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Different Types of Punishments

As per the United States Institute of Peace, the principle of the imposition of punishment can be based on:

1. The necessity for criminal justice compulsion; and
2. The proportionality of punishment based on the nature and degree of the danger which is present against the fundamental freedoms, human rights, social values, rights guaranteed and protected under the Constitution or international law.

In the case of Soman v. Kerala, the Supreme Court of India cited a number of principles while exercising discretionary powers by the Court. The general principles are proportionality, deterrence, and rehabilitation. In the proportionality principle aggravating and mitigating factors should be considered. Mitigating circumstances are related to the criminal and aggravating circumstances are related to the crime.

In para 12 of the Soman's case, the Supreme Court pronounced that "Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out just punishment to the accused facing trial before it after he is held guilty of the charges." Further, the court acknowledged and opined the observation made in the case of State of Punjab v. Prem Sagar, wherein the Court stated that "In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which

punishment is imposed upon an offender have not issued any guidelines.” Therefore, there is a necessity to have a sentencing policy with due consideration to the recommendations made by the Madhava Menon Committee and Malimath Committee.

Scope of Section 53

In the Indian Penal Code, 1861 (“Code”), Section 53, specifically deals with different types of punishments which can be given by the Criminal Courts if the person is held liable under the Code.

There are five kinds of punishments recognized under Section 53 of the Code:

1. Death;
2. Imprisonment for life;
3. Imprisonment:
 1. Rigorous Imprisonment; or
 2. Simple Imprisonment.
1. Forfeiture of property;
2. Fine.

Considering the above punishments, the courts are supposed to follow the procedures and provisions which are prescribed under other adjective and substantive laws.

As per the scheme of the Code the maximum punishment is prescribed, leaving the minimum to the discretion of the Judge. The Judge has all the means to form an opinion on the sentence

which would meet the end of justice in a particular case. If the offence is grave in nature then the Code had prescribed the maximum and the minimum duration of the punishment.

Awarding Appropriate Sentence is the Discretion of the Trial Court

In the case of Sibbu Munnial vs State Of Madhya Pradesh, the three-judge bench of the Madhya Pradesh High Court had observed the scheme of punishment as follows:

1. The classification of offences is made with reference to the maximum punishment to which the offender is liable to receive.
2. In the case of the death penalty and imprisonment for life is provided as a punishment under a section. Imprisonment for life shall be considered as an alternative. And death penalty shall only be given if the case comes under the ambit of 'rarest of rare case'. While giving the death penalty as punishment the Judge shall give due importance to the facts and nature of the case.
3. Imprisonment can be categorized into two categories- simple and rigorous.
4. Imprisonment for life means rigorous imprisonment for twenty years.
5. The difference between imprisonment for life and imprisonment is the former can be rigorous and the imprisonment is till his last breath, however, the duration of the latter can vary from period 24 hours to 14 years.
6. Lastly, offences punishable with fine means the offences for which the maximum penalty can be fine only.

In a recent case of 2017, in State Of H.P vs Nirmala Devi, the Supreme Court ruled that the trial court has the discretion to give punishments as per the scheme provided under the code.

When Appellate Courts Can Interfere with Sentence Imposed

As per Section 386 of CrPC, the Powers of Appellate Court are as follows:

1. The Appellate court can interfere or dismiss the appeal if it finds sufficient grounds to do so after hearing the parties of the appeal;
 2. If the matter is an appeal from an order or acquittal:
 1. Then the appellate court can reverse such order and direct further inquiry of the matter or;
 2. Direct for retrial of the accused.
- 3) If an appeal from a conviction, then the Appellate court have the following powers:
1. Reverse the finding and sentencing and acquit or discharge the accused or order for the retrial by a competent court, or committed for trial;
 2. Alter the maintaining, finding of the sentence, or;
 3. Alter the nature or the extent or nature and extent of the sentence, with or without altering the finding. However no power to enhance the sentence by the court.
- 4) If an appeal for enhancement of sentence, then the Appellate court have the following powers:
1. Reverse the finding and sentencing and acquit or discharge the accused or order for the retrial, or committed for trial;
 2. Alter the maintaining, finding of the sentence, or;
 3. Alter the nature or the extent or nature and extent of the sentence, with or without altering the findings with the power to enhance or reduce the sentence.
- 5) if the appeal is from any other order, then power to alter or reverse such order;

6) the appellate court can make any amendment or act incidental or any consequential order can be ordered which may seem to be just or proper to the court.

The section also includes a provision wherein it lays out conditions to the Appellate Court while exercising this power:

The conditions are as follows:

1. The Appellate Court shall not enhance the punishment unless the accused given an opportunity for such enhancement;
2. Further, the Appellate Court shall not inflict the punishment given by the court under appeal (trial court or lower court) unless the Appellate Court has a view that the punishment is inadequate.

In the recent case of State Of H.P vs Nirmala Devi, the Supreme Court held that the Appellate court shall not exceed its powers under Section 386 of Cr.P.C. beyond the statutory scheme provided under the Indian Penal Code. For example, to alter the sentence of imprisonment and fine with a sentence only of fine, the Appellate Court can not alter the order likewise where the consequences will be unjust and unfair.

Principles for Sentencing

The principle for sentencing developed through court decisions and legislation. And these principles form the sentencing decisions. The principles which are generally followed by the court are as follows:

- Excessiveness/Parsimony– the punishment which is given shall not be severe unless required.
- Proportionality– the sentencing shall fit to the overall gravity of the crime.
- Parity– the punishment should be similar for similar types of offences committed by offenders under similar situations.
- Totality– when an offender is punished with more than one sentence, the overall sentence must be just and appropriate which shall be proportional to the offending behaviour.
- Purpose– the sentencing shall achieve the purpose of the punishment. The purpose of punishment can be a deterrent, rehabilitative, protection of the public, etc.
- Simplicity and predictability– sentencing shall not be depending on the bias or personality of the judge. There shall be a clear and definite scheme of sentencing.
- Truthfulness- the sentencing shall reflect the actual term to be served by the prisoner in prison, so there shall be no place for ambiguity.

Aggravating Circumstances

The aggravating circumstances to which the Judges consider are as follows:

1. The surrounding of the crime itself;
2. The circumstances relating to the criminal's background;
3. The circumstances relating to the criminal's conduct;
4. The criminal's future dangerousness;

The other factors which are considered under aggravating circumstances are as follows:

- Professionalism and premeditation;

- Prevalence of offence;
- Offences committed in the group;
- Breach of trust.

In the case of Sangeet & Anr. v. State of Haryana, the court noted that the approach which was laid down in the case of Bachan Singh was subsequently not fully adopted by the courts. The mitigating factors and aggravating factors both need to be considered and balanced while sentencing a punishment to the accused.

Types of Punishments

1. Death Sentence

The death sentence is a punishment which is sanctioned by the government and ordered by the court where a person is put to death for a crime acted by him. It is also referred to as 'Capital Punishment'. The act of carrying out such practice is called execution. As per the Amnesty International survey, the report on as of July 2018 is 56 countries retain capital punishment and 106 countries have completely abolished capital punishment for all crimes. In India, the death penalty is given by the method of hanging. The other ways through which death sentences executed at world scenarios are stoning, sawing, blowing from a gun, lethal injection, electrocution, etc.

The subject of death sentence always has been a matter of controversy. While considering the Constitution as the supreme, the validity of death sentence v/s fundamental rights constantly came forward for the debates. However, the death sentences are rarely given in the Indian criminal courts. In the case of Bachan Singh vs State Of Punjab, the Supreme Court held that

capital punishment shall be given in the “rarest of the rare” case. However, what constitutes the “rarest of the rare cases” is not prescribed by the Supreme Court or by the legislature.

In the case of Jagmohan Singh v. State of Uttar Pradesh, the SC ruled that the approach towards imposing capital punishment shall be balanced on mitigating and aggravating factors of the crime. However, in the case of Bachan Singh, for the first time, this approach was called into question due to the amendments in the Cr.P.C. As per the amendment in the Cr.P.C. in the offence of murder the offender shall be punished with the sentence of life imprisonment. After taking due consideration of the amendment, the Court stated that capital punishment shall be given in special cases only. However, in the case of Sangeet & Anr. v. State of Haryana, the court noted that the approach laid down in Bachan Singh’s case is not fully adopted. The courts still give primacy to the crime and not to the circumstances of the criminal. The balance of the mitigating and aggravating factors have taken a bit of a back seat in ordering punishment.

The provisions under which the death penalty is given as punishment under IPC are as follows:

- Section 115– Abetment for an offence punishable with death or imprisonment for life (if offence not committed);
- Section 118– Concealing design to commit an offence punishable with death or imprisonment for life.
- Section 121– When armed rebellion (i.e. waging, abetting to waging of war or attempting to wage war) is made against the constitutionally and legally established government;
- Section 132– Uprising, supporting and encouraging the formation of the mutinous group of people in the nations armed forces;
- Section 194– With the intent to obtain a death sentence to an innocent by presenting concocted vexatious proof;
- Section 302– Causing murder of another;

- Section 305– Abetting suicide to an insane or minor person;
- Section 303– When a life convict person murders another person;
- Section 396– Causing dacoity with murder;
- Section 364A– Kidnapping;
- Section 376A (as per the Criminal Law Amendment Act, 2013)- Rape

Some other Acts under which the death penalty covered as punishment are:

1. Section 4, part II of the Prevention of Sati Act- Abetting or aiding an act of sati.
2. Section 31A of the Narcotic Drugs and Psychotropic Substances Act- Drug trafficking in cases of repeat offences.

However, the death penalty as a punishment is an exception to certain persons like intellectually disabled, pregnant women and minors.

Procedure When Death Penalty is Imposed

The death sentence is executed by two modes in India:

1. Hanging by the neck till death (this is mostly ordered by the Courts);
2. Being shot to death.

The various states of India have jail manuals that provide a method for the execution of death sentences. In accordance with Section 354(5) of the Code of Criminal Procedure Act, 1950 hanging by neck till death is the mode of the execution. After the death sentence is awarded by the court, the accused have the right to appeal the order. After exhausting all remedies and confirmation of the order, the execution is made as per procedure under Section 354(5) of Cr.P.C. The process of execution is provided separately under the Air Force Act, 1950, the Army

Act, 1950 and the Navy Act, 1957. However, the procedure under the above-mentioned defence acts is applicable to defence officers only.

The Prison manual of different states of India gives detailed instructions about the execution particulars. Some are as follows:

1. The prisoner who is convicted for death sentence shall be given a proper diet, examined twice a day. The officers shall satisfy that the prisoner has no article by which he can attempt for suicide.
2. The description of the rope and testing of rope.
3. Regulation of the drop while executing the hanging.
4. Time of executions.

Constitutional Validity of Death Penalty

The issue of the death penalty is not a recent issue. It has been discussed, studied and debated for a prolonged time. However, till today no conclusion is drawn about the abolition or retention of the provision. The death penalty has been the mode of punishment from the British era. Various countries have abolished this practice. However, in Arab countries the principle of retributive punishment i.e. “an eye for an eye” is practised. In the list of retention countries as mentioned above, India is one of them which have retained to give death penalty unless some ‘special reasons’ or ‘rarest of rare case’ condition arise.

Under Article 21 of the Constitution of India, the right to life and liberty is guaranteed, including the right to live with human dignity. There are certain exceptions that are recognized by the law wherein in the name of law and public order the state can restrict the rights. In Maneka Gandhi v. Union of India, the SC laid down the principle of “due process” through which a state can restrict

the citizens from enjoying their rights. In the case of the death penalty the due process can be as follows:

- Death penalty to be given in 'rarest of the rare' cases;
- The accused shall be given the 'right to heard';
- As per Article 136, the death penalty shall be confirmed by the High Court;
- Under Section 379 of the Cr.P.C., the accused have the right to appeal in the Supreme Court;
- Under Section 433 and 434 Cr.P.C., the accused may pray for commutation, forgiveness, etc. of the sentence.

In various cases, the constitutional validity of the death penalty was challenged. In the case of Jagmohan Singh v. State of U.P., the argument was that the death penalty is in violation of Article 14 (Right to Equality), Article 19 (Right to Freedom) and "right to life" i.e. Article 21, which has been unanimously rejected by the five-judge bench of the Supreme Court. Further, it was contended that as per Cr.P.C. the procedure is confined to findings of guilt and not awarding death sentence. However, the Supreme Court held that the death sentence is a choice by the court made according to the procedure established by law and the choice between capital sentence or imprisonment of life is based on the circumstances, nature and facts of the case brought during the trial.

In the case of Rajendra Prasad v. State of U.P., Justice Krishna Iyer had empathetically stressed that the death penalty is violative of articles 14, 19 and 21. With this the Justice Iyer said two conditions under which the death penalty can be given:

- While giving the death penalty the court shall record special reasons.
- Only in extraordinary cases the death penalty to be imposed.

However, in the case of Bachan Singh vs. State of Punjab, within one year the five-judge bench (4:1- Bhagwati J. dissenting) overruled the decision of Rajendra Prasad's case. The judgment expressed that the death penalty is not violative of Article 14, 19 and 21 of the Constitution of India and pronounced that in the "rare of the rarest case" i.e. those cases in which the collective conscience of the community is so shocked that it will expect the judiciary to deliver the death penalty on the accused the death penalty can be ordered. Although, Justice Bhagwati in his dissenting judgment stated that the death penalty is not only being violative to Article 14 and 21 but also undesirable because of several other reasons.

Further, in the case of Machhi Singh vs. State of Punjab, the Supreme Court laid down the broad outlines of the circumstances under which the death sentence can be imposed. The court pointed out that under five categories of cases the extreme penalty can be given. Those points are as follows:

1. Manner of commission of murder;
2. Motive;
3. The magnitude of the crime;
4. Anti-social abhorrent nature of the crime;
5. The personality of the victim of murder.

Similarly, in the case of Sher Singh v. State of Punjab and Triveniben vs. State of Gujarat, the Apex court asserted affirmatively that the death penalty does not invalidate the rights enriched under the Constitution of India.

In the case of Mithu v. State of Punjab, the Supreme Court held that the mandatory death penalty is invalid and unconstitutional in nature. However, no comments were made on the consequent legislation for drug and criminal offences wherein the death penalty is considered mandatory.

But at the same time, Indian courts actually applied the mandatory death penalty for these crimes.

However, recently in the case of Channu Lal Verma v. State of Chattisgarh, the question of the constitutional validity of the death penalty came to the three-judge bench. The Bench Constituted of Justice Kurian Joseph, Justice Deepak Gupta, and Justice Hemant Gupta. The bench upheld the decision of the Bachan Singh case. However, Justice Kurian Joseph had a different view, he said that “there is no substantial proof for the death penalty as a deterrent to crime”.

Evolving Parameters for Imposition of Death Sentence

The basic evolving parameters for the imposition of Death Sentence are:

1. The punishment shall not be so severe, so as to degrade the dignity of humans;
2. The state shall not arbitrarily inflict a severe punishment;
3. In a contemporary society such severe punishment shall not be unacceptable;
4. Such severe punishment must not be unnecessary.

However, there are other two questions which can be pondered by the Court while imposing the death penalty as punishment:

1. There is something uncommon in the crime which calls for the imposition of the death penalty and renders the sentence of imprisonment for life as inadequate.
2. Even after giving maximum weightage to the mitigating factors which are in favour of the offender there is no other alternative other than imposing the death sentence.

Sentencing Procedure: Mandatory Provision of Section 235(2), Code of Criminal Procedure 1973

In the '41st report of Law Commission', it recommended for the insertion of new provision which made a significant contribution in acknowledging the cardinal feature of procedural fairness and natural justice. Under the old code, there was no statutory opportunity given to the accused to explain the mitigating factor which is relevant to decide the nature of the punishment. However, after the recommendation of the Commission introduction of Section 235(2) and Section 248(2) of the Cr.P.C. was made. The new provisions provided an opportunity for the convict to place necessary information to the court to determine the mitigating factors and decide the case accordingly. Therefore, the choice of sentence shall be made after following the procedure under section 235(2) duly followed by the court. In the cases of death sentence the importance of "right of hearing" has been overemphasized.

In 1976, in the case of Santa Singh v. State of Punjab, the Supreme Court explained the nature and scope of Section 235(2). The Bench remarked that "The provision is an acknowledgement of the fact that sentencing is an important stage in the criminal justice administration as the adjudication of guilt. And in no case, it should be consigned to a subsidiary position. It seeks to personalize the punishment so that the reformist component remains as much operative as the deterrent element. It is, for this reason, the facts of social and personal nature, maybe irrelevant for guilt determination, should be brought to the notice of the court at the time of actual determination of sentence".

Further, the court also opined about the meaning of the word 'hearing'. The hearing is not only limited to the oral submissions but it is wider than that. It gives both parties the right to put facts and materials which can be essential for the questions of sentencing. The Court stressed on the point that it is mandatory for the lower courts to comply with this provision. Not complying with Section 235(2) will not only be considered as mere irregularity, but that shall vitiate the sentence.

In the case of Allauddin Mian v. State of Bihar, Justice Ahmadi emphasized the purpose of Section 235(2):

1. It gives the accused an opportunity of being heard, which satisfies the rule of natural justice;
2. To determine the sentence of the award it assists the court.

Case laws on Death Sentence (When the death sentence is confirmed)

(1) State of Tamil Nadu v Nalini

In the case of State of Tamil Nadu v Nalini, the case was filed as an appeal against the judgment of the High Court of Tamil Nadu. This case is popularly known as Rajiv Gandhi's assassination case. The offenders were accused under Indian Evidence Act, 1872, Indian Wireless Telegraphy Act, 1933, The Foreigners Act, 1946, Passports Act, 1967, Arms Act, 1959, Explosive Substances Act, 1908, Indian Penal Code, 1908 (IPC), TADA Rules, The Terrorist And Disruptive Activities (Prevention) Act, 1987. In the case, there were 26 accused out of which four accused were punished death penalty by the Apex Court. The accused were from the LTTE (Liberation Tigers of Tamil Eelam) group and were seeking revenge for the Indian government's decision for sending army troops in Srilanka. However, as per recent update Nalini Sriharan, V Sriharan, and Murghan have applied plea for mercy killing as there is no response to their mercy petition till date.

(2) Jai Kumar v State of Madhya Pradesh

In Jai Kumar v State of Madhya Pradesh case, an appeal by the grant of special leave against the order of the Division bench of the High Court of Madhya Pradesh was made. In this case, the accused brutally murdered sister-in-law and 7-year-old niece. The Court considered the factual

matrix of the case and observed that the act of murder was not done in the rage and the accused himself under Section 313 of the Cr.P.C admitted the murder. Thereby, the Supreme Court upheld the verdict of the Sessions Court and the High Court of Madhya Pradesh.

(3) Suresh Chandra Bahri v State of Bihar

The case of Suresh Chandra Bahri v State of Bihar was filed as an appeal from the High Court of Patna. The Sessions Court convicted the three appellants named Suresh Bahri, Gurbachan Singh and Raj Pal Sharma for the death penalty under Section 302 and Section 120 B of the IPC. The High Court of Patna dismissed the appeal affirming the sentence awarded by the trial court. In this case, the accused killed Urshia Bahri and her two children because of some dispute in the property. The Supreme Court confirmed the death penalty of Suresh Bahri, whereas the death penalty of the Gurbachan Singh and Raj Pal Sharma was commuted to a life sentence.

(4) Dhananjoy Chatterjee alias Dhana v State of West Bengal

In the 21st century, the case of Dhananjoy Chatterjee alias Dhana v State of West Bengal can be called as a historic case as the accused was the first person who was lawfully executed for a crime not related to terrorism. The accused was working as a watchman in the building of the deceased. He had raped and murdered an 18-year-old girl at her own home. The trial court ordered the death penalty under Section 302 of the IPC. The same has been confirmed by the High Court of West Bengal. While the appeal in the Supreme Court, the court held that case will be considered under “the rarest of the rare” case, thereby there will be no commutation of the punishment.

(5) Sushil Murmu v State of Jharkhand

In the case of Sushil Murmu v State of Jharkhand, the accused was punished with the death penalty for the sacrifice before Goddess Kali of a 9-year-old child. The accused made the

sacrifice for his own prosperity. The trial court held the accused liable under Section 302 and 201 of the IPC, 1860 and the Jharkhand High Court confirmed the death penalty. The Appeal was made to the Supreme Court, however, the Apex court upheld the order of the lower court and affirmed that this is an exemplary case which can be treated as the rarest of rare case, therefore there is no exception to be given to this case.

(6) Holiram Bardokti v State of Assam

In the case of Holiram Bardokti v State of Assam, there were 17 accused. The appellant is one of the accused who has been awarded the death penalty under Section 302 read with Section 149 of the IPC by the Sessions Judge. The same has been confirmed by the High Court of Assam. The accused was being held for two murders i.e. of Narayan Bordoloi, Padam Bordoloi and Nayanmoni (6-year-old child). The Supreme Court observed that the appellant had no spark of kindness or compassion while burning the bodies and cutting the body into pieces, the whole accident shocked the collective conscience of the community. Therefore, the Apex Court upheld the order of the lower courts and observed that the court is not able to find any mitigating factors to refrain from the death penalty.

Cases laws on Death Sentence (When Death Sentence has been Commuted to Life Imprisonment)

(1) Om Prakash v State of Haryana

In the case of Om Prakash v State of Haryana, the accused named Om Prakash was guilty of seven murders, thereby the Sessions court held him guilty under Section 302 of IPC, which was upheld by the High Court of Punjab and Haryana. There were two other accused but they were given life imprisonment and a fine of Rs.2000. During the appeal to the Apex Court, the court observed that mitigating factors of the case and considering other circumstances of the case, this

can not be counted under the rarest of rare cases. The court considering the background of the case found that the murder was acted due to constant harassment of the family members (deceased ones).

Further, the court observed that this is not the case which was committed to fulfil the lust for women or wealth, neither it is for money, the act does not include any anti-social element like kidnapping or trafficking, the act does not include any dealing in dangerous drugs, nor any act committed for political or power ambitions. And further, the accused was working in BSF at the age of 23 with no criminal antecedents. Thereby, the Apex Court converted the death penalty to the sentence of imprisonment for life.

(2) Rajendra Rai v. State of Bihar

In the case of Rajendra Rai v. State of Bihar, the accused were held guilty of the murder of Krishnandan (deceased 1) and Sir Bahadur (the son of deceased 1), as the accused and deceased had a dispute over the land situated between their houses. The Trial court-ordered death penalty and the High Court confirmed the order. However, the Apex Court was of the view that the case cannot be regarded under the rarest of rare cases. Thereby the death penalty was reduced to life imprisonment.

(3) Kishori v State of Delhi

In the case of Kishori v State of Delhi, the accused was in relation to the mob attack which occurred against the Sikh community immediately after the assassination of Mrs. Indira Gandhi, the then Prime Minister which broke out in several places including Delhi. The appellant was held to be a part of the mob. The Sessions court was of the view that the accused deserves a death sentence, as he has been convicted for several murders and he killed innumerable Sikhs in a brutal manner. The High Court of Delhi confirmed the order. However, the Apex Court had a

different opinion. The Court said that the acts conducted during the chain of events shall be considered as one. Further, the act of the accused was not a personal action, was just a part of the group activity which can not be called as a systematic or organized activity. Therefore, the Apex court felt that the act of the accused as a result of the temporary frenzy act, so the court reduced the death penalty to life imprisonment.

(4) State v Paltan Mallah & Ors

In the case of State Of M.P Through C.B.I., Etc vs Paltan Mallah, the deceased Shankar Guha Yogi, who was a popular and powerful trade union leader was killed. As he had been working for the welfare of the labour, the industrial unit at Bhillai and Durg wanted him to be out of their way. The deceased was the leader of the labourer organization named “CHATTISGARH MUKTI MORCHA” (‘CMM’). The workers at Bhillai asked for help in the protest. To help those labourers SG Yogi shifted to Bhillai with his servant Bahal Ram. There was a widespread movement, due to this, the leaders of the CMM were attacked by the industrialists. The deceased apprehended that there is a serious threat to his life. On the midnight of 27.09.1991, Bahul Ram heard a noise from the neighbouring room where the deceased was sleeping. The servant found Niyogi lying on the bed in pain because of gunshot injuries. However, the accused Paltan Mallah and others were acquitted by the Sessions and High Court due to lack of evidence. However, the Supreme Court reviewed the matter and reversed the order of acquittal by the lower court. As there was a long lapse of time from the lower court’s decision of acquittal to appeal, the court sentenced him to undergo imprisonment of life.

(5) Sambhal Singh v State of Uttar Pradesh

In the case of Sambhal Singh v. State of UP, wherein the four accused (Sambhal Singh, Jag Mohan Singh, Krishna Mohan Singh, and Hari Mohan Singh) murdered the three children of the Munshi Mall (deceased- the brother of the Sambhal Singh) because of a family land dispute. The

Sessions court found them guilty and the High Court confirmed the sentence. However, the Apex Court observed that the age of the four accused was not considered by the lower court. Sambhal Singh was old and the other three were young, therefore, the court reduced the punishment of death penalty to life imprisonment.

(6) Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka

In the case Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka, the accused was the second husband of the deceased Shakereh. The deceased came from a highly reputed and wealthy family. The accused murdered the deceased after a well-designed plan and executed it accordingly for attaining property which was on her name. The Session Court ordered the death penalty and the same was confirmed by the High Court of Karnataka. However, the Supreme Court converted the death penalty to life imprisonment. This is an important case from the point of view of sentencing and remitting the sentence. The Apex Court clearly differentiated the sentence of imprisonment for life from ordinary life imprisonment and held that the remission is not applicable to the cases where the imprisonment of life is given as a substitute to the death penalty, it means the accused will be in imprisonment till his last breath.

Commutation of Death Sentence by the State or Central Government Scope

The powers of commutation of the death sentence by the State and Central government is provided under the following provisions of the Constitution:

1. Article 72– gives pardoning power to the President.
2. Article 161– gives pardoning power to the Governor.

The difference between Article 161 and Article 72 are:

1. Article 161 is narrower than Article 72.
2. Article 72 covers the punishment sentenced by a Court Martial, however, Governor is not entitled with such powers.
3. Article 72 covers all death sentences, however, under the ambit of Article 161 death sentences are not covered.