



CAN DELAY IN EXECUTION OF DEATH SENTENCES RENDER IT UNCONSTITUTIONAL?

Law

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KEYWORDS

Sentence of death awarded for gruesome, heinous, cold-blooded offences which shake the conscious of the society can it be commuted into life imprisonment on the ground that there was undue delay. Time memorial socialists, jurists have argued, on one side, that awarding of death sentence does not denude a prisoner from his basic right. However, the other view is that delay in arriving at a conclusion ultimately benefits the accused who continues to live instead of being executed immediately. The tug of war between Right of the accused under Article 21 of the Constitution and serving public interest has to be considered, not in isolation, but has to be seen with the equally competing right of the victims of heinous crime and the right of society to free itself from a person who is found to be involved in a dastardly, diabolic crime. The circumstances of the crime cannot be ignored even when inordinate delay takes place in execution of the death sentence.

Constitution of India embodies broad principles and idealistic notions of dignity, humanity and equality. Whether a form of torture, punishment or rehabilitation is inhuman or degrading should be assessed as by exercise of a value judgment which has to take account not only of the emerging consensus of values in the civilized international community, as evidenced by decisions of other Courts and eminent jurists, but also of the contemporary norms, prevailing in the country, along with the sensitivities of the civil society.

Prisoners are not, by mere reason of a conviction, denuded of all rights they otherwise possess. A prisoner sentenced to death does not, therefore, forfeit the protection afforded by under Article 21 of Constitution in respect of his rights while in confinement. The attitude of the Courts to delay in the execution of the death sentence varies from jurisdiction to jurisdiction. Certain Courts have held that a condemned prisoner is not entitled to rely on the delay brought about by his exploiting such avenues for appeal or reprieve as may exist. It is, however, highly artificial and unrealistic to discount the mental agony and torment experienced on death row on the basis that by not making the maximum use of the judicial process available the condemned prisoner would have shortened and not lengthened his suffering.² The mental agony of the prisoner, foreseeing the lingering death penalty every moment, is so intense that reduces the person to a mere skeleton

According to Professor Robert Johnson³ Death row is barren and uninviting. Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life, as interpreted in liberal mode, in Article 21 of the Constitution is construed not merely the physical act of breathing. It is not expected from humans to lead an animal existence life. The court, while interoperating the intention of legislature and foreseeing the situations that might crop up in future has expanded the scope of Article 21. All those aspects of life which art pre requisites o make a man's life meaningful and worth living are enshrined under this Article. In modesty it is the only Article in the Constitution which has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter like the bare necessities, the minimum and basic requirements which are essential and unavoidable for a person is the core concept of right to life.

The Law Commission of India in its 35th Report to the government justified its conclusion for retention of death penalty thus by stating that Having regards to the conditions in India, to the variety of social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment.

The International Covenant on Civil and Political Rights, to which India has become a party in the year 1979, does not abolish imposition of death penalty wholly. The fact remains that, among rational persons, a deep division of opinion on this issue, was itself, according to the court, a valid ground exists for entertaining the petition for commuting the death sentence in case of undue delay. The perceived majoritarian view supporting the entertainment of petition by the court is it does involve a question of public interest and is not unreasonable.

In *Bachan Singh v. State of Punjab*⁴ the Supreme Court held that "Judges should not be blood thirsty. A real and abiding concern for the dignity of human life postulates resistance to taking a life through laws' instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

In *T.V.Vatheeswaran v. State of Tamil Nadu*⁵ the issue was whether delay in execution of death sentence violates Art 21 of the Constitution and whether on that ground death sentence may be replaced by life imprisonment. A Division Bench held that prolonged delay in execution of death penalty is unjust, unfair, unreasonable and inhuman; which also deprives him of basic rights of human being, guaranteed under Article 21 of the Constitution i.e., right to life and personal liberty.

Therefore, delay is unconstitutional or not should however, be filtered through 'due process' i.e. just, fair and reasonable process as held in *Maneka Gandhi*.⁶ Reasonableness does not only constitute pronouncement of death sentence rather it extends till the proper and due execution of sentence. The court in myriad of cases has reiterated that speedy trial is an integral part of Part III of our Constitution and it is included under Article 21 and prolonged detention before execution of death sentence is violation of Speedy trial. Every terrorized moment where accused is waiting for due execution of death sentence must be treated as violation of the Constitutional mandate.

In the case of *Jagmohan Singh v. The State of U.P.*⁷ the Constitution Bench examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute does not provide any guidelines on how to exercise the same. It was held that the policy of the law giving a wide discretion to the judges in the matter of imposition of death sentence had its origin in the impossibility of laying down any standards for exercise of such discretion. However, the Court found that such discretion is liable to be corrected by superior courts, but the court did not find that conferment of such discretion on the judges was unconstitutional. In *Sher Singh v. State of Punjab*⁸ the court held that prolonged delay in the execution of a death sentence is an important consideration to determine whether the sentence should be allowed to be executed. Where there has been an undue delay, the defendant may meet his burden of showing prejudice through evidence which indicates a reasonable possibility of prejudice, or which establishes a plausible claim of prejudice.⁹ While the Supreme Court disposes of promptly the review and curative petitions following the confirmation of a death sentence, the President normally takes a number of years to come to a decision on a mercy petition. When a petition is finally rejected, the convict would have suffered extra imprisonment, which is not part of the person's sentence and therefore excessive and disproportionate to the punishment laid down under the law for the offence committed. In one of the cases, the Supreme Court recognized this as a legitimate ground to challenge the President's rejection of a convict's mercy petition and seek commutation of the sentence. But the fact remains, as to what constitutes "inordinate delay" in deciding a mercy petition. The unending debate in deciding this moot question is often left unanswered as the Supreme Court refuses to fix a time limit for the President to decide. It has to be

according to case to case.

The conferment of commuting a death sentence is plainly and indubitably discretion of a judge, while being within the ambit of the law. Though, at times, it might appear ludicrous but sometimes essential for rendering individualized justice. The death penalty is qualitatively different from a sentence of imprisonment. If a sentence of imprisonment is for two years or five years or for life, it is qualitatively the same, namely, a sentence of imprisonment, but the death penalty is totally different ball game. It is irreversible, in normal course; it is beyond recall or reparation; it simply extinguishes life of a person. The choice bestowed upon the judge to choose between life and death which the court is intricate as decision is often accompanied unaided, unguided without any legislative yardstick to determine the choice¹⁰

An ordeal which the prisoners undergoes facing living death each and every moment is within his right to knock the doors of the Court for examining the question whether, after all the agony and torment he has been subjected to, it is just and fair? Whether is act of crime superseding his basic right to live with dignity and without fear? It is here where the true implications of Article 21 will come into picture. The horizons of Article 21 can be stretch to unending limit and the final word on its conspectus can never be said. So long as our Constitution exists, it should be the endeavor of the Court to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation.¹¹

To sum up the court has beautifully explained in *Vadivelu Thevar v. The State of Madras*¹² held that if the court is convinced about the truth of the prosecution story, conviction has to follow. The question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. Therefore, mere delay alone does not constitute a right for the convict to demand commutation. Each case must be determined on its own facts, and when a convict claims that his right has been transgressed, a balancing test must be utilized, and the issue is generally determined on the basis of whether the delay was reasonable under all the facts and circumstances of the particular case. Court should exercise this power sparingly. On one hand justice has to be served to the society and on other hand right of accused to speedy trial. Before coming to any conclusion the court should consider (1) whether delay was uncommonly long, (2) reason for delay, (3) to prevail on claim, convict must establish that, on balance, separate factors weigh in his favor. Where convict failed to show any nexus between undue delay and prejudice asserted, and absence of actual prejudice fulfilled Court's burden to overcome presumption of prejudice. It will be a sheer travesty of justice and the course of justice, even when there has been undue, unreasonable delay, Article 21 would never encompass the survival of those people who are a menace to social order and security and where society demands the extinction of the life of such persons. Delay does not render the execution of the death sentence to be unconstitutional.

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