

# FACING THE CHALLENGE OF ALTERNATIVES TO THE DEATH PENALTY

BY SUMEET VERMA  
ADVOCATE  
SUPREME COURT OF INDIA  
& DELHI HIGH COURT

# POSSIBILITY OF REHABILITATION AS A LEGAL ARGUMENT TO CONVINCING JUDGES NOT TO IMPOSE DEATH SENTENCE

- The Constitution bench of the hon'ble Supreme court of India in *Bachan Singh Vs. State of Punjab* [(1980) 2 SCC 684] expounded a Balance Sheet theory of Aggravating and Mitigating Circumstances along with the Rarest of rare test and inter-alia enlisted the following mitigating circumstances:-
  1. The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
  2. The probability that the accused can be Reformed and Rehabilitated.
- It was categorically laid down in *Bachan Singh's* judgment that the State shall by evidence prove that the accused does not satisfy these conditions.

# STATE Vs. BHARAT SINGH

[2015 (217) Delhi Law Times 640]

This was a landmark case argued by me before the Division Bench of High Court of Delhi wherein for the first time a PROBATION OFFICER working with the State Government was appointed to submit his report on:-

1. Is there a probability that, in the future, the accused would commit criminal acts of violence as would constitute a continuing threat to society?
2. Is there a probability that the accused can be reformed and rehabilitated?

- The court in Bharat Singh's case directed the Probation Officer to:
  1. Enquire from the jail administration and seek a report as to the conduct of the accused while in jail. The jail authorities to extend their full co-operation to the PO in this regard.
  2. Meet the family of the accused and the local people even if it requires travelling to the place from where the accused hails. He will seek their inputs on the behavioral traits of the accused with particular reference to the two issues highlighted.
  3. The PO shall consult and seek specific inputs from two professionals with not less than ten years experience from the fields of Clinical Psychology and Sociology.
  4. The State, through the Secretary of Home Department will make appropriate arrangements and reimburse the expenses incurred for the PO to comply with the directions issued.

**FACTS:** Bharat Singh's case came up for confirmation of the Death Sentence granted to him by the 1st trial court for the offence of brutally raping a three year old child thereby causing her death.

Though **my argument** that the intention of accused was at best to commit rape and not to murder her did not absolve him of the offence of murder but it had an impact over sentencing. I argued that the State had not discharged its onus by leading any evidence to prove that the accused could not be reformed or rehabilitated. I placed reliance upon several judgments laying down that Death Sentence cannot be granted until the State discharges its burden by leading fresh evidence at the stage of Sentencing to show that the accused is incapable of reformation and rehabilitation and would be a continuing threat to the society.

For seeking an Order for appointment of a Probation officer, I relied upon the following two judgments of the Supreme Court of India:

1. Birju v. State of M.P [(2014) 3 SCC 421]-

“In our view, while awarding sentence, in appropriate cases, while hearing the accused under Section 235(2) Cr.P.C, Courts can also call for a report from the Probation officer, while applying the Crime Test guideline No.3 as laid down in Shankar Kisanrao Khade’s case (supra). Court can then examine whether the accused is likely to indulge in commission of any crime or there is any probability of the accused being reformed and rehabilitated.”

2. Anil @ Anthony v. State of Maharashtra [(2014) 4 SCC 69]-

“Many a times, while determining the sentence, the Courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the Court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. Facts which the Courts, deal with, in a given case, cannot be the foundation for reaching such a conclusion, which as already stated, calls for additional materials.”

## RESULT IN BHARAT SINGH'S CASE:

- The court considered the detailed Social Investigation Report filed by the Probation officer including the recommendations that the feeling of repentance needs to be developed through reformative and corrective services and it will take a long process for reformation and reintegration into the society. The court also took note of the conclusion of Professors of Clinical Psychology and Clinical Psychiatry that there is nothing to suggest that the Appellant cannot be reformed and reintegrated, and put on to reformative process through social corrective measures.
- The Court gave a finding that there exists a probability that the convict can be reformed and rehabilitated and hence his Death sentence was converted to Imprisonment for Life.

# Grant of PAROLE- Part of Rehabilitation and Reformation process

- Though there was an embargo in the grant of Parole to a convict of murder and rape of children under Clause 12.5 (b) of the Parole/Furlough Guidelines 2010 (applicable in Delhi), I argued the Writ Petition filed by Bharat Singh [W.P (Crl) 1305/2015] which was allowed and he was granted Parole for a period of Three weeks which he availed and thereafter surrendered back to jail.
- Another notable case argued by me was a Death Sentence Reference in Om Prakash & others which was a Honour Killing case of Double murder wherein the two ladies of the house were acquitted and Om Prakash's Death Sentence was commuted to Life Imprisonment with a minimum of 20 years of incarceration. Even in this case there was an embargo in grant of parole, but my arguments in a Writ Petition (Crl) 468/2016 were accepted by the Delhi High court and Om Prakash was granted Four weeks Parole.

# MY EXPERIENCE OF ARGUING SOME OF THE MOST SENSITIVE AND HIGH PROFILE CASES OF THE COUNTRY

1. STATE V. VIKAS YADAV & ANR. (KATARA MURDER CASE)- This was a high profile case of allegedly Honour Killing wherein I defended the Appeal for Enhancement of Sentence from Life sentence to Death Sentence for the main accused who was son of a Parliamentarian, primarily on the ground of possibility of his Rehabilitation and Reformation.
2. SUSHIL SHARMA V. STATE (TANDOOR MURDER CASE)- This was one of the most sensitive case in the history of India wherein Sushil Sharma (a politician) was granted Death Sentence by the Trial court which was confirmed by the Delhi High court, for killing his wife and burning her body in a Tandoor (indigenous oven). However his death sentence was commuted to Life imprisonment by the Supreme Court of India primarily on the ground that the State had not led any evidence showing that he was incapable of being reformed and rehabilitated. I have argued several writ petitions for Sushil sharma resulting in grant of several paroles to him including an Unconditional Parole for an indefinite period granted by the Delhi High Court during the pendency of Final order to be passed on the recommendations of Sentence Review Board.

# LEGAL ARGUMENTS TO COUNTER THE RELUCTANCE OF JUDGES TO IMPOSE A SHORTER PRISON SENTENCE IN LIEU OF A LIFE SENTENCE

- The salutary principle quoted by **Burghess, J.C** in 1897 in a case from Upper Burma i.e. *Nga Ku Vs. Queen Emperor* [(1897) U.B.R 330 (334)] is:  
“To shut up a man in prison longer than really necessary is not only bad for the man himself, but also it is a useless piece of cruelty, economically wasteful and a source of loss to the community.”

- As regards Offences like Murder (Section 302 I.P.C) and Kidnapping for Ransom (Section 364A I.P.C) etc. where the prescribed sentence is Death or Life Imprisonment only, the Sentencing court should be persuaded not to grant the sentence of Death but only Life imprisonment subject to power of the Executive to grant Remission of sentence after having undergone the minimum statutory period of sentence (14 years u/s 433A cr.p.c in India).
- The Eligibility for Premature Release (of a Life convict) has been laid down by the National Human Rights Commission in India in its letter no. 233/10/97-98 (FC) dated 23<sup>rd</sup> Sept, 2003 addressed to all the State Governments wherein it has been stated:
- Every convicted prisoner undergoing sentence of life imprisonment shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment without remissions; considering the
  - a) Circumstances in which the crime was committed and other relevant factors like;
  - b) whether the convict has lost his potential for committing crime considering his overall conduct in jail;
  - c) the possibility of reclaiming the convict as a useful member of the society; and
  - d) socio-economic condition of the convict's family.

The total period of incarceration in such cases should ordinarily not exceed 20 years including remissions.

However in heinous cases such as murder with rape, murder with dacoity, murder for dowry, murder of a child, multiple murder, murder during parole, murder in a terrorist incident etc. the Period of incarceration inclusive of remissions should not exceed 25 years.

In appropriate cases Writ petitions can be filed in Court against refusal of grant of remission of Life sentence if the convict satisfies the Eligibility Criteria as per the Sentence Review Board Guidelines

- In all other offences which prescribe alternatives to the Death Sentence as not only Life imprisonment but imprisonment for a fixed period, such as Dacoity with murder (S. 396 I.P.C), Rape (S. 376A I.P.C), Attempt to murder by a life convict (S. 307 I.P.C), Abetment of suicide of a child or insane person (S. 305 I.P.C) etc.; it should be argued to grant the minimum possible sentence due to possibility of Rehabilitation on account of inter-alia the following factors:

1. No past criminal antecedents- First time offender
2. Age of the convict- Young(little above 18 years) or Old
3. Having roots in the society- Education and Job etc.
4. Composition of family- Any dependent family members



**THANK YOU**