

JURISPRUDENCE OF DEATH SENTENCE IN INDIA

By

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- **Introduction**
- Jurisprudence & Jurists' Prudence
- Judicial Discretion-Legislative Scheme, Spirit & Rationale
- Death Sentence & IPC-Mandatory & Discretionary

- Death Sentence or Life imprisonment, as an alternative, is provided in 12 sections of IPC:
 - ✓ ss 120B; 121; 132; 194 Part 2; 195A Part 2; 302; 305; 307; 376A; 376E; 364A, and 396
 - ✓ S 354(3) of CrPC 1973-‘Special Reasons’ for imposing death sentence – Life imprisonment is a rule and death sentence is an exception
 - ✓ Confirmation-by concurrence of a Bench of 2 Judges of the High Court [s 366]

- ✓ ‘Special Reasons’ **and** balancing of A & M circumstances [*Jagmohan Singh v UP* [(1973)]]
- ✓ Death sentence - the ‘rarest of the rare cases’ for ‘special reasons’ [*Bachan Singh v Punjab* [(1980)]]
- ✓ ‘Balance sheet’ of A & M circumstances needs to be drawn to decide whether the case is the ‘rarest of the rare’ or not [*Machhi Singh* (1983)]
- ✓ But: *Machhi Singh* was incorrectly decided and its ‘balance-sheet’ approach was mistaken [*Sangeet v State of Haryana* [(2013), Per Radhakrishnan & Madan Lokur, JJ]]

- ✓ They concluded:
- ✓ 1. *Bachan Singh* has not endorsed the approach of aggravating and mitigating circumstances-however this approach is followed in several cases.
- ✓ 2. ‘ A balance sheet’ between aggravating & mitigating cannot be drawn up for comparing the two’.

- ✓ 3. In sentencing process, both the crime and the criminal are equally important.
- ✓ 4. In capital offences, sentencing has become judge-centric rather than principled- sentencing
- ✓ 4. The Supreme Court has not encouraged standardization and categorization of crimes
 - Different judicial voices on ‘the rarest of the rare cases’ and ‘special reasons’
 - The crime test, the criminal test and the R-R Test- and **not** the ‘balancing test’

- Individualized Sentencing vs Guided exercise of discretion-A Glance
- ✓ Does arbitrary exercise of judicial discretion in opting for ‘death’ or ‘life’ (differentially treating the capital convicts placed in similar situations) not violate the equality clause under art 14 or the due process requirement under art 21 of the Constitution?
- ✓ Does such a sentencing system not become constitutionally arbitrary?

- **Standardization of A & M circumstances or of sentencing process and by whom?**
- ✓ Justice Malimath Committee (2003)
- ✓ Madhava Menon Committee (2008)
- ✓ Legislature-not acted upon-left it to the judiciary to for setting constraints on its judicial discretion
- ✓ Judicial response to the statutory restrictions on the judicial discretion

- ✓ Apex court-standardization of circumstances only-not streamlining sentencing process or theorising sentencing
- ✓ The principle of ‘Just Desert’-pre-requisites & genesis
- ✓ What needs to be done ?

“The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'”.

[Benjamin Cardozo]