

Thus it is evident, in view of the several authoritative pronouncements the decree in a suit for specific performance is only a preliminary decree and not a final decree. However, with respect to execution of the decree, whether lies under Section 28 of S.R. Act and or on the execution side, there appears to be conflict of views as laid down in *Balasa Sarada v. Talluri Anusuyama*, reported in 2007 (3) ALT 4 Section 28 does not relate to execution for decree. Application filed under Section 28(3)(a) of the Act is not maintainable. It was further held averting to words “same suit” in Section 28 enables the party to obtain incidental reliefs in the suit but not relating to execution of decree and the proper remedy is only to take steps as provided under Order 21(34) CPC. This is contrary to the decision of the Supreme Court in (1994) 2 SCC 642 = AIR 1994

SC 1699 = 1994 (1) CCC 360 (SC) and requires reconsideration.

Conclusion

Application for execution of a registered sale deed in pursuance of a decree for Specific Performance of a decree lies only under Section 28(3)(a) SR Act but not by filing under execution petition as provided under Order XXI Rule 34 CPC and the judgment of His Lordship Justice N.V. Ramana, 2007 (2) ALD 802 = 2007 (3) ALT 4, laying down the D.Hr has to file a separate petition for execution as provided under Order 21 Rule 34 CPC requires reconsideration and the decree under specific Relief Act is only a preliminary decree and not a Final decree” and the trial Court after passing the decree does not become *functions officio*.

Any sophisticated contra view in view of the importance of the matter is worth welcome.

NEED FOR ABOLITION OF DEATH SENTENCE — Its Spiritual and Constitutional Trends

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“Death to death, eye to eye is not the remedy or solution for controlling or curtailment of a crime or an offence”

All human beings are equal before law and Almighty. Human life is precious to all and is the gift of nature. Right to live is inherent in every human being. My best of study and personal opinion is that human beings by birth are not born as bad, cruel or criminal. It is a known phenomena that Almighty, the Supreme God be that of any community, religion or faith is the creator of all human beings and gifts of nature at 2014-Journal—F-5

large. Since, Almighty alone is the creator of all human beings, he alone has the right, authority to destroy the same. In other words, life and death are two sides of the same coin which are inherent powers vested with Almighty alone. It follows that it is the choice and rule of the Almighty that a human being is born to have his death in natural way, with the said human being/s not knowing how and when they die. Every

human being/s has “Atma” in thy themselves and is guided by the principles of the “Theory of Karma”. Almighty, the Supreme God is the ultimate Judge of destiny. The rules and laws of Nature created by Almighty cannot be circumvented by human beings with their legislations.

The imposition of death penalty or punishment even after due process of law upon a human being appears to be an abrupt end of life in gross violation of human rights and which is also against the laws of nature provided by Almighty. It is the opinion of majority in India that a capital punishment/death penalty should not be exercised even in cases of serious gravity of crimes for the death penalty is likely to bring sorrow and grief not only to the family members of the human being who is to face death sentence, so also is not likely to efface or console the sad moments faced by the victim/s family members by bringing back the dead victim/s back alive in any manner.

It is earnestly submitted with respectful approach that no human being/s are empowered to take life of another human being/s be that of a criminal even by due process of law for such right is vested only with the Almighty and such other factors and that even a criminal has a right to live and die a natural death.

Death sentence and its impact on the freedom to live has been a topic of debate since long. Our country accepts capital punishment of death sentence under law. The well established procedure of executing capital punishment in India is death by hanging the guilt.

Our Nation, legally accepts death sentence and the well accepted execution of capital punishment is death by hanging the offender. Hang till death is the common and official method of execution in India. In India, death sentence and freedom to live co-exist. Our

Indian Constitution provides various freedoms under Articles 14, 19 and 21, but there is no specific proviso in our Constitution providing freedom of protection for right to live. Nonetheless it is well accepted and acknowledged that right to live is the most basic human right.

India, our Nation is governed by the provisions of Indian Penal Code 1861 and Constitution of India in particular as regards imposing of a death penalty/capital punishment on a human being/ declared criminal. Death sentence is applied for several offences under the Indian Penal Code.

Death penalty can be imposed for the following offences and or criminal conspiracy to commit any of the following offences (Section 120-B IPC). The offences amenable for capital punishment are Treason for waging war against the Government of India (Section 121 IPC), Abetment of mutiny actually committed (Section 132 IPC) Perjury resulting in the conviction and death of an innocent person (Section 194) Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person (Section 195-A IPC) Murder (Section 302 IPC) Murder committed by a life convict (Section 303 IPC - it is pertinent to state here that this Section 303 IPC was struck down by the Hon’ble Supreme Court, but however the same remains in the annals of the Penal Code to this day) Abatement of a suicide by a minor, insane person or intoxicated person (Section 305 IPC) Attempted murder by a serving life convict (Section 307(2) IPC) Kidnapping for ransom (Section 364-A) Dacoity armed robbery or banditry) with murder (Section 396 IPC) respectively. In addition to the offences covered under the Indian Penal Code, the death penalty is provided under the following special and local laws also and the important of them are Defence and Internal Security of India Act 1971, Defence of India Act 1971 (Section 5), Narcotics Drugs and Psychotropic Substances (Prevention) Act 1985

(as amended in 1988-Section 31A), Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA), Prevention of Terrorism Act 2002, (POTA), Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act 1989, Explosive Substances Act 1908-as amended in 2001), Arms Act - as amended in 1988), Unlawful Activities Prevention Act 1967-as amended in 2004) Air Force Act 1950, The Navy Act 1956 respectively. The various States like Maharashtra, Andhra Pradesh and Karnataka to name a few have made local laws imposing death punishments for violations. It is the latest trend that the Hon'ble Supreme Court has even suggested that death penalty be extended to those held guilty for committing honour killings, and also to those police officials who commit brutality under the garb of encounter killings.

It is a part of historic record that several members of the Constituent Assembly in the course of drafting our Indian Constitution have made proposals for abolishing or even for non-inclusion at all of death penalty as means of punishment, but the Constitution of India adopted finally including the aspect of death penalty. However, the demand for abolition of capital punishment did continue and this led to introduction of a Bill in the Lok Sabha in the year 1956, but however the same was rejected. Further, a Resolution was introduced in the Rajya Sabha in or about 1958, but after debate the same was withdrawn. Similar exercise of Resolution was proposed in the year 1961 again in Rajya Sabha seeking abolition of capital punishment, but the same was rejected in 1962. The Law Commission of India in its 35th Report finally put the debate seeking abolition of death penalty to rest in a way by recommending that death penalty should be retained.

The judicial process in death sentence cases starts with the trial held before a District and Sessions Court at State level. The death sentences imposed in such trials can be reviewed by the High Court of the same

State and based on its evaluation, the death sentence may be confirmed or in the alternative another sentence may be imposed in its place. Generally under the Indian judicial system, High Court is the first Court of Appeal for a human being sentenced to death, except under some anti terrorist legislations whereon the Supreme Court is the first appellate Court. Similarly, in cases where the death sentence has not been imposed by a trial Court, the State can appeal to the High Court to enhance the sentence to one of death penalty. It is necessary to state here that there is no automatic right of appeal to the Supreme Court except where a High Court has imposed a death sentence while quashing a trial Court order of acquittal or enhancing a trial Court's sentence to that of death penalty. The judicial procedure comes to an end, with the verdict of the Supreme Court. The offender if aggrieved with the imposition of death penalty can file mercy petition with the State or National Executive. Our Constitution under Articles 72 and 161 provides that the State Governor and the President of India have the power to grant pardon or commutation of offence. The process of seeking commutation starts from the office of State Governor and then from office of the President. The Executive has the power under the Indian Penal Code to commute a death sentence without the consent of the offender.

The Constitutional validity of capital punishment was put to test and the same was upheld by the Hon'ble Supreme Court and the same can be attributed to the judgment rendered by Bench in the case of *Jaganmohan Singh v. State of Uttar Pradesh*, (1973) 1 SCC 20. In this case, the Hon'ble High Court confirmed the death sentence as ordered by the trial Court. However, the Hon'ble Supreme Court in another instance in the case of *Rajendra Prasad v. State of Uttar Pradesh*, AIR 1979 SC 916, took the view that crime may be grievous yet the criminal may not deserve death penalty. The

extreme penalty of death can be invoked only in extreme cases. In this case, the validity of capital punishment was tested in the teeth of Articles 14, 19 and 21 of the Constitution. In keeping with the difference of opinions of the Supreme Court Judges in the above stated two cases of *Jaganmohan Singh v. State of Uttar Pradesh* and *Rajendra Prasad v. State of Uttar Pradesh*, the question of reasonableness of death was raised before the Constitution Bench of Supreme Court in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684. It can be said that Courts of Justice have been taking initiative with their wisdom and human values in bringing down the need for implementation of death sentence. The first judicial pronouncement on the lines of highlighting the concept of applicability of death sentence only to "rarest of rare cases" can be attributed to the judicial pronouncement in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, but it is to be borne that though the constitutional validity of death sentence was not disturbed by the Hon'ble Court, it did not indicate the types of cases in which death penalty should be awarded instead of life imprisonment. The factors which determine the types of cases in which death penalty should be awarded instead of life imprisonment was explained in the case of *Macchi Singh v. State of Punjab*, (1983) 3 SCC 470, headed by His Lordships M.P. Thakkar, J. In the judgment rendered in *Macchi Singh v. State of Punjab*, (1983) 3 SCC 470, aspects like manner of commission of crime, motive for commission of crime, antisocial or socially abhorrent nature of the crime, magnitude of crime and personality of victim of crime were given due emphasis for determining imposition of death penalty or life imprisonment and to add the propositions that the extreme penalty of death need not be inflicted except in gravest cases of culpability, that circumstances of the offender requires to be considered along with the circumstances of the crime before opting for the death penalty, that life imprisonment is the rule and death sentence is an exception

and that a balance-sheet of aggravating and mitigating circumstances has to be drawn up *etc.*, have been properly given weightage and appreciated. An exercise was made seeking reconsideration of the rule laid down in the *Bachan Singh v. State of Punjab* and in the said process it was held in the case of *Allaudin Mian v. State of Bihar*, AIR 1989 SC 1456, that the principles laid down in *Bachan Singh's* case (*supra*), requires no reconsideration by the Court, and thus plea to the contra has been rejected.

Notwithstanding the interpretations given by the Hon'ble Courts by its judgments in *Bachan Singh's* case (*supra*), *Rajendra Parasad's* case (*supra*) and *Macchi Singh's* case (*supra*), as narrated and stated hereinabove, by taking liberal view in imposing death sentence/s to a given case, Legal luminaries, Human rights activists have continued with their demand for total abolition of death penalty in keeping with the changing trends of the world at large. The desire of abolition of death penalty is based on spiritual and on protection of basic human rights values. The need for abolition of death penalty, internationally is on the rise. My study revealed that around 118 countries across the Globe have abolished death penalty.

In addition to the thoughts stated hereinabove the need for abolition of death penalty was supported by majority taking the view that though death penalty as ordained under Indian Penal Code for wide range of offences is on paper, it has not reduced crime in our nation. It remains to state that existence of death penalty has not discouraged the increasing crimes attracting the provisions of death sentence as per the Indian Penal Code and of such other Statutes in India. It can be said capital punishment is the greatest violator of human rights.

The persistence and demand for abolition of death penalty is alive with active vibrations in our Nation and across the World. The date of 10th October of every year is

observed as “WORLD DAY AGAINST DEATH PENALTY”.

In addition to the above factors, the various other reasons on a study reveal the need and suggest for necessity for abolition of death penalty. The various other reasons that support the argument for abolition of death penalty are:

a. It has been observed and elicited that most death sentences imposed in India are based on merely circumstantial evidence alone. In such type of cases, there is always an element of innocent being wrongfully put to death sentence owing to improper testimony of witnesses. Thus the imposition of death penalty is based on probabilities and on a likely false implication of innocent, which is unjustified and grossly violating human rights.

In his dissenting judgment in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684, in which constitutional validity of death sentence was under test, Justice *Bhagwati* (in minority judgment) stated “our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believes to be a true case. Sometimes there is also mistaken eye-witness identification and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a frame up of innocent men by their enemies. There are also cases where an overzealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defence. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations. It is indeed a very live possibility ...”

It has been brought to light that the anguish and statements made by His Lordships *Bhagwati* of Supreme Court have proved correct, and that the present judicial

mechanism is functioning with the risk of executing innocent of the crime for which they were condemned. The judgment of Supreme Court in the case of *Sudama Pandey and others v. State of Bihar*, AIR 2002 SC 293 and that of in the case of *Krishna Mochi and others v. State of Bihar*, (2002) 6 SCC 81, prove the approach in which capital punishment was ordered without proper and correct appreciation of evidence.

b. Another important factor is the existence of arbitrariness in sentencing death penalty. The judicial discretion has been under great debate in this regard. It has been found that on perusal of the judgments even in a given period of time different Benches of Supreme Court have treated similar cases differently, reflecting their stands for or against the death punishment. The glaring example supporting this factor of variations in discretions can be attributed between the cases of *Dhananjay Chatterjee v. State of West Bengal*, (1994) 2 SCC 220 and the case of *Rahul v. State of Maharashtra*, (2005) 10 SCC 322, respectively. Both the said cases relate to similar facts. While in the case of *Dhananjay Chatterjee*, capital punishment was ordered and was executed, in the case of *Rahul*, the guilt (*Rahul*) was commuted to life imprisonment only and escaped the death penalty.

c. Another line of argument favouring abolition of death penalty is that death appears to be an easy means to escape, for the guilty gets relieved of his suffering and he being denied an opportunity to repent.

d. The delayed executions of death sentences are sending wrong signals to the society. The delay in carrying out the sentence makes the guilty suffer so also to the society at large in a way. The human being/s facing the death sentence lives with constant fear of execution and mostly in tough prison environment. The delay in execution/s have led to the Supreme Court interventions through their judicial pronouncements. It was held in the case of *Smt. Triveni v. State of*

Gujarat, (1988) 4 SCC 574, that undue long delays in execution of the sentence of death would entitle to approach the Court for appropriate orders of justice. The study of mine reveal that during the period of legal confusion and establishment of legal enforceable principle, a large number of death sentences were commuted on grounds of delay to imprisonments. The periods of delays and the stage at which they were delayed have been interpreted by the Hon'ble Courts with the going period of time for considering the cases of death sentence cases for commutation. In the case of *Gurmeet Singh v. State of Uttar Pradesh*, AIR 2005 SC 3611, the Hon'ble Court refused to commute the death sentence on the ground of delay, taking the position that only delay in mercy petitions are material considerations.

e. The use of death sentences by our Nation against the International Covenant on Civil and Political Rights treaties have raised eyebrows of the world at large. India, our Nation accepted in 1979 to abide by the ICCPR treaties. To say a few, the imposing of death sentence/s for kidnapping for ransom (364-A Indian Penal Code) and for offences covered under the Narcotics, Drugs and Psychotropic Substances (Prevention) Act 1995 are against the spirit and tenor to the International treaties.

f. Another arrow in the bow supporting the line of abolition of death sentences is that several years of life in prison spent by the offenders can be taken as a best substitute and sufficient criteria to avoid death punishment, for there would have been repentance in their attitude and mind.

g. The miscarriage of justices by playing with the lives of innocent have supported the theory that death sentences should be abolished. It is submitted that around 14 former Judges including that of Supreme Court and High Courts headed by Justice Mr. P.B. Sawant, Justice Mr. Bilal Nazki,

Justice Mr. A.P. Shah, Justice Mr. P.K. Mishra to name a few, have made appeal in a unique creating history of its kind to the President by making appeal informing therein that two prisoners had been wrongfully sentenced to death (*i.e.*) *Rayji Rao* and *Surja Ram* and that they were executed on 4.5.1996 and 7.4.1997 respectively pursuant to flawed judgments, constituting miscarriage of justice in the history of criminal jurisprudence and Independent India. The admission of error in the sentencing to death of 13 convicts revived the debate over abolishing the death penalty. The 13 convicts who were sentenced to death by the Hon'ble Supreme Court through its judgments and which are deemed to be not on correct lines as per the panel of Judges who submitted appeal to the President of India and as reported in English Magazine "Frontline" extract Issue 17 August 25-September 7 2012 are: (i) *Dayanidhi Bisoi*, (2003) 9 SCC 310 (ii) *Mohan Anna Chavan*, (2008) 7 SCC 561 (iii) *Shivaji*, (2008) 15 SCC 269 (iv) *Bantu*, 2008 (11) SCC 113 (v) *Sattan*, (2009) 4 SCC 736 (vi) *Upendra*, (2009) 4 SCC 736 (vii) *Ankush Maruti Shinde* (viii) *Ambadas Laxman Shinde* (ix) *Bapu Appa Shinde* (x) *Raju Mhasa Shinde* (xi) *Rajya Appa Shinde* (xii) *Surya* (Sl.Nos.vii to xii), (2009) 6 SCC 667 and (xiii) *Saibanna*, (2005) 4 SCC 165 respectively.

No doubt our Nation is firm in continuing the capital punishment on paper with India voting in 2007 against a UN General Assembly Resolution calling for moratorium on death penalty and reiterating its stand calling again in November 2012 on capital punishment by voting against the Resolution seeking to ban death penalty, the mechanism of Judiciary is playing its role by its judicial pronouncements diluting and interpreting the concept of rigid death penalty on many a occasions.

The Judicial machinery is very wise and cautious while dealing with cases involving death sentence punishments. The principle of "rarest of rare cases" is being the test adopted with care and diligence for arriving

to conclusions in death sentence involved matters. It is however been a matter of debate again as to what constitutes “rarest of rare cases”. It has been published in Times of India, English Daily dated 21.11.2012 that two Hon’ble Judges, Justice Mr. K.S. Radhakrishnan and Justice Mr. Madan B. Lokur opined that there is no uniformity in the application of the principle of “rarest of rare cases” and further that there is need to rethink the uniform norms for determining the aspect of “rarest of rare cases” too.

While the Judiciary is playing its active role, the Executive through exercise of powers by the President has diluted the execution and implementation of death sentence. A study of past record indicates that in June 2012 itself, the then President of India has commuted the death sentence of as many as 35 convicts to life. The discretionary powers of the President of India are all pervasive and are above the

judicial process as per our Constitution. The various facts indicate that death sentence, though not banned in our country on record, practically in the course of its implementation, death sentence is slowly drifting towards abolition.

It is my considered opinion that in keeping with the constitutional trends through the Judiciary with its pronouncements, exercise of powers by the President of our Nation, growing demand for abolition of death penalty for various reasons as studied hereinabove and the spiritual values attached to human beings are paving a steady progress in our country towards the need for abolition of death penalty. It may not be a surprise news when in the near future, we hear that even our Nation has abolished the Death Penalty/Capital punishment and has joined in the list of other Nations of the World which have abolished Death Sentence as means of criminal punishment.

MOTHER OF ALL JUDGMENTS —

G. Satyanarayana v. Government of Andhra Pradesh, 2014 (4) ALD 358

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Honourable Justice C.V. Nagarjuna Reddy has indeed done a remarkable work in making an in-depth study of all the Revenue Laws with their origin and concept, for delivering the above landmark judgment. Rather it will not sound strange to say, that the above judgment is the mother of all the judgments which are delivered till now by our High Court relating to the comprehensive Revenue Laws. In other words, the above judgment is an encyclopedia of all the Revenue Laws with golden interpretation of

the terms, mentioned therein besides highlighting their aims and objectives. This judgment will not only be helpful and useful to all the Advocates who practice mostly on Revenue side, and the legal community but also can be used as a handbook or manual for the Revenue Officers, who perform the Quasi Judicial functions under original, appellate and revisional jurisdictions, etc.,

Though, there are several judgments on hand till now, under the above subject, they