

CAPITAL PUNISHMENT- EXTREMIST OR RAREST?; CASE COMMENTARY ON BACHAN SINGH VS. STATE OF PUNJAB (AIR 1980 SC 898)

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Abstract

The Indian Penal Code, 1860 was drafted to incriminate certain acts as offences and prescribe punishment for each of them. It lays down as to what is right and wrong along with corresponding penalty for the wrong committed. Crime, as defined by Paul Tappon, is “an intentional act or omission, committed without defence or justification, and sanctioned by the state as a felony or misdemeanour.” Further, it is a deviation from accepted social code of conduct, which the society deems to be an attack on its values that is liable to be punished. Punishment refers to the consequences of a wrongful act committed by a person. There are different kinds of punishment mentioned under Section 53 of the IPC such as, death penalty, imprisonment for life, imprisonment either simple or rigorous, forfeiture of property, fine as well as solitary confinement under Section 73. It is pertinent to note that IPC prescribes more than one punishment for an offence, based on its gravity. The offences that are punishable with death penalty or capital punishment are given under Section 121, 132, 302, 303, 305, 364A, 376E, etc. These sections also mention alternate offences in the form of imprisonment or fine. The major issue is regarding constitutionality of death penalty, which was discussed in plethora of cases on the touchstone of Article 14 and 21, together with analysis of aggravating and mitigating circumstances, leading the court to choose or eliminate capital punishment and whether standards should be fixed to award death penalty.

Key Words: murder, death, penalty, capital punishment, life, constitution.

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| Acts and Sections | Section 302, Indian Penal Code, 1860; Section 354 (3), Code of Criminal Procedure, 1973; Articles 14, 19, 21 of Indian Constitution; 35 th Law Commission Report. |
| Case Name | Bachan Singh vs. State of Punjab |
| Date Decided | 16 August 1982 |
| Citation | AIR 1980 SC 898, (1982) 3 SCC 24. |
| Court | Hon’ble Supreme Court of India |
| Judges | Justice R. Sarkaria, Justice YD Chandrachud, Justice A. Gupta, Justice N. Untwalia and Justice PN Bhagwati. |
| Author | Justice R. Sarkaria |
| Majority | 4:1 |

I. Introduction

“An eye for an eye will only make the whole world blind.” This famous quote by Mahatma Gandhi coerces everyone to ponder that we live in a civilized society where idea of taking revenge on others delineates primitive and narrow minded thinking. The concept of capital punishment has its roots in the Hammurabi code of 18th century BC, which evolved through time and was introduced in Hittite Code (14th century BC), Draconian Code of Athens (7th

century BC), and Roman law of the Twelve Tablets (5th Century BC) as well.⁷⁸

Britain inherited the practice, which was accompanied by torture and severe pain was inflicted to criminals by burning alive, drowning, beheading, throwing stones, strangulating, hanging, pressing heavy weights against the chest, crucifixion, among others. It was only in 18th century that reforms were sought in the penal system to take a lenient approach towards capital punishment, as the justification of killing fellow countryman was itself questioned. Positive school of criminology and penology developed with Cesare Beccaria on the frontline. In his research paper, *On Crimes and Punishment*, he extensively criticized death penalty by saying there is no right which authorizes death, rather it is like a war of a nation against a person, who has to be eliminated for general good. Hence, only when the security of the state is at stake or there is a probability of a revolution by virtue of power one possesses, that will lead to anarchy, the death of that person is necessary.

As a result, no. of offences for which death was awarded as punishment were reduced and today most jurisdictions punish murder, dacoity, rape, waging war against government or mutiny, terrorism, etc. with death. Major arguments in favour of death penalty are that it acts as deterrence for others from committing heinous crimes, providing justice to family of the victim of gruesome crime and maintaining a sort of balance between the good and the evil. However, those against the idea of death penalty, contend that it is a moral obligation to preserve human life rather than taking it, it is irreversible and cannot be undone if an innocent person is executed, there is no evidence that death serves as a deterrence, it does not effectively stop others from committing various other crimes, diminishes the

immeasurable value of human life, it is unjust in the sense that how selection of criminals for awarding death to them is done.⁷⁹ A similar question subsists in India as well, as to whether death penalty is at par with constitutional principles in present times or is constitutionally obsolete. This has been taken up by the judiciary in many precedents, one of which is the present case to be analysed, to discuss the way forward.

II. Facts

Bachan Singh, the Appellant had been convicted for murdering his wife and had been sentenced to imprisonment. After his release, he was residing at his Cousin Hukam Singh's house, which his family did not like. One Vidya Bai was alarmed by some noise only to see the appellant inflicting axe blow with an axe on Veeran Bai's face. Vidya Bai tried to stop the appellant however she got injured badly with axe and fell unconscious. She screamed out loud waking up Diwan Singh and Gulab Singh sleeping at a distance from there. They saw the appellant with axe on Desa bai's face and tried to stop him. However, seeing them running towards him, Bachan Singh left the axe and successfully escaped.

Trial was conducted in Sessions Court, which found Bachan Singh guilty of murders under Section 302, Indian Penal Code. The Sessions Court sentenced him to death, which was later confirmed by the High Court. Bachan Singh appealed to the Supreme Court by Special Leave Petition, for SC to consider whether his case was covered under "special reasons" for sentencing him to death as required in section 354(3) of Code of Criminal Procedure, 1973. Several other convicts filed subsequent writ petitions challenging the death sentence, owing to important changes like inter-relationship between the Articles 14, 19, 21 of the constitution, and India signing International Covenant on

⁷⁸ Michael H. Reggio, *History of the Death Penalty*, PBS, (9 February 1999), <https://www.pbs.org/wgbh/frontline/article/history-of-the-death-penalty/>

⁷⁹ Claire Andre and Manuel Velasquez, *Capital Punishment: Our Duty or Our Doom?*, SANTA CLARA UNIVERSITY, <https://www.scu.edu/mcae/publications/iie/v1n3/capital.html#:~:text=Capital%20punishment%20is%20often%20defended,killers%20do%20not%20kill%20again.>

Civil and Political Rights, 1976. Hence, all petitions were clubbed into one to be heard by the apex court in this case.

III. Issues

The major issues before the apex court were:

1. "Whether death penalty that has been provided as the punishment for the offence of murder under Section 302, Indian Penal Code, 1860, is unconstitutional?"
2. "Whether the sentencing procedure stipulated in Section 354(3) of the CrPC, 1973 is unconstitutional insofar as it vests the courts with unguided and untrampled power, and allows the death sentence to be imposed arbitrarily on an individual found guilty of any offence punishable with death or life imprisonment?"

IV. Arguments

A. On behalf of Appellants

1. The death penalty violates Article 19 of the Constitution by putting an end to all freedoms mentioned in Article 19 1 (a) to (e) and (g). There is no evidence for death penalty to have a deterrent effect, rather it tarnishes the dignity of the person.

B. On behalf of Respondent

1. He emphasises that only broad guidelines, as distinct from rigid rules, can be laid down by the Court. Since the discretion-proceeds the argument-is to be exercised judicially after taking into consideration all the aggravating and mitigating circumstances relating to the crime and the criminal in a particular case, and ample safeguards by way of appeal and reference to the superior courts against erroneous or arbitrary exercise of the sentencing discretion have been provided, Section 354(3) cannot be said to be violative of Articles 14, 19 and 21 or anything else in the Constitution.

V. Observations of the Court and their Analysis

1. On issue 1.

Article 19 (1)'s guarantee of the six fundamental freedoms states that they are not unalienable

rights, rather subject to intrinsic limitations resulting from the reciprocal responsibility of a person to use his rights in a way that does not violate those of another. This is based on the maxim *sic utere tuo ut alienum non laedas*. These rights are explicitly subject to State's ability to put reasonable limitations, including prohibitions, on their exercise under Clauses (2) to (6). Anyone claiming to have a legal or fundamental freedom under Article 19(1) to engage in the profession of a hired assassin, form groups, or engage in criminal acts is a misled. The claim that every provision of the Indian Penal Code, regardless of whether it mentions any of the rights mentioned in Subclauses (b) to (e) and (g), is a statute that imposes reasonable limitations on those various rights, does not even have the benefit of plausibility.

If a murder is not affecting public order and only gives personal injury, then there is no reason why his right of freedom of such murderer should be curtailed and he should be punished; there should be no reasonable restriction as such. Such interpretation leading to injustice and absurdity should be avoided. In *AK. Gopalan vs State of Madras*⁸⁰, judges excluded those provisions of IPC from the scope of Article 19, which provided penalties for certain offenses that could not be investigated due to the specific reasons contained in paragraphs (2) to (5) of this article.

In *Maneka Gandhi v. Union of India*⁸¹, "the doctrine of intended and real effect" was iterated by Bhagwati, J. which delineated that Article 19 gets violated by a law if it has the direct and unavoidable effect of restricting any of the freedoms protected by Article 19 (1). Conversely, a law is not ultra-vires if it violates a fundamental right and its impact on the enumerated freedoms are remote or reliant on "factors which may or may not occur". Conviction of an accused and the resulting deprivation of freedom a natural incident rather

⁸⁰ AIR 1950 SC 27.

⁸¹ AIR 1978 SC 597.

that a direct consequence. It may or may not get effective. Hence, Section 302 of the Penal Code does not have to stand the test of Article 19(1) of the Constitution.

The court also observed the 35th Law Commission Report⁸² and its recommendations on abolishing or retaining death penalty in India. It was felt in the report that ground realities of India, like social up-bringing of people, moral and educational disparity among people, vast area, diverse population, maintaining law and order, do not allow scraping of death penalty as a punishment.

Further there are recourses available to convicts, in case they are awarded death sentence, like:

- Sections 235(2) and 354(3), CrPC giving pre-sentence hearing and sentencing procedure.
- Appeal to President/Governor to "suspend, remit or commute the sentence" of any convict, in their respective limits
- Appeal by convict to Supreme Court under Article 134 if his acquittal is reversed by the High Court.

The court referred to proponents of Abolitionist and Retentionist theories of capital punishment, giving respective rational and countering each other's opinions. It was stated that one cannot adhere to either theory strictly as they are formed on a hypothesis and are abstract, which may not cater to harsh realities on Indian society.

Retribution and deterrence are two major ends of punishment, especially, death penalty. It was argued that death sentence does not have any deterrent force. Nevertheless, it has the impact to incapacitate the convicts from repeating their offence.

Even Article 21 cannot come to rescue as deprivation of a person's life and liberty are

justified under fair, just and reasonable procedure established by law. Similar provision in the ICCPR under Article 6 empowers people to enjoy right to life against any arbitrary action of State. It allows death penalty to be imposed on accused who indulge in "most serious crimes in accordance with the law in force at the time of the commission of the crime".

2. On issue 2.

The apex court while interpreting "special reasons" given under Section 354 (3) of CrPC, stated that they are based on extraordinary facts and circumstances of a case with respect to offence and offender. This means that death penalty being the extreme punishment can only be awarded in exceptional cases. These exceptional cases in which death penalty can be imposed will be chosen by the judiciary while dealing with cases, where courts will take into consideration not only the relevant facts of the case but also the behaviour and nature of the accused.

Further, legislature cannot provide any watertight criteria to deem a case as exceptional. It cannot categorise the different degrees of murder to be considered exceptional by judiciary to award death penalty, because:

- What is the relevance of data about the crime and criminal to fix the type of punishment.
- Criminals have varying behavioural patterns even if they commit same offence.
- Prescribing standards for giving death sentence is legislative task.

All that can be done is that judiciary can provide guidelines to impose capital punishment which can reduce arbitrariness and injustice. This can reasonably justify different punishment for same offence and for determining quantum of punishment; there are certain aggravating and mitigating circumstances that are considered while

⁸² *Capital Punishment*, Vol. 1-3, Law Commission of India, (1967),
<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080828-1.pdf>

determining the guilt of an accused and imposing punishment that is proportionate.⁸³

Aggravating circumstances if murder is committed:

- after planning and was extremely evil/brutal or immoral
- Of a member of armed forces or police force or of any public servant on duty leading to seizure of membership.
- of a person discharging his duty under Section 43, CrPC,
- Person who assisted Magistrate or a police officer under Section 37 and Section 129 CrPC.

Mitigating circumstances

- Age of the accused.
- Act was not one which could be threat to society.
- Likelihood of reformation and rehabilitation.
- Offence was morally justified.
- accused was influenced by another
- Offender was not mentally capable to understand the consequences of his act.

Justice Bhagwati, being an abolitionist, voiced his dissent to the majority view by stating that death penalty has been discriminatory in nature and has been used as a tool in the hands of rich, affluent and white men to oppress poor, indigent and black. In this way it violates the golden triangle of Indian Constitution. He held that death penalty can be given in exceptional cases only when the whole bench opines so without any dissent or opposite view. If there are no standards to impose death sentence, judiciary assumes unfettered discretionary power which is exercised capriciously to deprive fundamental rights to people.

VI. Judgement

Furman vs Georgia⁸⁴ was referred to by the court wherein, US court had invalidated death penalty for being cruel and inhumane and violative of eighth amendment to US Constitution. Gregg vs. Georgia⁸⁵ later reversed it by giving a broader interpretation to the eighth amendment and held that death penalty for the offence of murder was not cruel/unusual. Justice Sarkaria gave the majority decision and upheld the constitutional validity of death penalty given under Section 302 of IPC and dismissed the appeal/challenge.

VII. Conclusion

Violence is treated as greatest evil for a civilized society. One cannot think of peace and tranquillity where people are willing to take lives of fellow countrymen for the sake of revenge. Same idea extends to the capital punishment, though a lawful procedure to end someone's life but is frowned upon by human right activists and modern day philosophers. It tends to eliminate the wrongdoer rather than the wrong. But it is justified on grounds when it serves as punishment against heinous crimes that shook the conscience and values of the society to their core. Retention or abolition of death penalty is not the only basis to analyse how much civilized a society is, if it were then today US, UK, Japan, Singapore etc. would not be developed. Hence, Barack Obama can be rightly quoted here "I am opposed to the death penalty, but I believe that there are some cases so heinous that the death penalty is warranted."

⁸³ Bhumika Indulia, *Sentencing in Indian Penal System: Aggravating and Mitigating Factors*, SCC ONLINE, (7 April 2023), <https://www.sconline.com/blog/post/2023/04/07/sentencing-in-indian-penal-system-aggravating-and-mitigating-factors/>

⁸⁴ 408 U.S. 238 (1972).

⁸⁵ 433 U.S. 584 (1978)