CAPITAL PUNISHMENT

-TAMOGHNA CHATTOPADHYAY[1]

Introduction

This concept is a very much debatable and I have chosen this for my article because this is a problem which we as to-be lawyers would want to analyse. This concept is either requested to scrap out or it is suggested to call for human slaughter on the people who have committed acts for which capital punishment was awarded to them. There has been a recent development in California where the people who have been given capital punishment are injected with lethal injection so as not to give pain with hanging.

In India there has been a very elongated process of awarding capital punishment to a convict and the process starts from the trial court who awards an accused to capital punishment then that has to approved by the High Court and if the accused wants to appeal then can go to the Supreme Court or if the High Court can't understand the Constitutional backing in this case then the High Court can give a Special Leave to Appeal with which the Supreme Court will admit that case or the High Court might request the Chief Justice of that High Court to refer this matter to a larger bench. In the High Court level, it has been observed by the DPR, NLU Delhi (Death Penalty Report made by NLU Delhi) that many capital punishment cases which are not approved by the High Court because the trial court judge's rule of law is not approved by High Court. In the Supreme Court it so happens that they have been overburdened with many cases as per the Attorney-General of India Mr K.K.Venugopal for which there are many cases which might be important is not admitted to the court as many times the court might say that the present case is not so important so even though admitted to the court but that case will be heard later. The suggestion as given by Mr Venugopal is that the Supreme Court needs to reduce its huge burden of cases by only taking cases from matters only related to its original jurisdiction and appellate jurisdiction and no other matters should be accepted in the apex court of the country.

[1] 2ndyear Law Student, VITSOL, Chennai, India

One thing that should be understood which is that the concept of Capital Punishment didn't just come fine day rather it was a very brutal affair by making its presence in the international arena and in history books after the French revolution which professed the concept of guillotine which became actually the birth of capital punishment in a international arena. But this kind of things was very much famous with another name during the reformation period where the divide of the Roman Catholic Church got divided into Protestants and Catholic. During this time when a person would come to repent to the high priest of his land then the phases leading to repentance would be so painful that is it would be worse than chopping off once head that is by pressing once knuckles with sharp steel objects which will cause more pain and one would ask for mercy which will not be given. This might not be capital punishment but this can be considered to be the beginning of this idea.

This reformation can be the time from where capital punishment can be traced to have evolved. There is no theory as such propounding capital punishment but the theory wanting to remove capital punishment from the world is the theory that can be raised while discussing capital punishment but those theorists don't tend to discuss capital punishment evolution. With this let us now see the evolution of capital punishment in India.

History of Capital Punishment in India

In originally this idea came into this present form solely after the French Revolution where the infamous guillotine came into existence and its aftermath that there was a mass killing by the aristocrats by the revolutionaries. The earliest practice of capital punishment was by brutally killing the person by putting him/her inside an arena where an animal will be sent to have combat with that person. It even happened in Japan where the accused would be tied with a bamboo stick and then that person will be pierced with needles so as to make the person fell the pain and endorsing fear inside others regarding the consequences of going against the state or authority. After many years of trial and error, this method of hanging a person by the neck came to light. This was for the first time ever enacted in a mass scale in British India was during the infamous hanging of Bhagat Singh, Sukhdev and Rajguru. Since then this has been followed in India. In Independent India, it was first used during the time Nathuram Godse was hanged which had brought in the attention of millions of Indians as he had killed the father of the nation. After this, there have been many cases where the court tried to award death penalty but its superior

court rejected the appeal or when it came for approval. The Supreme Court of India after the Bachan Singh & Anr v. State of Punjab & Anr (hereinafter as Bachan Singh's case) where for the first time ever the rarest of the rare occasion was framed as a yardstick to award anyone death penalty or capital punishment after that came Mithu v. State of Punjab where 303 of IPC that deemed the offence of murder to get punishment such as capital punishment was scraped off the statute books. With the slow levels of judgement delivery system there has been many cases pending in the Indian courts where it is my proud privilege to bring into notice the fact that the trial courts are the fastest courts in India as the number of cases filed and heard are very much high as compared to what happens in High Court and the Supreme Court of India. The year of 2017 has been a year of many sorts of changes and during that year the number of trial court sentencing of the death penalty has fallen drastically. I have found in an article stating the year of 2018 as the bloodiest year by News18.com's article released on 28th January 2019 because there have been 412 prisoners in the death row as compared to 327 in 2017. With this amount of knowledge about capital punishment as well as its impact in India. Let us now see the case studies.

Case Studies

In this part of the project, we will be discussing five case studies related to the subject of investigation. The case studies are as follows-

1) Jag Mohan Singh v. State of Uttar Pradesh
Citation no- (1973 (1) SCC 20)

This case is also known to be the first case relating to the constitutionality of capital punishment. This was a murder case which came up soon after the amendment of the Code of Criminal Procedure in 1973, wherein the imposition on the death penalty became subject to the discretion of the Court and was no longer a mandatory sentence for murder. In this context, arguments were raised regarding the constitutionality of the death penalty on the ground that was too wide a discretion vested in courts since no standards or guidelines were available, and that it violated Articles 14,19 and 21. This case was also an appeal case to the High Court's approval of the trial court's award. The main point of the appeal to the fact that how courts have the discretion to award

people capital punishment thereby going against the basic principle doctrine which was the main point of appeal to the Supreme Court. This judgement brought in many other interpretations of Article 19, 14 & 21. The interpretation of Article 19 was that it didn't safeguard the right to life and the punishment was given as per the merits of the case and was given beyond all reasonable doubt so this Article 19 couldn't be enforced. Now let us look at Article 14 which the judges said that this fundamental right could hardly be invoked as the judicial discretion of awarding capital punishment would be different for all the different facts and circumstances in that particular case. Article 21 was also not enforceable because there is the Criminal Procedure Code which gives the rules to follow before awarding any person capital punishment so the judiciary can't be held liable for its wrong decision. So, their appeal was rejected because all the fundamental rights were perfectly taken care of by the judiciary so the capital punishment was executed.

2) Bachan Singh v. the State of Punjab

Citation number- (1980 (2) SCC 684)

This is another famous case relating to the constitutionality of capital punishment. This case was decided taking many writ petitions into consideration and this was enlisted in the Supreme Court. This case for the first time talked about the unconstitutionality of death penalty that too by the judge in the bench named Justice P N Bhagwati who said that no judge should have the power to take anyone's life even with the procedure established by law. Rather the other judges in the bench which was in majority with the Chief Justice of India backing that proposition which was in Jag Mohan Singh's case with some changes which was by expanding the interpretation of Article 19. They spelt that Section 302 of the Criminal Procedure Code gave the courts discretionary power taking all facts and circumstances into consideration after which awarding capital punishment is done so there is an infringement of Article 19. More so Article 21 is not infringement as it is as per the procedure established by law. This case's dissenting opinion has also acted as a precedent for helping the court to decide whether the person needs to be awarded capital punishment as Justice Bhagwati said that capital punishment can only be given to the rarest of the rare occasion. Justice Bhagwati also suggested that the Supreme Court also analyse

the High Court's approval of trial court's order to award capital punishment which as per the court and the present times of Supreme Court's overburden with cases so that proposition couldn't be accepted the Supreme Court then and now. This case opened a new frontier of awarding a convict with capital punishment.

3) Mithu v. State of PunjabCitation number (1983 (2) SCC 277)

Section 303 of the Indian Penal Code laid down a mandatory death sentence for the offence of murder committed by a person undergoing life imprisonment. The case challenges the constitutional validity of the section in light of Article 21. The judgement helped the draconian law in 303 of IPC get scraped out from the statute books. The judgement read that the mandate of the articles 14& 21 is that every procedure established under the law (which includes punishment) must be fair, just and non-arbitrary. The is no rationale for drawing a distinction between a person who commits murder and a person serving life sentence committing murder so as to make the death sentence mandatory for the latter class. It would be a savage punishment to impose a mandatory death sentence on a category of persons on a baseless assumption (that life convicts are dangerous per se).A standardized mandatory sentence of death deprives Courts of the exercise of its discretion and is, therefore, harsh, unjust and unfair. The section was struck down as being unconstitutional. This was the first time that capital punishment's existence was questioned.

4) Machhi Singh & Ors v. State of Punjab Citation Number (1983 (3) SCC 470)

This was a case soon after Bachan Singh's case so this was the first of the cases where the principle of rarest of the rare principle was used. The case was that seventeen members of a family were murdered due to an on-going feud between two families. The death sentence was given to the appellants by the Trial Court and the sentence was confirmed by the High Court. In appeal before the Supreme Court, the question was whether the case satisfied the standard of 'rarest of the rare' laid down in Bachan Singh.In assessing the various aggravating and mitigating circumstances as per Bachan Singh, the Court held that there may be circumstances (based on the depravity of the crime, crimes committed against minority communities or those which are of a nature

arousing social wrath, power relations between the offender and the victim etc) where the collective conscience of the society is so shocked that it mandates the imposition of the death sentence.

5) Mohammad Arif v. The Registrar, Supreme Court of India

Citation number (2014 (9) SCC 737)

One of the most important issues, in this case, was whether review petitions in the death sentence cases should only be heard in open court. The practice in the Supreme Court (which was held to be constitutionally valid) was that the review petitions were heard in chambers. The argument here was that death sentence cases were a class by themselves and therefore, merited separate treatment.

The decision, in this case, was split into two where the majority decision was that the fundamental right to life had to be viewed in the context of the irreversibility of the death sentence. They held that review petitions for death sentence cases should be heard in open court, but there would be a time limit of thirty minutes for an oral hearing. Such a procedure would be just and fair. The cases would be heard by a bench of three judges, and the special procedure would apply to all cases of a death sentence where the review had been dismissed but the sentence was yet to be executed, including cases brought under Terrorist and Disruptive Activities (Prevention) Act. Whereas the dissenting opinion was that neither Art. 21, nor the principles of natural justice require a mandatory oral hearing in every case of review; it all depends on the demands of justice in each case.

With this, we see the evolution of death penalty in India as well as the changes observed in the judgements throughout these cases which is unique in as in all places in talks various different aspects of capital punishment. All the case laws cited and its summary is inspired by the Death Penalty Report, NLU Delhi.

Objective

I will want to study that form the case ***Dhananjay Chatterjee v. State of West Bengal*** how a person even though being innocent was awarded the death penalty due to media, societal and political pressure. So will want to study media, society and politics in judicial decision and also in Presidential pardoning.

Analysis

In the case that is dealt with in this project is a 1994 Supreme Court's SLP (Special Leave Petition) judgement where the reason for filling the case was that a security guard named Dhananjay Chatterjee had been accused by Yashmoti Parekh (hereinafter mother of the deceased girl) of raping and murdering his only 18-year-old daughter Hetal Parekh (hereinafter deceased girl). This case was tried in the trial court, High Court and also in the Supreme Court twice and later the then President Late Mr APJ Abdul Kalam rejected the mercy petition formulated by the petitioner's family.

This case has been heard in all the strata of the Indian judiciary but none of them recognised some of the key shreds of evidence and did not verify it before presenting in court. This case has been a reason which brings to our notice the fact that how capital punishment is not required in the Indian legal system rather any other best possible way to imprison any person committing any rarest of the rare crimes.

The judiciary and the political parties were pressurized by media and public at large wanted death penalty to be given for such a crime. The facts of the case were Hetal Parekh a young 18-year-old school-going- a girl was raped and murdered on March 5, 1990, between 5.30 and 5.45 p.m. in her Flat No. 3-A, on the third floor of 'Anand Apartment'. The appellant was challenged and tried for rape and murder and also for an offence under Section 380 IPC for committing theft of a wrist-watch from the said flat.According to the facts of the case, the appellant Dhananjay was one of the security guards deputed to guard the building 'Anand Apartment' by M/s Security and Investigating Bureau of which Mr Shyam Karmakar was the proprietor. On March 2, 1990, Hetal deceased complained to her

mother Yashmoti Parekh that the appellant had been teasing her on her way to and back from the school and had proposed to her on that day to accompany him to a cinema hall to watch a movie. She had made complaints about the teasing by the appellant to her mother previously also. Yashmoti told her husband Nagardas Parekh on March 3, 1990, about the behaviour of the appellant towards their daughter, who in turn complained to Shyam Karmakar and requested him to replace the appellant. At the asking of Shyam Karmakar, who came to meet Nagardas in his flat in that connection, Nagerdas gave a written complaint also and the appellant was transferred and a transfer order posting the appellant at 'Paras Apartment' was issued by Shyma Karmakar. Bijoy Thapa, a security guard at Paras Apartment was posted in his place, at Anand Apartment. The transfer was to take effect from March 5, 1990. As per their normal routine, Nagardas Parekh and his son Bhawesh Parekh, father and brother of the deceased respectively, left for their place of business and college in the morning on March 5, 1990. Bhawesh PW 5 returned to the flat at about 11.30 a.m. and after taking his meals, left for his father's place of business as was his routine. The deceased returned to her flat after taking her examination at about 1 p.m. Yashmoti PW 3, the mother of the deceased used to visit Laxmi Narayan Mandir between 5 and 5.30 p.m. daily. As usual, on the date of the occurrence also she left for the Temple at about 5.20 p.m. Hetal deceased was all alone in the flat at that time. The appellant, in spite of the order of transfer, did not report at Paras Apartment and instead performed his duties, as a security guard, at Anand Apartment between 6 a.m. and 2 p.m. on March 5, 1990. Shortly after Yashmoti, the mother of the deceased left for the Temple, the appellant met Dasarath Murmu, another security guard who was at that time on duty at the building and told him that he was going to Flat No. 3-A for contacting his office over the telephone. The appellant used the lift to go to the said flat. At about 5.45 p.m., Pratap Chandra Pall, supervisor of the Security and Investigating Bureau, visited Anand Apartment and enquired from Dasarth whether Bijoy Thapa had performed his duty in place of the appellant in the morning but was told by Dasarath, that Bijoy Thapa had not come to that building and that the duties had been performed by the appellant between 6 a.m. and 2 p.m. on that day. On inquiry by the supervisor as to where the appellant was, told the supervisor that at that

particular time, the appellant had gone to Flat No. 3-A with a view to contacting his office over the telephone. The supervisor Pratap Chandra asked Dasarath to call the appellant and since he was not able to contact him through the intercom, there is no response from Flat No. 3A, he called out the name of the appellant, who appeared at the balcony of Flat No. 3-A and on being told that , the supervisor had come and wanted to see him, told him that he would come down. The appellant after a little while came down by the stairs and even though the supervisor and Dasarath were waiting for him, he hurriedly went past them and on being asked by PW 6 that he wanted to talk to him, told him to come outside the gate and speak to him. The appellant on inquiry by PW 6 as to why he had not obeyed the transfer order told him that due to some personal difficulty he could not report for duty at Paras Apartment. He was advised to take charge at Paras Apartment without fail the next day. The appellant thereafter left. At about 6.05 p.m. Yashmoti returned from the Temple. While going to her flat in the lift, she was told by Ramdhan Yadav, the lift operator, that the appellant had gone to her flat in her absence to make a telephone call to his office. She was annoyed about getting this information because of the complaint which the deceased had made to her earlier. On reaching her flat, she rang the bell repeatedly but there was no response and nobody opened the door. She raised an alarm which attracted several of her neighbours. They also rang the bell and knocked at the door but there was no response. Eventually, the lock of the door was broken open by the neighbours, their servant and the liftman, and as she entered the flat along with some of her neighbours, she found the door of her bedroom open. Hetal deceased was lying on the floor. Her skirt and blouse had been pulled up and her private parts and breasts were visible. There were patches of blood near her head as well as on the floor. There were bloodstains on her hands and vagina also. Her wearing apparel was bloodstained. There were some marks of violence and blood was found on her face as well. There were blood marks on the 'Jhoola' lying in the room. Her torn panty was found lying near the entrance of the door and the deceased appeared to be unconscious at that time. Her mother lifted the deceased in her arms and rushed down through the lift with a view to taking her to the doctor. In the meantime, a doctor had been summoned by the neighbours who arrived and on

examining the deceased in the lift itself, where she was lying in the lap of her mother, pronounced her dead. Information of the occurrence was sent to the father of the deceased and at about 7 p.m. Bhawesh returned. In the meantime, another doctor, who had also been called, arrived and after examining the deceased certified her as dead. The dead body of Hetal was taken back to the flat and laid on her bed in her room and was covered by a sheet. At about 8.30 p.m. father of the deceased, Nagardas returned to the flat and on being told of the murder of Hetal, he informed Bhawanipore Police Station at about 9.15 p.m. on the telephone

From this case, many loopholes can be found such as the fact that how can Dhananjoy rape and murder and also steal a watch owned by the mother of the deceased girl within twenty minutes.

It is also questionable that the fact that how is it possible this case to be considered as a rape when there have been only injuries in the upper part of the deceased girl rather than the injuries being in the downer part of the body.

It is also questionable the fact that how even after seeing one's daughter in such a condition can the mother of the deceased girl just do nothing so as to take the deceased girl to the hospital rather than doing something. With these observations let us see furthermore findings.

Findings

The findings are as follows-

- Out of the many things mentioned above in the analysis, the most interesting thing is that from the forensic evidence made in the court prove the fact that there was food there in her stomach so the alleged rape happened soon after the deceased girl had her lunch. But as per the verbal records of all the witness, one thing is evident that Dhananjoy went to the deceased girl's room after she entered her room a long time back.
- Another funny thing noticed in this occasion is that there were so many neighbours present after the mother of the deceased girl breached into

the there house but there were hardly so many people taken as witnesses and many of there verbal sayings contradicted each other also.

- The thing which is very shocking is that how the mother of the deceased girl had that much of energy after receiving that sort of shock to wait so long for the doctor and not calling the police immediately.
- Another thing is there that there was sexual intercourse between the deceased girl and another fellow because few semen samples were found from the deceased girl's dress. Which proved that she had sexual intercourse with someone which was consented but the beating on her upper part of the body did not consent and for that, she didn't protest against the person for not beating her like that.
- The final finding is that the transfer order of Dhananjay was submitted to the court during the trial very late which was not questioned by Dhananjay's counsel but the other person who worked in his behalf henceforth had no transfer order.

Suggestion

In our judicial system, the trial court has been overburdened with the work of analysing and proving that all shreds of evidence in that case such as rape is true and has said nothing which might contradict the final outcome of this case. The High Court should also analyse the pieces of evidence and witnesses like what is done in the trial related to cases such as rape or murder.

The apex court of the country should always have the intervening power into cases such as murder or rape to be approved by the High Court only. That should be understood by the Supreme Court taking into consideration the gravity of the case and the way it impacts the future judgements of the same court or courts lower than that. The Supreme Court should be given more liberty of intervention mostly for cases such as murder and rape. Another thing is that the way Presidential pardoning

power should be used judiciously and that should not be decided as what the media or the public at large wants the President to do.

These are few suggestions taking into this case into consideration and especially to cases of that nature into mind.

Conclusion

The conclusion from this project that even capital punishment is been awarded to innocent people. The only reconciling thing which happens is that these kinds of awarding of judgements have not been awarded to many people since then but with that idea, we shouldn't be happy because we can't let India be ashamed for not even one occasion such as this.

Another thing is that this particular judgement passed through all courts of this land and also passed through Presidential pardoning without so many things not being taken into consideration by such high authorities. With this, I will also like to plead to the Indian judiciary, not to this kind of killing innocent people for no fault of theirs and no judiciary should be affected from the remarks by the media or the government of the day.

Reference

- Case law from Indian Kannon official site.
- I was inspired to take such a landmark case after watching a Bengal film called ***'Dhanajoy'*** which made me inspire to take up this case in detail.