

UPHOLDING THE FAIRNESS OF THE SENTENCING PROCESS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Mukesh Kumar Singh, Pawan Kumar Gupta, Akshay Kumar Singh and Vinay Kumar Sharma have been given seven days to exercise all their legal rights, after which they will, in all probability, be hanged to death for the rape and murder of a young woman in Delhi in December 2012. The trial court has also refused to permit their execution before the exhaustion of their legal remedies, in light of the order of the Delhi High Court.

Since the incident, the case has received great media attention. The subject of rape has since become a matter of national importance; often there are protests with demands for the perpetrators to be hanged. Public anger around the Delhi incident led to the national belief that the death penalty was the only appropriate outcome.

While public sentiment remains unchanged, it is important to realise that judicial processes demand dispassionate fairness that gives due regard to substantive requirements of sentencing. Failure to meet these demands raises serious concerns about fair trial rights of the accused, which is as important during sentencing as it is at conviction. This article discusses the manner in which public opinion and “society’s cry for justice” have played a huge role in the sentencing process at the trial as well as appellate levels of the judiciary in this case, and the implications of this on the fair trial rights of the convicts.

A Constitution Bench of the Supreme Court in *Bachan Singh v. State of Punjab* (1980) laid down the sentencing framework in capital cases, requiring sentencing courts to consider the aggravating and mitigating circumstances of the offence and the offender when deciding the question of punishment. Courts also have to discharge the burden of meaningfully considering whether the alternative option of life imprisonment has been unquestionably foreclosed. The death sentence can only be imposed in exceptional cases involving extreme culpability, and such exceptionalism cannot solely be rooted in the brutality of the crime.

The manner of imposition of death sentences by courts at all levels in this case sits uncomfortably with the basic tenet of *Bachan Singh*. These decisions do not meaningfully engage with the mitigating circumstances of the convicts leave alone fulfilling the obligation of unquestionably foreclosing the option of life imprisonment.

The sentencing orders of both the trial court and the High Court not only summarily dismissed mitigating factors on the basis of precedents but also went on to explain why any punishment lesser than the death penalty would not meet the demands of “justice”. The trial court commented upon the “extreme mental perversion of the accused”, which was “not worthy of human condonation” and also reiterated elements of the crime to highlight their “bestial behaviour”. The High Court elaborately discussed the exceptional nature of this case given the brutality involved to conclude that expecting society to demand anything other than the death penalty for the convicts would be “unnatural and ludicrous”. A plain reading of the sentencing orders makes it very clear that the public clamour for “hanging the rapists” made its way into the judicial decision-making.

Irrespective of the brutal nature of the crime, the circumstances of the convicts are crucial to the sentencing exercise and have to inform the punitive outcome. Recognising these deficiencies in

the sentencing hearings by lower courts, the Supreme Court took it upon itself to appreciate mitigating evidence. The Court allowed defence counsels access to the convicts and directed the defence counsel to file “necessary separate affidavits and documents on mitigating circumstances”.

While this is noteworthy, the decision to itself hear on the question of sentence and not send the case back to the trial court for a fresh sentencing hearing took away the right of the convicts to be heard on the issue of sentence by courts at three different levels. The evidence on mitigation that was presented before the Court in the form of affidavits included material on the socio-economic circumstances of the convicts, their family background and some information on their previous occupation.

The uncanny similarity between the mitigation affidavits of the defendants is itself a matter of concern, as it does not meaningfully present individual circumstances of the convicts, raising questions about the quality of legal representation. However, of graver concern is the manner in which the court dismissed these circumstances as irrelevant, given the circumstances of the crime in the case.

Confirming the death sentences for all, two concurring opinions remarked that the crime was bound to “shock the collective conscience” and any punishment lesser than the death penalty would “shake the confidence of the public” in the criminal justice system. After an unreasoned dismissal of individual circumstances of the convicts, the Supreme Court also failed to sufficiently answer why life imprisonment was unquestionably foreclosed. The Court failed to discharge any of these burdens.

At its core, imposition of death sentence to satisfy “collective conscience” is vengeance couched as retributive justice, captured by the phrase “an eye for an eye”. Modern penal systems consider this an outmoded concept, and even *Bachan Singh* had observed that retributive justice means punishment based on blameworthiness of the convict, and cannot be equated to “vindictiveness”. The sentencing requirements under the law do not have a place for bloodlust. However, the judgments in this case indicate a strong influence of collective conscience on the outcome. In fact, the Supreme Court’s approach suggests that society’s cry for the death penalty justifies the imposition of the death penalty, without adequately dealing with the question of life imprisonment.

The execution of the four convicts after exhaustion of their legal remedies may give their case a semblance of due process. However, concerns about the fairness of the sentencing process remain unanswered. While the public has very little patience to appreciate such nuances of the law, courts are duty-bound to maintain a high degree of fidelity to these processes. This should hold true especially in a case such as this which has seen loud and repeated calls for “hanging the rapists”.

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