
STRUGGLES IN DEATH PENALTY SENTENCING: GUIDELINES IN MANOJ VS STATE OF MADHYA PRADESH (2022) AND THEIR NON-COMPLIANCE

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ABSTRACT

In recent years, India's death penalty administration has been criticized by various stakeholders. One of the common threads running through all the critiques is the arbitrary sentencing process in capital punishment cases. In order to ensure some consistency in consideration of relevant factors during the sentencing stage, the Supreme Court in *Manoj vs. State of Madhya Pradesh* (2022) laid down certain practical guidelines. The guidelines seek to ensure the collection of mitigating circumstances during the trial stage itself by casting a duty on the trial court to extract information pertaining to accused from the state. Despite the importance and unequivocal nature of these directions, the Trial Courts have failed to comply with them.

To state that death penalty in India is a legally contested issue would be an understatement. Recent years have seen multiple critiques of the administration of death penalty in India across distinct fronts. The Law Commission of India in its 262nd report (2015) on 'The Death Penalty' after taking note of the lack of any valid penological justification and arbitrary imposition of capital punishment recommended the abolition of death for all the offences barring terrorism and waging war.¹ In 2016, empirical research on the death sentence confirmed a long-held view that the penalty is imposed disproportionately on the marginalized sections of the society.² Based on interviews with more than 370 death row convicts, the Death Penalty India Report found that around 75% of the convicts were economically vulnerable.³

While the Supreme Court refused to re-examine the constitutional validity of death penalty in 2019, Justice Joseph in his dissent took note of the 262nd Report of the Law Commission of India and remarked on the need to reconsider 'death penalty as a punishment, especially its purpose and practice'.⁴ Within the debate on the administration of capital punishment, one burning issue that the courts have been forced to grapple with is the discretion available to judges in the sentencing stage. The fact that death penalty sentencing in India has become arbitrary owing to the judge centric application of the Bachan Singh principle has been acknowledged by the Supreme Court itself in multiple cases.⁵ Last year, the Supreme Court suo motu took cognizance of a related issue of same day sentencing and referred the same to a Constitution Bench.⁶

Guidelines in Manoj vs. State of Madhya Pradesh (2022)

In 2022, another crucial development took place in Manoj vs State of Madhya Pradesh⁷ wherein the Supreme Court made an attempt to bring in some consistency to sentencing in death penalty cases. After highlighting the "incongruence in the application of the 'rarest of the rare test'

¹ Law Commission of India, The Death Penalty (Report no. 262, 2015).

² Anup Surendranath & Shreya Rastogi, Death Penalty India Report (2016).

³ *Id.*

⁴ Chhannu Lal Verma v. State of Chhattisgarh, (2019) 12 SCC 438 (India).

⁵ Swamy Shraddhananda v. State of Karnataka, (2008) 13 SCC 767 (India); Sangeet v. State of Haryana, (2013) 2 SCC 452 (India); *Id.*

⁶ *In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences*, Suo Motu Writ Petition (Crl.) No 1 of 2022 (India).

⁷ 2022 SCC OnLine SC 677 (India).

enunciated in *Bachan Singh*”, the Court lamented the fact that:

*“...despite over four decades since Bachan Singh there has been little to no policy-driven change, towards formulating a scheme or system that elaborates how mitigating circumstances are to be collected, for the court’s consideration “.*⁸

In light of the same, the Court deemed it necessary to “frame practical guidelines for the courts to adopt and implement...to systematically collect and evaluate information on mitigating circumstances”.⁹

First, the Court entrusted the trial courts to extract information pertaining to the psychiatric and psychological evaluation of the accused from the state as well as the accused.¹⁰

Second, the Court imposed a duty on the State to collection additional information relating to the accused (like age, early family background, socio-economic background, history of unstable social behaviour, alienation of the individual, etc.) in a time bound manner.¹¹

Third, the Court also made it mandatory to seek information from the jail authorities ‘regarding the accused’s jail conduct and behaviour, work done (if any), activities the accused has involved themselves in’, etc.¹²

These guidelines are critical to ensure that the possibility of reformation is considered meaningfully at the sentencing stage and ‘to avoid slipping into a retributive response’ to the crime.¹³ In addition to this, the guidelines attain increased importance owing to the lack of restraint shown by the Trial Courts in meting out death sentences. An analysis of data of 2000-2014 showed that out of around 1500 death sentences given by the Trial Courts, only 5% remained on death row post the Supreme Court’s decision on their appeal.¹⁴

⁸ *Id.* at para 208.

⁹ *Id.* at para 212.

¹⁰ *Id.* at para 214.

¹¹ *Id.* at para 215.

¹² *Id.* at para 216.

¹³ *Id.* at para 213.

¹⁴ Surendranath, *supra* note 2.

Further research on sentencing in Trial Court of various states has demonstrated that these Courts engage in crime centric mode of sentencing (as opposed to the mandate in Bachan Singh).¹⁵ Moreover, the Trial Courts rarely consider the option of life imprisonment (in contrast to the statutory mandate of Section 354(3)).¹⁶ The broken state of criminal sentencing in the Trial Courts means that a lot of the prisoners end up spending a significant period of time on death row which causes them immense avoidable suffering, making their condition akin to ‘living death’.¹⁷

Another reason why the guidelines require special emphasis is brought out by the ground reality of death row prisoners when it comes to mental illnesses. An unprecedented report by Project 39A titled ‘Deathworthy’ found that more than 60% of the prisoners had a mental illness out of 88 prisoners who were part of the study.¹⁸ More concerning finding was the existence of correlation between the conditions of death row and the mental illnesses.¹⁹ Furthermore, the report painted a painful backstory of the prisoners. More than 50% death row convicts faced physical/verbal abuse as children, around 85% grew up in disturbed family environment and almost 33% had issues of substance abuse.²⁰

In this context, the guidelines formulated by the Supreme Court in Manoj case concretize the consideration of such information of the death row convicts at the sentencing stage.

Non-compliance by Trial Courts

Despite the significance of the guidelines and their unequivocal nature, the Trial Courts have continued handing out death sentences without considering the relevant information as mandated by the Supreme Court. In the Annual Statistics Report (2022), Project 39A made an attempt to trace the impact of guidelines issued by the Supreme Court in Manoj case. The report brought out a disturbing reality. It found that in more than 95% of cases, the Trial Court did not have any

¹⁵ Project 39A, Death Penalty Sentencing in Trial Courts (2020)

¹⁶ Neetika Vishwanath & Preeti Pratishruti Dash, *The broken state of capital sentencing in India’s trial courts*, OxHRH Blog (May 28, 2020) <https://ohrh.law.ox.ac.uk/the-broken-state-of-capital-sentencing-in-indias-trial-courts/>

¹⁷ Law Commission, *supra* note 1.

¹⁸ Project 39A, Deathworthy: A Mental Health Perspective of the Death Penalty (2021)

¹⁹ *Id.*

²⁰ *Id.*

material on mitigating circumstances while handing out death sentences.²¹

When J. Lalit, who was part of the bench in the Manoj case, was apprised of the non-compliance by the Trial Courts, he suggested putting ‘additional imperatives’.²² As possible reason behind Trial Court’s failure to follow the guidelines, J. Lalit thought the same to be a result of an administrative fault on the part of the lower courts because of which the guidelines were not getting circulated. While the non-circulation may have played its part, the failure by the Trial Courts to look at mitigating circumstances is part of a broader concern in death penalty sentencing.²³

At a macro level, the fact that the Supreme Court is commuting more and more death sentences while the Trial Courts are showing little restraint in giving out death sentences portrays the declining health of the judicial system as a whole. Indeed, the struggle of the Supreme Court to ensure compliance by the Trial Courts is not limited to death penalty matters.²⁴ Part of the issue is that the Supreme Court itself has contributed to the confusion around sentencing process in death penalty.²⁵ The difficulty of the Supreme Court to lay clear guidelines for the lower Courts emerges out of the structural characteristics of the apex court. Numerous scholars have highlighted that the Supreme Court increasingly finds itself unable to set up larger benches and engage in norm elaboration.²⁶

The structural limitation forces the Court to resort to small benches to deal with almost all its work, including constitutionally salient cases. The Court’s polyvocality can lead to obfuscation of doctrine where ‘lower court judges, let alone Indian citizens, sometimes cannot distinguish which Supreme Court judgments represent settled law’.²⁷ The differential standards followed by different benches of the Supreme Court was acknowledged by the Court itself in *Manoj vs. State of Madhya*

²¹ Project 39A, Annual Statistics Report 2022 (2023).

²² Project 39A, NLUD, 6th Annual Lecture | *The Quixotic Search for Fairness: Death Penalty in India* by Justice UU Lalit, YouTube (Dec. 6, 2023), <https://www.youtube.com/watch?v=W8etqVYdFok&t=3663s>.

²³ Vishwanath, *supra* note 16.

²⁴ Sohini Chowdhury, *Supreme Court Warns Magistrates Who Don't Follow Judgments On Bail; Says They Might Be Taken Off From Judicial Work & Sent For Training*, LiveLaw (March 21, 2023) <https://www.livelaw.in/top-stories/supreme-court-warns-magistrates-who-dont-follow-judgments-on-bail-says-they-might-be-taken-off-from-judicial-work-sent-for-training-224392>

²⁵ *Suo Motu Writ*, *supra*, note 6; Project 39A, *supra* note 21.

²⁶ Aparna Chandra et al. *The Supreme Court of India: A People’s Court?* 1 Indian L. Rev. (2017).; Nick Robinson, *Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts*, 61 Am. J. Comp. L., (2013).

²⁷ *Id* at 185-186

Pradesh. In Re Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences also, the Supreme Court noted ‘a clear conflict of opinions by two sets of three judge bench decisions’.²⁸

In order to ensure that the death penalty sentencing maintains at least a semblance of fairness, there is a need for greater enduring clarity. The Constitution bench in *Re Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences* has a critical opportunity to do so. While laying down clearer doctrine, the Supreme Court must specifically address the Trial Court’s propensity to mete out capital punishment in such a high number of cases. This will result in greater uniformity in the judicial system and also ensure that individuals are not needlessly subjected to life on death row.

²⁸ *Suo motu writ, supra*, note 6.