Vikram Singh @ Vicky & Anr vs Union Of India & Ors on 21 August, 2015

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Bench: Adarsh Kumar Goel, R.K. Agrawal, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.824 OF 2013

Vikram Singh @ Vicky & Anr. …Appellants

Vs.

Union of India & Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. This appeal, by special leave, arises in somewhat peculiar circumstances. The appellants were tried, convicted and sentenced to death for commission of offences punishable under Sections 302 and 364A of the Indian Penal Code, 1860. The conviction and sentence awarded to them was affirmed by the High Court of Punjab and Haryana in appeal and eventually by this Court in Criminal Appeals No.1396-1397 of 2008. The appellants did not, however, give-up. They filed Writ Petition (Crl.) D No.15177 of 2012 before this Court for a declaration that Section 364A inserted in the IPC by Act 42 of 1993 was ultra vires the Constitution to the extent the same prescribes death sentence for anyone found guilty. The petitioner further prayed for quashing the death sentence

awarded to the petitioner by the trial court as affirmed by the High Court and by this Court in Criminal Appeals No.1396-1397 of 2008. A mandamus directing commutation of the sentence awarded to the petitioner to imprisonment for life was also prayed for. The writ petition was eventually withdrawn with liberty to the petitioners to approach the jurisdictional High Court for redress. The appellant, thereafter, moved the High Court of Punjab and Haryana at Chandigarh in CWP No.18956 of 2012 praying for a mandamus striking down Section 364A of the IPC and for an order restraining the execution of the death sentence awarded to them. Reopening of the case of the appellants and commutation of the death sentence for imprisonment for life were also prayed for in the writ petition. A Division Bench of the High Court of Punjab and Haryana has, while dismissing the said petition by its judgment and order dated 3rd October, 2012, taken the view that the question whether Section 364A of the IPC was attracted to the case at hand and whether a person found guilty of an offence punishable under the provision could be sentenced to death was not only raised by the appellants as an argument before this Court in appeal filed by them, but, was noticed and found against them. The High Court while saying so relied upon the following passage of the judgment of this Court in the appeal filed by the appellants against their conviction:

> "... A plain reading of the Objects and Reasons which led to the amendment shows the concern of Parliament in dealing with kidnapping for ransom a crime which called for a deterrent punishment, even in a case where the kidnapping had not resulted in the death of the victim. The statistics further reveal that kidnapping for ransom had become a lucrative and thriving industry all over the country which must be dealt with, in the harshest possible manner and an obligation rests on Courts as well. Courts to lend a helping hand in that direction. In the case before us, we find that not only was Abhi Verma kidnapped for ransom which act would by itself attract the death penalty but he was murdered in the process. It is relevant that even before the aforesaid amendments, this Court in Henry's case (supra) observed that death sentence could be awarded even in a case of kidnapping and murder based on circumstantial evidence..."

2. The High Court further held that the question of quantum of sentence had also been examined by this Court in the following paragraph of the judgment delivered in the criminal appeal filed by the appellants:

> "24. Some of the judgments aforesaid refer to the ongoing debate as to the validity and propriety of the death sentence in a modern society. There are the moralists who say that as God has given life, he alone has the right to take it away and this privilege cannot be usurped by any human being. There are others who believe that the death sentence cannot be taken as a retributive or deterrent factor as the statistics show that the possibility of a death sentence has never acted as a deterrent to serious crime. The theory which is widely accepted in India, however, is that as the death penalty is on the statute book it has to be awarded provided the circumstances justify it. The broad principle has been laid in Bachan Singh's case (supra) as the "rarest of the rare cases". Bachan Singh case has been followed by a series of judgments of this Court delineating and setting out as to the kind of matters that would fall within this

> category. In Machhi Singh & Ors. Vs. State of Punjab 1983 (3) SCC 470 this Court gave an indication as to what could constitute this category..."

3. The High Court on the above reasoning concluded that this Court had considered the nature of the offence and its gravity and held that the appellants deserved the maximum punishment prescribed for both the offences proved against them. The High Court held that the plea now sought to be raised by the writ-petitioners to the effect that Section 364A of the IPC was attracted only when the offence was committed against the government or a foreign country etc. or that no such offence was made out in the case of the petitioners, had been examined and decided against the petitioners which plea could not be re-agitated by them in collateral proceedings. Having said that the High Court proceeded to examine the plea raised by the appellants on its merit, referred to the historical background in which the provisions of Section 364A were added to the statute book and held that Section 364A of IPC, even in the form in which it was initially introduced, made kidnapping by any person in the circumstances indicated in the said provision an offence no matter at the time of initial insertion of Section 364A, India was not committed to the International Convention Against the Taking of Hostages, 1979 to which it became a party only on 7th September, 1994. It was only thereafter that Section 364A was amended to incorporate the expression "any foreign state or international inter-governmental organization or any other person" to honour the commitment under the said Convention. The High Court, accordingly, repelled the argument that Section 364A was attracted only in situations where kidnapping was meant to coerce the government or any international organization to do or not to do a particular act including the demand for payment of ransom. The writ petition was, on that reasoning, dismissed by the High Court, which dismissal is what is under challenge in this appeal before us.

4. When the appeal initially came up before a two-Judge Bench of this Court, the same was directed to be placed before a larger Bench for an authoritative pronouncement especially because the appellants had been awarded a death sentence which stood affirmed by a Bench of coordinate jurisdiction. That is precisely how the matter has come up before us for final hearing.

5. Appearing for the appellants, Mr. Tripurari Ray followed by M/s Altaf Ahmad and R.S. Sodhi, senior advocates, who appeared for the interveners, strenuously argued that Section 364A of the IPC was attracted only in situations where an offence was committed against the Government, any foreign State or international inter-governmental organisation. The provision, argued the learned counsel, had no application to situations in which a victim was abducted or kidnapped for ransom demand from a private individual. The provisions of Section 364A, it was contended, were meant to deal with kidnapping by terrorists for ransom or where terrorists take hostages with a view to compelling the Government or a foreign State or international inter-governmental organisation to do or abstain from doing any act including payment of ransom.

6. On behalf of the respondents, it was contended by Mr. Ranjit Kumar, Solicitor General, that the question whether Section 364A IPC was attracted to the fact situation of the case at hand was examined and decided by this Court in the criminal appeal filed by the appellants against their conviction and sentence. The view taken by this Court in the appeal having attained finality, it was not open to the appellants to re-agitate the issue in collateral proceedings. Reliance in support of

that submission was placed upon the decisions of this Court in Naresh Shridhar Mirajkar etc. v. State of Maharashtra (AIR 1967 SC 1), Prem Chand Garg v. Excise Commissioner, U.P., Allahabad (AIR 1963 SC 996) and Rupa Ashok Hurra v. Ashok Hurra and Anr. (2002) 4 SCC 388.

7. Alternatively, it was contended that Section 364A of the IPC was widely worded to cover not only situations where terrorists take hostages to compel the Government or a foreign State or any international inter- governmental organisation but also where any person abducts or kidnaps the victim for no more than compelling payment of ransom by the family of the victim. It was contended that the High Court had rightly analysed the provisions, examined the historical perspective to hold that Section 364A was not confined only to cases involving acts of terrorism but was attracted even in cases where the crime is committed for securing ransom.

8. There is no gainsaying that in an appeal directed against an order of conviction and sentence, the appellant is entitled to urge all such contentions as are open to him in law and on facts. One of the contentions open to the aggrieved convict in such cases is that the provision under which he has been convicted has no application to his case or that the ingredients of the offence with which he has been charged are not established to justify his conviction. It follows that the contention that Section 364A was not attracted in the present case was open to the appellants and was in fact advanced on their behalf in the appeal filed by them. Not only that, the contention was examined and rejected. So long as that rejection holds the field, there is no room for this Court or any other court for that matter to take a contrary view. The writ petition filed by the appellants to the extent the same sought to urge that section 364A was not attracted to the case at hand was, thus, not maintainable in law.

9. In Rupa Ashok Hurra's case (supra), a Constitution Bench of this Court examined the options available to a litigant aggrieved of a final judgment/order of this Court after the dismissal of the review petition filed by him. This Court reviewed the case law on the subject and held that a final judgment/order passed by this Court cannot be assailed in an application under Article 32 of the Constitution of India by an aggrieved person regardless whether he was or was not a party to the case. This Court also examined the competing considerations of giving finality to the judgments of the Court of last resort, on the one hand, and the need to dispense justice on reconsideration of a judgment on the other and held that in rarest of rare situations, a final judgment of the Court may require re-consideration to set right the miscarriage of justice complained of. In such cases it would not only be proper but even obligatory for the Court to both legally and morally rectify the error. This Court further held that the duty to do justice in such rarest of rare cases shall prevail over the policy of certainty or finality of judgments. The following two passages from the decision are apposite:

> "40. The petitioners in these writ petitions seek re-consideration of the final judgments of this Court after they have been unsuccessful in review petitions and in that these cases are different from the cases referred to above. The provision of Order XL Rule 5 of the Supreme Court Rules bars further application for review in the same matter. The concern of the Court now is whether any relief can be given to the petitioners who challenge the final judgment of this Court, though after disposal of review petitions, complaining of the gross abuse of the process of Court and

> irremedial injustice. In a State like India, governed by rule of law, certainty of law declared and the final decision rendered on merits in a lis between the parties by the highest court in the country is of paramount importance. The principle of finality is insisted upon not on the ground that a judgment given by the apex Court is impeccable but on the maxim "Interest reipublicae ut sit finis litium".
>
> 41. xxxxxxxxxx
>
> 42. The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles - ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principle of natural justice or giving scope for apprehension of bias due to a Judge who participated in the decision making process not disclosing his links with a party to the case or on account of abuse of the process of the court. Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice - a concept which is not disputed but by a few. We are of the view that though Judges of the highest Court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error. After giving our anxious consideration to the question, we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and cause perpetuation of irremediable injustice."

10. In the case at hand, the writ petition filed by the appellants under Article 32 of the Constitution of India was dismissed as withdrawn with liberty reserved to the appellants to approach the High Court. Even so, in the light of the pronouncement of this Court in Rupa Ashok Hurra's case (supra), if against a final judgment of this Court, a remedy was not available under Article 32 of the Constitution the same would also not be available under Article 226. If this Court could not take resort to Article 32 for reopening for examination its final judgement, the High Court could also not do so under Article 226. The only remedy which the appellants could resort to in terms of the view taken in Rupa Ashok Hurra's case (supra) is by invoking this Court's inherent powers under Articles 129 and 142 of the Constitution of India for recall, reversal or modification of the order passed by this Court in the criminal appeal filed by the appellants. A writ petition before the High Court for that relief was clearly untenable in law.

11. Legal impediments in the choice of the remedy available to the appellants have not dissuaded the High Court from examining and answering the contentions sought to be raised on the merits of the

case. We too propose to go into the merits of the contentions urged on behalf of the appellants, no matter it may not be necessary to do so in the light of what we have said about the maintainability of the proceedings brought by the appellants. We do so not only because the matter was argued at considerable length before us but also because the lives of the appellants hang in the balance. We will, therefore, be loathe in shutting out the arguments advanced on behalf of the appellants on a technical ground touching the maintainability of the petition filed by the appellants.

12. Any attempt to properly understand the true scope and purport of Section 364A must, in our opinion, start with the historical background in which the provision came on the statute book. When we do so, we find that the proposal for addition of Section 364A to the Indian Penal Code was first modified by the Law Commission of India in its 42nd Report submitted in 1971. The relevant portion of the report reads as under:

> "16.100 We consider it desirable to have a specific section to punish severely kidnapping or abduction for ransom, as such cases are increasing. At present, such kidnapping or abduction is punishable under Section 365 since the kidnapped or abducted person will be secretly and wrongfully confined.
>
> We also considered the question whether a provision for reduced punishment in case of release of the person kidnapped without harm should be inserted, but we have come to the conclusion that there is no need for it. We propose the following section:-
>
> "364A. Kidnapping or abduction for ransom – Whoever kidnaps or abducts any person with intent to hold that person for ransom shall be punished with rigorous imprisonment for a term which may extend to 14 years, and shall also be liable to fine." xxxxxxxxxxxxxxxxxxx Chapter 25 SUMMARY OF RECOMMENDATIONS 25.1. xxxxxxxxxxx A brief summary of the principal recommendations made in each chapter is given below:
>
> xxxxxxxxxxxxxxx (14) Kidnapping or abduction for ransom should be an aggravated form of the offence of kidnapping or abduction punishable with rigorous imprisonment upto fourteen years and fine."

13. The recommendations of the Law Commission appear to have languished for nearly two decades before the Criminal Law (Amendment) Bill, 1992 was presented to the Parliament by the Government proposing to add to the IPC Section 364A in a form slightly different from the one in which the Law Commission had recommended such addition. What is important is that in the statement of Objects and Reasons, accompanying the bill, a two-fold justification was given by the Government for the proposed addition namely:

> (i) that kidnappings by terrorists for ransom for creating panic amongst the people and for securing release of their associates and cadres had assumed serious dimensions and (ii) The Law Commission had in its 42nd Report recommended a specific provision to deal with the menace of kidnapping and abductions for ransom.

> The Bill eventually led to the Criminal Law Amendment Act 1993 (Act 42 of 1993), introducing Section 364A to the Indian Penal Code with effect from 22nd May, 1993, in the following words:
>
> ”364A. Kidnapping for ransom, etc.— Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

14. Shortly after the introduction of the above provision arose the need for an amendment to the same. The amendment was necessitated by reason of India acceding to the international convention against the taking of hostages adopted by the General assembly of the United Nations on 17th December, 1979 in the background of Iranian hostage crisis. The Convention aimed at fighting international terrorism, came into force with effect from 3rd June, 1983 but was acceded to by India with effect from 7th September, 1994.

15. The Indian Penal Code (Amendment) Bill 1994, Bill No.LXV of 1994 was, in the above background, introduced in the Rajya Sabha on 25th August, 1994 to amend Section 364A so as to substitute the expression “any other person” by the words “any foreign State or international inter-governmental organisation or any other person” in the said section. The Statement of Objects and Reasons for the amendment also gave the background in which the amendment was considered necessary. The Statement of Objects and Reasons accompanying the bill were as under:

> “STATEMENT OF OBJECTS AND REASONS An international convention against the taking of Hostages was adopted by the United Nations General Assembly on the 17th December, 1979 The said convention seeks to develop international cooperation between the states in devising and adopting effective measures for prevention prosecution and punishment of all acts of hostage taking.
>
> India has decided to accede to the said convention since it is one of the important conventions aimed at fighting international terrorism. For the purpose of implementing the convention it is proposed to amend section 364A of the Indian Penal Code which provides punishment for the offence of kidnapping for ransom etc. It is proposed to widen the scope of the said section by including therein situations where the offence is committed with a view to compelling foreign states or international inter governmental organisations to do or abstain from doing any act or to pay a ransom.
>
> The bill seeks to achieve the above object.”

16. A Committee of Home Affairs constituted by Rajya Sabha examined the issue and submitted a report dated 29th November, 1994 in support of the amendment to Section 364A. The existing Section 364A did not, it opined, take care of situation where the offence was committed with a view to compel a foreign State or international inter-governmental organisation to do or abstain from doing any act or paying ransom. The relevant extract of the Report is as under:

> "In its note furnished to the Committee, the Ministry of Home Affairs explained the background and the necessity for amending section 364-A of the Indian Penal Code, 1860, as under:-
>
> An International Convention Against the Taking of Hostages was adopted by the General Assembly of the United Nations on 17th December, 1979. The Convention was adopted in the background of Iranian hostage crisis and aimed at fighting international terrorism. The Convention entered into force on 3rd June, 1983.
>
> As per the Convention, if any person seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an International inter-governmental organisation, a natural or juridical person or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostages, it will constitute the offence of hostage taking.
>
> India acceded to the Convention with effect from 7th September, 1994.
>
> At present, the offence of hostage taking is not defined in the Indian law. However, vide Criminal Law (Amendment) Act, 1993, Section 364A was added to the Indian Penal Code to make kidnapping for ransom, etc. An offence punishable with death or imprisonment for life and also fine. This provision read with other provisions of the Indian Penal Code on abetment and attempt, would already cover hostage taking, as defined in the Convention to the extent that this Act is confined to the territory of India. Section 364A IPC does not take care of situations where the offence is committed with a view to compelling foreign States or international inter-governmental organisation to do or abstain from doing any act or to pay a ransom.
>
> Hence, the Indian Penal Code (Amendment) Bill, 1994 seeks to amend the said section 364A on kidnapping for ransom, etc. to make it clear that kidnapping a person to compel the Government or any foreign State or international inter-governmental organization or any other person is punishable under that section."

17. It is evident from the above that Section 364A came on the statute book initially in the year 1993 not only because kidnapping and abduction for ransom were becoming rampant and the Law Commission had recommended that a separate provision making the same punishable be

incorporated but also because activities of terrorist organisations had acquired menacing dimensions that called for an effective legal framework to prevent such ransom situations and punish those responsible for the same. It is also manifest that the further amendment to Section 364A in the year 1994 simply added the expressions "foreign state or international inter-governmental organisation" to the provision without deleting the pre-existing expression "any other person".

18. A conspectus of the above leaves no manner of doubt that the expression "any other person" appearing in Section 364A right from the time of its initial incorporation in the Code was meant to apply the provisions not only to situations where the Government was asked to pay ransom or to do any other act but even to situations where any other person which would include a private person also was asked to pay ransom. The subsequent amendment in the year 1994 also did not remove the expression "any other person" in Section 364A while adding the expression "foreign State or international inter Government organisation" to the provision as it originally existed.

19. There is nothing in the provision to suggest that the same is attracted only in ransom situations arising in acts of terrorism directed against the Government or any foreign state or international inter- governmental organization. The language employed in the provision is, in our view, wide enough to cover even cases where the demand for ransom is made not as a part of any terrorist act but also for monetary gain from a private individual.

20. It was next argued by Mr. Sodhi that kidnapping for ransom was already covered by the existing provisions in the IPC. He urged that Sections 359, 360 and 361 of the IPC deal with 'kidnapping', which according to Section 359 is of two kinds viz. kidnapping from India and kidnapping from lawful guardianship. 'Kidnapping from India' is under Section 360 of the IPC while 'kidnapping from lawful guardianship' is covered by Section 361 of the IPC. Both the situations are made punishable under Section 363 of the IPC with imprisonment for a term which may extend to seven years besides fine. 'Abduction' defined in Section 362 of the IPC, is not by itself punishable as is the case with kidnapping.

21. Section 383 of the IPC defines 'extortion', while Section 384 of the IPC makes the same punishable with imprisonment that may extend to three years, or with fine, or with both. Similarly, Sections 386, 387, 388, 389 of the IPC deal with aggravated forms of extortion and are made suitably punishable. It was contended that once a person is kidnapped and put in fear of death or injury to coerce the person so kidnapped or any other person to deliver any property or valuable security or anything signed which may be converted into a valuable security can be punished suitably under the provisions mentioned above. This, according to Mr. Sodhi implies that the existing provisions in the IPC were sufficient to deal with ordinary situations involving kidnapping for ransom, thereby, making it unnecessary for the Parliament to introduce Section 364A of the IPC to cover an ordinary crime situation. The corollary, according to Mr. Sodhi, is that Section 364A was added only to deal with terrorist related ransom situations and not ordinary crimes, like the one in the case at hand.

22. The argument though attractive does not stand on closer scrutiny. The reasons are not far to seek. Section 364A has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 of the IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364A proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above. The argument that kidnapping or abduction for ransom was effectively covered under the existing provisions of the IPC must, therefore, fail.

23. We may before parting with this aspect of the matter also deal with the argument that the expression 'any other person' appearing in Section 364A ought to be read ejusdem generis with the expression preceding the said words. The argument needs notice only to be rejected. The rule of ejusdem generis is a rule of construction and not a rule of law. Courts have to be very careful in applying the rule while interpreting statutory provisions. Having said that the rule applies in situations where specific words forming a distinct genus class or category are followed by general words. The first stage of any forensic application of the rule, therefore, has to be to find out whether the preceding words constitute a genus class or category so that the general words that follow them can be given the same colour as the words preceding. In cases where it is not possible to find the genus in the use of the words preceding the general words, the rule of ejusdem generis will have no application.

24. In M/s. Siddeshwari Cotton Mills (P) Ltd. v. Union of India and Anr. (1989) 2 SCC 458 M.N. Venkatachaliah, J., as His Lordship then was, examined the rationale underlying ejusdem generis as a rule of construction and observed:

> "14. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extent to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:
>
> ..... if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."

> (See: Construction of Statutes by EA Driedger P. 95 quoted by Francis Bennion in his tatutory Construction, pp. 829 and 830)

25. Relying upon the observations made by Francis Bennion in his "Statutory Construction" and English decisions in SS Magnhild v. McIntyre Bros. & Co. (1920) 3 KB 321 and those rendered by this Court in Tribhuban Prakash Nayyar v. Union of India (1969) 3 SCC 99, UPSEB v. Hari Shanker (1978) 4 SCC 16, his Lordship summed-up the legal principle in the following words:

> "19. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus."

26. Applying the above to the case at hand, we find that Section 364A added to the IPC made use of only two expressions viz. 'government' or 'any other person'. The Parliament did not use multiple expressions in the provision constituting a distinct genus class or category. It used only one single expression viz. 'government' which does not constitute a genus, even when it may be a specie. The situation, at hand, is somewhat similar to what has been enunciated in 'Craies on Statute Law' (7th Edn.) at pages 181-182 in the following passage:

> "The modern tendency of the law, it was said, [by Asquith J in Allen v. Emmerson (1944) KB 362)] is " to attenuate the application of the rule of ejusdem generis." To invoke the application of the ejusdem generis rule there must be a distinct genus category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, (Hood-Barrs v. IRC (1946) 2 All ER 768) but the mention of a single species does not constitute a genus. (Per Lord Thankerton in United Towns Electric Co. Ltd. v. Attorney General for Newfoundland (1939) 1 All ER 423). "Unless you can find a category," said Farwell L.J., (in Tillmans and Co. v. S.S. Knutsford (1908) 2 KB 385) "there is no room for the application of the ejusdem generis doctrine," and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that "theatres and other places of public entertainment" should be licensed, the question arose whether a "fun-fair" for which no fee was charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words "other places"

to places of the same kind as theatres. So the insertion of such words as "

> or things of whatever description" would exclude the rule. (Attorney General v. Leicester Corporation (1910) 2 Ch. 359). In N.A.L.G.O. v. Bolton Corpn. (1943) AC 166) Lord Simon L.C. referred to a definition of "workman"

as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour, clerical work "or otherwise" and said: "The use of the words 'or otherwise' does not bring into play the ejusdem generis principle: for 'manual labour' and 'clerical work' do not belong to a single limited genus" and Lord Wright in the same case said: "The ejusdem generis rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a 'genus' but here the only 'genus' is a contract with an employer".

(emphasis supplied)

27. The above passage was quoted with approval by this Court in Grasim Industries Ltd. v. Collector of Customs, Bombay (2002) 4 SCC 297 holding that note 1(a) of Chapter 84 relevant to that case was clear and unambiguous. It did not speak of a class, category or genus followed by general words making the rule of ejusdem generis inapplicable.

28. There is yet another angle from which the issue can be viewed. The term 'person' used in the expression 'any other person', appearing in Section 364A of the IPC must be understood as referring to 'person' as defined in Section 11 of the IPC. Section 11 of the IPC defines the term 'person' as under:

> "The word "person" includes any Company or Association or body of persons, whether incorporated or not."

29. This would mean that the term 'person' appearing in Section 364A would include a company or association or body of persons whether incorporated or not, apart from natural persons. The tenor of the provision, the context and the statutory definition of the expression 'person' all militate against any attempt to restrict the meaning of the term 'person' to the 'government' or 'foreign State' or 'international inter-governmental organisations' only.

30. That brings us to the only other contention urged on behalf of the appellants. It was argued that Section 364A to the extent it denied to the Courts the discretion to award a sentence other than death or life imprisonment was ultra vires of the right to life guaranteed to the appellants under Article 21 of the Constitution. Support for that proposition was drawn from the decision of this Court in Mithu etc. v. State of Punjab etc. (1983) 2 SCC 277 whereby a Constitution Bench of this Court, struck down Section 303 of the IPC as unconstitutional. It was urged that denial of judicial discretion to award a sentence other than death was held by this Court to be a reason good enough to declare the provision constitutionally invalid. Since Section 364A, also did not leave any discretion with the Court in the matter of sentence except death or life imprisonment, it was on a parity of reasoning liable to be struck down as unconstitutional.

31. On behalf of the respondents, it was argued that Mithu's case (supra) was clearly distinguishable inasmuch as the Court was in that case dealing with Section 303 IPC which did not leave any option for the Court except to award death sentence to a convict who while undergoing life imprisonment committed a murder. That is not the position in the case at hand where the Parliament has

prescribed alternative sentences leaving it for the courts concerned to award what is considered suitable in the facts and circumstances of a given case. It was also submitted that there was nothing outrageous about the sentence provided under Section 364A, keeping in view the nature and gravity of the offence and the fact that kidnappings and abductions for ransom had assumed alarming dimensions in the country apart from the fact that terrorists were also using that method to achieve their nefarious ends. Similar sentences were prescribed for several offences under the IPC that were considered grave by the Parliament who represent the will of the people. There was at any rate no reason for this Court to go into the question of quantum of sentence after the matter had been thoroughly examined in the criminal appeal filed by the appellants including on the question of sentence to be awarded to them. The issue whether a lesser punishment would meet the ends of justice may arise in a given case where the victim is released soon after he is kidnapped or abducted without doing any harm to him. But in the case at hand, the victim was done to death which called for the extreme penalty rightly awarded to the appellants upon consideration of the relevant circumstances. Reference was also made to the decisions of this Court in Malleshi v. State of Karnataka (2004) 8 SCC 95; Suman Sood @ Kamal Jeet Kaur v. State of Rajasthan (2007) 5 SCC 634; Vinod v. State of Haryana (2008) 2 SCC 246 and Akram Khan v. State of West Bengal (2012) 1 SCC 406, in which too life sentence was awarded even when the victim was released unharmed. It was lastly argued that courts must show deference to parliamentary wisdom underlying a legislation and as far as possible avoid interference with the quantum of sentence prescribed by law unless of course the same was so outrageously brutal, barbaric or disproportionate as to be unacceptable by any civilised society. That not being the case at hand, there was no compelling need for this Court to interfere, argued the learned Counsel.

32. In Mithu's case (supra), this Court had before it a challenge to the constitutional validity of Section 303, which prescribed but one sentence for an offender who committed a murder while undergoing a sentence of imprisonment for life. This Court struck down Section 303 of the IPC holding that there was no rational basis for classifying persons who committed murder while they are under a sentence of life imprisonment and those who are not under any such sentence for purposes of awarding to the former category a mandatory death sentence. The Court held that Section 303 assumed that life convicts are a dangerous breed of humanity as a class, without there being any scientific data for such an assumption. This Court further found that prescription of a mandatory death sentence for the offence of murder as a second offence merely for the reason that the offender was under a sentence of life imprisonment for the first such offence is arbitrary and unreasonable, and that mandatory death sentence would not serve any social purpose. The motivation of the two offences may be different, the circumstances in which they may be committed may be different and even the two offences may be basically different genre. This Court also found that there was no rational distinction between a person who commits murder while undergoing the sentence of life imprisonment and another who does so after he has already undergone such sentence. This Court in the above backdrop took the view that the mandatory death sentence deprived the Court of its wise and beneficial discretion in the matter of life and death, making it harsh, unjust and unfair.

33. The above features, noticed by this Court in Mithu's case (supra), are not present in the case at hand for Section 364A does not mandate a death sentence as was the case with Section 303 of the

IPC. In Section 364A, the Court enjoys the discretion whether to award the extreme penalty of death or the lesser alternative of a life imprisonment. There is also no element of any discrimination between persons who commit the offence, like the one noticed by this Court in Mithu's case (supra). Whether life or death would be the proper sentence is in the absolute discretion of the Court which the Courts are expected to exercise wisely having regard to the facts of the case and the gravity of the offence and its severity or barbarity. To that extent, there is indeed no comparison between Mithu's case (supra) and the case of the appellants who have been awarded death sentence not because the law so mandated but because this Court after considering the attendant circumstances found that to be the only sentence which would meet the ends of justice. This is evident from the following passages appearing in the judgment of this Court in the criminal appeal filed by the appellants [Vikram Singh & Ors. v. State of Punjab (2010) 3 SCC 56]:

> "56. Much argument and passion have been expended by the learned counsel as to the propriety of the death sentence in the facts of the case. Mr Sharan has emphasised that as the prosecution story rested on circumstantial evidence, this fact by itself was a relevant consideration in awarding the lesser sentence. It has also been pleaded that the appellants were all young persons and the possibility that they could be reformed during their incarceration could not be ruled out and this too was a factor which had to be considered in awarding the sentence.
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> 57. Mr. Sharan has also referred us to Dhondiba Gundu Pomaje v. State of Maharashtra (1976) 1 SCC 162 that an accused of young age should not ordinarily be meted out a death sentence. Reference has also been made by Mr Sharan to some observations in Bachan Singh v. State of Punjab (1980) 2 SCC 684 that the mitigating circumstance in favour of an accused must also be factored in. It has also been pleaded that the additional circumstance in favour of Sonia was that she was not only young but she was also a lady and as it was possible that she had been influenced into the unpleasant situation by her husband, the death sentence should not be given to her in any case. Mr Sharan has also placed reliance on two recent judgments of this Court in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498 and Sushil Kumar v. State of [pic]Punjab (2009) 10 SCC 434 whereby it has been indicated that the latest trend in jurisprudence was that the death penalty should not be awarded except in the most extraordinary of cases and that the position and background of the appellant-accused was to be kept in mind in evaluating the circumstances for and against the imposition of the death sentence.
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> 58. These submissions have been strongly controverted by Mr. Jaspal Singh and Mr. Kuldeep Singh, the learned counsel representing the complainant and the State of Punjab respectively. It has been emphasised that Sections 364-

A and 302 both provided for the imposition of a death sentence and as kidnapping for ransom was perhaps the most heinous of offences, no latitude should be shown to the appellants as they had poisoned a young boy to death for money. The learned counsel have also placed reliance on Henry Westmuller Roberts v. State of Assam (1985) 3 SCC 291 and Mohan v. State of T.N. (1998) 5 SCC

336 where the kidnap victim was a young boy and had subsequently been done to death, the Court had awarded the death penalty.

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64. A plain reading of the Objects and Reasons which led to the amendment shows the concern of Parliament in dealing with kidnapping for ransom, a crime which called for a deterrent punishment, even in a case where the kidnapping had not resulted in the death of the victim. The statistics further reveal that kidnapping for ransom has become a lucrative and thriving industry all over the country which must be dealt with in the harshest possible manner and an obligation rests on the courts as well. The courts to lend a helping hand in that direction.

65. In the case before us, we find that not only was Abhi Verma kidnapped for ransom which act would by itself attract the death penalty but he was murdered in the process. It is relevant that even before the aforesaid amendments, this Court in Henry case (1985) 3 SCC 291 observed that death sentence could be awarded even in a case of kidnapping and murder based on circumstantial evidence holding that: (SCC p. 313, para 40) "40. ... We are of the opinion that the offences committed by Henry, the originator of the idea of kidnapping children of rich people for extracting ransom, are very heinous and pre-planned. He had been attempting to extract money from the unfortunate boy's father, PW 23 even after the boy had been murdered by making the father to believe that the boy was alive and would be returned to him if he paid the ransom. In our opinion, this is one of the rarest of rare cases in which the extreme penalty of death is called for the murder of the innocent young boy, Sanjay in cold blood after he had been kidnapped with promise to be given sweets. We, therefore, confirm the sentence of death and the other sentences awarded to Henry by the High Court under Sections 302, 364, 201 and 387 IPC and dismiss Criminal Appeal No. 545 of 1982 filed by him."

66. Moreover, as already indicated, we have the eyewitness statement of PW 13 Baljeet Saini with regard to the kidnapping of Abhi Verma from outside the school.

67. Likewise, in Mohan case (1998) 5 SCC 336 which again related to a kidnapping for ransom and murder under Sections 364-A and 302 of a young boy aged ten [pic]years, while assessing the aggravating and mitigating circumstances, it was observed that the former far outweighed the others. It was held as under: (SCC p. 343, para 14) "14. So far as appellant Gopi is concerned, he not only did participate by pulling the rope around the neck of the boy, as already narrated, but went to his house and brought a coir rope. After removing the rope from the neck of the boy, he encircled the coir rope again around the boy's neck and pulled the said rope for about half a minute and the boy stopped breathing. Thereafter he took out one Keltron TV box from underneath the cot and packed the boy in the box. These aggravating circumstances on the part of accused Mohan and Gopi clearly demonstrate their depraved state of mind and the brutality with which they took the life of a young boy. It further transpires that after killing the boy and disposing of the dead body of the boy, Mohan also did not lose his lust for money and got the ransom of Rs 5 lakhs."

68. We must also emphasise that in this tragic scenario and in the drawing up of the balance sheet, the plight of the hapless victim, and the abject terror that he must have undergone while in the grip of his kidnappers, is often ignored. Take this very case. Abhi Verma was only 16 years of age, and had been picked up by Vikram Singh who was known to him but had soon realised the predicament that he faced and had shouted for help. His terror can further be visualised when he would have heard the threatening calls to his father and seen the preparations to do away with him, which included the taping of his mouth and the administration of an overdose of dangerous drugs. The horror, distress and the devastation felt in the family on the loss of an only son, can also be imagined."

34. Reliance upon Mithu's case (supra) does not, therefore, help the appellant in their challenge to the vires of Section 364A. Having said that, we must add that a legislation is presumed to be constitutionally valid with the burden of showing the contrary lying heavily upon any one who challenges its validity. Not only that, courts show due deference to the parliamentary wisdom and exercise self restraint while examining the vires of legislations validly enacted. Reference may in this regard be made to the decision of this Court in Maru Ram v. Union of India & Ors. (1981) 1 SCC 107 where Fazal Ali, J. in his concurring judgment observed:

> "93. Thus, on a consideration of the circumstances, mentioned above, the conclusion is inescapable that Parliament by enacting Section 433-A has rejected the reformative character of punishment, in respect of offences contemplated by it, for the time being in view of the prevailing conditions in our country. It is well settled that the legislature understands the needs and requirements of its people much better than the courts because the [pic]Parliament consists of the elected representatives of the people and if the Parliament decides to enact a legislation for the benefit of the people, such a legislation must be meaningfully construed and given effect to so as to subserve the purpose for which it is meant."

35. Reference may also be made to the decision of this Court in Bachan Singh v. State of Punjab (1980) 2 SCC 684 where Sarkaria, J. speaking for majority observed:

> "175. We must leave unto the Legislature, the things that are Legislature's. "The highest judicial duty is to recognise the limits on judicial power and to permit the democratic processes to deal with matters falling outside of those limits." As Judges, we have to resist the temptation to substitute our own value-choices for the will of the people. Since substituted judicial "made-to-order" standards, howsoever painstakingly made, do not bear the people's imprimatur, they may not have the same authenticity and efficacy as the silent zones, and green belts designedly marked out [pic]and left open by Parliament in its legislative planning for fair play of judicial discretion to take care of the variable, unpredictable circumstances of the individual cases, relevant to individualised sentencing. When Judges, acting individually or collectively, in their benign anxiety to do what they think is morally good for the people, take upon themselves the responsibility of setting down social norms of conduct, there is every danger, despite their effort to make a rational guess of the

> notions of right and wrong prevailing in the community at large and despite their intention to abide by the dictates of mere reason, that they might write their own peculiar view or personal predilection into the law, sincerely mistaking that changeling for what they perceive to be the community ethic. The perception of "community" standards or ethics may vary from Judge to Judge. In this sensitive highly controversial area of death penalty, with all its complexity, vast implications and manifold ramifications, even all the Judges sitting cloistered in this Court and acting unanimously, cannot assume the role which properly belongs to the chosen representatives of the people in Parliament, particularly when Judges have no divining rod to divine accurately the will of the people. In Furman 408 US 238 ((1992), the Hon'ble Judges claimed to articulate the contemporary standards of morality among the American people. But speaking through public referenda, Gallup Polls and the State legislatures, the American people sharply rebuffed them. We must draw a lesson from the same."

36. To the same effect are the observations made by this Court in State of M.P. v. Bala alias Balaram (2005) 8 SCC 1 where this Court said:

> "12. The punishments prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the offence concerned, its impact on the society and what the legislature considers as a punishment suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it."

37. In a Parliamentary democracy like ours, laws are enacted by the Parliament or the State legislature within their respective legislative fields specified under the Constitution. The presumption attached to these laws is that they are meant to cater to the societal demands and meet the challenges of the time, for the legislature is presumed to be supremely wise and aware of such needs and challenges. The means for redressing a mischief are also in the realm of legislation and so long as those means are not violative of the constitutional provisions or the fundamental rights of the citizens, the Courts will show deference towards them. That, however, is not to say that laws that are outrageously barbaric or penalties that are palpably inhuman or shockingly disproportionate to the gravity of the offence for which the same are prescribed cannot be interfered with. As observed by Chandrachud, CJ in Mithu's case (supra) if the Parliament were tomorrow to amend the IPC and make theft of cattle by a farmer punishable with cutting of the hands of the thief, the Courts would step in to declare the provision as constitutionally invalid and in breach of the right to life. The Court observed:

> "6..... Two instances, undoubtedly extreme, may be taken by way of illustration for the purpose of showing how the courts are not bound, and are indeed not free, to apply a fanciful procedure by a blind adherence to the letter of the law or to impose a savage sentence. A law providing that an accused shall not be allowed to lead evidence in self-defence will be hit by Articles 14 and 21. Similarly, if a law were to provide that the offence of theft will be punishable with the penalty of the cutting of hands, the law will be bad as violating Article 21. A savage sentence is

> anathema to the civilized jurisprudence of Article 21. These are, of course, extreme illustrations and we need have no fear that our legislatures will ever pass such laws. But these examples serve to illustrate that the last word on the question of justice and fairness does not rest with the legislature. Just as reasonableness of restrictions under clauses (2) to (6) of Article 19 is for the courts to determine so is it for the courts to decide whether the procedure prescribed [pic]by a law for depriving a person of his life or liberty is fair, just and reasonable."

38. That punishment must be proportionate to the offence is recognised as a fundamental principle of criminal jurisprudence around the world. In Weems v. United States (217 US 349; 54 L.Ed 793; 30 S. Ct 544 (1910) the petitioner had been convicted for falsifying a public document and sentenced to 15 years of what was described as 'cadena temporal', a form of imprisonment that included hard labour in chains and permanent civil disabilities. The US Supreme Court, however, declared the sentence to be cruel not only in terms of length of imprisonment but also in terms of shackles and restrictions that were imposed by it. That punishment for crime should be graduated and proportionate to the offence, is a precept of justice, declared the Court.

39. That decision was followed by Enmund v. Florida 647 458 US 782 (1982) where the Court held that death penalty was excessive for the felony of murder where the petitioner did not take life, attempt to take life or intend that life be taken or that lethal force be used. In Coker v. Georgia 433 US 584 (1977) US Supreme Court held sentence of death to be grossly disproportionate and excessive for the crime of rape. In Herman Solem v. Jerry Buckley Helm 463 US 277, 77 Led 2d 637, 103 S Ct 3001, the US Supreme Court was dealing with a case where Helm was found guilty of what is described as "uttering a no account check" for 100 dollars, ordinarily punishable with imprisonment for a period of five years and a fine of 5000 dollars but was sentenced under the recidivist statute of South Dakota to undergo imprisonment for life. The question that fell for determination was whether the sentence was disproportionate to the crime committed by Helm. The Court by majority held that the general principle of proportionality was applicable as much to sentence of imprisonment as it was to capital sentences and that while applying the proportionality principle in capital cases, the Court had not drawn any distinction between capital cases, on the one hand, and case of imprisonment, on the other, even when the penalty of death differs from all other forms of punishment not in degree but in kind. The Court held that decisions rendered in capital cases were not of much assistance while deciding the constitutionality of punishments in non-capital cases, with the result that outside the context of capital punishment, successful challenges to the proportionality of sentences were exceedingly rare. That did not, observed the Court, however, mean that proportionality analysis was entirely inapplicable to the non-capital cases. The Court summed-up its conclusion regarding the doctrine of proportionality as applicable to cases involving sentence of imprisonment in the following words:

> "[6a, 7, 8] In sum, we hold as a matter of principle that a criminal sentence must be proportionate to the crime for which the defendant has been convicted. Reviewing courts, of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes, as well as to the discretion that trial courts possess in sentencing

convicted criminals. But no penalty is per se constitutional. As the Court noted in Robinson v. California, 370 US, at 667, 8 L Ed 2d 758, 82 S Ct 1417, a single day in prison may be unconstitutional in some circumstances."

40. More importantly, the Court recognised the following guiding principles for determining whether the sentence of imprisonment was disproportionate to the offence allegedly committed by the accused:

"[10] In sum, a court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions."

41. Applying the above principles to the case before it, the Court declared:

"[1c] The Constitution requires us to examine Helm's sentence to determine if it is proportionate to his crime. Applying objective criteria, we find that Helm has received the penultimate sentence for relatively minor criminal conduct. He has been treated more harshly than other criminals in the State who have committed more serious crimes. He has been treated more harshly than he would have been in any other jurisdiction, with the possible exception of a single State. We conclude that his sentence is significantly disproportionate to his crime, and is therefore prohibited by the Eighth Amendment. The judgment of the Court of Appeals is accordingly affirmed."

42. More recently in Ronald Allen Harmelin v. Michigan 501 US 957 the U.S. Supreme Court revisited the approach to be adopted while determining the question of constitutionality of sentences for non-capital offences.

This was a case where the petitioner was convicted for possessing 672 gms. of cocaine and sentenced to a mandatory term of life in prison without possibility of parole. The question that fell for consideration was whether the mandatory life imprisonment was in consonance with the Eighth Amendment to the U.S. Constitution. Kennedy, J. in his concurring judgment noted the view taken by the Court in Weems v. United States (supra), Enmund v. Florida 458 US 782, Rummel v. Estelle 445 U.S 263, and Solem v. Helm 463 US 277 to observe that although the said decisions recognise the principle of proportionality, its precise contours remain unclear. The Court, based on a conspectus of the decisions, formulated some common principles applicable in situations that required examination of limits of proportionality. The first principle culled out from the decisions earlier pronounced by the Court was that prescribing punishment for crimes rests with the legislature and not Courts and that Courts ought to show deference to the wisdom of the legislature. The Court observed:

"The first of these principles is that the fixing of prison terms for specific crimes involves a substantive penological judgment that, as a general matter, is "properly within the province of legislatures, not courts." Rumel, supra, at 275-276, 63 L Ed2d 382, 100 S Ct 1133. Determinations about the nature and purposes of punishment for criminal acts implicate difficult and enduring questions respecting the sanctity of the individual, the nature of law, and the relation between law and the social order. "As a moral or political issue [the punishment of offenders] provokes intemperate emotions, deeply conflicting interests and intractable disagreements." D. Garland, Punishment and Modern Society 1 (1990). The efficacy of any sentencing system cannot be assessed absent agreement on the purposes and objectives of the penal system. And the responsibility for making these fundamental choices and implementing them lies with the legislature. See Gore v. United States [51 US 999] 357 US 386, 393, 2 L Ed 2d 1405, 78 S Ct 1280 (1958) ("whatever views may be entertained regarding severity of punishment, whether one believes in its efficacy or its futility...these are peculiarly questions of legislative policy). Thus, "[r]eviewing courts...should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." Solem, supra, at 290, 77 L Ed 2d 637, 103 S Ct 3001. See also Rummel, supra, at 274, 63 L Ed 2d 382, 100 S Ct 1133 (acknowledging "reluctance to review legislatively mandated terms of imprisonment"); Weems, supra, at 379, 54 L Ed 793, 30 S Ct 544 ("The function of the legislature is primary, its exercises fortified by presumptions of right and legality, and is not to be interfered with lightly, nor by any judicial conception of their wisdom or propriety")."

43. The second principle recognised by the Court was that the Eight Amendment does not mandate adoption of any one penological theory and that principles that guide criminal sentencing have varied with the times.

44. The third principle recognised that divergences, both in underlying theories of sentencing and in the length of prescribed prison terms, is inevitable, because of the federal structure. The fourth principle shaped by the court was that proportionality review by federal courts must be informed by objective factors to the maximum possible extent. While saying so, the Court held that penalty of death differs from all other forms of criminal punishments and that the easiest comparison between different sentences is the comparison between capital punishment and non capital punishment. The decision also recognised that objective standards to distinguish between sentences for different terms of years are lacking with the result that outside the context of capital punishment, successful challenges to the proportionality of particular sentences are exceedingly rare. The Court summed-up in the following words:

"[3b] All of these principles – the primacy of the legislature, the variety of legitimate penological schemes, the nature of our federal system, and the requirement that proportionality review be guided by objective factors – inform the final one: The

Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are "grossly disproportionate....."

45. In Ewing v. California [538 US 11] the US Supreme Court held that it is enough if the state has a reasonable basis for believing that its punishment advances the goals of its criminal justice system in any substantial way. The Court upheld the sentence of life imprisonment awarded to Ewing for theft of three golf sticks because it reflected a rational legislative judgment, entitled to deference. The Court observed:

"Our traditional deference to legislative policy choices finds a corollary in the principle that the Constitution "does not mandate adoption of any one penological theory." Id., at 999, 115 L Ed 2d 836, 111 S Ct 2680 (Kennedy, J., concurring in part and conrurring in judgment). A sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation. See 1 W. LaFave & A. Scott, Substantive Criminal Law 1.5, pp 30-36 (1986) (explaining theories of punishment). Some or all of these justifications may play a role in a State's sentencing scheme. Selecting the sentencing rationales is generally a policy choice to be made by state legislatures, not federal courts.

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Ewing's sentence is justified by the State's public-safety interest in incapacitating and deterring recidivist felons, and amply supported by his own long, serious criminal record. ... ... To be sure, Ewing's sentence is a long one. But it reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated. The State of California "was entitled to place upon [Ewing] the onus of one who is simply unable to bring his conduct within the social norms prescribed by the criminal law of the State." Rummel, supra, at 284 63 L Ed 2d 382, 100 S Ct 1133. Ewing's is not "the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality."

46. The Canadian view on the principle of proportionality of sentence is no different. Several decisions of the Canadian Supreme Court, have held proportionality of punishment to the gravity of the offence to be a constitutional requirement. In R. v. Smith (1987) 1 SCR 1045, the Supreme Court of Canada said:

"In assessing whether a sentence is grossly disproportionate, the court must first consider the gravity of the offence, the personal characteristics of the offender and the particular circumstances of the case in order to determine what range of sentences would have been appropriate to punish, rehabilitate or deter this particular offender or to protect the public from this particular offender. The other purposes

which may be pursued by the imposition of punishment, in particular the deterrence of other potential offenders, are thus not relevant at this stage of the inquiry. This does not mean that the judge or the legislator can no longer consider general deterrence or other penological purposes that go beyond the particular offender in determining a sentence, but only that the resulting sentence must not be grossly disproportionate to what the offender deserves."

47. In R. v. Goltz (1991) 3 SCR 485, the Canadian Supreme Court also recognised the principle that legislative edicts as to quantum of punishment should not be lightly upset. The Court observed:

"Moreover, it is clear from both Smith and Lyons, that the test is not one which is quick to invalidate sentences crafted by legislators. The means and purposes of legislative bodies are not to be easily upset in a challenge under s.12.

xxx xxx xxx This acknowledgement that sanctions serve numerous purposes underscores the legitimacy of a legislative concern that sentences be geared in significant part to the continued welfare of the public through deterrent and protective aspects of a punishment. This perspective is explicitly affirmed in R. v. Luxton per Lamer C.J. Thus, while the multiple factors which constitute the Smith test are aimed primarily at ensuring that individuals not be subjected to grossly disproportionate punishment, it is also supported by a concern to uphold other legitimate values which justify penal sanctions. These values unavoidably play a role in the balancing of elements in a S.12 analysis."

48. In R. v. Fergusson (2008) 1 SCR 96, the Canadian Supreme Court held that for the Court to interfere with the sentencing provision it was not enough to say that the sentence was excessive. What must be demonstrated is that the sentence is so outrageously disproportionate that the Canadians would find the punishment abhorrent or intolerable. The following observations succinctly sum up the test to be adopted:

"The test for whether a particular sentence constitutes cruel and unusual punishment is whether the sentence is grossly disproportionate: R. v. Smith (1987) 1 SCR 1045. As this Court has repeatedly held, to be considered grossly disproportionate, the sentence must be more than merely excessive.

The sentence must be "so excessive as to outrage standards of decency" and disproportionate to the extent that Canadians "would find the punishment abhorrent or intolerable".

49. To sum up:

(a) Punishments must be proportionate to the nature and gravity of the offences for which the same are prescribed.

(b) Prescribing punishments is the function of the legislature and not the Courts'.

(c) The legislature is presumed to be supremely wise and aware of the needs of the people and the measures that are necessary to meet those needs.

Courts show deference to the legislative will and wisdom and are slow in upsetting the enacted provisions dealing with the quantum of punishment prescribed for different offences.

(e) Courts, however, have the jurisdiction to interfere when the punishment prescribed is so outrageously disproportionate to the offence or so inhuman or brutal that the same cannot be accepted by any standard of decency.

(f) Absence of objective standards for determining the legality of the prescribed sentence makes the job of the Court reviewing the punishment difficult.

(g) Courts cannot interfere with the prescribed punishment only because the punishment is perceived to be excessive.

(h) In dealing with questions of proportionality of sentences, capital punishment is considered to be different in kind and degree from sentence of imprisonment. The result is that while there are several instances when capital punishment has been considered to be disproportionate to the offence committed, there are very few and rare cases of sentences of imprisonment being held disproportionate.

50. Applying the above to the case at hand, we find that the need to bring in Section 364A of the IPC arose initially because of the increasing incidence of kidnapping and abduction for ransom. This is evident from the recommendations made by the Law Commission to which we have made reference in the earlier part of this judgment. While those recommendations were pending with the government, the specter of terrorism started raising its head threatening not only the security and safety of the citizens but the very sovereignty and integrity of the country, calling for adequate measures to curb what has the potential of destabilizing any country. With terrorism assuming international dimensions, the need to further amend the law arose, resulting in the amendment to Section 364A, in the year 1994. The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organized activity for economic gains but by terrorist organizations is what necessitated the incorporation of Section 364A of the IPC and a stringent punishment for those indulging in such activities. Given the background in which the law was enacted and the concern shown by the Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to Section 364A cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared unconstitutional. Judicial discretion available to the Courts to choose one of the two sentences prescribed for those falling foul of Section 364A will doubtless be exercised by the Courts along judicially recognized lines and death sentences awarded only in the rarest of rare cases. But just because the sentence of death is a possible punishment that may be awarded in appropriate cases

cannot make it per se inhuman or barbaric. In the ordinary course and in cases which qualify to be called rarest of the rare, death may be awarded only where kidnapping or abduction has resulted in the death either of the victim or anyone else in the course of the commission of the offence. Fact situations where the act which the accused is charged with is proved to be an act of terrorism threatening the very essence of our federal, secular and democratic structure may possibly be the only other situations where Courts may consider awarding the extreme penalty. But, short of death in such extreme and rarest of rare cases, imprisonment for life for a proved case of kidnapping or abduction will not qualify for being described as barbaric or inhuman so as to infringe the right to life guaranteed under Article 21 of the Constitution.

51. It was argued that in certain situations even imprisonment for life may be disproportionate to the gravity of the offence committed by the accused. Hypothetical situations are pressed into service to bring home the force of the contention. The question, however, is whether the Court can merely on a hypothetical situation strike down a provision disregarding the actual facts in which the challenge has been mounted. Our answer is in the negative. Assumed hypothetical situations cannot, in our opinion, be brought to bear upon the vires of Section 364A. The stark facts that have been held proved in the present case would at any rate take the case out of the purview of any such hypothetical situation. We say so because the appellants in the case at hand have been held guilty not only under Section 364A, but even for murder punishable under Section 302 of the IPC. Sentence of death awarded to them for both was considered to be just, fair and reasonable, even by the standards of rarest of rare cases, evolved and applied by this Court. It is not a case where the victim had escaped his fate and lived to tell his woeful tale. It is a case where he was done to death, which is what appears to have weighed with the ourts in awarding to the appellants the capital punishment. We are not in this round of litigation sitting in judgment over what has already attained finality. All that we are concerned with is whether the provisions of Section 364A in so far as the same prescribes death or life imprisonment is unconstitutional on account of the punishment being disproportionate to the gravity of the crime committed by the appellants. Our answer to that question is in the negative. A sentence of death in a case of murder may be rare, but, if the courts have, upon consideration of the facts and evidence, found that the same is the only sentence that can be awarded, it is difficult to revisit that question in collateral proceedings like the one at hand.

52. In the result this appeal fails and is, hereby, dismissed.

.....J. (T.S. THAKUR) .....J. (R.K. AGRAWAL)
.....J. (ADARSH KUMAR GOEL) New Delhi August 21, 2015