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ABOUT US

“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume 1 focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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PREFACE

On looking today scenario, there are numerous issues to know about. Our journal`s Issue III of Volume 1 has work on three crucial themes namely Criminal law, Arbitrational Law and Competition law. We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

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EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence.

We thanks to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

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CASE ANALYSIS: BACHAN SINGH V. STATE OF PUNJAB

AIR 1980 SC 898

Author: *Aarush Bharadwaj**

INTRODUCTION

One of the most hotly debated topics of criminal law is the death penalty/capital punishment. While the death penalty has been abolished in the majority of countries throughout the world, it remains legal in India. The Indian legislature and judiciary continue to believe that death punishment is justified in some instances. Murder, rape, terrorism, offences under defence laws, and narcotics offences under certain conditions can all result in the death penalty in India. The case in question has become a hot topic in terms of the death penalty. Many legislative initiatives were undertaken after the Constitution to address the practicality and legality of death punishment. In 1973, the Criminal Procedure Code was amended, requiring "special reasons" for the imposition of a death sentence, based on the recommendations of the 35th Law Commission Report. "However, taking into account the conditions in India, the diversity of social upbringing of its inhabitants, the disparity in the level of morality and education in the country, the vastness of its area, the diversity of its population, and the paramount need for maintaining law and order in the country at this juncture," the Law Commission of India stated in its 35th report.

BACKGROUND

The current case represents a watershed moment in the history of the death sentence for murder under Section 302 of the Indian Penal Code and the method enshrined in Section 354, Sub-section (3) of the CrPC, 1973. The Apex Court of India established the "rarest of the rare concept" in this decision by placing restrictions on the death penalty. A five-judge panel of the Hon'ble Supreme Court of India declared a historic verdict in this particular case. The debate about the death penalty's relevance has raged and been discussed for a long period of time, with one side claiming that it is the most appropriate deterrent for preventing such crimes, while the other claims that this argument is solely based on speculation and not on facts of the current situation. This judgement established the legislation and emphasized the role of Judicial precedents when discussing about the appropriateness of death penalty in India, making it a watershed event for the country's capital punishment laws.

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FIVE-JUDGE BENCH

The bench included the following judges:

- Justice Y.C. Chandrachud
- Justice A. Gupta
- Justice N. Untwalia
- Justice P.N Bhagwati
- Justice R. Sarkaria.

FACTS

Bachan Singh, the appellant, was declared guilty of his wife's murder by the court and sentenced to life in jail. His cousin Hukam Singh and his family gave him a place to live after the successful completion of his prison sentence, but Hukam Singh's wife and his children objected in various ways declaring the fact that they didn't want Bachan Singh to stay in their home. Vidya Bai was woken by an alarm a few days prior to this event in the middle of the night when she observed the appellant inflicting an axe strike on her sister's (Beeran Bai) face.

A short time after trying to stop the appellant, Vidya Bai was struck with an axe and injured in the face and ear, resulting in losing consciousness. When Diwan Singh heard the cry, he woke Gulab Singh who was slumbering nearby. Both Gewal Singh and Gurbak Singh ran to the appellant with an axe in his face and watched him drop it and flee.

Bachan Singh was convicted and sentenced to death under Section 302 of the Indian Penal Code for slaying Desa Singh, Durga Bai, and Veeran Bai by sessions judge later that year. The High Court upheld the sessions court's decision of death penalty and denied his appeal. Bachan Singh, the appellant, appeared before the Supreme Court on Special Leave to Appeal to ask the court if the facts of his case were "special grounds" for giving him the death penalty as required under Section 354(3) of the CrPC, 1973.

ISSUES

- The death penalty for murder is provided in Section 302 of the Indian Penal Code, 1860. Is this provision unconstitutional?
- Whether the facts discovered by the lower courts qualify as a "special cause" for imposing the death penalty, as required under Section 354(3) of the CRPC?

ARGUMENTS PRESENTED

APPELLANT:

First, the appellant argued that implementation of Section 302 of the IPC violated Section 19(1) of the Constitution. It was argued that the right to life is fundamental to the enjoyment of all six freedoms provided in Clauses (a) to (e) and (g) of Article 19(1) of the Constitution, and therefore the death sentence terminates all of them. The implementation of the death sentence, it was contended, would amount to an arbitrary limitation under Article 19 since it served no societal purpose and its usefulness as a deterrence was uncertain, and it was against the dignity of an individual protected by the constitution. The appellants further claimed that the death sentence was unconstitutional under Article 21 of the Constitution of India as it was an irrational, harsh, and blunt punishment that offended an individual's dignity.

RESPONDENT:

The respondents' attorneys argued the concept of *sic uteri tou ut alienum non laedas*, which states that a person may utilise their property in a way that does not infringe on the rights of others. They argued before the Court that the six rights granted in Article 19(1) are not absolute rights, but are subject to inherent limitations, requiring members of civil society to use their rights in a way that does not infringe or harm the rights of others.

DECISION

The constitutional arguments against Sections 302 of the IPC and 354(3) of the CRPC were decisively rejected by the Supreme Court of India. The court went on to state that Section 19(1)'s six basic rights are not absolute. Members of a civil society are bound by a reciprocal obligation not to use their rights for the purpose of infringing or impairing the rights of others (*sic uteri tuo ut alienum non laedas*). The court further clarified that article 19 clauses (2) to (6) plainly limit the state's power to impose reasonable limits on citizen rights enjoyment. The court stated that in addition to these indicators in the Constitution of India, there are numerous others that indicate the constitution is well aware that the death penalty is provided in the Indian Penal Code 1860 for certain crimes, including murder.

Section 354(3) of the CRPC defines "special reason" as "extraordinary grounds" based on

"exceptionally severe conditions" for which the death sentence or life imprisonment is imposed. In granting the death penalty, the Supreme Court established the notion of "rarest of rare instances." The rule for those convicted of murder is life imprisonment, with the death penalty being an exception.

DETAILED ANALYSIS

By a vote of 4:1, the Supreme Court confirmed its previous judgement, holding that the death sentence as an alternative punishment for murder under Section 302 is not irrational nor against the public interest. It does not contradict either the law or the spirit of Article 19 of the Indian Constitution. It satisfies the requirements of the Constitution. The use of discretion under section 354(3) of the CrPC, 1973 should be limited to extraordinary and severe circumstances, and the imposition of a death sentence should be reserved for the most unusual of situations.

“Judges are never bloodthirsty,” the bench declared as it handed down its verdict. The judges based their decision on the cases of **Jagmohan Singh v. State of Uttar Pradesh**¹ and **Rajendra Prasad v State of Uttar Pradesh**², where a plurality was observed in the situation of Rajendra Prasad and it was further observed that if a certain individual is awarded the death sentence, his fundamental right i.e. The Right to life is infringed. In the instance of Jagmohan, it was noted that the nation's courts had discretion in determining the severity of the sentence or punishment. The accused is eventually protected by the judges' discretion based on the concept of a well-recognized legal judgement. Articles 19 and 21 were considered in determining the legality of the challenged provision. As a result, the panel was not able to reasonably conclude that the death penalty given by the court is unreasonable or contrary to public policy and individual interests under Section 302 Of the Indian Penal Code, and the provision in Section 302 of the Indian Penal Code was found to be neither unconstitutional nor void.

In regards to the second point, Section 354(3) authorizes courts to punish a person for a crime punishable by death or life imprisonment only where there are "exceptional reasons" for doing so. In very serious cases, the death sentence or life imprisonment is imposed. When making the decision, the aggravating and mitigating circumstances were given sufficient weight.

The order that was signed by the judges reads, “In accordance with the majority opinion the challenge to the constitutionality of Section 302 of the Penal Code in so far as it provides for the death sentence was also the challenge to the constitutionality of Section 354(3) of the CrPC, 1973 fails and is rejected.”

The only dissenting opinion came from Justice P.N Bhagwati, his views on the issue were not the mirror image of the other Judge’s opinions, according to him, he disagreed with justice Sarkaria because he believed that Section 302 of the Indian Penal Code because it provides for the imposition of capital punishment as an alternative to life, Section 302 of the Indian Penal Code is ultra vires and void as being in violation of Articles 14 and 21 of the Constitution because the law does not provide any guidelines on when it is okay to render a person's life indeterminate through a death sentence.

¹ AIR 1973 SC 947.

² (1979) 3 SCR 646.

OTHER SIMILAR DEVELOPMENTS

- In the most serious situations of severe responsibility, the death sentence will be applied.
- Unlike in the past, the punishment currently is life imprisonment, with the exception of the death penalty. Taken together, the conditions in which the crime was committed need to be considered when imposing the death penalty.
- Only when life imprisonment appears to be insufficient punishment for the crime committed is the death sentence applied.
- Mitigating variables should be given greater weight than aggravating factors, and a comprehensive balance sheet should be created.

CONCLUSION

As stipulated in the current case, the death penalty should be reserved for the "rarest of conditions," according to its authors. It has essentially become an exception rather than a norm. By saying that death sentences should be viewed as exceptions rather than norms, the decision established precedent, but it did not specify the conditions for the "rarest of the rare cases." The majority position is provided by Justice Sarkaria, Chandrachud, and Gupta, whereas Untwalia validated section 302 of the IPC and 354(3) of the CrPC because of legality. The imposition of a death sentence has always captivated the nation's attention.

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