



An abhorrent and unjust device

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Retention of the death penalty utterly undermines India's moral foundations

- On March 5, a three-judge bench of the Supreme Court delivered verdicts in three different death penalty cases.
- In two of those the court entirely exonerated the suspects, while in the third it not only found the accused guilty of murder, but also deserving of capital punishment.
- Individually read, the judgments typify the deep penological confusion that pervades India's criminal justice system.
- Collectively, the cases demonstrate how arbitrary the death penalty is, how its application is mired by a belief in conflicting values, and how the fundamental requirement of precision in criminal law has been replaced by a rhetorical cry for avenging crime by invoking the "collective conscience" of society.

Conjecture and farce

- In the first of the cases, Digamber Vaishnav v. State of Chhattisgarh, the chief testimony, which formed the backbone of the prosecution's case, was that of a nine-year-old child, who was, shockingly, not even an eye-witness to the crime.
- This, the court therefore ruled, was effectively a conviction premised on surmise and conjecture.
- Ankush Maruti Shinde v. State of Maharashtra, the second of the cases, saw a gut-wrenching series of events being reduced to macabre farce.
- In 2006, a trial court found six persons guilty of rape and murder and sentenced each of them to death.
- A year later, the Bombay High Court confirmed the finding of guilt, but commuted the sentences imposed on three of the individuals to life imprisonment.
- However, in 2009, the Supreme Court not only dismissed the appeals filed by those sentenced to death, but also, astonishingly, enhanced the

penalties of the three persons whose sentences had been commuted by ordering that they too be punished with death.

A 'rarest of rare' case

- Yet, we might have been forgiven for thinking that the court's experience in hearing Digamber Vaishnav and, especially, Ankush Maruti Shinde may have made it more circumspect in upholding death sentences.
- After all, if these decisions had shown us anything, it was that the judicial process is far from inerrant.
- But the collective conscience of society, represented through the court's capital punishment jurisprudence, it appears, is still alive and kicking.
- For in the third of the cases, in Khushwinder Singh v. State of Punjab, it not only affirmed the conviction of the accused, on charges of murdering six members of a family, but also gave its imprimatur to the award of the death penalty.
- The murders, the judgment holds, were "diabolical and dastardly" and the case fell into the "rarest of rare" categories where "there is no alternative punishment suitable, except the death sentence".
- The rarest of rare doctrine has its origins in Bachan Singh v. State of Punjab (1980).
- There, the court declared Section 302 of the Indian Penal Code, which prescribes the death penalty for murder, as constitutionally valid, but bounded its limits by holding that the punishment can only be prescribed in the rarest of rare cases.
- Since then, the court has repeatedly cautioned that capital punishment ought to only be decreed when the state can clearly establish that a convict is incapable of being reformed and rehabilitated.

Victims of the system

- That capital punishment serves no legitimate penological purpose is by now abundantly clear.
- There's almost no empirical evidence available showing that the death penalty actually deters crime.
- If anything, independent studies have repeatedly shown the converse to be true.
- In India, evidence also points to a disproportionate application of the sentence, with the most economically and socially marginalised amongst us suffering the most.

- The Death Penalty India Report (DPIR), released on May 6, 2016, by Project 39A of the National Law University, Delhi, for example, shows that 74% of prisoners on death row, at the time of the study, were economically vulnerable, and 63% were either the primary or sole earners in their families.
- In the face of this invidiously prejudiced application, the retention of capital punishment utterly undermines the country's moral foundations.
- Over the course of the last decade, the Supreme Court may well have expanded the rights of death row prisoners: delays by the President in disposing of mercy petitions now constitute a valid ground for commutation; review petitions filed by death row convicts now have to be mandatorily heard in open court. But as the judgments delivered on March 5 reveal, the very preservation of the death penalty creates iniquitous results.
- Not only are wholly irrational criteria applied to arrive at dangerously irreversible decisions, the law's application is made all the more sinister by invariably imposing these standards on the most vulnerable members of society.
- The Constitution promises to every person equality before the law.
- But capital punishment renders this pledge hollow.

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