

DEATH PENALTY*By*

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Death Penalty, in the rarest of rare cases is awarded on the touchstone of conscience burn and a horrible shock to the public. Rarest of rare cases principle is evolved to deter the criminal from resorting to disastrous and dastardly act of committing the heinous crime of murder. Thus, the jurists advocate in favour of retaining death penalty in the statute. However certain countries in the globe are in favour of abolishing the death sentence and in fact some countries abolished it. Perhaps, this is also one of the reasons where Courts are reluctant to impose death penalty except in rarest of rare cases.

The present trend of the Apex Court as reflected in the recent Constitution Bench of the Supreme Court remains a landmark judgment and it deserves all commendation from the view point of human rights violation and equality before law as enshrined under the Article 14 of the Constitution. The sole consideration weighed with the wisdom of the Supreme Court is the delay in dispensation of clemency petitions by the death convicts by the President of India. The apex Court felt that long delay in disposal of mercy petitions by Constitution Head left the death convicts in untold agony and misery and depressed wait and it is further felt that the torture undergone by

the convicts on the death row is sufficient in fact to suffer the execution of the death penalty and from this humanitarian approach, Supreme Court favoured commutation of death sentence to that of life imprisonment.

It is also made clear in the said celebrated judgment that the Supreme Court cannot act as Court of appeal over the verdict of its own in confirming the death sentence awarded to the selfsame accused. However, it emphatically made clear that the decisions of President of India is justiciable only to the limited extent of appreciating and considering the part of delay in disposal of mercy petitions. This is no doubt as I pointed out at, the threshold that this judgment is a landmark one in the legal history.

But, the Courts cannot derive any inspiration on the negative side to refrain from awarding death sentence in horrible rarest of rare cases. The judgment of the Supreme Court shall be understood that by any means, it has not advocated against death penalty. So long as the death penalty is not abolished, the Courts in India shall lean towards visiting notorious criminals with death penalty on being satisfied with parameters laid down in catena of supreme judgments as to rarest of rare cases.

**“JUDGMENT RESERVED” – WITHOUT FIXING THE DATE OF
PRONOUNCEMENT OF JUDGMENT, WHETHER ILLICIT ?**

By

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Very often, we come across; the Judiciary without fixing the date of pronouncement

of judgment is simply writing judgment, reserved, irrespective of the nature of the

suit. Can this ship shot be considered has sanctity of law and is legal and compliance of the mandate.

1. In order to answer this question, it is desirable and profitable to extract the relevant provisions of CPC as laid down in Order 20 CPC.

Judgment when pronounced.

Order XX CPC

2. Order XX Rule 1 CPC. The Court after the case has been heard, shall pronounce judgment in open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future date. The Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleader, provided that when the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment, within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, on the ground of exceptional and extraordinary circumstances of the case, the Court shall fix a day for the pronouncement of the judgment and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded and due notice of the day so fixed shall be given to the parties or their pleaders.”

3. Even a cursory reading of the above mandatory provisions makes it clear; there is no provision for reservation of the judgment.

It is laid down in (1991) 2 CCC Page 432” order of the trial Court posting the suit for judgment without fixing the date of hearing no sanctity of law, and is illegal as fixing the date of hearing is a statutory mandate.”

4. Unreasonable delay between the hearing of the argument and delivery of judgment is not countenanced in the justice delivery system. Delay in the announcement of judgment may give rise to uncalled for ripples ruffling the legal eco-system. To avoid such situations the Parliament in its wisdom has set a time limit, for pronouncement of judgments under Order XX(1) CPC, which is meant to be abided. Order XX(1) CPC lays down the Code of ethics which is to be adhered to in spirit as well as in letters to avoid such risks. Trust and confidence are the foundation on which the system rests and no room is to be provided for dropping bricks.

5. As laid down by the Supreme Court AIR 1976 SC 2037, a long and unreasonable delay in delivering the judgment after hearing arguments unless explained properly is undesirable.

6. In civil cases, judgments must at best be pronounced with two months of the close of the case.

7. For the aforesaid reasons, and having regard to the mandatory provisions, set out in Order XX(1) CPC, it is suggested, the mandatory provisions are to be complied with, as posting the matter, “Judgment reserved” without fixing the date is illicit.