ANALYSIS OF BACHAN SINGH AND MACHHI SINGH AND ITS IMPLICATION

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Abstract

In spite of the various guidelines laid down in the cases with respect to death penalty there has been inconsistency in the procedure of sentencing, we cannot deny the fact that it is a man made system after all. Death sentencing has become Judge-centric rather than principled sentencing.

This paper is an attempt to understand the various principles evolved in these two cases and it also delves into the aspect as to how there has been inconsistency in the procedure of sentencing in spite of the various guidelines laid down by the Court. It begins with the analysis of the two leading cases on death penalty. It goes on to analyse the Court's lack of uniformity and consistency in awarding death sentence. It ends with the authors providing their views that at least the Court must see that they give uniform sentencing in the cases which have similar set of facts and circumstances

Introduction

The entire debate whether death penalty should be given or not is a burning issue. Post constitution period there have been judicial and legislative endeavour dealing with the feasibility, viability, advisability and also the validity of capital punishment. Criminal Procedure Code was amended in the year 1973 on the recommendation of the 35th Report of the Law Commission of India published in 1967. In which it was directed that the Courts would give special reasons while awarding death sentence. This showed that the Legislature did not want to abolish death penalty but it implied, in normal circumstances life imprisonment to be given. The situation of death penalty was further examined this time by the judiciary in the famous case of Bachan Singh v. State of Punjab[2], wherein the majority of judges declared that death penalty could be imposed only in "rarest of rare cases in which the alternative sentence of life is unquestionably foreclosed." Law commission of India in its 35th report stated that "Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population, and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment."[3]. In spite of the various guidelines laid down in the cases there has been inconsistency in the procedure of sentencing, we cannot deny the fact that it is a man made system after all.

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[2] Bachan Singh v. State of Punjab, (1980) 2 SCC 684.
[3]262 Law Commission of India Report, *The Death Penalty*, 19 (2015), available at http://lawcommissionofindia.nic.in/reports/report262.pdf, last seen on 21/11/2018.

Case analysis of Bachan Singh vs. State of Punjab[4]

Facts of the Case:

Bachan Singh was tried and convicted and sentenced to death under Section 302, Indian Penal Code which reads as: "Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine." He was sentenced to death for the murders of Desa Singh, DurgaBai and VeeranBai by the Sessions Judge. The High Court confirmed his death sentence and dismissed his appeal. Case went to Supreme Court.

Issues raised:

(I) Whether death penalty provided for the offence of murder in Section 302, Penal Code is unconstitutional?

(II) Whether the sentencing procedure provided in Section 354(3) of the CrPC, 1973 (Act 2 of 1974) is unconstitutional on the ground that it invests the Court with unguided discretion?

With regards to the first issue:

The Law Commission of India submitted its 35th Report in 1967 to the Government. It summed up its conclusions at page 354 of its Report, as follows:

Having regard, however, to the conditions in India, to the variety of the social up-bringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment. Moreover capital punishment does act as a deterrent. Basically every human being dreads death.

For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, India Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it was observed by the Court not to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. It was further observed if the framers of the Indian Constitution were fully aware about the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent Reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the

[4]*Supra* 3

Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the CrPC, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Indian Penal Code is unreasonable and not in the public interest. Therefore, the Court concluded that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19 and 21.

With regards to the second issue:

Section 354(3) which mandates the Court convicting a person for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, not to impose the sentence of death on that person unless there are "special reasons" to be recorded-for such sentence. The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy is clear on the on the face of Section 354(3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases. It is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case.It was also observed that the present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration principally or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

While considering the question of sentence to be imposed for the offence of murder under Section 302 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. Cognizant of the past experience of the administration of death penalty in India, Parliament, in its wisdom, thought it best and safe to leave the imposition of this gravest punishment in gravest cases of murder, to the judicial discretion of the courts which are manned by persons of reason, experience and standing in the profession. The exercise of this sentencing discretion cannot be said to be untrammelled and unguided. It is exercised judicially in accordance with well-recognised principles crystalised by judicial decisions, directed along the broad contours of legislative policy towards the signposts enacted in Section 354(3).

The Court observed that the standardisation or sentencing discretion is a policy matter which belongs to the sphere of legislation. And the judiciary will not interfere with it

There are some of the aggravating circumstances which, in the absence of any mitigating circumstance, have been regarded as an indication for imposition of the extreme like

- Pre-planned, calculated, cold-blooded murder
- The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim.

The Court further observed that what is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them

In a sense, to kill is to be cruel and, therefore, all murders are cruel. But such cruelty may vary in its degree of culpability (responsibility for a fault or wrong). And it is only when the culpability assumes the proportion of extreme depravity (wickedness) that "special reasons" can legitimately be said to exist

Dr.Chitale (Appearing for the other writ petitioners) at paragraph 200 of the judgement has suggested these "aggravating circumstances".

Aggravating circumstances: A Court may, however, in the following cases impose the penalty of death in its discretion:

- if the murder has been committed after previous planning and involves extreme brutality; or
- if the murder involves exceptional depravity;, or murder has been commited of a person on public duty

But court refused from giving any exhausting enumeration. With respect to the concept of mitigating factors in the area of death penalty the Court felt it must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be blood-thirsty As for persons convicted of murder, life imprisonment is the rule and death sentence an exception.

Principles laid down in the case

- The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
- 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'.
- 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.
- A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

The test which emanates from ***Bachan Singh***[5] is that the courts must engage in an analysis of aggravating and mitigating circumstances with an open mind, relating both to the crime and the criminal, irrespective of the gravity or nature of crime under consideration. The courts while adjudging on life and death must ensure that rigor and fairness are given primacy over sentiments and emotions.

Case analysis of Machhi Singh and Others v. State of Punjab[6]

Facts of the case

Theprinciple of `rarest of rare cases' came up for consideration and elaboration in this case . It was a case of extraordinary brutality. On account of a family feud Machhi Singh the main accused in the case, along with eleven accomplices, in course of a single night, conducted raids on a number of villages killing seventeen people, men, women and children for no reason other than they were related to one Amar Singh and his sister PiyaroBai.

Issue involved

- What normal guidelines are to be followed so as to identifythe "rarest of rare cases" formula for imposing death sentence?

Principles involved

It was observed by the court that the community as a whole may endorse capital punishment when its collective conscience is so shocked that it will expect the Judiciary to give death penalty irrespective of their personal opinions. Thus the Court framed guidelines mentioned below

(1) Manner of Commission of Murder: When the murder is committed in an extremely brutal, grotesque, diabolical. revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance:

- When the house of the victim is set aflame with the end in view to roast him alive in the house.
- When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.
- When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

(2) Motive for Commission of murder: When the murder is committed for a motive which evince total depravity and meanness. For instance when

[5]*Supra* 3
[6]Machhi Singh and Others v. State Of Punjab, 1983 SCR (3) 413.

- a hired assassin commits murder for the sake of money or reward
- a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust.
- a murder is committed in the course for betrayal of the motherland.

(3) Anti Social or Socially abhorrent nature of the crime

- When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them with a view to reverse past injustices and in order to restore the social balance.
- In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) Magnitude of Crime When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) Personality of Victim of murder : When the victim of murder is

- an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder
- a helpless woman or a person rendered helpless by old age or infirmity
- when the victim is a person vis a vis whom the murderer is in a position of domination or trust
- when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

Decision of the Court

The circumstances of the case do reveal that it was a cold- blooded murder and the victims were helpless and undefended. The offence committed was of an exceptionally depraved and heinous character. The court uphold the view concurrently taken by the Sessions Court and the High Court that extreme penalty of death requires to be imposed on appellants (1) Machhi Singh (2) Kashmir Singh son of Arjan Singh (3) Jagir Singh. Accordingly the death sentence was confirmed. Benefit of reasonable doubt was given to Mohinder Singh as there was lacuna in the evidence that he was in possession of the rifle.

Thus **Bachan Singh**[7] laid down the principle of the rarest of rare cases. **Machhi Singh**[8]formulated this principle into five definite categories and in doing so also considerably enlarged the scope for imposing death penalty. But the unfortunate reality is that in later decisions neither the rarest of rare cases principle nor the Machhi Singh categories were followed uniformly and consistently.

Court's lack of uniformity and consistency in awarding death sentence

In the case of ***Ravji* v. *State of Rajasthan***[9], it was observed by the Court "*The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial."*

This aspect of the decision in the ***Ravji case*** directly conflicts with the ***Bachan Singh*** ruling. Thereafter, the Supreme Court repeatedly invoked the Ravji precedent in death penalty cases so as to limit the focus only to the circumstances pertaining to the crime and exclude the circumstances pertaining to the criminal until another two-Bench judge of the Supreme Court discovered this folly in and it was observed in the ***Bariyar Case***[10],

"*63. ... It is apparent that Ravjicase has not only been considered but also relied upon as an authority on the point that in heinous crimes, circumstances relating to the criminal are not pertinent."*

It is now generally accepted that that ***Ravji case*** was rendered per incuriam.

Age of the accused

In the case of ***Ramnaresh* v. *State of Chhattisgarh***,[11] involving a gang rape and murder, the Court imposed a life sentence taking into account the young age of the convicts (all between 21-30 years of age), which pointed to the possibility of reform. However in the case of ***Dhananjoy Chatterjee* v. *State of West Bengal***,[12] the Supreme Court had imposed the death sentence on the offender for committing the rape and murder of an 18 year old woman who lived in a building where he was a security guard. Dhananjoy Chatterjee was given the death sentence and was executed in 2004. He was 27 years old.

Nature of the offence

In the case of ***Bhagwan Das* v.*State (NCT of Delhi)***[13] the brief facts of the case are appellant was very annoyed with his daughter, who had left her husband Raju and was living in an incestuous relationship with

[7]*Supra* 3
[8]*Supra* 10
[9]Ravji v. State of Rajasthan, (1996) 2 SCC 175.
[10]Santosh Kumar Satishbhushan v. State of Maharashtra, (2009) 6 SCC 498.
[11]Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257.
[12]Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220.
[13]Bhagwan Das v.State , Criminal Appeal No. 1117 Of 2011 (Supreme Court,09/05/2011).

her uncle, Sriniwas. This infuriated the appellant as he thought this conduct of his daughter Seema had dishonoured his family, and hence he strangulated her with an electric wire. The trial court convicted the appellant and this judgment was upheld by the High Court. The Supreme Court dismissed the appeal and held that honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment.

However in the case of ***DilipPremnarayanTiwari&Anr* v. *State Of Maharashtra***[14]

The facts of the case are Dilip Premnarayan Tiwari, Dilip's sister Sushma fell in love with deceased Prabhu who used to live in the neighbourhood of their residential house. Ultimately, she got married to Prabhu. Prabhu being a Keralite and belonging to `Ezhava' caste, the marriage was not approved of by the family of Sushma since Sushma belonged to a Brahmin caste from the State of Uttar Pradesh. The whole family of Sushma was extremely opposed to the marriage which took place on 29.10.2003. The ghastly incident took place on the night of 16/17th May, 2004. At about 1.15 a.m. at night someone knocked the back side door of deceased house and the accused along with the other two entered their house and killed the deceased and also hit Sushma who was in the advanced stage of her pregnancy. However Sushma did not die. The Court commuted his death sentence to life imprisonment. The court observed that the murders were the outcome of social issue like a marriage with a person of so-called lower caste. However, a time has come when we have to consider these social issues as relevant, while considering the death sentence in the circumstances as these. The caste is a concept which grips a person before his birth and does not leave him even after his death. The vicious grip of the caste, community, religion, though totally unjustified, is a stark reality. The psyche of the offender in the background of a social issue like an inter-caste-community marriage, though wholly unjustified would have to be considered in the peculiar circumstances of this case. The court did accept that the murder was brutal but when we weigh all the circumstances, particularly, about the mindset of Dilip, the cruel acts on the part of the accused would not justify the death sentence.

Personally I feel the social issues like inter caste marriage should not come under the mitigating factors, because everyone has to right to choice to marry the person of one's own choice.

In the case of ***State of Maharashtra* v. *Damu***[15], the accused were convicted of murdering three children as human sacrifice for recovering hidden treasure. The Court did not impose the death penalty on them even though it held that "the horrendous acts" made it "an extremely rare case." Nevertheless, the Court imposed life imprisonment on the reasoning that the crime was motivated by ignorance and superstition, which were considered to be mitigating circumstances.

As against this, in ***Sushil Murmu* v.*State Of Jharkhand***[16] where the accused was convicted for murdering one child as human sacrifice, the Court held that given the nature of the crime, the accused "was not

[14]DilipPremnarayanTiwari&Anr v. State Of Maharashtra , Criminal Appeal No.1026 Of 2008 (Supreme Court,10/12/2009).
[15] State of Maharashtra v. Damu , (2000) 6 SCC 269.
[16] Sushil Murmu v.State Of Jharkhand, Appeal (crl.) 947 of 2003 (Supreme Court, 12/12/2003).

possessed of the basic humanness and he completely lacks the psyche or mind set which can be amenable for any reformation to be beyond reform."Stating that the crime "borders on a crime against humanity indicative of greatest depravity shocking the conscience of not only any right thinking person but of the Courts of law, as well," The Court refused to consider the superstitious motivation as a mitigating factor. Held that the case to be treated as the 'rarest of rare cases' in which death sentence is and should be the rule, with no exception whatsoever." Therefore, in similar circumstances, while in one case the Court found the murder of three children for human sacrifice to not call for the imposition of the death penalty, in another case it found the murder of one child for similar reasons to require the imposition of the death penalty as a rule.

Last Words

In any criminal justice system sentencing policy plays a very crucial role especially in cases like death penalty because once the death penalty is given it cannot be undone. From the analysis of the above cases we can see that unfortunately death sentencing has become Judge-centric rather than principled sentencing. There is marked imbalance in the end result as there is no uniformity in the sentencing process by the court. Based on the similar set of facts and circumstances in some cases death sentences is given in some cases it is not. Thus given overall larger picture gets asymmetric and lop-sided and presents a poor reflection of the system of criminal administration of justice.The author is of the view that the Court should impose such punishment that is in tune with the crime committed so that the public hatred towards that crime is reflected in the sentence. In case of imposing the appropriate punishment along with the rights of the criminal, the rights of the victims should also be given importance. Improper sentencing will undermine the confidence of the people and this can have catastrophic effect as people will lose faith in the efficacy of law. At least the Court must see that they give uniform sentencing in the cases which have similar set of facts and circumstances. For instance when age of the accused has been taken as the mitigating factor that commutes his death sentence into life imprisonment then it must be done in every case which is based on the same set of facts and circumstances. Personal bias of the Judges should not come in between while giving sentences.