

‘Organised Crime and Offences against National Security’

Substantive and Procedural Nuances:

Challenges involved in adjudication:

P-1429 for District Judiciary

05.01.2025

SENTENCING

Interplay of Principles of Sentencing in
Determination of Sentence:

Aggravating and Mitigating Circumstances in
Death Sentence: 05.01.2025

Different Theories of Punishment

- (i) **Deterrent:** Severe punishment which will deter others to commit offences. (Death or Life.)
- (ii) **Preventive:** disabling the offender from committing crimes again by detaining or imprisoning him for life or for other terms
- (iii) **Retributive:** Returning evil for evil. Eye for Eye, tooth for tooth, limb for limb, life for life)
- (iv) **Reformative:** (probation, community service)

Ramnaresh -vs- State of Chhattisgarh, [AIR 2012 (SC) (Cri) 711]

The Supreme Court while determining the questions relatable to sentencing policy has held as under:

- (i) The court has to apply the 'rarest of rare' case for imposition of a death sentence.
- (ii) In the opinion of the court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.
- (iii) Life imprisonment is the rule and death sentence is an exception.
- (iv) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature, circumstances of the crime and all relevant considerations.
- (v) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

Mukesh -vs- State for NCT of Delhi & Others : [AIR 2017 SC 2161]

Two Questions to be answered to test rarest of rare case:

- (i) Is there something uncommon about crimes which make sentence of imprisonment for life inadequate ?
- (ii) Whether there is no alternative punishment suitable except death sentence?

Where a crime is committed with extreme brutality and collective conscience of society is shocked, courts must award death penalty, irrespective of their personal opinion as regards desirability of death penalty.

By not imposing death sentence in such cases, Courts may do injustice to society at large.

- In *Ediga Anamma v. State of Andhra Pradesh*, *V.R. Krishna Iyer, J.*, speaking for the Bench observed that "deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime." It was further observed that "horrendous features of the crime and the hapless and helpless state of the victim steal the heart of law for the sterner sentence."

Bachan Singh case

- In the absence of any mitigating circumstances, have been regarded as an indication for imposition of the extreme penalty, Pre-planned, calculated, cold blooded murder has always been regarded as one of an aggravated kind. If a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer.

Aggravating and Mitigation Circumstances

- **Aggravating circumstances: Factors indicating higher culpability:**
- offence committed whilst on bail for other offences;
- failure to respond to previous sentences;
- offence communally or religiously aggravated;
- offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation or mental (or) physical disability.
- previous conviction(s), particularly where a pattern of repeat offending is disclosed;
- planning of an offence;

- an intention to commit more serious harm than actually resulted from the offence;
- offenders operating in groups or gangs;
- ‘professional’ offending;
- commission of the offence for financial gain (where this is not inherent in the offence itself);
- high level of profit from the offence;
- an attempt to conceal or dispose of evidence;
- failure to respond to warnings or concerns expressed by others about the offender’s behaviour;

Mitigating Factors:

Factors Indicating Lower Culpability

- a greater degree of provocation than normally expected;
- mental illness or disability;
- youth or age, where it affects the responsibility of the individual defendant;
- the fact that the offender played only a minor role in the offence;
- **Offender mitigation**
- genuine remorse;
- admissions to police in interview;
- ready co-operation with authorities.

Proper Sentence:
Deo Narain Mandal –vs- State of UP
(2004) 7 SCC 257

Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionality. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

Jagmohan Singh –vs- State of UP

[1973(2) SCR 541]

Plea in the appeal:-

- (i) that the death sentence puts an end to all fundamental rights guaranteed under clauses (a) to (g) of sub-clause (ii) of [Article 19](#) of the Constitution and therefore the law with regard to capital sentence is unreasonable and not in the interest of the general public;
- (ii) that the discretion invested in the Judges to Impose capital punishment is not based on any standards or policy required by the Legislature for imposing capital punishment in preference to imprisonment for life;

- (iii) that the un-controlled and unguided discretion in the Judges to impose capital punishment or imprisonment for life is hit by [Article 14](#) of the Constitution of India.
- (iv) that the provisions of the law do not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life, and therefore [Article 21](#) is violated.

SC dismissed the Appeal

- Deprivation of life is constitutionally permissible if that is done according to procedure established by law.
- In India, the onerous duty of passing the death sentence is cast on Judges. 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. That discretion in the matter of sentence is liable to be corrected by superior Courts.

Rajendra Prasad –vs- St. of UP

[(1979) 3 SCR 646]

- It is constitutionally permissible to swing a criminal out of corporal sentence only if the security of the State and Society, public order and the interests of the general public compel that course as provided in Article 19 (2) to (6).
- It held, such extraordinary grounds alone constitutionally qualify **as special reasons** as leave no option to the court but to execute the offender if the State and Society are to survive.

- Further, in Rajendra Prasad case, majority decision characterised the observations made in *Jagmohan case* as incidental. They observed, “judgements are not Bible for every line to be venerated.”
- The conflict in these two judgments were highlighted by Justice Kailasam, when Bhachan Singh challenged the death sentence imposed on him and confirmed by the HC.

- The learned Judge opined that the view expressed by the constitution Bench in *Rajendra Prasad case* is inconsistent with the law laid down by the Constitution bench in *Jagmohan case*.
- It is beyond the functions of the Court to evolve working rules for imposition of death sentence bearing the markings of enlightened flexibility and social sensibility or to make law “by cross - fertilisation from sociology, history, cultural anthropology.”

Bachan Singh –vs- St. of Punjab

[AIR 1980 SC 898]

- Reference to Constitution Bench of 5 Judges.
- Regarding constitutional validity of death penalty for murder under Section 302 IPC and the sentencing procedure embodied in Section 354(3) of Cr.P.C.

- In view of the opinion expressed by Justice Kailasam, regarding constitutional validity of death penalty for murder under Section 302 IPC and the sentencing procedure embodied in Section 354(3) of CrPC Bachan Singh appeal was referred to Constitution Bench of 5 Judges
- The appeal was dismissed by verdict of majority by 4:1. (with dissent by **Justice Bhagwathi**).

Held, that absence of any mitigating circumstances is an indication for imposition of the extreme penalty.

Pre-planned, calculated, cold blooded murder has always been regarded as one of an aggravated kind.

If a murder is "diabolically conceived and cruelly executed", it would justify the imposition of the death penalty on the murderer.

Suggestion of Dr.Chitale while introducing Cr.P.C Amendment in 1978

- **Aggravating circumstances :Court in its discretion can impose death sentence**
- (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 a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed –
- (i) while such member or 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 case may be, or had ceased to be such member or public servant; or

- (d) if the murder is of a person who had acted in the lawful discharge of his duty under [Section 43](#) of the Cr.P.C, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under [Section 37](#) and Section 129 of the said Code.

Mitigating Factors

- Mitigating circumstances:- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:
- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

- (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.
- (7) That the condition of the accused showed that he was mentally defective and that the said defect unpaired his capacity to appreciate the criminality of his conduct.

Thank You