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MUKESH & ANR. V. STATE (NCT OF DELHI): A CRITICAL ANALYSIS OF THE 'RAREST OF RARE' DOCTRINE IN INDIA

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ABSTRACT:

The present case commentary deals with Mukesh & Anr. v. State (NCT of Delhi), commonly known as Nirbhaya case. In this case, the Court reiterated that the “rarest of rare” theory applies and confirmed the death sentence for the accused due to the heinousness of the crime committed by them. This commentary highlights the Court's arguments, the principles outlined in Bachan Singh and Machhi Singh cases, the debate around capital punishment from constitutional and criminological perspectives, and the conflict between deterrence, retribution, and rehabilitation models of punishment.

Keywords: Death Penalty, Rarest of Rare Doctrine, Nirbhaya Case, Capital Punishment, Criminal Justice.

INTRODUCTION:

Death penalty is considered to be one of the most controversial forms of punishment implemented in the Indian criminal justice system. Although some experts consider that death penalty is necessary to ensure social justice and maintain order in society, other specialists argue that death penalty contradicts humanitarian and restorative principles of justice. Thus, efforts were undertaken by the Indian Supreme Court to regulate the application of death penalty in accordance with the 'rarest of rare' rule formulated within Bachan Singh v. State of Punjab¹. Still, the applicability of this principle remains questionable nowadays.

As far as the case-law of the Indian Supreme Court is concerned, one can identify a number of important rulings. More specifically, the case of Mukesh & Anr. v. State (NCT of Delhi) also

¹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

known as Nirbhaya Case became a landmark precedent within Indian criminal law². It is noteworthy that in the course of this case, several men raped and killed a young woman from Delhi in 2012; consequently, the demand for capital punishment in relation to sexual crimes increased among Indians. As a result, death penalty was approved by the Indian Supreme Court as a measure corresponding to the nature of a crime in question.

Speaking about this court ruling, one should emphasize the critical discussion of its key features. Namely, this paper aims at evaluating the particularities of the ruling related to Nirbhaya case. Furthermore, the present study will focus on discussing possible motivations for such judicial decision – whether it is an outcome of public pressure or simply the voice of national conscience.

FACTS OF THE CASE:

During the night of 16 December 2012, there occurred an incident whereby a young girl aged 23 years studying physiotherapy was gang-raped and tortured along with her male companion in a moving bus in Delhi. This was done by six accused persons who included Mukesh and others as appellants herein. Both the appellant and her companion had boarded the bus assuming it to be a public transport bus. In the course of committing such heinous act of torture, the accused assaulted the male companion and sexually tortured and raped the victim.

This resulted in nation-wide protests demanding harsher laws and strict actions in relation to such sexual offences. As a consequence of her critical condition following the torture and rape, the victim was shifted to a hospital in Singapore where she died of her injuries on 29 December 2012³.

In this case, the trial court convicted the appellants under various sections of the Indian Penal Code and sentenced them to death in respect of four adult accused⁴. This decision of the trial court was also upheld by the Delhi High Court. Aggrieved by this decision, the accused filed the appeal before the Hon'ble Supreme Court questioning their conviction and sentence to death.

ISSUES BEFORE THE COURT:

² *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1.

³ *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1.

⁴ *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1.

1. Whether the legal validity of the conviction imposed upon the accused in view of the evidence and circumstances connected with the case.
2. Whether the acts committed by the accused fulfilled all that was required under the doctrine of “rarest of rare” laid down in *Bachan Singh v. State of Punjab*⁵.
3. Whether the nature, manner, and impact of committing such an act made the imposition of death sentence a better option rather than imposing life imprisonment on the accused.
4. Whether the matters like justice, deterrence, and public conscience prevailed sufficiently in the mind of the court as to render the accused unworthy of any reformatory measure.

JUDGEMENT OF THE COURT:

Supreme Court affirmed the conviction handed down by the Trial Court and the Delhi High Court and the imposition of the death sentence on the accused persons. According to the Supreme Court, the prosecution succeeded in its case against the accused beyond reasonable doubt because there were adequate medical evidence, witness testimonies, forensic evidence and other types of evidences presented in the trial courts.

In deciding the type of punishment to impose on the accused person in this particular case, the Supreme Court considered how brutally and inhumanely the crime was committed. According to the Court, the crime was committed in such a way that it subjected the victim to extreme mental and physical suffering resulting in shock to the whole of society. Indeed, the crime committed was a manifestation of utter contempt of human dignity.

According to the principles of *Bachan Singh v. State of Punjab*⁶ and *Machhi Singh v. State of Punjab*⁷, the Supreme Court decided that the case involved many aggravating factors that heavily outweigh any mitigating factors in favour of the accused.

Additionally, crimes of this nature create insecurity and destroy the confidence of women in the criminal justice system. It is for this reason, among others, that the Supreme Court held that the imposition of life imprisonment would not suffice⁸.

CRITICAL ANALYSIS:

⁵ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

⁶ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

⁷ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.

⁸ *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1.

At first glance, the ruling in the present case was widely recognized because of the outrageous character of the crime. What is more important, the case has again opened the discussion about constitutional validity and death penalty. Although, as it has been mentioned above, the Supreme Court applied 'rarest of rare' principle in this case, the interpretation of this doctrine still remains disputable⁹.

In connection with the above, one of the most controversial aspects of the case is the issue of 'collective conscience'. It has been stated by the Supreme Court that people were shocked by this crime, which means that the most severe punishment had to be applied. However, it should be noted that there were some legal scholars and jurists who thought that the decision of Supreme Court was wrong since criminal penalty must be consistent with the constitution and not rely on public opinion¹⁰. Hence, the latter may eventually lead to inconsistencies in criminal jurisprudence.

From the point of criminal law theory, one can consider two concepts, including retribution and reform. Whereas the former is related to proportionality of the criminal penalty and its deterrence function, the latter speaks about rehabilitating the offender. The present case, due to its brutal character, has been analysed within the framework of the retributive model. However, it should be added that according to the opponents, offenders have not been rehabilitated.

What is more, there remain some doubts about the effectiveness of death penalty in the sphere of preventing sexual crimes against women. Even though the sentences are very strict, there continue to occur many reports on sexual assaults all over the country. Such a tendency may have many reasons, among which lack of education, patriarchal mentality, social conditioning and police reaction to sexual assaults.

Furthermore, there remain doubts about consistency of using 'rarest of rare' doctrine. In particular, it has been mentioned that in some similar cases death sentence was not imposed. As a result, there may be a problem of uncertainty in criminal jurisprudence. One should note that under Article 14 of the Constitution, equality should be provided and there are no definite standards in such cases¹¹.

However, it is necessary to admit the importance of the ruling for increasing public awareness of the problem. First, one may emphasize the fact that this case contributed greatly to raising

⁹ *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470

¹⁰ INDIA CONST. art. 21.

¹¹ INDIA CONST. art. 14.

public awareness of the situation regarding safety of women. Second, the case made some experts think about making certain legislative changes in criminal legislation. Therefore, it can be concluded that despite many criticisms, this case has become very significant for Indian criminal jurisprudence.

CONCLUSION:

The landmark decision delivered by the court in the case of *Mukesh & Anr. v. State (NCT of Delhi)* is perhaps one of the most influential judgments in the history of Indian criminal law. The imposition of death penalty by the Court was seen as an attempt to preserve justice, deterrent factor and confidence in the judiciary of the nation. In this particular case, the Court deemed the brutal nature of the offence enough justification to consider it as a case which fits into the 'rarest of rare' category, according to *Bachan Singh v. State of Punjab*.

Nonetheless, the judgment raises issues about the subjective approach adopted during the application of the death penalty in India. Such notions as "collective conscience" of society and lack of an objective standard that defines a certain category of offences as being the 'rarest of rare' keep raising questions on this matter. Hence, the present case can be regarded as another example of a conflict between retributive and reformatory forms of justice in the Indian criminal law.

Despite its huge contribution to the criminal law reforms and heightened public concern regarding offences against women, the present case raises an important issue as regards the necessity of an objective and uniform approach in imposing death penalty.