



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Rarest of the rare

Vimal Kumar¹

¹ Vimal Kumar, M.B.A., LL.B., Practicing in Bar Association, Rohtak,

Abstract

Rarest of the rare are the cases in which capital punishment though incorporated under the criminal law is awarded to the criminal for heinous crimes in which other punishments can't be presumed as sufficient or justifiable. In India various cases have been considered as rarest of the rare and capital punishment is not only awarded but has been executed also. Rarest of the rare are the cases in which the accused of offences against the state itself or involved in the heinous crimes against the society such as brutal murder, rape, human trafficking etc. The criminal law provides for six types of punishments in which capital punishment is one of them. Though various sections under criminal law provide the offences in which the capital punishment can be awarded but judiciary was always in favour of awarding any other punishment than life penalty. However the court has awarded the capital punishment in various cases considering them as rarest of the rare.

Introduction

Rarest of the rare cases are those cases in which the judiciary awards capital punishment not as an option but mandatorily. These are those cases which are so serious and heinous that any other punishment is not considered as justified. After independence in the Indian judicial history, there are various cases in which capital punishment was awarded and executed. All those matters were justified for execution of capital punishment. Rape cases and wage war against the state are such offences. India is a welfare state and India has fulfilled its duty of protecting the people by providing various fundamental rights to them. One of the most important rights incorporated under Constitution is the right to life under article 21. The right to life provides that nobody can be deprived of his right to life. Therefore the life of any person can't be taken away and any person who takes the life of another by committing murder in unjustified circumstances will be punished by the law. The exception to the right to life is enshrined in the article 21 itself. This article provides that the person can be deprived of his right to life by the procedure established by the law. The criminal law

¹ Vimal Kumar, M.B.A., LL.B., Practicing in Bar Association, Rohtak,

provides that for the offences against the state, offences against the woman and some other offences which are against the society are punishable by life. Offence some of rape with murder, murder, wage war against the state, rape and gang rape on a woman under twelve years of age, kidnapping for ransom are examples of such type of offences in which life punishment can be awarded by the court.

1. Capital punishment

The criminal law provides for six types of punishments. Punishment of death is the most important type of punishment. The evolution of capital punishment in India can be traced from 1860 when the criminal law was drafted. Death penalty was incorporated from the very beginning. Reason was that at that time, India was slave of british government. Revolutions were started during that period and punishment of death was incorporated to punish the freedom fighters accusing them as state offenders. India got independence in the year 1947. After independence, the constituent assemble opined to abolish the death penalty from the list of punishments but finally it was retained in the criminal law. Various times the constitutional validity of death penalty was challenged. Judiciary set the constitutional validity of the capital punishment in different cases. Supreme Court observed that capital punishment is not the practice but rarest of the rare. However what is rarest of the rare is made clear by the judiciary.

2. Crimes punishable with death penalty

Indian criminal law contains a long list of offences punishable with death punishment. These are murder, wage war against the state, rape and gang rape on a woman under twelve years of age, the repeat offenders of the mentioned crimes, and crimes under defence laws are some of them. For all these offences, the capital punishment is an optional punishment. Description of other type of punishments is also given in the classification of these offences. In the cases in which death penalty was awarded were the cases of rarest of the rare according to circumstances which justified the inflicting of this punishment to the criminals.

Murder

The offence of murder was defined under section 300 of Indian penal code and punishable under section 302 of the same. This section² provides that “whoever commits murder shall be punished with death or imprisonment for life and fine”. In this section death penalty is the first penalty is first one. The intention of the legislature behind retaining the capital punishment is that the person who has deprived another from his right to life must be given the same punishment. The idea behind giving capital punishment to the accused of murder is the retributive theory of punishment. Retribution means tit for tat. The punishment is based on the principle that he who gives something must take the same.

Offences against the state

² Section 302 IPC, 1860

The state is empowered to award capital punishment in the offences against the nation. The reason behind it is the interest of the nation and national security. The terrorist who commits any offence which endanger the security of the nation can be given capital punishment. The cases of Afzal and Qasab are suitable examples of this kind of offences. Mohammad Afzal was the accused of attack on Indian parliament in the year 2001. He possessed special explosive with him and caused danger to life of many people inside the parliament as well as killed the security guards while entering in vicinity of the parliament. Mohammad Ajmal Amir Qasab was the accused of terrorist attack on two famous hotels of Mumbai in the year 2008. He killed many people. Both the terrorists were given capital punishment however executed at different times.

Rape

The offence of rape is punishable under section 376 of criminal law. Section 376 does not provide for the death punishment for the offence of rape but section 376A³, section 376 AB⁴, section 376 DB⁵ and section provide the death punishment for the offence of rape in the given circumstances. However the capital punishment can also be awarded to the rape offender if the rape victim died due to the incident.

Kidnapping for ransom

Kidnapping and abduction are offences under Indian Criminal Law. For the offence of kidnapping for ransom the provision for death punishment is incorporated under section 364A⁶ of Indian criminal law. The section provides that whoever kidnaps or abducts any person and hurts or causes death of such person for ransom, that person may be punished with capital punishment.

Provision for death penalty under SC ST Act

Section 3 (2) (i)⁷ provides that whoever gives or fabricates false evidence in any criminal proceeding against the member of schedule caste or schedule tribes and in consequences of such false evidence, capital punishment is not only awarded but executed also executed on an innocent member of scheduled caste or scheduled tribes, such person shall be punished with capital punishment. This provision is made for the purpose of protecting the innocent people from being harassed and become victim.

Other offences resulting in death of people

Apart from the above mentioned crimes which specifically provide for death punishment the punishment of death can also be awarded in the cases in which though provision for capital punishment is not incorporated

³ Punishment for causing death or resulting persistent vegetative state of victim

⁴ Punishment for rape on a woman under twelve year of age

⁵ Punishment for gang rape on a woman under twelve years of age

⁶ Kidnapping for ransom etc.

⁷ SC ST Act, 1989

but the consequences are sever and such offences resulted in death of innocent people. In the offence of causing murder during dacoity is punishable with death penalty.

3. Constitutional validity of Capital punishment

Death or capital punishment is an important type of punishment under Indian Criminal law. In various cases the constitutional validity of capital punishment was challenged on the ground that this type of punishment is against the right to life and personal liberty, right to freedom and right to equality under article 21, 19 and 14 respectively of the constitution.

In the case of *Jagmohan singh vs. State of U.P.*⁸ the constitutional validity of death sentence was challenged. In this case, the appellant was convicted under section 302 by the session court and the death sentence was confirmed by the High Court also. The appellant filed special leave to appeal before the Supreme Court which was allowed and the appellant file appeal before Supreme Court. The appellant challenged the sentence imposed upon him on the ground that the sentence of death is unconstitutional and against the right under article 14, 19 and 21. The appellant contended that the execution of sentence of death is against the right to freedom under article 19 because the sentence puts an end upon all the freedoms. The sentence is also against right to life because the sentence takes the life of the accused after which the accused is not able to possess any right. The appellant also contended that the imposition of sentence of death on the ground that it is against right to equality because the law gives discretionary power to the judges to impose either death sentence or life imprisonment but does not provide the procedural factors for deciding the same.

Hon'ble Supreme Court observed that death sentence is not in violation of rights to life, freedom and equality. The rights given to any person by the constitution are not absolute. Reasonable restrictions can be imposed upon them. Article 21 provides that the person can be deprived of his right to life according to the procedure established by law. Therefore the accused who has taken the life of other can be given same punishment. The appeal in this case was dismissed by the court.

But in the case of *Rajendra Prasad vs. State of U.P.*⁹. Hon'ble Supreme Court gave an opposite view. In the present case Justice Krishna Iyer observed that it would not be possible to impose capital punishment on all the convicted. Although all the crimes are against the state and society but the convicted person who is not dangerous to the society can't be punished with death sentence. Justice Iyer giving its view based on the point raised in the case of Jagmohan observed that the discretion given to the judges to award either life imprisonment or death sentence according to their choice is violative of article 14 of the constitution. Further justice Iyer was in favour of abolishing the capital punishment however also observed that if the capital punishment is retained in the criminal should be awarded in white color crimes only.

⁸ AIR 1973, SC, 947

⁹ AIR 1979, SC, 917

In *Bachan Singh vs. State of Punjab*¹⁰ Hon'ble Supreme Court overruled the judgment given in Rajendra Prasad case and held awarding death penalty constitutional. In this case the appellant was convicted under section 302 IPC for murder of three persons. His appeal was dismissed by the High Court and sentence was confirmed. The appellant through Special leave to appeal came before the court. He challenged his sentence of death contending that whether his case justified for the capital punishment. Supreme Court in the present case by majority overruled the decision given in Rajendra Prasad case and held that awarding of sentence of death under section 302 of IPC is not violative of Article 21. Capital punishment is the alternative punishment incorporated in the section and judiciary is free to impose this punishment if they consider it justified. Judges have the discretion to impose death sentence but the discretion does not mean wish, here discretion means justifiability. Further capital punishment is not in violation of article 21 because the constitution that the person can be deprived by the procedure established by the law.

*Macchi Singh vs. State of Punjab*¹¹ was the case in progress of deciding the constitutional validity of capital punishment and evolution of the concept of "Rarest of the rare". In the present case the appellant and his relatives and friends were convicted for causing murder of seventeen persons and sever injuries to three to the member of same family living in the vicinity of same village and sentence of death was imposed upon 4 accused including the appellant and confirmed by the High Court and his appeal was dismissed. The appellant came before Supreme Court through special leave to appeal and challenged the constitutional validity of death sentence imposed upon him. The divisional bench observed that imposing capital sentence is not unconstitutional in the case because the present case comes under rarest of the rare cases. What are the circumstances which bring the case in the category of rarest of the rare was not made clear however attempt has been made by concluding that the manner of committing the crime, motive for the same, the age and physical capacity of the victim are some test to bring the case in the category of the rarest of the rare. Justice Thakkar opined that it is not unconstitutional to impose the highest punishment on the accused though the highest penalty need not be inflicted unless the imposition is extremely justified.

State of *M.P. vs. Manohar Singh*¹², the accused killed an old man for gratifying his greed. The case was held not be rarest of the rare.

4. Important cases of execution of Death sentence

There are number of cases in which the sentence of capital punishment was executed. Some important cases which are categorized as rarest of the rare and death penalty were executed.

*State vs. Jasbir Singh and Kuljeet Singh*¹³ popularly known as Ranga and Billa case is the most important case. In the present case the both the accused were guilty of kidnapping, rape and murder of a 16 years old girl

¹⁰ AIR 1980 SC, 898

¹¹ AIR 1983 SC, 957

¹² Cr. L.J. 1998, 3630

and kidnapping and murder of her brother who was of the age of 14 years. Both the victims were kidnapped by the accused in the car when they were going to All India Radio in Delhi. The accused committed rape with the girl and caused murder of the girl and her brother also. The accused were given the sentence of death which was also confirmed by the High Court as rarest of the rare. The sentence was executed on 31st January, 1982.

In the case of *Dhananjay Chatterjee vs. State of W.B.*¹⁴, the sentence of death was awarded putting the case in rarest of the rare category. In the present case the accused was the security guard in the apartment in which the deceased girl was residing with her parents. One day, the appellant entered the house of the deceased victim when she was alone at her home. The appellant committed rape on her and killed her. He also committed theft of some precious articles in the home. He was charged and convicted under section 302, 376 and 386 of IPC. The appellant was awarded capital punishment by the session court which was confirmed by the High Court. High Court also dismissed his appeal. The appellant filed an appeal before Supreme Court and the appeal was also dismissed in the apex court. The Supreme Court observed that the case is the rarest of the rare. We are much aware about the security and protection of the woman and therefore the cases of rape against the helpless woman and minor girl can't be taken leniently. The appellant in this case was executed to death on 14th August, 2004.

*State vs. Mohad. Afzal and others*¹⁵ was another case in which capital punishment was awarded. The accused was involved in the terrorist activities and attack on Indian Parliament in the year 2001. The sentence was awarded by the special court on December 2002. The sentence of life was also upheld by the Delhi High Court in 2003 and also by the Supreme Court in 2005. The sentence was finally executed after eight years of final decision of Supreme Court on 9 February, 2013.

*Md. Ajmal Md. Amir Kasab vs. State of Maharashtra*¹⁶, the appellant was a Pakistani resident. He was charged for committing multiple crimes in India. He was accused of bomb blast and killing various people in the three famous hotels of Mumbai e.i. Taz Hotel and Oberoye Hotel and Nariman House. Before reaching to the hotels he also killed many people at railway station of Mumbai. During trial he was charged with wage war against the Govt. of India, murder and under the Arms act for possessing arms. He was sentenced to death by the Session Court and confirmed by the High Court. The appellant filed an appeal before the Supreme Court observed that the offence committed by the appellant was the matter of national security which can never be pardoned and therefore the court dismissed the appeal. His sentence was executed on 21st November, 2012.

¹³ ILR 1979, DELHI, 571

¹⁴ AIR, 1994 SC (1) 220

¹⁵ AIR, 2003, Delhi

¹⁶ AIR 2012, SC

The death sentence was also executed to the accused of Bombay bomb blasts in 1993 after the incident of demolition of Babri Masjid. In *Yakub Abdul Memon vs State of Maharashtra*¹⁷ the appellant was involved in the serial bomb blasts in Mumbai in the year 1993. He was arrested by the police in the year 1994. He was a terrorist and previously involved in terrorist activities. He was prosecuted under TADA act and found guilty and convicted. He was sentenced to death penalty which was also confirmed by the Bombay High Court. The appellant filed an appeal before the Supreme Court but his appeal was dismissed on the ground that the terrorist activities are threat to national security and falls under the category of rarest of the rare. His life sentence was executed on 30th July, 2015.

The latest case in the series of rarest of the rare case is the Nirbhaya Case. This case was related to gang rape of a 23 years old girl in Delhi.

In *Mukesh and others vs. State for NCT of Delhi*¹⁸ the appellants were charged with sections 302¹⁹, section 376 (2) (g)²⁰, section 120 B²¹, section 365 and 366²², section 307²³, section 201²⁴ etc. The present case was the most heinous incident in the human memory. The appellant were total six members, they committed brutal rape on a woman and caused her sever injuries with iron road on her private parts. They also inflicted sever injuries to the friend of the deceased Nirbhaya. Whole incident was taken place in a bus. All the accused were arrested and prosecuted under above mentioned sections of IPC. One of the accused was minor and he was sent to juvenile court for the trial. During trial of the remaining five accused, one accused name Ram Singh committed suicide however the trial of accused was concluded and all the remaining five accused were sentenced to death and the sentence was also confirmed by the High Court of Delhi. The accused/appellant file appeal before the Hon'ble Supreme Court but the appeal was dismissed by the Hob'ble Supreme Court observing that this case comes under the category of rarest of the rare. Their application for granting pardon was also rejected by the President of India. The sentence of death of four accused of Nirbhaya rape case was executed on 20th March, 2020.

Conclusion & suggestion

Though various times the constitutional validity of death penalty was challenged and it was also argued to abolish the death penalty from the list of punishments. But it is still retained in the act and executed also. The judiciary observed that the death penalty can be imposed in the rarest of the rare cases. The offences against the woman especially the offence of brutal gang rape of woman and minor girls, intentional murder, terrorist activities and offences against the national security are such offence which are categorized as rarest of the

¹⁷ AIR 2013, SC

¹⁸ AIR 2017, SC

¹⁹ Murder

²⁰ Gang Rape

²¹ Criminal Conspiracy

²² Kidnapping with intent to wrongful confinement and seducing her for sexual intercourse

²³ Attempt to murder

²⁴ Causing disappearance of evidence

rare. The court observed that although the criminal law provides for the alternative options for punishment but the judiciary is not limited to use the alternated option only. Judges are fully empowered to use the discretionary power given to them. Although the constitutional validity of capital punishment was challenged on the ground that it is in violation of article 21 of the constitution but the court observed that the death penalty is not in violation of article 21 because the person upon whom the penalty is executed can be done by the procedure established by the law only. But the execution of death is results in such circumstances that if the executed person turns out to be innocent, no one would be able to compensate. Therefore this provision needs to get effected very carefully.

