



# JUDICIAL TRENDS WHILE AWARDING CAPITAL PUNISHMENT IN INDIA: A STUDY

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## INTRODUCTION

The Supreme Court of India as the highest Judicial Tribunal of the country has given its authoritative decisions on various points of law from time to time. The apex court has examined the constitutional validity, procedure and many other issues related to death sentence and delivered its valuable verdict on numerous occasions in last 50-60 years. The constitutionality of death penalty has been questioned before the Supreme Court several times on the ground that it contravenes provisions incorporated in Indian Constitution. However, the Court has made it clear many times that the imposition of death penalty is not opposed to the supreme law of the land, Bhagwati, J., is of opinion that Sec. 302 of the I.P.C. in so far as it provides for imposition of death penalty as an alternative to life sentence is ultra vires and void as being violative of Art. 14 and 21 of the constitution since it does not provide any legislative guidelines as to when life should be permitted to be extinguished by imposition of, death sentence.

Now comes the question as to when should the courts be inclined to inflict death sentence to an accused. By virtue of section 354(3) of Cr.P.C. it can be said that death sentence be inflicted in special cases only. The apex court modified this terminology in Bachan Singh's Case and observed, „A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed...

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For all the offences, in which death sentence is the punishment, it may be noted that it is not the only punishment, it is the extreme penalty. Thus, these sections, by virtue of their very wordings, provide for a discretion which is to be vested in the courts to decide the quantum of punishment. So, in its ultimate judicial discretion, power to decide whether death sentence is to be imposed or not, have been vested in courts right from the inception of Penal Code in 1860. However, the manner of exercising this discretion has undergone various changes with the changing time and evolution of new principles formulated through judicial pronouncements. The guidelines has been specified from time to time to guarantee the fair trial and restrict the arbitrary use of this extreme punishment.

## II. Constitutionality and Procedural Reforms

**In Jagmohan Singh v. Uttar Pradesh**<sup>1</sup>, the validity of death sentence was first time challenged on ground that it was violative of Arts. 19 and 21 because it did not provide any procedure. It was contended that the procedure prescribed under Criminal Procedure Code was confined only to findings of guilt and not awarding death sentence. The Supreme Court held that choice of awarding death sentence is done in accordance with the procedure established by law. The Judge makes the choice between capital sentence or imprisonment of life on the basis of circumstances and facts and nature of crime brought on record during trial. Accordingly, a 5 member Bench of the Court held that capital punishment was not violative of Arts. 14,19 and 21 and was therefore constitutionally valid. After this decision the constitutional validity of death sentence was not open to doubt. But in the case of **Rajendru Prasad v. State of Pujab**<sup>2</sup>, Krishna Iyer, ., held that capital punishment would not be justified unless it was shown that the criminal was dangerous to the society. He held that giving discretion to the Judge to make choice between death sentence and life imprisonment on "special reason" under Section 354 (3) of Cr.P.C., would be violative of Art. 14 which condemns arbitrariness. He pleaded for the abolition or the scope or Section 302, I.P.C. and Section 354 (3) should be curtailed or not is a question to be decided by the Parliament and not by the Court. It is submitted that minority judgment is correct because after the amendment in the Cr.P.C. and the decision in Jagmohan Singh's case the death penalty is only an exception and the life imprisonment is the rule. The discretion to make choice between the two punishments is left to the Judges and not to the Executive.

**In Buchun Singh v" State of Punjab**<sup>3</sup>, the Supreme Court by 4 : 1 majority has overruled Rajendra Prasad's decision and has held that the provision of death penalty under Section 302 of LP.C. as an alternative punishment for murder is not violative of Art. 21. Art. 21 of the Constitution recognizes the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. In view of the constitutional provision by no stretch of imagination it can be said that death penalty under

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<sup>1</sup> AIR 1973 SC 947

<sup>2</sup> AIR 1979 SC 916

<sup>3</sup> AIR 1980 SC 898

Section 302, I.P.C. either per se, or because of its execution by hanging constitutes an unreasonable, cruel or unusual punishment. The death penalty for the offence of murder does not violate the basic feature of the Constitution. The International Covenant on Civil and Political Rights to which India has become party in 1979 do not abolition of death penalty in all circumstances. All that it requires is, that (1) death penalty should not be arbitrarily inflicted, (2) it should be imposed for the most serious crimes. Thus the requirements of International Covenant is the same as the guarantees and prohibitions contained in Arts. 20 and 21 of our Constitution. The I.P.C. prescribes death penalty as an alternative punishment only for heinous crimes. Indian Penal Laws are thus entirely in accord with international commitment.

**In Deena v. Union of India**<sup>4</sup> the constitutional validity of Section 354 (5), Cr.P.C., 1973 was challenged on the ground that hanging by rope as prescribed by this section was barbarous, inhuman and degrading and, therefore, violative of Art.21. It was urged that State must provide a human a dignified method for executing death sentence. The Court unanimously held that the method prescribed by Section 354 (5) for executing the death sentence by hanging by rope does not violate Art.21. The Court held that Section 354 (5) of the Cr.P.C., which prescribes hanging as mode of execution lays down fair, just and reasonable procedure within the meaning of Art. 21 and hence is constitutional. Relying on the report of U.K. Royal Commission , 1949, the opinion of the Director General of Health Service of India and the 35th report of the Law Commission, the Court held that hanging by rope is the best and least painful method of carrying out the death sentence than any other methods. The Judges declared that neither electrocution, nor lethal gas, or shooting, nor even the lethal injection has 'any distinct or advantage' over the system of hanging by rope.

**In Attorney General of India v. LachmaDevis**<sup>5</sup>, it has been held that the execution of death sentence by public hanging is barbaric and violative of Art. 21 of the Constitution. It is true that the crime of which the accused have been found to be guilty is barbaric, but a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.

In 1991, a Supreme Court bench again upheld the constitutionality of the death penalty in Smt. **ShashiNuyur v. Union of India and others**<sup>6</sup>, where the Court did not go into the merits of the argument against constitutionality, arguing that the law and order situation in the country has worsened and now is therefore not an opportune time to abolish the death penalty. An argument which assumes executions address such situations.

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<sup>4</sup> (1983) 4 SCC 645

<sup>5</sup> AIR 1992 SC 395

<sup>6</sup> 1983 CRI.L.J.811 ( S.C.)

## Constitutionality of Section 303 of I.P.C.

Section 303 of I.P.C. incorporates punishment for murder by life convict. It contemplates, whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death. **In Mithu v. State of Punjab**<sup>7</sup>, the legality of Section 303 was examined by the Full Bench of the Supreme Court. The majority opinion was that this section violates the guarantee of equality contained in Art. 14 and also the right contained in Art. 21 of the Constitution. The section was held to have been conceived to discourage assaults by the life convicts on the prison staff but the legislatures choose a language which far exceeded its intention. It was, further held that the section proceeds on the assumption is not supported by any scientific data. The majority view was that it mainly violates Art.21 of the Constitution.

**In BhagwanBux Singh and another v. State of U.P**<sup>8</sup> this section has been declared unconstitutional because it is violative of Arts. 14 and 21 of the Constitution of India. Now it is no longer available for conviction of any offender. A conviction under this section will be altered to one under Section 302. But for awarding death sentence under section 302 it must be established that the case is rarest of rare. If the case cannot be termed as rarest of rare, the sentence would be converted into sentence for life.

Three days after the execution, a similar case of rape and murder of a child was heard on appeal by the Supreme Court in **Rahul alias Raosaheb v. State of Maharashtra**<sup>9</sup> the victim in the former case was 13 years old, in the latter she was four-and-a-half. Neither of the accused had a previous criminal record, and in neither case was any report of misconduct while in prison. Yet the Supreme Court deemed **Dhanajoy Chatterjee**<sup>10</sup> a menace to society and not only was his sentence upheld by the Court but he was subsequently hanged. In Rahul's case, he is not deemed a menace, and his sentence is commuted to life imprisonment.

## Consideration of Evidence.

It is a shocking fact that most death sentences handed down in India are based on circumstantial evidence alone. In his dissenting judgment in **Buchan Singh v. State of Punjab**<sup>11</sup>, Bhagwati, J., identified a number of problems within the criminal justice system:-

"Our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believe to be a true case. Sometimes there is also mistaken eyewitness identification and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a

<sup>7</sup> CRI.L.J.811(S.C).

<sup>8</sup> CRI.L.J.928 (S.C.)

<sup>9</sup> (2005) 10 SCC 322

<sup>10</sup> Dhananjay chatterjee alias dhana v/s state of west bengal,( 1994) 2 SCC 220

<sup>11</sup> AIR 1980 SC 898

frame up of innocent men by their enemies" There are also cases where an overzealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defense. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations" It is indeed a very live possibility..."

**In RampalPithwaRahidas v. State of Maharashtra<sup>12</sup>**, the Court observed 'the manner in which the investigating agency acted in this case causes concern to us. In every civilized country the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice.

**In sudamaPandey and other v, State of Bihar<sup>13</sup>**, the trial court had sentenced five people to death for the attempted rape and murder of a 12-year-old child, the High court had commuted these sentences, but the supreme Court noted that it was unfortunate that the High Court did not also properly review the evidence. Acquitting the accused, the Supreme court noted that both the trial court and the High Court had committed a serious error by appreciating circumstantial evidence, resulting in a miscarriage of justice. In an indictment of the lower judiciary' the Supreme Court remarked: „The learned Sessions Judge found the appellants guilty on fanciful reasons based purely on conjectures and surmises' It is all the more painful to note that the learned Sessions Judge, on the basis of the scanty, discrepant and fragile evidence, found the appellants guilty and had chosen to impose capital punishment on the appellants'.

**In Krishna Mochi and others v. State of Bihar<sup>14</sup>**, a three-judge bench disagreed over the sentence imposed on one of the appellants, while agreeing on the conviction and upholding the death sentence awarded to three other appellants. In a dissenting judgment, Justice Shah argued that the shortcomings in the investigation and the evidence that only proved the presence of the accused at the scene of the offence meant that this could not be a fit case for imposing the death penalty. He observed, "This case illustrates how faulty, delayed, casual, unscientific investigation and lapse of long period of trial affects the administration of justice which in turn shakes the public confidence in the system."

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<sup>12</sup> 1994 SUPP (2) SC C 478

<sup>13</sup> AIR 2002 SC 293

<sup>14</sup> (2002) 6 SCC 81

### III. Mandatory Pre-sentencing Hearings and the Statement of "special reasons"

In 1973, a new code of criminal Procedure was adopted, requiring that a pre-sentencing hearing be held in the trial court in capital cases. In **Ediga Anamma v' State of Andhra Pradesh**<sup>15</sup>, the Supreme court referred to this requirement as an improvement over the judicial hunch in imposing or avoiding capital sentence" and stated that "to personalize the punishment so that the reformatory component is as much operative as the deterrent element, it is essential that facts of a social and personal nature, sometimes altogether irrelevant if not injurious at the stage of fixing the guilt, may have to be brought to the notice of the Court when the actual sentence is determined". Further in **Sunta Singh v. State of Punjab**<sup>16</sup>, the Court noted that the mandatory pre-sentencing hearing was 'in consonance with the modern trends in penology and sentencing procedures' and commented on what such hearings were meant to achieve; "a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances - extenuating or aggravating - of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home, life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such deterrent in respect to the particular type of sentence-" By 1979, it was becoming clear that the system was not working as intended. Voicing its concern that the pre-sentencing hearing has become little more than a repeat of the facts of the case, the Supreme Court expressed the hope in **Rajendra Prasad v, State of Uttar Pradesh**<sup>17</sup>, "the Bar will assist the Bench in fully using the resources of the new provision to ensure socio-personal justice, instead of ritualizing the submissions on sentencing by reference only to materials brought on record for proof or disproof of guilt."

The extent to which only lip service was being paid to the importance of pre-sentencing hearings was evident in **Muniappan v. State of Tamil Nadu**<sup>18</sup>, where the Supreme Court noted that the trial court had sentenced the accused to death stating that when the accused was asked to speak on the question of sentence, he did not say anything. The supreme court noted that requirement laid down in the Code of Criminal Procedure was not discharged by merely putting a formal question to the accused. Under the 1973 Code of Criminal Procedure, "special reasons" must be established before a trial court to impose a death sentence" In Bachan Singh's decision, the Supreme Court set out aggravating and mitigating circumstances to be taken into account during consideration of sentencing and specified that evidence must be presented by the State demonstrating a lack of

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<sup>15</sup> AIR 1974 SC 799

<sup>16</sup> (1976) 4 SCC 190

<sup>17</sup> AIR 1979 SC 916

<sup>18</sup> (1981) 3 SCC 11

potential for reform of the convicted person, in the absence of which the case would not fall within the "rarest of rare" category.

#### IV. Rarest of Rare Cases

As it has been stated earlier, after Cr.P.C. 1973, death sentence is the exception while life imprisonment is the rule. Therefore, by virtue of section 354(3) of Cr.P.C., it can be said that death sentence be inflicted in special cases only. The apex court modified this terminology in **Buchsn Singh's Case**<sup>19</sup> and observed:-

"A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

To decide whether a case falls under the category of rarest of rare case or not is completely left upon the court's discretion. However the apex court has laid down a few principles which are to be kept in mind while deciding the question of sentence. One of the very important principles is regarding aggravating and mitigating circumstances. It has been the view of the court that while deciding the question of sentence, a balance sheet of aggravating and mitigating circumstances in that particular case has to be drawn. Full weightage should be given to the mitigating circumstances and even after that if the court feels that justice will not be done if any punishment less than the death sentence are awarded, then and then only death sentence should be imposed. In **Muchhisinghvs" State of Punjab**<sup>20</sup>, the court again laid down:-

"In order to apply these guidelines inter alia the following questions may be asked and answered:

- (a)' Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence,/
- (b)' Are there circumstances of the crime such that there is no alternative but to sentence even after according maximum weightage to the mitigating circumstances in favor of the offenders?"

The principles laid down by the apex court are reiterated in its latest judgment in **SushitMurmu Vs. State of Jharkhand**<sup>21</sup>, in the following words:-

"In rarest of rare cases, when the collective conscience of 'the community is so shocked that it will expect the holders of judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded."

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<sup>19</sup> AIR 1980 SC 898

<sup>20</sup> AIR 1983 SC 957

<sup>21</sup> (2004) 2 SCC 338

The SC has also discussed such circumstance in various cases" These circumstances include: -

- I. Murder committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.
- II. Murder- for a motive which evinces total depravity and meanness"
- III. Murder of a Scheduled cast or Scheduled tribe- arousing social wrath (not for personal reasons).  
Bride burning/ Dowry death.
- IV. Murderer in a dominating position, position of trust or in course of betrayal of the motherland.
- V. Where it is enormous in proportion.
- VI. Victim- innocent child, helpless woman, old/infirm person, public figure generally loved and respected by the community.

If upon taking an overall view of all the circumstances and taking in to account the answers to the question posed by way of the test of rarest of rare cases, the circumstances of the case are such that death penalty is warranted, the court would proceed to do so.

**In Shankar Kisanrao Khade v. State of Maharashtra<sup>22</sup>** was also concerned with another dimension of the issue of death penalty and rued lack of research on the issue. The Court held: It seems to me that though the courts have been applying the rarest of rare principle, the executive has taken into consideration some factors not known to the courts for converting a death sentence to imprisonment for life. It is imperative, in this regard, since we are dealing with the lives of people (both the accused and the rape-murder victim) that the courts lay down a jurisprudential basis for awarding the death penalty and when the alternative is unquestionably foreclosed so that the prevailing uncertainty is avoided. Death penalty and its execution should not become a matter of uncertainty nor should converting a death sentence into imprisonment for life become a matter of chance.

#### **V. Delay in the Carrying out of Death Sentence**

Prisoners sentenced to death may wait many years while their cases are under consideration. Too short a time will not allow for an adequate appeal process or for further evidence of the possible innocence of the person to emerge. However, prolonged periods on death row leave the individual facing the constant strain of living with the fear of execution, almost always in harsh prison conditions. Following a long period of legal ambiguity, during which time a number of death sentences were commuted on grounds of delay, while others were not, in 1988 a constitutional bench of the Supreme Court ruled that an unduly long delay in execution of the sentence of death would entitle an approach to the Court, but that only delay after the conclusion of the judicial process

<sup>22</sup> (2013) 5 SCC 546



would be relevant, and that the period could not be fixed. In **Triveniben v. State of Gujarat**<sup>23</sup>, it has been held that a person sentenced to death is also entitled to procedural fairness till his last breath of life. Art. 21 demands that any procedure which takes away the life and liberty of such person must be reasonable, just and fair. Undue delay in execution of death sentence due to delay in disposal of mercy petition by the president would certainly cause mental torture to the condemned prisoner and, therefore, would be violative of Art. 21. A condemned prisoner has to suffer a degree of mental torture even though there is no physical mistreatment and no primitive torture. He may be provided with amenities of ordinary inmates in the prison, but nobody could succeed in giving him peace of mind. In such a situation, the court will examine the delay factor in the light of the circumstances of the case and in appropriate cases commute death sentence to the sentence of life imprisonment.

In **Madhu Mehta v. Union of India**<sup>24</sup>, the mercy petition of the petitioner was pending before the President for about 8 or 9 years. This matter was brought to the notice of the court by Madhu Mehta, the National Convenor of Hindustani Andolan. Following Triveniben's decision the Court directed the death sentence to be commuted to life imprisonment as there was no sufficient reason to justify such a long delay in disposal of the convict's mercy petitioner. Speedy trial in criminal cases is implicit in the broad sweep and content of Art. 21. This principal is no less important for disposal of mercy petitions.

However' **Dhananjay Chatterjee**<sup>25</sup> had completed over 14 years in prison, most of them under sentence of death and in solitary confinement" before he was executed in August 2004" No action had been taken on his case for nine years because the West Bengal state officials had failed to inform the High court of the rejection of his mercy petition by the Governor. These facts are not considered a ground for commutation by the Supreme court, which has refused to be drawn on the issue of delay in dismissing appeals on his behalf in 2004.

In the case of **Gurmeet Singh v. State of Uttar Pradesh**<sup>26</sup>, (AIR 2005 SC 3611) the Supreme court similarly refused to take into account a delay of a number of years, caused in this case by the negligence of staff of the High court of Allahabad. In March 1996, Gurmeet Singh had sought special leave from the High court to appeal to the Supreme court after the High court had confirmed his death sentence' Despite several reminders sent by the jail authorities, there was no response from the High court' Finally, after a petition had been filed in the supreme court' an inquiry was ordered which found that officials of the High court had been negligent in failing to respond' and action was initiated against the officers responsible. Nonetheless, the Supreme court refused to commute the sentence on the ground of delay, relying on the position that only delays in mercy petitions would be material for consideration.

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<sup>23</sup> AIR 1989 SC 142

<sup>24</sup> (1989) 4 SCC 62

<sup>25</sup> (1994) 2 SCC 220

<sup>26</sup> AIR 2005 SC 3611

A reading of the 1988 judgment shows that the rationale for the court's position is to avoid a rush through the judicial process which might jeopardize procedural safeguards and lead to challenges based on the fairness of the trial. The intention is clearly not to exclude cases like those of Dhananjoy Chatterjee and Gurmeet Singh, where the judicial process is stalled for years through negligence on the part of executive or judicial officials. yet when presented with appeals in these two cases' the Supreme court has refused to consider the issue of delay.

## VII Executive Clemency

Under Art.72, the President has power to grant pardons, reprieves, respites or remissions of Punishment or to suspend, remit or commute the sentence of any person convicted of any offence

(1) by court Martial; (2) an offence against any law relating to a matter to which the executive power of the Union extends; or (3) in all cases in which the sentence is one of death. A similar power is conferred by Art.161 on the Governors of States. But there is a difference between the pardoning powers of the President under Art" 72 and the pardoning power of the Governor under Art. 161. The President has exclusive power to grant pardon in cases where the sentence is a death sentence while the Governor cannot grant pardon in case of a death sentence' The object of conferring the 'judicial' power on the President to correct possible judicial errors, for no human system of judicial administration can be free from imperfections<sup>27</sup>. A pardon completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the offence.

In **Maru Ram v. Union of India**<sup>28</sup>, it has been held that in exercising the pardoning power the object and the spirit of Section 433-A of Cr.P.C' must be kept in view" The power to pardon is exercised by the President on the advice of the council of the Ministers.

A pardon is an act of grace and, therefore, it cannot be demanded as a matter of right' The effect of pardon is that it not only removes the punishment but in the eye of law places the offender in the same position as if he had never committed the offence' The executive can exercise the pardoning power at any time after commission of an offence, either before legal proceedings are taken or during their pendency or either before or after conviction<sup>29</sup>.

In **K. M. Nanavati v. State of Bombay**<sup>30</sup>, the Supreme Court has held that the Governor's power to suspend sentence under Art. 161 is subject to the rules made by the Supreme court under Art. 145 for disposal of pending appeals before it. once the appeal is filed in the court the Governor cannot exercise his power of

<sup>27</sup> Basu introduction to the Indian constitution of india part 2 p 21 3<sup>rd</sup> edition

<sup>28</sup> (1981) 1 SCC 107

<sup>29</sup> AIR 1954 MAD 911

<sup>30</sup> AIR 1961 SC 112

suspension of sentence under art" 161. and if he does so his order would be invalid being in conflict with the Supreme Court rules under Art.143.

**In Kuljeet Singh v. Lt. Governor of Delhi<sup>31</sup>**, an important question came for consideration of the Supreme Court regarding the scope of the pardoning power of the President under Art. 72 (1) The petitioners (Ranga and Billa) were found guilty of murdering two innocent children and awarded death sentence by the Session court which was confirmed by the High court. Their special Leave Petition under Art. 136 against the judgment of the High court was dismissed by the Supreme Court. Thereafter they presented a mercy petition under Art' 12 to the President for the grant of pardon which was rejected by the President without assigning any reasons. The petitioners contended that the power of the President under Art.72 to grant pardon etc. especially in the case of a death sentence is a power coupled with a duty that which must be exercised fairly and reasonably. The Court said that the Court did not know whether the Government of India has formulated any uniform standard or guidelines by which the exercise of the constitutional power under Art. 72 is intended to be, or was in fact guided. Declaring that the exercise of the president's power to commute the death sentence would have to be examined case to case, the Court held that even the most liberal use of this power could not have persuaded the President to impose anything less a sentence of death in the present case and more so in view of the considerations mentioned by the Court in its judgment while confirming the death sentence on

Ranga and Billa. By ruling that the exercise of the President's power under Art. 72 will be examined on the facts and circumstances of each case the Court has retained the power of judicial review even on a matter which has been vested by the Constitution solely in the Executive. This would make the exercise of the pardoning power a matter for further litigation as it has been demonstrated in the present case.

In a significant judgmentt in **EpuranSudhar v. Government of Andhra Pradesh<sup>32</sup>**, the Supreme Court has held that the pardoning powers of the President under Act. 72 and the Governors under Art.161 is subject to judicial review. Pardoning power cannot be exercised on the basis of caste or political reasons. In the instant case a Congress worker was convicted for murder of a worker of the TelguDesham. He was awarded death sentence by the Court. He was granted pardon by the then Governor Mr. Shinde, who is at present minister of power under the U.P.A. Government. The victim's son had challenged the constitutional validity of the Governor's pardoning power in the High Court of Andhra Pradesh. The High Court had quashed the order of pardoning of the Governor on the ground that it was exercised on the political ground. The Supreme Court, upholding the judgment of the High Court of Andhra Pradesh, held that if the pardoning power has been exercised on the ground of political reasons, caste and religious considerations it would amount to violation of the Constitution and the Court will examine its validity.

<sup>31</sup> AIR 1982 SC 774

<sup>32</sup> Times of india, 5<sup>th</sup> October 2006.

## VIII. Conclusion

In India, the provisions for death sentence still prevails as part of criminal jurisprudence but the Supreme Court of India has repeatedly asserted that it should be imposed in the rarest of rare case. The highest Judicial Tribunal of the country has given from time to time authoritative pronouncements and made it clear that the provisions for death sentence are not violative of Arts. 14, 19 and 21 of the Constitution. Thus, the provisions dealing with death sentence are not opposed to the Constitution, but care must be exercised in every case to look into the circumstances of the case, facts and the nature of the crime for making choice between the imposition of death penalty and the award of the sentence of life imprisonment. However, the death penalty should be imposed only in accordance with the procedure established by law. The execution of death sentence by hanging by rope is held to be not contravening to provisions of the Constitution and does not amount unreasonably cruel or inhuman punishment, but public hanging is considered as barbaric.

