"THE DOCTRINE OF RAREST OF RARE": A CRITICAL ANALYSIS

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ABSTRACT

There is no statutory definition of 'rarest of rare'. It depends upon facts and circumstances of a particular case, brutality of the crime, conduct of the offender, previous history of his/her involvement in crime and chances of improving and combining him/her into the death penalty has always been a disputable issue all over the world. However, there can not be any dispute as to the fact that the global tendency is towards the abolition of extreme penalty. But Indian law still keeps on the capital punishment for a number of offences.The decision of Bachan Singh v. State of Punjab, 1980 is significant in this respect. In which the supreme court affirmed the constitutional validity of the death penalty. Maintaining the constitutional validity of the death sentence, the court set down the standards and norms to be followed in awarding death penalty. The proposals expressed in this case that the death penalty can only be awarded where the court is gratified that it is 'a rarest of rare' case, has time and again been repeated by the later benches. The principal of laid down by the court was further described in the decision of Machhi Singh case. This theory embarks upon that the person who has committed such a heinous offence he must also suffer the same issue. Death penalty is awarded to create a deterrent effect on society so that the people fear the consequences of the offence. In this research paper, the author will discuss about 'the doctrine of rarest of rare' cases.

Key words: statutory, the 'rarest of rare' doctrine, brutality, significant, death penalty, awarded, gratified.

Introduction

The capital punishment in India is based on the doctrine of 'the rarest of rare' cases. This Death penalty is one of the harshest punishments that are provided under the IPC which includes capital punishment to the accused for his wrongdoing. Here the question arises whether a state has right to take a life of a person, however he cross the any limit of barouseness. The people were divided into two groups about this question. First is moralists who feel that this penalty is necessary to deter the other like-minded person, Second is progressive, who argue that is only a judicial taking of life which court mandated.An analysis of criminal jurisprudence, will find that the death penalty is only given in the extreme or "rarest of rare cases" that involve a high level of crime, which poses a great danger to society.In deciding whether he deserves the death penalty, not only is the culpability of the act dangerously taken into account, but also the individual characteristics and circumstances and the gravity of the offence, must be taken into consideration. So the punishment should depend on the seriousness of the offender's act and the social response to it.

Indian law does not have a consistent view of the death penalty nor does it prohibit it outright. The death penalty in India is limited to the rarest of the previous cases - such as Section-121 (raising arms against the state), Section-302 (murder), Section-364A (kidnapping with ransom), and so on. Code in Punishment, 1860, Death.Recommend offenses punishable with the death sentence. The most widely recognized cases, including those of significant death sentences, are those of homicide following an animal operation and assault. The 'rarest of rare doctrine' can be divided into two sub-parts: Aggravating circumstances and Mitigating circumstances- in case of aggravating conditions, the judge may on his will force capital punishment yet for mitigating, the bench will not grant capital punishment under rarest of rare cases.

Historical background

Death penalty has been prevalent in India since time immemorial, however, the methods of implementing it have been changing from time to time.In ancient religious scriptures, there was a system of capital punishment for great readers.In Mahabharata and During the reign of the Mughals in India, the death penalty was given very barbarically. However, during the British rule, this barbaric heart-wrenching method of capital punishment was abandoned and only the method of hanging was adopted.Ramayana also there is a mention of execution of criminals.In

the Shanti Parv of Mahabharata, Emperor Ghumtsen supported the death penalty, saying that if the criminals are let loose, crimes are sure to increase.But Ghoomatsen's son Satyaketu opposed human slaughter. Even in the Hindu period, the death penalty was given.

During the reign of the Mughals in India, the death penalty was given very barbarically. However, during the British rule, this barbaric heart-wrenching method of capital punishment was abandoned and only the method of hanging was adopted. And even today death penalty is given in India, but now this death penalty is given only in 'rare to rare' cases.

The 'Rarest of the Rare' doctrine

In 1980, in the Bachan Singh case the apex court proposed the rarest of rare doctrine and since then life imprisonment is the rule and death penalty the exception as in India it is awarded only in the gravest of cases.

In the Machhi Singh case, the court laid down certain criteria for assessing when a case could fall within the purview of rarest to rarest. The criteria are analyzed below:

1. Manner of committing murder - when the murder is committed in an extremely cruel, ridiculous, diabolical, rebellious or reprehensible manner so as to arouse intense and extreme outrage of the community; For example,

a. When the victim's house is set on fire with the intention of baking her alive.

b. When the victim is tortured for inhuman acts leading to her death.

C. When the victim's body is mercilessly mutilated or cut into pieces.

2. Motive for murder - When a murder is intended to be a total depravity and cruelty; For example,

a. A hired killer is killing just for the reward of money.

b. A cold-blooded murder involving a thoughtful design to gain control of property or some other selfish gain.

3. Socially heinous nature of crime - When a person belonging to a backward class is murdered. Cases of burning of the bride, popularly known as dowry death, are also included in this.

4. The magnitude of the crime - when the proportion of crime is very high, for example, in cases of multiple murders.

5. Personality of the Victim of the Murder - When the Victim of the Murder is an innocent child, a helpless woman or person (due to old age or infirmity), a public figure, etc.

The scope of the principle of rarest of rare:

In Jagmohan Singh v State of U.P. 1973, the Supreme Court upheld the constitutionality of the death penalty, holding that it is not merely a deterrent but marks the rejection of the crime on the part of the society. The Court also felt that Indians could not afford to experiment with abolishing the death penalty. Again constitutionalism was upheld in the case of Bachchan Singh. Thus, the following propositions emerged from the case of Bachchan Singh:

i. The extreme step of imposing the death penalty need not be applied except in cases of extreme conviction.

ii. Before opting for the death penalty, the circumstances of the offender should be kept in mind. (increasing and decreasing conditions)

iii. Life imprisonment is the rule and the death penalty is the exception. In other words, the death penalty should be imposed only in cases where life imprisonment proves to be a wholly insufficient punishment in relation to the exact circumstances of the offence.

iv. There is a need to prepare a balance sheet of all the stimulating and mitigating conditions and the mitigating conditions should be given full importance so that a balance can be struck between the two.

Cases in which there was involvement of an unusual offense which is unusual for any prudent person or any person in the society with a proper mind, as well as for lack of alternative punishment for the offence, which is equivalent to the Court Later coined as "rare to rare" condition. The court further widened the scope of rarest to rare by mentioning five criteria within which the rarest to rarest case was applied.

Establishment of the doctrine

The doctrine of 'the rarest of rare' case was established in the landmark case of Bachan Singh vs State of Punjab, 1980. Where the constitutional bench raised question is regard to the

constitutional validity of death penalty for murder under section 302 of IPC,1860

In Kehar Singh vs Delhi administration, the Apex Court affirmed capital punishment granted by the trial court and kept up by High Court to the three appellantse Kehar Singh,Balbir Singh and Sawant Singh for planning conspiracy and attaining murder of Smt .Indira Gandhi under section 302,120B,34 and 109 of IPC,1860.The court held that murder is one of the rarest of rare cases in which extraordinary punishment is sought for a professional murderer and planner.

Dimensions of the doctrine

According to the Supreme Court, the crime must be viewed from different angles such as the manner of committing the murder, the motive for the murder, the anti- social or socially abhorrent nature of the crime and the horrors and personally of the victim of the murder. Generally Courts award life imprisonment to convict in a murder case. Only in rarest of real cases murder convicts are given death penalty.

Working of the 'Rarest of Rare Doctrine'

The Supreme Court of India formulated the rare to rare cases doctrine in the Bachan Singh case to guide the discretion of sentencing judges in the choice of life or death sentences. It did not embellish on what the rarest of rarest cases are. Thus the question of providing guidelines for judges to exercise their discretion remained unresolved, leading to more confusion and contradiction in judicial decisions. Ultimately, in the machhi Singh case the supreme court provided a classification of cases from rarest to rarest. The essence of earlier judgements in the machhi Singh case which made a gentle attempt to provide equality of such classification is retained. In the judicial judgement of Dharm bhagre vs State of Maharashtra Dot had held that the question of punishment is a matter of judicial discretion. Relevant considerations in determining punishment include the motive, the magnitude of the crime, and the manner of its commission. Similarly in the case of Jagmohan Singh vs State of UP. Justice palekar speaking for a unanimous court,said that the death penalty can be given where the murder was disabolical in conception and brutal in its execution or was of a person of high status thereby shaking the society. The intention was to impose the death penalty in the worst of such cases.

Analysis of Constitutional Validity of the 'Rarest of Rare Doctrine'

The validity of the death sentence was sought only because it was under the watch of the

Supreme Court in Jagmohan Singh v State of Uttar Pradesh. Section 302 of the IPC was tested as a violation of Articles 14, 19 and 21 of the Constitution. The court upheld the death penalty constitutional and held that the right to life is the setting stone of opportunity recognized under Article 19 and no law can be sanctioned which takes away the life of a person except That he is sensible and in open intrigue. As such, it is difficult to believe that the death penalty was so bizarre or not needed in broad daylight. If the entire strategy of awarding death sentence to an offender under CrPC is valid, then the inconvenience of capital punishment as per the technique created by law cannot be held to be illegal.

It was argued that the Supreme Court in Maneka Gandhi v Union of India has given a more explanatory measure to Articles 14, 19 and 21, and through appraisal of their interrelationship in each law of corrective imprisonment, both in their procedural and considerable approach. Air should be given. Each of the three articles. In any case, the Court rejected this argument. It was held that Article 19, not at all like Article 21, does not deal with the right to life and personal liberty and Section 302 is not appropriate to decide about the validity of the provisions of the IPC. With respect to Article 21, it was held that in the said article, the establishing fathers felt the prerogative of the State to deprive any person of his life or personal liberty in accordance with a just, fair, sensible and impartial technique established by law. did, and there are some indications in the Constitution that show that the framers of the Constitution were perfectly sensible about the existence of capital punishment, for example, entries 1 and 2 in List II, Article 72(1)(c), Article 161. and Article 34.

Requirement of the Doctrine

According to Article 6 of the International Covenant on Civil & Political Rights, by the General Assembly Resolution 2200A (XXI) of 16th December 1966, every living being has an inalienable right to life and must not be awarded a death penalty. But certain countries, that have not yet abolished the culture of Death Penalty can only pronounce such a judgment "for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide".

'Rarest of Rare' doctrine in India

What makes a case the rarest of the rarest is a controversial subject. There is no clear definition of this principle, though it has been applied considering the extent of the offense committed by

the offender. There are different approaches to the death penalty in India, they neither support nor avoid the issue altogether by limiting themselves to the rarest of the rarest. But things got complicated when crime increased and extreme acts of crime became common. Various criteria have been laid down by the Supreme Court of India in the Machi Singh case.

The death penalty does not violate the provisions of Article 21 of the Indian Constitution as it states that the right to life and personal liberty shall be given to any person so much as not to violate the rights of other people. The Law Commission report in 2015 stated that the concept of capital punishment should be abolished apart from terrorism-related offenses in order to protect the nation. Since India only carries out the death penalty in the rarest of rare cases, the rate of implementation of the death penalty is very low, as we can see that between 2004–2015 only 4 were executed.

Conclusion

Many countries have abolished the death penalty or capital punishment by justifying that it is barbaric and inhuman in nature and violates the right to life and liberty given to the citizens of the countries. However, if a valid opinion is to be taken, it would be correct to say that even in its brutal nature the deathpenalty is effective in reducing criminal offenses and discouraging criminals to some extent.

The standard of rarest of rare cases is not fixed, but after doing a lot of research of the author, it can be said that such cases in which the people of the country demand capital punishment on a large scale, all those cases can be brought under this Doctrine. Like in the Nirbhaya case, every child of the country wanted that the culprits of Nirbhaya should be given death penalty as soon as possible and later those four convicts were also given death penalty. Therefore, in my opinion, capital punishment is constitutionally valid and reasonable provided it is given in cases of grevious and extreme Nature. Furthermore, in my opinion, a person, who neither values the life of others nor values the integrity of his/her own nation, should not be treated with empathy. Even though it is hard to quantify the crimes in terms of which crime deserves capital punishment, still, crimes of grevious nature like rape, terrorism and murder should always be awarded with capital punishment or death penalty.

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