genuine violations, are conceded simply after numerous years of detainment which run from 30- 60 years. Requitil has an imperative part to play in the discipline. Be that as it may, it can't be diminished to retaliation. The idea of **“tit for tat, tooth for a tooth”** has no place in our unavoidably interceded criminal equity framework. Capital discipline neglects to accomplish any unavoidably substantial objectives.

Commission has prescribed in his report that, the passing punishment be nullified for all wrongdoings other than psychological warfare related offenses and taking up arms The Commission assumes that this Report will add to a more judicious, principled and educated civil argument on the annulment of capital punishment for all violations. Advance, the Commission truly trusts that the development towards total nullification will be quick and irreversible.

This suggested distraught by Law Commission of India in his most recent report, as of late amid the execution of death punishment on Mr. Yakub Meman such a variety of lobbyist raised this contention that capital punishment ought to be canceled from our nation, as 140 have abrogated Capital Punishment.