

DEATH PENALTY UNDER THE IPC

- Section 53[1] of the Indian Penal Code makes death penalty as one of the punishments. The present position regarding capital punishment is to use it as sparingly as possible – i.e. in the “rarest of rare” cases.
- [1] *“The punishments to which offenders are liable under the provisions of this code are –*
- *First – Death;*
- *Second – Imprisonment for Life;*
- *Thirdly – [Repealed by Act XVII of 1949]*
- *Fourthly – Imprisonment, which is of two descriptions, namely:-*
- *Rigorous i.e. with hard labour;*
- *Simple*
- *Fifthly – Forfeiture of property;*
- *Sixthly – Fine*

RAREST OF RARE CASES

- **Bachan Singh v. State of Punjab** AIR 1980 SC 898.
- *“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. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”*

- The Doctrine spelled by the honorable Supreme Court in Bachan Singh v. State of Punjab is as follows:
- (a) if the murder has been committed after previous planning and involves extreme brutality, or
- (b) if the murder involves exceptional depravity, or
- (c) if the murder is of member of any of the armed forces of the Union or of a member or any police force or of any public servant and was committed.
 - (i) while such member of public servant was on duty, or
 - (ii) 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 whether at the time of murder he was such member or public servant, as the cases may be, or had ceased to be such member or public servant, or
- if the murder is of a person who had acted in the lawful discharge of his duty under Sec. 43 of the Code of Criminal Procedure, 1973 or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Sec. 37 and Sec. 129 of the said Code.

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- AIR 1980 SC 893.

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RAREST OF RARE CASES

- Machhi Singh and Others v. State of Punjab AIR 1983 SC 957
- This case while adopting the guidelines in Bachan Singh's case, also described the propositions that emerge from it,
- *(i) the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;*
- *(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.*

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- (iii) *Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.*
- (iv) *A balance sheet of aggravating and mitigating circumstances has to be drawn up.*

RAREST OF RARE CASES

- Dayanidhi Bisoi v. State of Orissa AIR 2003 SC 3915.
- *“A cumulative reading of these judgments shows that for awarding a punishment of death sentence, there must be some special reasons, the courts should give relative weight to the aggravating and mitigating factors available on the facts of the case, the case in question should be a rarest of the rare case...”*

RAREST OF RARE CASES

- Dhananjoy Chatterjee alias Dhana v. State of West Bengal 1994 (2) SCC 220.
- *“The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment...”*

Dhananjoy

- a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defence less young girl of 18 years, by the security guard certainly makes this case a "rarest of the rare

RAREST OF RARE CASES

- Ravindra Trimbak Chouthmal v. State of Maharashtra (1996) 4 SCC 148
- The appellant killed his eight month pregnant wife Vijaya in conspiracy and with the help of his father. The motive of putting an end to Vijaya's life was to secure freedom from matrimonial bond for the appellant, an engineering college lecturer, who could re-marry after receiving higher dowry.
- The judgment seems to have taken a new course in its finding and also the reasoning regarding the categorisation of the present murder as not a “rarest of rare” type.

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- *“We have given considered thought to the question and we have not been able to place the case in that category which could be regarded as 'rarest of the rare' type. This is because dowry deaths have ceased to belong to that species of killing. The increasing number of dowry deaths would bear this.”*

- In Om Prakash v. State of Uttaranchal where a domestic servant killed three of the family members without any motive just out of vengeance the Supreme Court observed:
- Conduct and behaviour of the accused is repulsive to the collective conscience of the society.
- Offender does not value the lives of others in the least.
- The crime committed by the appellant shocks the conscience of the society at large and of the Court and the facts and circumstances unfolded in the case leave the Court with an irresistible feeling the he is beyond reformation.”
- 2003 Cr.L.J. 483.

- The Trial Judge found that the bodies of Ranbir, Bimla (his wife) and Seema (wife of Amardeep) had bullet injuries and other injuries inflicted by a sharp-edged weapon called 'Kukri'. The body of Seema was also burnt from below the waist. As far as Rahul (a three-year-old boy) is concerned the upper portion of his head was blown off by a firearm injury. Amardeep also had a grievous injury but he survived and was the star witness for the prosecution

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- The High Court opined that the crime was committed in a pre-meditated, cold-blooded, cruel and diabolic manner while the victims were sleeping. The convicts were armed with deadly weapons like firearms and kukris etc. which they used unhesitatingly and indiscriminately to commit murders and cause a life threatening injury to Amardeep. It was held that Seema's body was burnt by Sandeep from below the waist with a view to destroy evidence of her having been subjected to sexual harassment and rape. Narender was found to be a professional killer. It was held that the act of the Appellants fell in the category of rarest of rare cases and as such a death penalty was warranted.

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- ***Bachan Singh*** was, however, heard and decided when the Code of Criminal Procedure, 1973 (for short the Code of Criminal Procedure) had come into force with effect from 1st April, 1974. The Code of Criminal Procedure contained Section 354(3), which provided that for an offence punishable with death, the first option for punishment would be imprisonment for life (or imprisonment for a term of years) and the second option would be a sentence of death. Section 354(3) of the Code of Criminal Procedure reads as follows:
 - When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

jagmohan

- (i) The general legislative policy that underlines the structure of our criminal law, principally contained in the Indian Penal Code and the Code of Criminal Procedure, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefor, and to allow a very wide discretion to the Judge in the matter of fixing the degree of punishment.
- With the solitary exception of Section 303, the same policy permeates Section 302 and some other sections of the Penal Code, where the maximum punishment is the death penalty.
- (ii)-(a) No exhaustive enumeration of aggravating or mitigating circumstances which should be considered when sentencing an offender, is possible. "The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler plate' or a statement of the obvious that no Jury (Judge) would need." (referred to McGoutha v. California (1971) 402 US 183).

- (b) 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.
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- (iii) The view taken by the plurality in *Furman v. Georgia* (1972) 408 US 238 decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our Constitution any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. There are grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.

- iv)(a) This discretion in the matter of sentence is to be exercised by the Judge judicially, after balancing all the aggravating and mitigating circumstances of the crime.
- ~~(b) The discretion is liable to be corrected by superior courts. The exercise of judicial discretion on well recognised principles is, in the final analysis, the safest possible safeguard for the accused.~~
- In view of the above, it will be impossible to say that there would be at all any discrimination, since crime as crime may appear to be superficially the same but the facts and circumstances of a crime are widely different. Thus considered, the provision in Section 302, Penal Code is not violative of Article 14 of the Constitution on the ground that it confers on the Judges an unguided and uncontrolled discretion in the matter of awarding capital punishment or imprisonment for life.

- v)(a) Relevant facts and circumstances impinging on the nature and circumstances of the crime can be brought before the court at the pre-conviction stage, notwithstanding the fact that no formal procedure for producing evidence regarding such facts and circumstances had been specifically provided. Where counsel addresses the court with regard to the character and standing of the accused, they are duly considered by the court unless there is something in the evidence itself which belies him or the Public Prosecutor challenges the facts.
- (b) It is to be emphasised that in exercising its discretion to choose either of the two alternative sentences provided in Section 302 Penal Code, "the court is *principally* concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under inquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the Code of Criminal Procedure

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- . The trial does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the court. The only thing that remains is for the Judge to decide on the guilt and punishment and that is what Sections 306(2) and 309(2), Code of Criminal Procedure purport to provide for. These provisions are part of the procedure established by law and unless it is shown that they are invalid for any other reasons they must be regarded as valid. No reasons are offered to show that they are constitutionally invalid and hence the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional under Article 21".

TWO Departures from Jagmohan in bacchan singh (constitutional bench)

- (a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.
- (b) While considering the question of sentence to be imposed for the offence of murder Under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence

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- Despite the legislative change and Bachan Singh discarding proposition (iv)(a) of **Jagmohan Singh**, this Court in **Machhi Singh** revived the "balancing" of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to a crime with the mitigating circumstances pertaining to a criminal. It hardly need be stated, with respect, that these are completely distinct and different elements and cannot be compared with one another. A balance sheet cannot be drawn up of two distinct and different constituents of an incident. Nevertheless, the balance sheet theory held the field post **Machhi Singh**.

Judgment

- 1. This Court has not endorsed the approach of aggravating and mitigating circumstances in **Bachan Singh**. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.
- 2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.
- 3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.
- 4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.

Supreme Court of India

Sangeet & Anr vs State Of Haryana on 20 November, 2012

Author:J.

Bench: K.S. Radhakrishnan, Madan B. Lokur

- The Trial Judge found that accused Ram Phal believed that Amardeep's family had performed some black magic which led to the death of his (Ram Phal) son Ved Pal soon after his marriage. Apparently, with a view to take revenge, Ram Phal and the other accused committed the crimes aforementioned.
- The Trial Judge found that the bodies of Ranbir, Bimla (his wife) and Seema (wife of Amardeep) had bullet injuries and other injuries inflicted by a sharp-edged weapon called 'Kukri'. The body of Seema was also burnt from below the waist. As far as Rahul (a three-year-old boy) is concerned the upper portion of his head was blown off by a firearm injury. Amardeep also had a grievous injury but he survived and was the star witness for the prosecution.

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- The view taken by the plurality in *Furman v. Georgia* (1972) 408 US 238 decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our Constitution any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply “the due process” clause. There are grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.

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- Mohd. Chaman v. State (NCT of Delhi), (2001) 2 SCC 28 was a case where the convict had raped a one-and-a-half year old child who died as a result of the unfortunate incident. This Court found that the crime committed was serious and heinous and the criminal had a dirty and perverted mind and had no control over his carnal desires. Nevertheless, this Court found it difficult to hold that the criminal was such a dangerous person that to spare his life would endanger the community. This Court reduced the sentence to imprisonment for life since the case was one in which a “humanist approach” should be taken in the matter of awarding punishment.

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- Sebastian v. State of Kerala, (2010) 1 SCC 58 was a case in which the criminal had raped and murdered a two-year-old child. He was found to be a pedophile with “extremely violent propensities”. Earlier, in 1998, he was convicted of an offence under Section 354 of the IPC, that is, assault or use of criminal force on a woman with intent to outrage her modesty, an offence carrying a maximum sentence of two years imprisonment with fine. Subsequently, he was convicted for a more serious offence under Sections 302, 363 and 376 of the IPC but an appeal was pending against his conviction. The convict also appears to have been tried for the murder of several other children but was acquitted in 2005 with the benefit of doubt, the last event having taken place three days after he had committed the rape and murder of the two year old child.

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- Rajesh Kumar v. State, (2011) 13 SCC 706 was a case in which the appellant had murdered two children. One of them was four and a half years old and the criminal had slit his throat with a piece of glass which he obtained from breaking the dressing table. The other child was an infant of eight months who was killed by holding his legs and hitting him on the floor. Despite the brutality of the crime, the death sentence awarded to this convict was reduced to that of life imprisonment. It was held that he was not a continuing threat to society and that the State had not produced any evidence to show that he was incapable of reform and rehabilitation.

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- Amit v. State of Uttar Pradesh, (2012) 4 SCC 107 was a case in which a three-year-old child was subjected to rape, an unnatural offence and murder. The convict was also found guilty of causing the disappearance of evidence. The sentence of death awarded to him was reduced to imprisonment for life subject to remissions. It was held that there was nothing to suggest that he would repeat the offence. This Court proceeded on the premise that the convict might reform over a period of years since there was no evidence of any earlier offence committed by him.

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- In *Swamy Shraddananda* this Court embarked on a journey to answer this question. In doing so, this Court noted the mandate of *Bachan Singh* that we must not only look at the crime but also give due consideration to the circumstances of the criminal. It was noted that this Court “must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed in appropriate cases as a uniform policy not only by this Court but also by the High Court, being the superior courts in their respective States.” The subject of discussion in this phase, therefore, is remission under Section 432 of the Cr.P.C. of a sentence awarded for a capital offence.

- Sangeeth:
- 1. This Court has not endorsed the approach of aggravating and mitigating circumstances in Bachan Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.
- 2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.
- 3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.
- 4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.