

BACK TO LIFE: ON THE BELATED ACQUITTAL OF DEATH ROW CONVICTS

Courts biased against poor

“Judicial system is conceived as blind to power, wealth & social status. Courts are supposed to offer a forum where the poor and powerless can stand with all others as equals before law.

“Many of our poor fellow citizens have chosen to avoid courts and other legal systems rather than face intimidation, cost and time-loss in legal proceedings.”



S Rajendra Babu, former Chief Justice of India

A nation's legal system is integral to how its citizens look upon issues that concern the country in general and their individual lives in particular.

Despite having the world's longest Constitution not to mention, one that has gone through numerous amendments and the many directives by the Supreme Court that have secured the stature of de facto law, the Indian law books have struggled to evolve at a pace commensurate with the rapid change's society has undergone.

The judiciary is a co-equal branch of the government within India's democratic and constitutional framework, along with the legislature and the executive.

Context:

Ten years after condemning to death six nomadic tribe members in a rape and murder case, the Supreme Court found them innocent and ordered the Maharashtra Police to hunt down the real criminals.

In a complete act of turning round so as to face in the opposite direction, the apex court ordered the immediate release who had been claiming for the murder of five members of a family, rape of a woman and her 15-year-old daughter and dacoity in Nashik.

They had spent over 16 years in jail in anticipation of death. The court said the six men were falsely implicated and roped in by the police.

One of the six was a **juvenile at the time of his arrest**. Some of them have **developed psychiatric symptoms** due to the long years in **solitary confinement**. He was kept in isolation in solitary confinement with **very restricted human contact** and under perpetual fear of death.

Therefore, all the accused remained under **constant stress and in the perpetual fear of death**.

They had not been eligible for pardon or furlough as they were condemned men. The court ordered the Maharashtra government to pay each of the six men a **compensation of ₹5 lakh**.

Institutional bias is quite evident against the socially and economically weaker sections:

People look up to the **judiciary as the last bastion** which corrects the **wrongs of the executive and legislature**.

To a great extent, the **judiciary has acted as a vanguard**. But the biggest area where it has failed is the **criminal justice delivery system**.

We must be **sensitive to the rights of human beings**, we forget that even people accused of brutal crimes have rights which must be upheld. Irrespective of the case, due process must always be followed. The judiciary doesn't follow due process in many cases.

There needs to be a **serious understanding** of how badly the **justice delivery system works** in our country, for people who prosecute or defend.

Victims of crimes who are prosecuted **don't get justice fast enough**, if at all. While people implicated in cases or facing trial have the **constitutional right to defend themselves** and those rights are routinely negated.

Nobody talks about a rape case in Jharkhand or the rape and murder of a child in Chhattisgarh.

Many of the opined that the **system is unfairly skewed** and a large majority of the Indian population is **poor and underprivileged** and **don't have access to justice**.

There are so many cases where the quality of legal representation people receive is pitiable.

Are investigating agencies working effectively enough?

Investigation agencies in the country are **given too long a rope by everybody**, including the media and the judiciary.

If there is irrevocable evidence that I have not committed the crime, why should I face trial?

Even people who are **arrested and prosecuted on valid grounds** get acquitted due to sloppy investigation.

So instead of being neutral, courts tend to fill up the gaps that the **prosecution has created**. That's dangerous; we don't want courts that act as a **super prosecutor**, that's not their job.

Problems with death penalty:

The death penalty **unfairly targets the poor and marginalised**. Those without capital get the punishment. Penurious prisoners on legal aid get it the most, while others **with private lawyers remain untouched**.

The death penalty is **impossible to administer fairly or rationally**. The Supreme Court has repeatedly admitted that it has **arbitrarily imposed** this most extreme punishment.

Executions occurred in **5.2 cases for every 1 lakh murders**. Such a **selection cannot but be freakish**. It depends overwhelmingly on the adjudicator's personal beliefs.

Constitutional, legal and policy issues cannot be determined by the victim's understandable hunger for revenge without leading to a frenzy where the death penalty is demanded, as it often is, for wholly inappropriate cases (accidental deaths, cheating, etc.).

The death penalty has been criticised for **far too long without an understanding of its nuances**. It is criticised mainly on three counts: **arbitrariness, irreversibility and human rights**. However, the punishment passes muster on all accounts. Its constitutionality has not only been upheld in India but also in the bastion of liberal democracy that is the U.S.

If life imprisonment sufficed for the 99.99% of victims' families, why not for the minuscule fraction in whose name the death penalty is demanded?

Conclusion:

The court turned its ire on the State Police force **for trauma it unleashed on the men**, who belonged to both **socially and financially backward communities**.

The court highlighted how the police did not bother to even investigate the fact that an eye-witnesses had, immediately after the crime was committed, identified four other men from the rogue's gallery as the perpetrators of the crime.

There has been **no effort from the side of the police** made to find these four men. The court ordered the Maharashtra Chief Secretary **to take disciplinary action against the probe officers within three months**.

Between January 1, 2000 and June 31, 2015, Supreme Court **imposed 60 death sentences** and subsequently admitted that **it had erred in 15 of them** Every death sentence throws up a moral dilemma on whether the truth has been sufficiently established or not.

The **Law Commission of India** has attempted to analyse the **need for the death penalty on two separate occasions**.

While the **35th Report** correctly called for its retention in order to see its impact on a new republic, the more **recent 262nd Report** could not recommend the **punishment's absolute abolition** despite a rather desperate attempt to do the same for the first 240 pages. The **exception to abolition came in cases of terror**.

Way Forward: How do you fix accountability of the judiciary and agencies involved?

The role of courts in society is not merely to adjudicate disputes between parties, but also to **protect the rights and liberty of individuals**. This is especially important in criminal matters, where an individual is pitted against the might of the State.

There must be a **compulsory departmental enquiry**, particularly where acquittals happen and judgments are passed challenging the **findings of the investigating team**, either on grounds that somebody was framed or some evidence was **fabricated**.

That departmental enquiry report and action taken report must be **placed before the court that passed the judgment**.

I think judicial orders must be accompanied by a further direction that there must be **departmental enquiries against officers who have failed in recording proper evidence**.

Courts must **call for records periodically** seeking action against these officers.

Access to justice thus, assesses the **fulfilment of an individual's entitlement to justice** on these parameters to ensure that legal redress does not become the preserve of a few. It represents the ability of every person to **enforce the fundamental rights and freedoms guaranteed by law**.