



DEATH PENALTY (2005). By Janak Raj Jai. Regency Publications, New Delhi. Pp.viii+220. Price Rs.550/- (US \$ 40).

THE BOOK under review is the spur of the moment reaction of a social activist lawyer against the execution of Dhananjoy Chatterjee whose conviction and sentence under sections 376, 380 and 302 IPC was upheld by the Supreme Court holding the same as 'rarest of rare' case.¹ The case generated lot of debate especially because the execution took place more than ten years after the Supreme Court had dismissed his appeal and the subsequent refusal of his mercy petition by the President.

India is one of the few states in the world to have retained the death penalty for murder. The Supreme Court in *Bachan Singh*² – on a majority verdict with P.N. Bhagwati J expressing his powerful dissent – held that death penalty for murder was constitutional. Not long ago death penalty for murder was the rule in India. The underlying policy of the state was that death penalty would work as deterrent. However, there was discernable change with the amendment of section 367(5) of the old Criminal Procedure Code by the Criminal Procedure (Amendment) Act, 1955. There was thus a definite swing in the Code in favour of life imprisonment consistent with the changes in the criminological thought. It is now the discretion of the court to award either of the two sentences envisaged in section 302 IPC depending upon the fact situation.

The death penalty now has to be imposed only in the 'rarest of the rare' cases. The debate in the book is not on the question as to what are the 'rarest of the rare' cases but on the very fundamental issue as to whether death penalty at all should be retained as a punishment in the penal legislation of the land.

The author is an ardent advocate supporting abolition of death sentence as a punishment. Besides humanist approach to the issue, the author states that the strongest reason for the abolition of the death penalty is the factor of arbitrariness in the sentencing process. The author goes on to argue that ultimately the choice between the two

1. *Dhananjoy Chatterjee v. State of W. B.* (1994) 2 SCC 220.

2. *Bachan Singh v. State of Punjab* (1982) 3 SCC 24.



alternative punishments boils down to the subjectivity of the judge. He also argues that the statistics world over have shown that death sentence has not achieved the avowed object of being a deterrent punishment. The book poses a larger question whether the death penalty at all be retained.

The author has divided the work into part I and part II. In part I he has expressed his views against capital punishment. He has also dealt, though not in detail, with the ailments which our criminal justice delivery system suffers from - defective investigations because of lack of training of the investigators, the third degree means being used by the investigators and the 'cooked up' evidence and 'professional' witnesses—which have brought the criminal justice delivery system to disrepute. The author has also initiated a legal debate on the exercise of the constitutional power of the President with respect to mercy petitions. In part II the author has compiled writings of legal luminaries, eminent judges and social activists to place the debate for and against death penalty in proper perspective. In the foreword to the book, Tahir Mahmood has ably brought out the socio-legal perspective of the issues relevant for the debate that has enhanced the prestige of the book.

The shortcomings of the book are many and varied. Though part I of the book has been divided under various chapters, the thoughts permeating these chapters are repetitive, intermingled and at times lack in clarity. Some of the articles of the authors, reproduced in part II of the book, are neither properly edited nor correctly footnoted. For example, in the article by Rajinder Sachar J at page 87, the observation of the Supreme Court has been put in quotes in the beginning but where the quotes end is not discernable. Similar is the case with the observations of Eduardo Frei reproduced in the same page. Nevertheless, the writings of various authors compiled and incorporated in the book has put the debate on death penalty in proper perspective.

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