

Capital Punishment: 9 get death sentence in Bihar hooch tragedy

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In an unprecedented judgment in Bihar, a special excise court in Gopalganj awarded the death penalty to nine of a family in the 2016 Khajurbanni hooch tragedy that had claimed 19 lives and left two others permanently blind. The legality, constitutionality, morality and social acceptability of the death penalty is highly debated.

In news: 2016 Bihar hooch tragedy: Nine get death sentence; life term for four

Placing it in syllabus: Law & Policy

Dimensions

- Death Penalty: Rarest of the Rare Case
- Death Penalty: Pros and Cons

Content:

Death Penalty: Rarest of the Rare Case

- The death penalty is a legal process whereby a person is put to death by the state as a punishment for a crime.
- It is defined as the authorized, legal killing of an individual as punishment for a crime that was committed. It is a government-sanctioned action.
- It is only applied in cases where the crime is of such nature that it cannot be vitiated without a penalty of death.
- It has existed since time immemorial, the first recorded instance being that of Hammurabi in the 18th Century B.C.

Bachan Singh v State of Punjab Case:

- The case of Bachan Singh v State of Punjab brought up the question of the validity of capital punishment.
- This was the case that gave birth to the “rarest of the rare cases” doctrine and still remains one of the most important cases in this subject.
- The court provided the principles and guidelines that should be considered in granting death penalty to a person which are as follows: A Court may impose death penalty, if:
 - If the murder has been committed after previous planning and involves extreme brutality.
 - If the murder involves exceptional depravity or murder has been committed of a person on public duty.
 - Capital punishment should not be given in every case; instead it should be given on the basis of the culpability of various cases. Before granting such punishment, the circumstances of offender and the crime must be taken care of.
 - The punishment can only be given when the life imprisonment falls short of the crime done by the offender.
 - Both aggravating and mitigating factors should also be considered and the balance between them must be maintained.
- In this case the court upheld the the constitutional validity of death penalty and the validity of IPC Section 354(3)
- The majority were of the view that Article 19 and 21 is not violated by capital punishment in extreme cases.
- The fact that our Constitution makers were fully cognizant of the fact that death sentences may be given in certain extreme crimes is proven by the existence of provisions for appeal (Article 134) and Pardoning power of the President (Article 72).

- It was also laid down that for ascertaining the existence or absence of “special reasons” in a case, the Court must pay due regard to both the criminal and the crime equally.
- The aggravating or mitigating factors need to be looked into. Things like age, mental condition, age of the accused and if the act was done under the command of a superior must be taken into consideration while deciding the punishment.

In the case of **Macchi Singh v. State of Punjab** in order to further elucidate the “rarest of the rare rule”, situations where the application of death sentence could be justified Justice M.P Thakkar gave the following illustrations:

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:

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

Motive for Commission of murder

When the murder is committed for a motive which evinces total depravity and meanness. For instance when:

- (1) a hired assassin commits murder for the sake of money or reward
- (2) 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,

- (3) a murder is committed in the course for betrayal of the motherland.

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.

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.

The personality of the Victim of murder

When the victim of murder is:

- (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder,
- (b) a helpless woman or a person rendered helpless by old age or infirmity
- (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust

- (d) 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.

Crimes punishable by death in India include:

- aggravated murder, other offences resulting in death,
- terrorism-related crimes resulting in death,
- terrorism-related cases not resulting in death,
- rape not resulting in death,
- kidnapping not resulting in death,
- drug trafficking not resulting in death,
- treason, espionage and military offenses not resulting in death.

Methods of Death Penalty in India:

- Hanging and shooting are the two methods of death penalty in India.
- According to the Criminal Procedure Code, hanging is the method of execution in the civilian court system.
- The Army Act, 1950, however, lists both hanging and shooting as official methods of execution in the military court-martial system.
- According to a study by National Law University in Delhi, 755 people have been hanged in independent India until now.

Law Commission Report:

The Law Commission of India, after making an intensive and extensive study of the subject of death penalty in India, published and submitted its 36th Report in 1967 to the Government.

After examining, a wealth of evidential material and considering the arguments for and against its retention, that high-powered body summed up its conclusions as follows:

- The issue of abolition or retention has to be decided on a balancing of the various arguments for and against retention.
- No single argument for abolition or retention can decide the issue.
- In arriving at any conclusion on the subject, the need for protecting society in general and individual human beings must be borne in mind.
- India cannot risk the experiment of abolition of capital punishment.
- This is because of the conditions in India, such as:
 - the variety of the social upbringing of its inhabitants,
 - the disparity in the level of morality and education in the country,
 - the vastness of its area,
 - diversity of its population and
 - the paramount need for maintaining law and order in the country at the present juncture.

Death Penalty – Pros and Cons:

- There are currently 56 countries, including the United States and India, which have retained capital punishment as an option for their system of criminal justice.
- On the other hand, 103 countries have completely abolished it for all crimes, 6 have abolished it for ordinary crimes, while another 30 are abolitionist in its practice.
- It's a debatable topic whether or not capital punishment should be enforced. There are points that speak for both sides.

Reasons for enforcement of Death Penalty

- *Capital punishment discourages future crimes*
- The goal of a law is to provide someone with a deterrent

against a crime they wish to commit.

- As a society, violent crime is something to be avoided at all costs. To make that happen, the strongest deterrent is required.
- That is why capital punishment often applies to cases of first-degree murder or issues where the safety of an entire country was jeopardized.
- In Death Penalty serious crimes, the goal is to prevent the crime from happening in the first place.
- **Justice to the Victim**
- Seeking justice after being the victim of a crime is the only way to go about it.
- The victims and their family can spend the rest of their life in peace without looking over the shoulder and there will be less risk of being the victim again.
- **Eliminates the possibility of escape & crime**
- Death penalty eliminates the chance of escape for the consequences of a criminal's actions.
- For extreme horrific crimes, capital punishment leaves no chance for the accused to commit other crimes.
- **Creates a deserved punishment equivalent to the crime committed**
- There are cases of horrific crimes which are beyond the point of rehabilitation.
- For such cases, capital punishment not only creates a deserved punishment equivalent to the crime committed but also provides safety for the rest of society.
- **Equivalent Punishment for heinous crime**
- Another argument that supports capital punishment is that every guilty person should be punished and the punishment shall be proportional to the crime that he/she has committed.
- This argument supports the concept of justice.

Disadvantages of Death Penalty

- **No Opportunity to Change / Rehabilitation**

- Capital Punishment simply takes away the right of a criminal who may prefer to get rehabilitated.
- It eliminates such possibilities where a person who is not a habitual offender can seek a chance to rehabilitate.
- It assumes that nothing can be done about an offender which is simply in violation of his/her rights.
- ***Violation of Human Rights and its Practices***
- According to Amnesty International, the death penalty breaches human rights, in particular the right to life and the right to live free from torture or cruel, inhuman or degrading treatment or punishment.
- The death penalty is the ultimate cruel, inhuman and degrading punishment.
- Both rights are protected under the Universal Declaration of Human Rights, adopted by the UN in 1948.
- ***Deterrent effect is unproven***
- Capital punishment many times do not show its effect on the rates of violent crime.
- It is quite ironical but the states with most executions have the highest murder rates.
- It is, for this reason, capital punishment seems ineffective for the motive it was created.
- ***No remedy in case of miscarriage of justice***
- In a country like India wherein many cases justice seems to be an ideal type which is hard to get, there are many cases where innocent people come within the clutches of Death Penalty.
- Though an exact number for such cases is impossible to be checked, this is a fact which cannot be denied.
- ***Morally untenable***
- It is just an act of violence that leads to the risk of taking the lives of innocents.
- People believe that death penalty based on retribution to provide justice is morally wrong and is just an emerged form of vengeance.
- Killing cannot be termed as wrong by killing.

Mercy Petitions:

- For a convict to file a mercy petition, his/her death sentence must be confirmed by a high court first.
- The law says: "The death sentence convict has an option to appeal to the Supreme Court. If the Supreme Court either refuses to hear the appeal or upholds the death sentence, then the convict or his relatives can submit a mercy petition to the President of India (Articles 72) or the Governor of the State (161)."
- Grounds to seek mercy appeal range from physical fitness, age, law was too harsh, or the convict is the sole breadwinner of the family.
- According to Article 72 of the Constitution, the power to pardon – philosophy of which is "every civilised country recognises and provides for the pardoning power as an act of grace and humanity in course of law" – lies with the President.
- The Article also states that he/she can grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the convict.
- The mercy petition is reviewed by the Ministry of Home Affairs, which consults the state involved, before going to the President.

Mould your thought: What is the rarest of the rare doctrine? Does capital punishment justified in such cases? Give reasons.

Approach to the answer:

- Introduction
- Discuss SC cases and rarest of the rare case doctrine for death penalty
- Mention the advantages of Death Penalty
- Discuss the disadvantages of Death Penalty
- Conclusion: give your opinion based the reasons given