

# Abolition of death penalty in india



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Mahatma Gandhi, who preached non-violence and through the same was successful in attaining independence for colonial India, said the above lines. Eye for an eye refers to vengeance which contrasts the Gandhian ideology of non-violence. In contrast, India has decided to retain the most brutal form of punishment death penalty, which has been abolished by 131 other countries. Tracing the history of abolition of death penalty in India, it dates back to 27th January 1931, when this issue was brought about in the legislative assembly headed by Shri Gaya Prasad Singh.[2]

Death penalty is one of the oldest forms of punishment, even though the method of execution has evolved over the years. This form of punishment has been prescribed under the Indian Penal Code, 1860 which introduced the preliminary concepts of criminal law in India. To a layman, death penalty is awarded for offences like murder section 302 of IPC. The most recent execution had been that of Dhananjoy Chatterjee, whose case has been examined in detail in our paper. This paper will study the recent trends of abolition of death penalty and evaluate India's stand on the same. After this, various cases will be discussed to understand the meaning and scope of the term 'rarest of rare'. Our main case in discussion is that of

DhananjayChatterjee, who was awarded death penalty. This case will bring out the restrictive interpretation of 'rarest of rare' term. To sum up, the purpose of our paper is to put forward the arguments in favour of abolition of death penalty.

## **RECENT TRENDS OF ABOLOTION OF DEATH PENALTY**

Ban Ki-Moon, Secretary General of UN, in 2007 said, " I recognize the growing trend in international law and in national practice towards a phasing out of the death penalty." [3]

There has been a worldwide concern regarding the abolition of death penalty. The UN General Assembly made the first instance towards any such abolition in 1948 by adopting Universal Declaration of Human Rights (UDHR). They strongly advocated the concept of right to life. Article 3 and 5 of UDHR cater to the inhumane or degrading treatment or punishment. Article 6 states that no one should be deprived of life and the countries, which are still practicing death penalty, sentence must be given for the most serious crime in accordance with the law. India too claims to have retained death penalty on the ground that it will be awarded only in the 'rarest of rare' cases and for 'special reasons'. [4]

Amnesty International reports indicate that a total of 131 countries have abolished death penalty. While 66 other countries have chosen to retain this form of punishment but the number of countries actually executing the punishment is in the minority. [5]

In 2007, the UN General Assembly approved a resolution, which called all the states to establish a ban on execution with the purpose of abolishing the death penalty. This further strengthens the movement against this form of punishment. Forty-eight countries including India opposed countries that voted in favor of it. In light of the above information India must realize the importance of abolishing death penalty in order to keep up with the rest of the world. It must be kept in mind that India's stand in retaining death penalty is contrary to the international trend but it always seeks for justifiable ground to award such punishments.

## **DHANANJOY CHATTERJEE Alias DHANA v. STATE OF WEST BENGAL**

In the present case, DhananjayChatterjee, the accused, raped and murdered a 18 year old school going girl. The Additional Session judge found him guilty and convicted the accused : (i) for an offence under Section 302 IPC and sentenced him to death, (ii) for an offence under Section 376 IPC and sentenced him to imprisonment for life, and (iii) for the offence under Section 380 IPC, he was sentenced to undergo rigorous imprisonment for five year. The High court confirmed the death sentence after which the appeal was filed, and the Supreme Court confirmed death sentence again.

Justice AS Ananad examined the case in the light of the circumstantial evidence since there were no eyewitnesses and confirmed death penalty. He categorized this case under the ' rarest of rare' cases arguing that it was " a cold blooded pre-planned brutal murder, without any provocation, after committing rape on an innocent and defenseless young girl of 18 years". He

further says that such a case deserves no other punishment than capital punishment.

India has witnessed various heinous crimes but the biggest problem faced by the courts is whether to categorize a particular murder under the 'rarest of rare' cases. Though the term 'rarest of rare' is complicated to define, but the Supreme Court in Bachhan Singh's explained what constitutes 'rarest of rare'. The Supreme Court discussed the circumstances of such cases. These circumstances include that the murder committed should be extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community, it should be for a motive which evinces total depravity and meanness, murder of a scheduled cast or scheduled tribe- arousing social wrath (not for personal reasons), bride burning/ dowry death, murderer in a dominating position, position of trust or in course of betrayal of the motherland, where it is enormous in proportion or when the victim is an innocent child, helpless woman, old/infirm person, public figure generally loved and respected by the community.

In Panchhi v State of Uttar Pradesh, one of the important cases which stated that brutality is not the only factor that determines whether the case will fall under the 'rarest of rare' category and thereby, life imprisonment can be a better substitution rather than commuting death sentence. The court opined:-

" No doubt brutality looms large in the murders in this case particularly of the old and also the tender age child. It may be that the manner in which a murder was perpetrated may be a ground but not the sole criterion for

judging whether the case is one of the 'rarest of rare cases' as indicated in Bachan Singh's case." [6]

In *State of Maharashtra v Bharat Fakir Dhiwar*, even though the accused was held guilty of murder and rape, but the High court acquitted the accused. Furthermore, the Supreme Court refused to take strong stand on death penalty and awarded life imprisonment. Instead, the accused was awarded with life imprisonment. The facts of the cases are, prima facie, diabolical that the lesser option was to give life imprisonment instead of death sentence.

*Ediga Anamma v. State of Andhra Pradesh* is another landmark judgment which involves death penalty awarded to female criminals. Justice Krishna Iyer on the basis of certain factors like gender, socio economic background, and age, psychic reversed the punishment from death sentence to life imprisonment. It was laid down that while evaluating the death penalty, the crime committed should not be the sole criterion for determining the crime but various other factors should also be taken into account.

The case of *Swamy Shradananda and Murali Manohar Mishra v. State of Karnataka* is another case which depicts restricted interpretation of rarest of the rare category. Life imprisonment usually of 14 years was extended for the remaining life of the accused. This was the first time that a court attempted to award life imprisonment by altering the period of punishment.

In *Santosh Kumar Satish Bhushan Bariyar vs State of Maharashtra*, the accused with three others lured the victim to a particular place with the purpose of confining his movement to ask for ransom. They threatened to kill him if the family did not pay the ransom. Eventually they killed the victim and cut his

body into pieces to dispose of at different places. Along with Bariyar, the other accused were also arrested and charged under S. 302 and S. 364B read with S. 120B of the IPC. Bariyar was awarded death sentence which was upheld by the high court stating that Bariyar was the protagonist of the act. However, the Supreme Court refused to award death penalty based on the reasoning that the circumstances were not sufficient enough to constitute 'rarest of the rare' case. The court further supported the judgment by saying that the accused were not professional killers, without any criminal history, but the motive of collecting the money had lead them commit the crime. They relied on the theories of punishment and believe that the Bariyar could be reformed and rehabilitated and hence awarded him rigorous life imprisonment. This is a landmark case which is a step closer to the abolition of death penalty in India, hence was well received by the abolitionists.[7] In other words it restricted the scope of 'rarest of the rare' cases. From the facts it can be gauged that the crime committed was extremely grotesque yet the punishment awarded was not in proportion.

Based on the landmark cases and the work done by B. B Pande on capital punishment, we'll be examining the legal perspectives in support of abolition of death penalty in India. The arguments made in favour of the abolition can be discussed in a thematical framework. In *Rajendra Prasad v State of U. P*, certain fundamental issues relating to law have

Right to life is the fundamental right as laid down in the constitution. This theme plays an important role in the debate against death penalty. The constitutional arguments as raised by Justice Krishna Iyer in *Rajendra Prasad v State of U. P* will be reflect an abolitionist's perspective. The points raised

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by Justice Iyer are: 1) the deprivation of life under our system is too fundamental to be permitted save on the gravest ground and under the strictest scrutiny if Justice, Dignity, Fair Procedure are creed ally constitutional[8]. 2) The right to life and to fundamental freedom is deprived when he (accused) is hanged to death, his dignity is defiled when his neck is noosed and strangled.[9]3) The judge who sits to decide between death penalty and life sentence must ask himself: Is it reasonably necessary to extinguish his freedom of speech of assembly and association of free-movement, by putting out finally the very flame of life?[10]he goes into the retrospection of the judge deciding the death penalty and is it reasonable to extinguish to every flame of life out of the accused.[11]4) you cannot be unusually cruel for that spells arbitrariness and violates Article 14.[12]5) Through this he is trying to bring to notice that this form of punishment violates article (14) which talk about equality before law such punishments are also in violation of the Preamble which speaks of ' dignity of the individual.'[13]5) you cannot inflict degrading punishment since the preamble speaks of the dignity of the individual.' 6) " Social Justice", which the preamble and Article 38 highlight as paramount in the governance of the country, also has a role to mould the sentence.[14]

Through these arguments put forward by Justice Iyer clearly indicates him to be a believer of abolition of death penalty. Through the issues he wants to highlight the basic rights, one of them being Right to Life which is violated on execution of death penalty. In his argument, he highlights that the death penalty deprives the criminal from right to life and questions if the crime committed is so grave that a constitutional right needs to be compromised



on? In contrary, all other fundamental rights are given equal importance in India. Such degrading punishments defeat the purpose of Article (14) which talks about equality before law. In other words, this form of punishment can be said to be unconstitutional.

Justice Iyer points out to the absence of 'proper guidelines and standards' in awarding life imprisonment or death sentence in Section. 302 of IPC. This in turn gives 'over- wide power' in matters of life and death. Sections. 303 and 307 prescribe death penalty as the only form of punishment. Section. 302 prescribes only one alternative to death penalty i. e. life imprisonment. The basic problem arising here is that the only alternative to death penalty is life imprisonment. So, the question of when and which punishment is left at the discretion of the judges. Another matter complexing the situation is that the punishments under IPC are limited. Therefore, the scope of awarding punishments in brutal and diabolical cases is restricted because of the sections enacted under IPC.

Among the prevailing theory of punishments, one of the important factors of death penalty is deterrence. This element of death penalty is given a lot of importance because it has been presumed by the courts that will deter crimes to be committed in the future. This theory is supported by Justice Sen, who argued that the deterrence is generally held to be the most important, although the continuing public demand for retribution cannot be ignored.

[15]It is still believed that through death penalty deterrence can be the factor that refrain a person from committing a crime. However, the statistics shows that this impression about deterrence is proved to be wrong.

According to the Indian Crime Report of 2007 which states disturbing figures,

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19, 89, 673 are crimes related to IPC.[16]It also shows that the IPC crime rate in 2007 was 175. 1 whereas in 2006 it was 167. 7.[17]These figures clearly contradict the presumptions taken by the courts on deterrence. Thus, it is also stated in the 35th report produced in 1967 the Law Commission took the view that capital punishment acted as a deterrent to crime.[18]

A deeper study of the implications of death penalty gives us a social aspect of this punishment which is not evident otherwise. In this perspective we can observe that the death penalty affects the poor and the helples that are to be protected by the law. The significant role of the law is to protect the people and society by laying down rules for the proper justice. However, the process and the practices implemented till now have been biased specially towards the poor and the helpless. The social inequalities are highlighted through the judgments given in different cases. In DayanidhiBisoi v State of Orissa, the accused was working as a peon which indicates about its weak economic background. Thus, this element is betokening of the wrong judgment executed by the courts.

According to the cases stated above, it is evident that the ' rarest of rare' term has been interpreted in a restrictive manner. Even after the guildines laid down by the court in the Bachhan Singh case, the judicial discretion has played an important role in defining the ' rarest of rare' cases. For every offence where death penalty is awarded, the court looks at various aspects of the offence to decide whether it is ' rare' enough to award death penalty. In Rajendra Prasad case, the court defined the parameters for awarding death penalty. It was further stated that the death penalty must relate to the criminal and not with the crime. In Bariyar case, brutality was not the only

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factor for determining death sentence for the accused, the court emphasized on the other aspects like the professional background of the accused as well as his criminal history. In EdigaAnamma case, the female criminal's socio-economic background was looked into. Therefore, it can be confidently said that inspite of many death penalties awarded no clear standard has evolved to clear the stand of the courts on 'rarest of rare' term. This gives rise to erroneous judgments which in the past have taken place in almost seven cases convicting thirteen criminals and awarding them death penalty. Coming to the DhananjayChatterjee's case, in light of the above arguments, the crime or the criminal clearly does not come under the 'rarest of rare' cases. There is a thin line between the 'rarest of rare' and ordinary case but again its judicial discretion that plays the deciding factor.

## **CONCLUSION**

Various arguments have been made in favor of the abolition of death penalty. The purpose of this paper is to bring together the analysis from the landmark cases to infer what constitutes rarest of rare. The judgment in Bariyar can be considered as a significant one because it gave importance to the reformatory and rehabilitation scheme. The court said that the prosecution has to first prove that the case belong to the rarest of the rare category after which they also have to provide evidence as to why accused was not fit for any kind of reformation. After which, the death sentence could be awarded. It is important for a developing nation like ours to match up to the international standards and do away with the forms of punishment that hinder its progress. We hope that India works towards complete abolition of death penalty!!