

Death Sentence & its Relevance in Modern Times

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- 1.1 **Object of Sentencing Policy**: Object of sentencing policy should be to see that crime does not go unpunished and victim of crime as also the society has satisfaction that justice has been done to it. See : **Purushottam Dashrath Borate Vs. State of Maharashtra, (2015) 6 SCC 652 (Three-Judge Bench).**
- 1.2 **Sentencing as socio-legal process**: The Supreme Court held that “sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch” this process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. It is established that sentencing is a socio-legal process, where a judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the judges to give punishment, it becomes important to exercise the same in a principled manner. The Trial Court is obligated to give reasons for the imposition of sentence, as firstly, it is fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. See: **X vs. State of Maharashtra, (2019) 7 SCC 1.**
2. **Object of Penology** : The object of penology is to protect the society against the criminals by inflicting punishment upon them under the

existing criminal law. Social defence is the criminological foundation of punishment. See : **M.H. Hoskot Vs. State of Maharashtra, AIR 1978 SC 1548.**

3. **Different Theories of Punishment** : Following are the main theories of punishments to offenders :

- (i) Deterrent
- (ii) Preventive
- (iii) Retributive
- (iv) Reformative

4. **Punishments awardable to offenders**: Section 53 of the IPC provides for following punishments which can be awarded to offenders:

- (i) Death
- (ii) Imprisonment for life
- (iii) Rigorous imprisonment
- (iv) Simple imprisonment
- (v) Fine
- (vi) Forfeiture of property

5. **Policy of sentencing as declared by Supreme Court**: The Supreme Court while determining the questions relatable to sentencing policy has held as under:

- (i) The court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.
- (ii) In the opinion of the court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.
- (iii) Life imprisonment is the rule and death sentence is an exception.
- (iv) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature, circumstances of the crime and all relevant considerations.
- (v) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime. See **Ramnaresh vs State of Chhattisgarh, AIR 2012 (SC) (Cri) 711.**

6. **Death penalty awarded by Lord Krishna to Shishupal after hurling of 101 filthy abusive words at him** : Lord Krishna had killed Shishupal by his *Sudarshan Chakra* after Shishupal had hurled 101 filthy abusive words at him. Using abusive words in modern times is punishable under Section 504 of the Indian Penal Code, 1860 with imprisonment upto two years or with fine or with both.
6. **Lord Rama killed Bali for having adulterous relations with the wife of Sugreev, younger brother of Bali** : Lord Rama killed Bali for having adulterous relations with the wife of Sugreev, younger brother of Bali. The penalty in modern times in our country for the offence of adultery u/s 498 of the IPC is imprisonment upto two years or fine or both. In Ramcharit Manas, Goswami Tulsidas has depicted the event of killing of Bali by Lord Rama thus :
- मैं बैरी सुग्रीव पियारा, अवगुन कवन नाथ मोहि मारा ।
 अनुज वधू भगिनी सुत नारी, सुनु सठ कन्या सम ए चारी ।
 इन्हहिं कुदृष्टि बिलोकइ जोई, ताहि बधे कछु पाप न होई ।
7. **Death penalty to Ashwatthama, killer of the children of Draupadi, was found too kind** : During Dwapar era and after the world war of Mahabharat was over, Ashwatthama clandestinely killed all the sleeping children of Draupadi in the darkness of night. Pandavas launched a massive manhunt for Ashwatthama and ultimately caught him and brought to Lord Krishna to pronounce punishment against him for the heinous killing of the children of Draupadi. Everybody amongst pandavas except Udhishthir was demanding death penalty i.e. killing of Ashwatthama. But Lord Krishna said that awarding simple death penalty/killing of Ashwatthama would be too kind to him and not commensurate with the heinous crime that Ashwatthama committed. Lord Krishna pronounced the sentence against Ashwatthama to the effect that for three years Ashwatthama will wander on this earth planet all alone and invisible, stinking of blood and pus. The said

penalty awarded by Lord Krishna against Ashwatthama goes to suggest that the Indian society has always been quite harsh in awarding death penalty against the offenders by keeping the nature and the manner of commission of the crime.

8. **Method of testing guilt or innocence of accused in medieval England** : In Medieval England, truth was tested by putting a suspect under water or throwing him in fire considering that if he is truthful God will save him. Another test was that the suspect would have to carry a red-hot iron bar for nine paces and if he was burnt he was deemed guilty and was immediately hanged. Sometimes the accused was tied with the sack of sand and thrown in the river. If he sank he was considered truthful and if he floated he was thought guilty and was then hanged. In both the cases the accused had to die. These practices of lie detection were banned by law in England in 1215.
9. **Concept of blood money in Islam & killing by throwing stones on rapist** : In Islam, if the dependents/family members of a person killed do not accept blood money from the killer, in some of the Islamic countries, they are allowed to themselves kill the killer in public view. Similarly, the death penalty in Islam for rapist is killing by *sangsaar* i.e. killing in public view by pelting stones on the rapist.
10. **Execution of terrorists killing 150 young students in Pakistan** : Many of the terrorist who had killed 150 young students in their class rooms by point blank firearm weapons, were later on executed by the Govt. of Pakistan. Such crimes shake the collective conscience of the society.
11. **Rehabilitary & reformative aspects in sentencing** : Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behavior has to be countered not by undue cruelty

but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorism' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries. **See : Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**

12. **Relevant Considerations for Determining Quantum of Sentence:**
 The personality of the offender as revealed by his age, character, antecedents and other circumstances and the traceability of the offender to reform must necessarily play the most prominent role in determining the sentence. A judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed. **See....**
- (i) **Sushil Murmu Vs. State of Jharkhand, (2004) 2 SCC 338**
 - (ii) **Surjit Singh Vs. Nahar Ram, (2004) 6 SCC 513**
13. **Duty of prosecution & courts to collect past criminal history etc. of the convict before awarding sentence:** The investigating agency and courts are duty bound to collect addl. evidence regarding past criminal history etc. of the convicted accused before imposing sentence on him. The courts are further duty bound to collect additional evidence relating to possibility of reformation, rehabilitation and criminal past of the convict to impose appropriate sentence u/s 354(3) CrPC. The state

is obliged to furnish such materials to court. See : **Anil Vs. State of Maharashtra, (2014) 4 SCC 69.**

14. **Reformation, Rehabilitation and Reintegration of convicts into society:** Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasized. the process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible. See: **Rajendra Pralhadrao Wasnik vs State of Maharashtra, (2019) 12 SCC 460.**
15. **"Proper Sentence" what is ?** Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically. See : **Deo Narain Mandal Vs. State of UP (2004) 7 SCC 257.**
15. **Awarding lesser sentence than prescribed improper :** If the legislature has provided for a minimum sentence, the same should ordinarily be imposed save and except some exceptional causes which may justify awarding lesser sentence than the minimum prescribed (It was a case u/s. 3/7 of the E.C. Act, 1955). See---**Harendra Nath Chakraborty vs. State of W.B., 2009(1) Supreme 272.**

16. **Delay in disposal of appeal no ground for awarding sentence below minimum prescribed** : In the matter of conviction of an accused under Section 7 & 13(1)(d)(ii) of the P.C. Act, 1988, it has been ruled by the Hon'ble Supreme Court that delay in disposal of appeal is no ground for awarding sentence below minimum prescribed. See **A.B. Bhaskara Rao Vs. Inspector of Police, CBI, 2011 (75) ACC 619 (SC)**
17. **Loss of service due to conviction no ground for awarding sentence below minimum prescribed** : In the matter of conviction of an accused under Section 7 & 13(1)(d)(ii) of the P.C. Act, 1988, it has been ruled by the Hon'ble Supreme Court that delay in disposal of appeal is no ground for awarding sentence below minimum prescribed. Loss of job by the delinquent due to conviction and the quantum of amount taken as graft is also immaterial for reduction of sentence below the minimum prescribed. See : **A.B. Bhaskara Rao Vs. Inspector of Police, CBI, 2011 (75) ACC 619 (SC)**.
18. **Awarding meagre sentence counter productive and against the interest of the society**: Awarding meagre sentence by courts is counter productive and against the interest of the society. See... **State of UP Vs. Kishan, 2005(1) SCJ 390**.
- Note : *It was a case of conviction by trial court under section 304, part II of the IPC by the Sessions Judge, Sitapur (UP) who had awarded 7 years R.I. In appeal, the Lucknow Bench of the Hon'ble Allahabad High Court reduced the sentence to period already undergone in Jail without indicating as to what the period already undergone was. On appeal being filed by the State before the Hon'ble Supreme Court, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court with the direction to re-hear on the question of sentence.*
19. **Undue sympathy to impose inadequate sentence to harm the judicial system & undermine public confidence** : Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and

the society cannot long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence by having regard to the nature of the offence and the manner in which it was executed or committed. Imposition of sentence without considering its effect on the social order in many cases may in reality be a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. See---

- (i) **Mofil Khan vs. State of Jharkhand, (2015) 1 SCC 67**
- (ii) **State of Punjab Vs. Bawa Singh, (2015) 3 SCC 441**
- (iii) **State of M.P. Vs. Najab Khan & Others, (2013) 9 SCC 509**
- (iv) **Gopal Singh Vs. State of Uttarakhand, (2013) 7 SCC 545**
- (v) **Guru Basavaraj Vs. State of Karnataka, (2012) 8 SCC 734**
- (vi) **Sahdev vs. Jaibar, 2009 (67) ACC 483 (SC)**
- (vii) **State of M.P. vs. Sheikh Shahid, AIR 2009 SC 2951 (Three-Judge Bench)**
- (viii) **Sevaka Perumal vs. State of T.N., AIR 1991 SC 1463**

20. **Undue sympathy not to be shown to the convict in awarding sentence** : Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in

which it was executed or committed etc. See.....**Union of India Vs. Devendra Nath Rai, (2006) 2 SCC 243**

Note: *In this case the trial court had sentenced the convict/accused u/s 307, 324, 504 IPC to undergo ten years imprisonment which was reduced by the High Court to period already undergone.*

21. **Showing Undue sympathy to accused in awarding lesser sentence to harm the society and the judicial system** : Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine public confidence in the efficacy of law and the society could not long endure under such serious threats. It is, therefore, duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. See.... **Shailendra Jasvantbhai Vs. State of Gujarat, (2006)2 SCC 359**
22. **Proportion between crime & punishment**--- Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences. See--- **Sahdev vs. Jaibar, 2009 (67) ACC 483 (SC)**
23. **Principle of Proportionality to be observed in determining the quantum of sentence** : Sentence must be appropriate and

proportionate to the gravity of the crime. Where the accused was convicted for several offences, he cannot be sentenced to imprisonment for period longer than 14 years. Sentence of 20 years R.I. imposed on accused was set aside. when the court convicts an accused for more than one offence and directs the sentences to run consecutively and not concurrently, the aggregate sentence cannot exceed 14 years. **See...**

- (i) **Alister Anthony Pareira Vs. State of Maharashtra, 2012 (76) ACC 660 (SC)**
- (ii) **Chatar Singh Vs. State of MP, AIR 2007 SC, 319**

Note : *In this case 20 years aggregate sentence was consecutively awarded by MP High Court which was set aside by Supreme Court.*

24. **Inadequate sentence against the interest of Society** : Punishment awarded by courts for crimes must not be irrelevant. It should conform to and be consistent with the atrocity and brutality with which crime was committed. It must respond to society's cry for justice and criminals. **See... State of MP Vs. Kashiram, AIR 2009 SC 1642**

25. **Duration & meaning of "imprisonment for life"**---There is no provision of law where under a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. Section 57 does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. Sentence of imprisonment for life is for indefinite period. Government alone can remit sentence. Remission earned by convict is of little help. **See---**

- (i) **Gopal Vinayak Godse vs. State of Maharashtra, AIR 1961 SC 600 (Five-Judge Bench)** (*Known as Mahatma Gandhi murder case*)
- ii) **State of Haryana vs. Balvant Singh, AIR 1999 SC 3333**
- (iii) **Chatar Singh vs. State of M.P., AIR 2007 SC 319---** where interpreting Sec. 31 CrPC, it has been held that where the accused was convicted for several offences and 20 years aggregate sentence was consecutively awarded by the M.P. High Court, the same was illegal as u/s 31 CrPC the convict/accused could not have been sentenced to imprisonment for period longer than 14 years and sentence of 20 years rigorous imprisonment was set aside.

26. **“Life imprisonment” does not mean 14 or 20 years---** Interpreting the provisions u/s 53, 53-A, 55, 57 of the IPC, the Supreme Court has held that the expression “life imprisonment” is not equivalent to imprisonment for 14 years or 20 years. “Life imprisonment” means imprisonment for the whole of the remaining period of the convicted persons natural life. There is no provision either in IPC or in CrPC whereby life imprisonment could be treated as 14 years or 20 years without their being a formal remission by the appropriate government. See--- **Mohd. Munna vs. Union of India, (2005) 7 SCC 417.**

27(A). **Death penalty when can be awarded ?** A **Constitution Bench** of the Hon'ble Supreme Court in the case of **Bachan Singh Vs. State of Punjab, AIR 1979 SC 316 (Five-Judge Bench)** has laid down that the death sentence is constitutional but it should be awarded only in **rarest of rare** cases.

27(B). **Criteria to ascertain rarest of the rare case :** In the case of **Machi Singh Vs. State of Punjab, AIR 1983 SC 473**, the Supreme Court has laid down following criteria for denoting the rarest of the rare case :

- (i) brutal murder hurting the collective conscience of the society

- (ii) professional murder for wealth and money
- (iii) murder of the member of the SC/ST and Minority on account of caste and religion.
- (iv) mass killing
- (v) murder for dowry and sexual lust
- (vi) murder of child, helpless woman and old age person
- (vii) murder of popular and respectful leader
- (viii) Where the accused become dangerous for social security & fees.

27(C). **Death penalty when to be awarded? No death penalty if mitigating circumstances exist---** There have to be very special reasons to record death penalty and if mitigating factors in the case are stronger then it is neither proper nor justified to award death sentence and it would be sufficient to place it out of “rarest of rare category.” See--- **Sushil Kumar vs. State of Punjab, 2009 (6) Supreme 228.**

27(D). **Certain important decisions of the Hon'ble Supreme Court on 'death penalty' are as under:**

- (i). Jagmohan Singh Vs. State of UP, AIR 1973 SC 947
- (ii). Bachan Singh Vs. State of Punjab Vs. State of Punjab, AIR 1980 SC 898
- (iii) Machhi Singh Vs. State of Punjab (1983) 3 SCR 413
- (iv) Gopal Vinayak Godse Vs. State of Maharashtra, (1961) 3 SCR 440
- (v) State of MP Vs. Ratan Singh, (1976) 3 SCC 470
- (vi) Dalbir Singh Vs. State of Punjab, (1979) 3 SCC 745
- (vii) Maru Ram Vs. Union of India, (1981) 1 SCC 107
- (viii) Naib Singh Vs. State of Punjab, (1983) 2 SCC 454
- (ix) Bhagirath Vs. Delhi Administration, (1985) 2 SCC 580
- (x) Ashok Kumar Vs. Union of India, (1991) 3 SCC 498
- (xi) State of Punjab Vs. Kesar Singh, (1996) 5 SCC 495
- (xii) Laxman Naskar Vs. State of W.B., (2000) 7 SCC 726
- (xiii) Zahid Hussein Vs. State of W.B., (2001) 3 SCC 750
- (Xiv) Subhash Chander Vs. Krishna Lal, (2001) 4 SCC 458
- (xv) Shri Bhagwan Vs. State of Rajasthan, (2001) 6 SCC 296
- (xvi) Ram Anup Singh Vs. State of Bihar, (2002) 6 SCC 686
- (xvii) Delhi Administration Vs. Manohar Lal (2002) 7 SCC 222
- (xviii) Nazir Khan Vs. State of Delhi, (2003) 8 SCC 461
- (xix) Mohd. Munna Vs. Union of India, (2005) 7 SCC 417
- (xx) Alope Nath Dutta Vs. State of W.B., 2006 (13) SCALE 467
- (xxi) C.A. Pious Vs. State of Kerala, (2007) 8 SCC 213

27(E). **Recent recommendations of the National Law Commission on**

death penalty :The National Law Commission has recently submitted its report to the Central Government recommending death penalty only for two offences viz. (i) terrorism and (ii) sedition.

27(F). **Awarding death penalty is discretionary with the court:**

It is within the discretion of the court to pass either of the two sentences prescribed in the provision; but whichever of the two sentences the court passes, the judge must give his reasons for imposing a particular sentence. The amendment in section 367(5) of the old code does not affect the law regulating punishment under IPC. This amendment relates to procedure and now courts are no longer required to elaborate the reasons for not awarding the death penalty; but they cannot depart from sound judicial considerations preferring the lesser punishment. See: Bablu vs. State of Rajasthan, AIR 2007 SC 697.

27(G). **Triple-Test to be applied for awarding death penalty:**

Supreme Court has emphasized on applying triple-test viz. balancing test, aggravating circumstances test and rarest of rare test in deciding the death penalty by courts. The triple-test seemingly attempts to prevent the “judge-centric” capital sentencing as it focusses on the societal response to the crime and the circumstances relating to the crime and the criminal. It expects the sentencing judges to substitute their presumptions; values and predilections, by that of the community and informed societal preferences. However, the triple-test raises a few doubts about its claim of ensuring “people centric” sentencing. See:

- (i) Shabnam vs. State of Uttar Pradesh, (2015) 6 SCC 632.
- (ii) Mofil Khan vs. State of Jharkhand, (2015) 1 SCC 67. (Three-Judge Bench)

27(H). **Three-tests to be applied for sentencing of crimes:** Sentencing for crimes has to be analyzed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or anyone from the deceased group, adequately repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list). See: **State of Maharashtra vs. Udham, (2019) 10 SCC 300.**

28(A). **Article 72(3) empowers the Governor to pardon etc. death penalty also** : Article 72(3) of the Constitution reads thus : "*Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.*"

28(B). **Death penalty can be pardoned both by President & Governor** : Governor in exercise of his powers conferred on him by Article 161 read with Article 72(3) of the Constitution can suspend, remit or commute a sentence of death. Article 72 of the Constitution is quoted here as under :

"Article 72 : Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.--(1) The President shall have the 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---

(a) in all cases where the punishment or sentence is by a Court Martial;

- (b) *in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;*
- (c) *in all cases where the sentence is a sentence of death.*
- (2) *Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.*
- (3) *Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force".*

28(C). **Power of Governor to grant pardon in death penalty under**

Article 161 : As regards the question of powers of Governor to grant pardon under Article 161 of the Constitution in the matter of death penalty, the law declared on the point by the Hon'ble Supreme Court in the case of **G.V. Ramanaiah Vs. the Superintendent of Central Jail, Rajahmundry & Others**, AIR 1974 SC 31 being relevant, is quoted here thus :

"A plain reading of the entry No. 1 of List III-Concurrent List of Schedule 7 of the Constitution of India would show that the ambit of 'Criminal law' was first enlarged by including in it the Indian Penal Code, and, thereafter, from such enlarged ambit all offences against laws with respect to any of the matters specified in List I or List II were specifically excluded. The reason for such inclusion and exclusion seems to be that offences against laws with respect to any of the matters specified in List I or List II are given a place in Entry No. 93 of List I, and Entry No. 64 of List II in the Seventh Schedule. The Indian Penal Code is a compilation of penal laws, providing for offences relating to a variety of matters, which are preferable to the various Entries in the different Lists of the 7th Schedule of the Constitution. Many of the offences in the Penal Code relate to matters, which are specifically covered by the Entries in the Union

List, Examples of such offences are to be found in Chapter VII, offences relating to the Army, Navy and Air Force; Chapter IX-A, offences relating to Elections; Chapter XII, offences relating to coins and Government stamps; Chapter XIII, offences relating to Weights and Measures; and the bunch of Sections 489-A to 489-E, offences relating to Currency Notes and Bank Notes, which are preferable to Entries No. 4, 72, 36, 50 and 36 respectively of List I of the Seventh Schedule. This excluding clause in Entry No. 1, List III read with Entries Nos. 36 and 93 of the Union List, shows beyond all manner of doubt that in respect of offences falling under Sections 489-A to 489-D, only the Central Government is competent to suspend or remit the sentence of a convict." Since the criminal law including all the matters included in the IPC occurs at Entry 1 of List III-Concurrent List of Schedule 7 of the Constitution, therefore, in accordance with the provisions of Article 245 read with Article 246(2) of the Constitution, the power of the State Legislature also extends to making laws in criminal matters including the matters covered in IPC and, therefore, like the President of India under Article 72 of the Constitution, Governor of a State is also empowered under Article 161 of the Constitution to exercise his power of clemency in such cases where death penalty has been awarded by the courts. The petition dated 07.05.2011 of the convict/prisoner Surendra Koli is, therefore, maintainable under Article 161 of the Constitution.

28(D). **Death sentence can be commuted by Governor under Article 161 to life imprisonment:** Where the death sentence awarded to the convict/prisoner was commuted by the Governor of Assam under Article 161 of the Constitution to life imprisonment and the Governor's order was based on detailed consideration of entire record of notes put by the Chief Minister's Secretariat and more than adequate reasons

were available on record of the case, the order of the Governor commuting death sentence to life imprisonment was upheld by the Supreme Court by observing that non disclosure of reasons will not vitiate the order of the Governor for commutation of sentence. See : **Ramdeo Chauhan Vs. Bani Kant Das, AIR 2011 SC 615**, (paras 76, 82 & 83).

28(E). **Death sentence commuted to 30 & 20 years of imprisonment without**

remissions : The accused Sandeep was convicted for the offence u/s 302/34 and 316/34 of the IPC for having murdered her girl friend who was pregnant and had refused to abort. Her murder was committed inside car by hitting her with car tools like jack and spanner, cutting her with shaving blade and throwing acid on her. Murder was committed in a pre-planned and brutal manner. The accused was sentenced with death penalty and the same was also upheld by the Allahabad High Court. The Supreme Court, while upholding the conviction of the accused Sandeep, commuted the death sentence to life imprisonment with the condition that the main culprit Sandeep would serve minimum imprisonment for 30 years without remissions during the said period. The co-accused was ordered to serve imprisonment for minimum 20 years without remission. See..... **Sandeep Vs. State of UP, (2012) 6 SCC 107**(paras 74 & 75)

28(F). **Government cannot be restrained from granting remission before 20**

or 30 years of imprisonment where death penalty has been converted

by court into imprisonment of 20, 25 or 30 years : In the case of **Sangeet & Another Vs. State of Haryana, AIR 2013 SC 447** (paras 58 & 59), the Hon'ble Supreme Court has observed thus : "*A reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some*

cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done in Swamy Sharddananda's case (AIR 2008 SC 3040) and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively inject the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. It is true that a convict undergoing a sentence does not have right to get a remission of sentence, but certainly does have a right to have his case considered for the grant of remission as held in State of Haryana Vs. Mahender Singh, (2007) 13 SCC 606 and State of Haryana Vs. Jagdish, (2010) 4 SCC 216."

- 28(G). **Penalty of death sentence reduced to the entire natural life of the convict in jail** : Where the accused Swamy Shradhdhananda was convicted for the offences u/s 302 & 201 of the IPC and was sentenced to death for the said offence and in appeal the High Court had also affirmed the death sentence awarded by the City Sessions Judge, Bangalore City, a Three-Judge Bench of the Supreme Court though confirmed the conviction but reduced the penalty of death to imprisonment for life with the direction that the convict would not be released from jail for the rest of his life. However, the decision in Swamy Shradhdhananda's case was taken in the special facts of that

case. See : **Swamy Shraddhananda Vs. State of Karnataka, (2008) 13 SCC 767 (Three-Judge Bench).**

28(H). In a Three-Judge Bench decision dated 21.01.2014 of the Supreme Court in Writ Petition (Criminal) No. 55 of 2013, Shatrughan Chauhan & Another Vs. Union of India & Others, (2014) 3 SCC 1 several guidelines against the delayed execution of death sentence of prisoners have been issued as under :

- (i) Legal aid to the prisoner
- (ii) Speedy disposal of the mercy petition by the President/Governor
- (iii) Communication of rejection of mercy petition by the Governor to the prisoner
- (iv) Providing a copy of rejection order of the mercy petition to the prisoner
- (v) Minimum 14 days prior notice to the prisoner before execution
- (vi) Regular evaluation of mental health of the prisoner condemn to death
- (vii) Execution of the prisoner should be stopped when he is mentally and physically not fit for execution
- (viii) Providing copies of all relevant documents to the prisoner free of cost.
- (ix) Assisting the death sentence prisoner in making mercy petition
- (x) Arranging final meeting between the prisoner and his family before execution
- (xi) Post mortem of the body of the prisoner after execution of death sentence mandatory
- (x) Hanging by rope is constitutionally valid.

28(I). Delay in disposal of mercy petition entitles the prisoner condemned to death for commutation of the death penalty into life imprisonment :

Where the mercy petition of the prisoner condemned to death was not disposed of even after the period of three years and ten months, it has been held that such inordinate delay in disposal of the mercy petition was violative of Article 21 of the Constitution and the death sentence was commuted by the Supreme Court into life imprisonment. See: **Ajay Kumar Pal Vs. Union of India, AIR 2015 SC 715 (Three-Judge Bench).**

29.1 Death penalty for offence under POCSO Act upheld by Supreme

Court: The conviction of the appellant of the offences under sections 5/6 of the Protection of Children from Sexual Offences Act, 2012 (herein after known as POCSO Act) was upheld, and the sentences awarded to him were confirmed except the death sentence for the offence under section 302 IPC. The death sentence awarded to the appellant for the offence under section 302 IPC was commuted into that of imprisonment for life, with the stipulation that the appellant shall not be entitled to premature release or remission before undergoing actual imprisonment for a period of 30(thirty) years. See: **Pappu vs. State of Uttar Pradesh, (2022) 10 SCC 321**

29.2 Death penalty for gang rape and murder of young woman

upheld by Supreme court: The Trial court convicted the appellant-accused of the offence under section 302, 376(2)(g), 364 & 404 read with 120-B IPC and consequently awarded death sentence. It was further said that “it is true that any case of rape and murder would cause a shock to the society, but all such offences may not cause revulsion in society. The heinous offence of gang rape of an innocent and helpless young woman by those in whom she had reposed trust, followed by a cold-blooded murder, and calculated attempt to cover-up is one such stance of a crime which shocks and repulses the collective conscience of the community and the court. Therefore, the court agrees in holding that the case falls within the category of “rarest of rare”, which means death penalty and none else. Hence, the sentence of death awarded to the appellant-accused is confirmed. See: **Purushottam Dashrath Borate vs. State of Maharashtra, (2015) 6 SCC 652.**

29.3 No leniency in awarding sentence to a convict under POCSO Act

should be shown: The Supreme court while taking a very serious

note of sexual abuse of children has observed that any act of sexual assault or sexual harassment of the children should be viewed very seriously and all such offences should be dealt in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. It further said that by awarding a suitable punishment commensurate with the act, a message must be conveyed to the society at large that, if anybody commits any offence of sexual abuse, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. These cases are the shameful instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure. See: **Nawabuddin vs. State of Uttarakhand, (2022) 5 SCC 419.**

29.4 Conviction and death penalty awarded to convict of offences under POCSO Act set aside by Allahabad High Court: Where the trial court sentenced the accused to suffer death sentence under section 302, 376, 326-A, 354, 354A, 452 IPC and 7/8 and 5/6 POCSO Act. However, when the matter reached to High Court for confirmation of death sentence, the High Court held that in absence of proof of foundational facts with regard to commission of specified offences punishable under the Act, the benefit of presumption would not be available to the prosecution under section 29 of the Act, we have no hesitation on allowing the appeal and rejecting the reference. See: **Monu Thakur vs. State of U.P., (2022) Cr LJ 1838.**

29.5. Conviction and sentence of seven years RI for offence u/s 10 of POCSO Act upheld by High Court: The accused-appellant was convicted under section 10 of POCSO Act and was sentenced to undergo seven years rigorous imprisonment with a fine of rupees ten thousand and in default would undergo simple imprisonment for two months. The accused Amrita

Nand alias Tribhuvan Arjariya aged 60 years, who is the neighbourer called baba by the people of the locality, called his daughter victim X and gave her toffee and took her inside his house and tried to commit bad act with her. the court made following observation: The POCSO Act was legislated to eradicate the menace of the children who becomes the victim of the sexual offence. So, in view of above, the provision of the POCSO Act shall be interpreted in such a way so that this menace can be eradicated and in above circumstance the interpretation of the provision shall be taken with help of mischief ruling. **See Amrita Nand vs. State of UP, (2022) Cr LJ 1964.**

28(N). Compensation to victim under POCSO Act: The Delhi High Court in X's case deliberated on relevant factors to be considered in determining the compensation amount. The court referred to section 357A of CrPC, section 33(8) of POCSO Act, rule 9 of POCSO Rule, 2020, the order of the Supreme Court in Nipun Saxena and the Delhi Victim Compensation Scheme, 2018. It was held that in so far as the State of Delhi is concerned, if a victim applies for compensation to the DLSA or SLSA, the concerned authority is required to assess and pay compensation in accordance with the DVC Scheme 2018; however, if a victim applies for compensation under section 33(8) before the special POCSO court, the DVC scheme 2018 is not binding but serves merely as a "guideline" for the court to assess and pay compensation, whether at the interim or final stage. This position is in conformity with the mandate of the Hon'ble Supreme Court. See:

(i) X vs State, (2021) SCC Online Delhi 2061.

(ii) Nipun Saxena vs. Union of India, (2019) 13 SCC 715.

International Covenant on Economic, Social and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985: Referring to the abovementioned covenant of 1996 of the UN, the Supreme Court of India has made following observations in the case noted below:

Rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with the gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence and proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy. See: **Lillu alias Rajesh vs State of Haryana, AIR 2013 SC 1784 para 12.**

29.5 **Punishment for pornographic offences under POCSO Act:** The Punishment for these offences is directly proportionate to the severity of the offence. The court discussed the punishment provided for different kinds of sexual abuse of children to reflect on severity due to rising crimes against children. These offences include penetrative sexual assault (Section 3) that is punishable by imprisonment of not less than 10 years which may extend to imprisonment for life, in addition to payment of fine under section 4; aggravated penetrative sexual assault (Section 5) carries a rigorous imprisonment for a term of 20 years which may extend to natural life of the offender under section 6. Sexual assault (Section 7) carries imprisonment of not less than three years, and can be extended upto

five years with fine under section 8; aggravated sexual assault (Section 9) is punished by imprisonment of not less than five years and upto seven years with fine under section 10; and sexual harassment (Section 11) is punished by a term which may extend upto three years with fine under section 12. Punishment for using a child for pornographic purposes involves an imprisonment for a term of not less than five years and fine for a first-time offence, and upto seven years for a repeated offence. See: **Attorney General of India vs. Satish, AIR 2022 SC 13**

- 29.6 **Three years R.I. and Rs. 1 lakh as fine u/s 7 & 8 of POCSO Act held proper by Supreme Court:** Where the appellant was tried by the Fast Track Mahila Court, Dharmapuri for the offences punishable under section 7 read with section 8 POCSO Act. The victim at the relevant time was studying in class fifth and aged 13 years. Accused was convicted for the offence under section 7 of POCSO Act and was sentenced to undergo three years rigorous imprisonment, which is the minimum sentence provided under section 8 of the POCSO Act. The Trial court also passed an order to pay Rs. 1 lakh to the victim by way of compensation under rule 7(2) of the POCSO Rules, 2012. The Supreme Court held that after considering the object and purpose of POCSO Act as well as the evidence on record, the high court has rightly convicted the accused for the offence under section 7 of POCSO Act and has rightly sentenced the accused to undergo three years rigorous imprisonment which is the minimum sentence provided under section 8 of POCSO Act. See: **Ganesan vs. State represented by its inspector of police, AIR 2020 SC 5019.**
- 29.7 **Relevant considerations are selecting quantum of punishment to convict of sexual offences:** The Supreme court has held that following considerations should be taken into account by the courts

while awarding penalty to a convict held guilty for having committed sexual offences:

- (i) The nature and gravity of the crime;
- (ii) The circumstances surrounding the commission of the sexual assault;
- (iii) The position of the person on whom the sexual assault is committed;
- (iv) The role of the accused in relation to the person violated; and
- (v) The possibility of the rehabilitation of the offender. See **Patan Jamal Vali vs. State of Andhra Pradesh, (2021) SCC Online SC 342.**

29.8. Death Penalty to be awarded only when no other punishment but only death will serve the ends of justice: The Trial court convicted appellant under sections 363, 364, 376(2)(f), 302 and 201 IPC and awarded death sentence and the high court confirmed the conviction and sentence. The Supreme Court of India while commuting death sentence into life imprisonment held thus: “In the impugned judgement and order, the High Court has rightly noticed that life and death are acts of the divine and the divine’s authority has been delegated to the human courts of law to be only exercised in exceptional circumstances with utmost caution. Further, that the first and foremost effort of the court should be to continue the life till its natural end and the delegated divine authority should be to continue the life till its natural end and the delegated divine authority should be exercised only after arriving at a conclusion that no other punishment but death will serve the ends of justice. We have critically appreciated the entire evidence in its minutest detail and are of the view that not the extreme sentence of death to the appellant-accused but the sentence of life imprisonment would be adequate and meet the ends of justice. we are of the opinion that the four

main objectives which state intends to achieve, namely, deterrence, prevention, retribution and reformation can be achieved by sentencing the appellant-accused for life”. See: **Kalu Khan vs. State of Rajasthan, (2015) 16 SCC 492, para 32.**
