Shakti Mills rape case verdict

What is the issue?

- A photojournalist was gang raped in Shakti Mills, Mumbai in 2013.
- This rape case's verdict ignores the proportionality principle of Judicial Review.

What is the story behind?

- A 23-year-old photojournalist was raped by 3 men in Shakti Mills, Mumbai in August 2013.
- The trio had been already **sentenced to life** by the Mumbai sessions court in an earlier gangrape of a telephone operator in July 2013.
- In 2014, the same court **awarded the death penalty** to 3 repeat offenders in the case under Section 376E of the Indian Penal Code (IPC).
- **Section 376E of IPC -** Authorises the award of either a **life sentence or death penalty** to perpetrators upon a second rape conviction.
- The Bombay High Court in June 2019 handed down a judgment upholding the **validity of Section 376E** of the Indian Penal Code.

What is proportionality principle?

- Proportionality is a ground for judicial review.
- In the context of criminal law and sentencing, proportionality asks whether a particular punishment strikes an adequate balance between the gravity of the crime, the interests of the victim and of society, and the purposes of criminal law.
- The principle of proportionality calls for striking down of laws that are excessively harsh or disproportionate.

Why Section 376E was challenged by the accused?

- It is among the recent laws that have expanded the scope of death penalty to beyond cases of homicide and primarily to incidents of rape.
- Its constitutionality has been challenged on multiple grounds, primarily due to disproportionality of the punishment.
- The constitutional standard that courts must apply when testing laws on the touchstone of Articles 14 (right to equality) and 21 (right to life) of the

Constitution is that of “proportionality”.

What are some previous examples?

- Vikram Singh case (2015) - The Supreme Court (SC) limited the application of the proportionality standard to situations where the punishment was outrageously barbaric.
- Modern Dental College case and the Aadhaar case — SC have made it clear that where the question of rights violations is concerned.

How is the proportionality test done?

- There must be a legitimate state aim being pursued by the provision.
- There needs to be a rational nexus between the impugned provision and the aim.
- The impugned measure must be the least restrictive method of achieving the aim.
- There must be a balance between the extent to which rights are infringed, and public benefit to be attained from the legislation.

What is the fundamental question in this case?

- It is the permanent and irrevocable **nature of the death penalty**.
- The Court **did not scrutinise the reasons** that would have potentially justified the state’s decision to go for death penalty in the case of a non-homicidal crime.
- Another striking aspect of the judgment is the Court’s discussion of the **severe effect of rape on women and society**.
- The court declaimed that rape is far worse than murder, and used that notion to hold that the death penalty was proportionate.

In what aspects does the judgment fall short of?

- The judgment engages in excessive deference to the ‘will’ of the state.
- The court did **not enter into any judicial analysis** of whether the death penalty in these circumstances was justified under proportionality doctrine, and whether lesser form of punishment would have sufficed.
- It repeats **gendered stereotypes** about the nature of rape to substantiate the Court’s conclusions.
- It dismisses without any engagement, insights from other courts grappling with similar issues.

What is the change of view?

- As courts around the world including the Indian Supreme Court, have **recognised death penalty** is a form of punishment **qualitatively different** from any other.
- It is **permanent and irrevocable**, rules out any possibility of correcting an error if found later and also denies the possibility of reform and rehabilitation.
- It is for this reason that the Supreme Court has repeated many times that the death penalty must only be imposed in the "rarest of rare" cases.
- This is also why the recent proliferation of statutes expanding the scope of the death penalty, often as knee-jerk responses to public outrage, is a cause for concern.

Source: The Hindu

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