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Sensational Criminal Cases in India – A Study on the Recent Developments

MOHAMMED FARHAN C[1]

ABSTRACT

India is the second most populous country in the world and with increase in population, the crime rate also shoots up. Sensational crimes are those heinous crimes which leaves a nation shell-shocked and deeply affects the standard of living for law abiding citizens who wish to live peacefully in their social environment. Some of the popular sensational cases are the Parliament attack case, Mumbai terror attack case, Nirbhaya rape case, Unnao rape case, Kathua rape case and the recent Hyderabad rape case.

The nation at large is affected by such sensational crimes causing a sense of insecurity among all. Huge controversies are created in the news and social media platforms like Twitter and Instagram about these crimes. Some Human Rights activists and advocates opine that the death sentence awarded to the convict is definitely not a solution, while some members of the Parliament demand stringent punishments for the convicts.

This research paper highlights the present stance of the Supreme Court in the sensational criminal cases of the past. The research paper is divided into two sections. One section deals with those sensational cases that involve actions committed against the state like terrorist activities. The other section deals with sensational rape cases which has brought out a huge wry among the women of the country.

In the light of the recent guidelines put forth by the Apex Court in the appeal filed by the Nirbhaya rape case convicts, the research paper discusses the sensational criminal cases where the Supreme Court is going beyond its normal way of interpretation and enunciates new principles in order to act as precedents for upcoming cases.

This research paper seeks to provide relevant solutions on how the Supreme Court can deal with such sensational cases and provide speedy justice keeping in mind the concept of public consciousness. Secondary sources of information like acts, journals, newspapers, reports, etc. were used to carry out this research.

[1] Author is a student at St. Joseph's College of Law, India.

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I. INTRODUCTION

"It would be very difficult, if not altogether impossible, to establish any principle upon which the justice or expedience of capital punishment could be founded in a society glorying in its civilization... Now, what a state of society is that, which knows of no better instrument for its own defence than the hangman, and which proclaims through the 'leading journal of the world' its own brutality as eternal law?"[2] ~

Karl Marx

Sensational crimes are those heinous crimes which leaves a nation shell-shocked and deeply affects the standard of living for law abiding citizens who wish to live peacefully in their social environment. Sensational crimes cause a lot of controversies and discussions among all. The media publicises such cases and many debates, polls and shows are conducted about it in all coverages.

For the purpose of this study, I have chosen sensational cases after the year 2000. The past two decades has experienced many sensational cases and the Supreme Court has come out with interesting interpretations when the cases were brought before it. This paper highlights two aspects of sensational cases: Sensational cases where actions are committed against the state; Sensational rape cases.

II. SENSATIONAL CASES WHERE ACTIONS ARE COMMITTED AGAINST THE STATE (LIKE TERRORIST ACTIVITIES).

(A) Acts associated

In this divided world, there is not a single country where the threat of terrorism does not exist. Many South-Asian countries including India have been facing possible threats at the hands of the terror organisations and many acts have been done by them to spread hate and violence. These incidents have found to be having complex international linkages and possible connections with transnational organised crime.

India has come across many instances in the past few years where large-scale terrorism is sponsored from across the border. These attacks have taken place not only in military areas but also in form of terror attacks and bomb blast. With all this in mind, India needs to have stringent laws in order to prevent the threat of terrorism which is ever-growing.

Throughout the world, a number of countries have come forward with appropriate and

[2] Marx, K., 1853. New-York Tribune 1853. *Capital Punishment. — Mr. Cobden's Pamphlet. — Regulations of the Bank of England*, https://www.marxists.org/archive/marx/works/1853/02/18.htm

stringent legislations to counter terrorism. India has also come up with many laws which have been revised from time to time as per the needs.

The Unlawful Activities (Prevention) Act, 1967 has given the power to certain authorities to declare the acts of any association as unlawful if it is carrying out unlawful activities. An ordinance was passed in 2001 i.e. the Prevention of Terrorism Ordinance (POTO) where the State Authorities were given excessive power to investigate, detain and prosecute on terror offences. After the Parliament was attacked, the Ordinance was made into Prevention of Terrorism Act (POTA) in 2002. There were many prolonged and illegal detentions made in the exercise of this law. Thus, it was highly criticised by the media and human rights groups. The Act was mainly used to target opposition party leaders. The constitutionality of POTA was questioned in the People's Union for Civil Liberties v. Union of India[3]. The Supreme Court upheld the Act but put bars on the arbitrative usage. A new Central Government formed repealed the Act in September, 2004.

The Unlawful Activities (Prevention) Amendment Act, 2019 amended the Unlawful Activities (Prevention) Act, 1967 and brought in changes wherein such a person can be notified as a terrorist by the State without a procedure established by law. Association for Protection of Civil Rights (APCR), an NGO has filed a writ petition in the Apex Court challenging the constitutional validity of sections 35 and 36 of Unlawful Activities (Prevention) Amendment Act, 2019. The petitioners contend that the amendments did not pass the test of reasonable classification as there is no rational nexus between the object and means adopted to meet them. The plea said that it is unclear as to what legitimate aim does the state seek to achieve by declaring a person as a terrorist without even providing an efficacious remedy to challenge his notification.

Terrorist and Disruptive Activities Prevention Act (TADA) was the first anti-terrorism law by the Government which defined terrorist activities and aimed to counter them. The Supreme Court in the case of Arup Bhuyan v. State of Assam[4] held that mere being a part of a terrorist organisation is not sufficient to be held liable under this Act.

(B) Parliament Attack Case

The attack on the Parliament in 2001 is one of the most shocking cases for the nation in the past two decades. There were more than hundred people present including popular politicians inside the building at the time of the attack.

[3] *People's Union for Civil Liberties v Union of India*, Writ Petition (Civil) No. 389 of 2002
[4] *Arup Bhuyan v State of Assam*, (2011) 3 SCC 377

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The judgment[5] states that there is no doubt that this is the rarest of rare case. Even the idea of overpowering the sovereign democratic nation is a terrorist act of severe gravity. The conspiracy which had the potential of causing enormous casualty and dislocating the Government was a very heinous crime. It would lead to disruption of normal life for the whole country and thus, is unpardonable. The death penalty is the most suitable punishment for such a crime.

Afzal Guru's death penalty was confirmed by the Supreme Court and he was executed. A lot of controversy started thereon. Many articles on the internet still claim that the hanging was a stain to the Indian democracy. An article in 'The Guardian'[6] says that the days after the attack, the Delhi Police Special cell which was popular for its fake encounters had claimed to have cracked the case. On this, they arrested GAR Gilani and Afzal Guru and subsequently, Afsan Guru. There was a movie made on it based on the police charge sheet. It was played before the hanging took place under the pretext that the media will not affect the decision of the court. Later, the accused were acquitted by the High Court but subsequently, the Supreme Court charged Afzal Guru three life sentences and two double sentences. The Supreme Court in its verdict acknowledges that there is and could be no evidence of the criminal conspiracy. The sentence was given as the entire nation was shaken and to satisfy the collective conscience of the people which would happen only when the punishment is awarded to the offender.

Section 25 of the of the Indian Penal Code reads, "When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone". There were many conspirers name which came forward in the investigation but only Afzal Guru was arrested. It is said that he was not even aided with a lawyer at the time of the trial.

The death penalty was also carried out in a haphazard manner wherein the parents were not informed of the hanging. He himself was informed two hours before his expiry. The only person notified was the Chief Minister of Jammu & Kashmir in order to prevent any harmful reactions of the capital punishment in the valley.

[5] *State (NCT of Delhi) v Navjot Sandhu @Afsan Guru*, AIR 2005 SC 3820: (2005) 11 SCC 600: (2005) 2 SCC (Cr) 1715.

[6] Roy, Arundhati. "The Hanging of Afzal Guru Is a Stain on India's Democracy | Arundhati Roy." The Guardian, 10 Feb. 2013. www.theguardian.com,https://www.theguardian.com/commentisfree/2013/feb/10/hanging-afzal-guru-india-democracy.

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III. SENSATIONAL RAPE CASES

(A) Nirbhaya Gang Rape Case

The Nirbhaya Rape Case brought a huge wry and cry among the women community and thousands took to the street to protest for demanding justice for the victim. The whole nation was in shock to learn about such a brutal rape where one of the accused was a minor and he had committed the most gruesome acts.

The Nirbhaya case is the 5th case in the 21st century where the convicts are hanged to death in our country. This came after the hangings of Rapist and Murderer Dhananjoy Chatterjee in 2004, 26/11 Mumbai Terror Attack convict Ajmal Kasab in 2012, Parliament Attacker Afzal Guru in 2013 and Mumbai bomb blast financer Yakoob Memon in 2015.

We must question whether the hate prevailing in the society is having any impact on the judgment delivered by the Supreme Court? There is tremendous amount of hatred which is being spread across people because of the gruesome acts committed by the miscreants. The judgment of Mukesh & Anr. v. State for NCT of Delhi & Ors.[7] said that the accused may not be hardened criminals. They have committed some gruesome acts which has shaken the collective conscience of the society. The media and the people demanded for the hanging of the rapists and the Supreme Court has responded to their cry. But, are we doing the right thing? Is there no chance of reformation of the rapists? The people believe that the hanging will bring in a feeling of fear in the society which will prevent rapes again. But is it really the case?

After the Nirbhaya case, the law was made more stringent including the doubling of the sentence to 20 years. This has had an impact on the reporting of the rape cases but no effect is seen on the reduction of rapes. There has been an increase from 24923 rapes in 2012 to 33707 cases in 2013 and a further increase to 36735 in 2014. The death sentence awarded to the rapist has had no effect in the society.

The delay in execution of the death sentence of convicts of the Nirbhaya Case had created a huge amount of controversy among the public. The Supreme Court during this controversy came out with guidelines vide a circular, in which the appeal filed to the Supreme Court against the death sentence of a convict must be listed to be heard within 6 months irrespective of whether the appeal is ready or not. This move by the Apex Court of our country can be considered to be a good one keeping in mind the backlog of cases which the Court has to cater to.

[7] *Mukesh & Anr. v State (NCT of Delhi) and Ors.*, (2017) 3 SCC 719

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One of the accused filed a last-minute writ petition, but the Supreme Court held that the convicts had exhausted all their legal remedies and thus, their capital punishment was affirmed. The Supreme Court also dismissed Akshay Singh's plea challenging rejection of mercy petition by the President. The convicts lawyer tried an ultimatum by asking a stay for execution on the grounds of pendency of various legal applications in different courts. The Delhi High Court heard the petition at 9 pm of the previous day of hanging. The judges slammed the convicts advocate for making unimportant points in the 11th hour. The four convicts were hanged at the Tihar Jail at 5:30 am on the 20th of March, 2020 to satisfy the collective consciousness of the people across the country. Few hours later, the country woke up to celebrate their satisfaction.

IV. IDEAL CRIMINAL JUSTICE SYSTEM

Oliver Wendell Holmes Jr, an American jurist who has served as the Associate Justice of the Supreme Court has written in 1945 that if he was to ever talk to a man who was going to be electrocuted, he would say that he knew that the crime committed by the man was inevitable for him. But in order to make it more avoidable by others, he was to be sacrificed for common good. Further, he would say that the person can regard himself as a soldier who dying for the country.

Oliver was right in his approach as the people who commit crimes are executed or harmed in order to dissuade people from emulating their behaviour. But this is a crude application of utilitarian logic. Applying the same logic in a case where we kill one person so that his organs can be harvested to cater to five sick people. This can be used to maximise well-being but it is against human rights. The fundamental rights of the citizens should not be affected while benefits are being given to the society.

Deterrent punishments are not usually as effective as they are thought to be. Quiet often, the capital punishment has an anti-deterrent effect. The crime rate goes up rather than it being reduced. The study in the "Journal of Criminal Law and Criminology" by Michael Radelet and Traci Lacock examines the opinion of criminology experts. The study reveals that 88.2% of the respondents do not think that death penalty deters murder. The Hindu in its article[8] "Is it time to abolish the death penalty" mockingly asks as to how killing a person who has killed a person will show that killing is wrong. The death penalty has is no way deterred terrorism, murder or even theft.

[8] Singh, Avi, et al. "Is it Time to Abolish the Death Penalty?" *The Hindu*, 14 Dec. 2018. *www.thehindu.com*, https://www.thehindu.com/opinion/op-ed/is-it-time-to-abolish-the-death-penalty/article25735508.ece

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If our society would reject the notion of blame and responsibility, then we would see a shift in our approach and thoughts about punishments. In such a situation, the criminal justice system would try to improve the future and not seek revenge for the past.

An ideal criminal justice system presumes innocence of the accused and enough evidence must by furnished by the State to prove that the accused is guilty beyond reasonable doubt. The courts uphold Blackstone's formulation which says that a hundred guilty can be let free but an innocent must not suffer. When the person is not even given a fair trial, how can he even be held guilty? The mob acts on what the media is portraying to it and a number of fake news circulated through WhatsApp. If we start awarding punishment by taking recommendations from the Professors of WhatsApp University, then I am afraid that the idea of an ideal criminal justice system in our country is clearly at risk. We must go back to the courts and believe in them. For, justice delayed in the process of saving an innocent life, is not justice denied.

V. CONCEPT OF PUBLIC CONSCIOUSNESS

Public consciousness is a set of shared beliefs, ideas, and moral attitudes which act as a unifying force within the society. The public conscience can also be seen where the caretakers of the graveyard refused to bury the body of the deceased terrorist of the Mumbai terror attacks in the graveyard. They expressed that the terrorist cannot belong to any religion.

We are going back to the time for barbaric justice like the times of Hammurabi code where "an eye for an eye" or "a tooth for a tooth" is considered to be the appropriate punishment for the accused. The Hammurabi Code consisted of very harsh punishments which involved removal of the convict's tongue, hands, breasts, eye or ear. But this code for the first time put forth the principle of "innocent until proven guilty". Retributive Justice is a theory of justice which believes that the offender should suffer at a rate proportional to the crime he has committed. This is the principle behind the Hammurabi code. Considering the present times where people believe that harsh punishment will spread a fear in the society from such a crime being committed again, but is there any actual change seen in the society?

It was Mahatma Gandhi who once said "An eye for an eye will make the whole world blind". For those who have consigned Gandhian philosophy in general to history, repudiating Gandhi's objections to the death penalty would surely not pose a problem. But to those who really do consider Gandhian philosophy, are we not starting to move towards the retributive form where instant justice is being considered as the right way? We must believe in a non-violent method in dealing with the convict. This does not mean they must be let off scot-free.

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They must be helped and pushed forward in such a way that they are reformed to such an extent that they stand as an example to all.

The court in the case of Om Prakash v. State of Haryana[9] held that the Courts must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime. But should the court go to such an extent where it responds to the society ignoring the values and principles of justice? The Court has a responsibility to be just and fair. If you start awarding punishments which the society seeks, you may have to leave a hardened criminal scot-free one day and punish an innocent on another.

VI. CONCLUSION

There are a number of incidents which happen every day and go unreported. Only certain cases are sensationalised. The media plays a very important role here. They have to equally pay attention to all incidents. They highlight a few of them while they ignore the rest, and even in the cases they highlight, they show only what they want to be seen. The entire story is not shown in front of the people. The media is considered to be the fourth pillar of democracy by many. When the remaining three pillars of the Democracy fail, it strives to protect the people's rights. But in the dark times of today, our fourth pillar has been bought off.

Keeping in mind the recent Hyderabad rape case, the police has acted in association with the people's ideas. What will be the need of the judiciary if the law is taken into the hands by the policemen? The accused were not even allowed a fair trial. There is a presumption of innocence on every accused till he is proven guilty. In today's times, instant justice is being identified and endorsed by anti-social elements in the society. Instant justice is not justice at all. We must believe in a fair trial.

In the case of *Bachan Singh v. State of Punjab*[10], the Supreme Court said that the death sentence must be given only in the rarest of rare cases stating that the "judiciary should not be bloodthirsty". Also, B.R. Ambedkar opposed the death penalty in the Constitutional Assembly Debates on the principle of non-violence. The Nirbhaya case is not that rarest of rare case where death must be given. It is just another sensationalised case where the media is playing a negative role for the convicts.

The Supreme Court in the case of *Union of India v. Sriharan alias Murugan & Ors.*[11], formally enunciated the innovation approach in which it deviated from the capital punishment

[9] *Om Prakash v State of Haryana*, (1999) 3 SCC 19
[10] *Bachan Singh v State of Punjab*, AIR 1980 SC 898
[11] *Union of India v Sriharan alias Murugan & Ors.*, (2014) 4 SCC 242

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and awarded the convict a life imprisonment for a prolonged period ranging from 25 to 30 years without the benefit of release on remission. The Apex Court authorised itself to tweak the sentencing laws and award a special category of sentence. According to Justice S.K. Singh, the innovation approach is to make no party (neither the convict nor the society) a loser. The Supreme Court has observed that judicial innovation bridges the gap between the ultimate death sentence and the name sake life imprisonment for 14 years. Justice B. S. Chauhan, Law Commission of India Chairperson commented that the Supreme Court has indeed found an alternative to death penalty. Indeed, such a move by the Supreme Court is commendable but restricting it to a few cases is a mishap. With all the arguments presented through my study, I recommend that the Supreme Court must strive to have the widest possible interpretation of judicial innovation and it must not be restricted only to a limited number or special category of cases.

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