

Jurisprudential Analysis of Mithu Singh vs. State of Punjab [AIR 1983 SC 473] and Validity of Section 303 IPC

Shashwat Jha¹

The aforementioned case is one of the landmark judgments given by the honorable Supreme Court of India with regards to criminal law set up of India. The Indian Penal Code was given assent to by the then Governor-General on 6th of October, 1860 and it ultimately came into force on the 1st of January, 1862 inside the territory of India.² The code contains over 550 sections framed in 23 chapters. Out of these, several sections have been repealed and several new sections have been added using amendments and as per adhering to orders and recommendations of Supreme Court of India. One such section of the code which was repealed courtesy of this Supreme Court judgment and that is Section 303. Section 303 of the IPC says that :-

Whoever, being under sentence of [imprisonment for life] commits murder, shall be punished with death.³

In this case counsel from the appellants side argued that section 303 of the IPC is unconstitutional and arbitrary as it propagates deprivation of life by the virtue of a procedure that is highly unfair and unjust. The respondents side in turn argued that as the constitutional validity of death sentence had already been upheld in the previous case of Bachan Singh Vs. State of Punjab⁴ and as Section 303 does nothing but lays down provision for capital punishment for an act of murder by a convict already serving punishment of life imprisonment, there is nothing wrong with the section and it must remain valid and operational⁵.

It was held in the judgment delivered by the then CJI Chandrachud heading a five bench constitutional bench that section 303 of the IPC is unconstitutional and void as it stands violative of Article 14 because it infringes with guarantee of equality along with Article 21 because it deprives a man of his life and personal liberty. Therefore the 5 judge bench decided to repeal the Section 303 of the IPC taking into consideration the said reasons. In context to the argument that life convicts are a potent and vile group of humanity, court said that this was not backed up by any form of scientific proof or justification and so will not be put outside the purview of article

¹ Institute of Law, Nirma University

² K.D GAUR, TEXTBOOK ON INDIAN PENAL CODE 2 (5th ed. Universal Law Publishing Co.)

³ 303 IPC 1860

⁴ AIR 1980 SC 898

⁵ AIR 1983 SC 473

14 of Constitution of India. This section also stands violative of Section 235(2) of the CrPc, 1973, which guarantees a convict a right to be heard while deciding the question of a sentence.⁶ In furtherance, it also infringes Section 354(3) of CrPc, 1973 whereby the court is bound to provide special reasons for imposing death sentence.⁷

Jurisprudential Analysis of Section 303 (repealed) of IPC As Per Different Schools.

A) Positive School

Positive school or Analytical school says that laws are made by human authority and it does not consider justice, ethics and morality that goes with those laws. Different theorists of positive law have different definitions for 'authority'. Positivists are simply concerned with whether a law is valid or not. Validity of a law can be decided by placing the law against the following questions:-

- Whether the law was made by an authority?
- Whether proper procedure was followed before framing the law?

Positivism or the positive movement started at the beginning of the 19th century largely as a reaction to the a priori form of thinking that had governed mankind upto this point in history. Natural reasoning for the purpose of forming laws was replaced by 'actual laws' that inclined towards reality and scientific learning. Positive law can therefore be classified as the school of law that is applicable at a certain point of time whether past or present and at a particular place and consists of both statutory laws and case laws to the extent upto which they are binding. Basically, positive law can be termed as a law that has been enacted or later adopted actually or specifically by a competent authority so that an organized society can be governed by that law.⁸

1) John Austin

Austin is the father of positive school. He was the student of Jeremy Bentham, who was widely regarded as the father of jurisprudence. According to Austin, Law is command of a sovereign given by a political superior to a political inferior that is backed by a sanction. He believed that the commands should be general and not specific to a particular person like an order. Also, a sanction is a fine or punishment making somebody duty bound to comply to the command. A sovereign must have the following features:-

⁶ 235(2) CrPc 1973

⁷ 354(3) CrPc 1973

⁸ "Positive law". Black's Law Dictionary (5th ed.). West Publishing Co. 1979

- Sovereign has unlimited power.
- Sovereign does not take orders from anybody.
- Sovereign should command a habitual obedience.
- Habitual obedience should be general and not fragmented.
- Sovereign should be a determinant body.

Further, Austin says that law made by a political superior to a political inferior is a law properly so called which is subdivided as Law strictly so called and Law not strictly so called. Only Law strictly so called is law according to Austin's theory.⁹

Taking Austin's Theory of Law into consideration, we can try to verify whether Section 303 of IPC could be placed as a valid law under Austin's scheme. The IPC was coined by the British while they had India as one of its colonies in the year 1860. That was a time when the British had absolute powers to govern and control the Indian population as per their whims and fancies. Therefore the British legislators of the time, according to me would fit in the definition of sovereign. The British monarch who had control of colonial India had unlimited power, he was not supposed to take orders from anybody, he commanded a habitual obedience which was general and he was not any abstract body but was easily determinant. Also, the British being the colonial rulers were the political superiors to the native Indians. And lastly, any person already serving a term of life imprisonment, if commits murder shall be given death penalty ensures that the law in question was applicable to each and every person of the land and there was a suitable sanction to stop any person serving a term of life imprisonment from committing murder. Therefore Section 303 of IPC was a valid law prior to independence.

Further, post independence, Indian government decided to incorporate/adopt the IPC into its general functioning and control of the Indian Union. Therefore this adoption made it a law according to the positivist school even though its difficult to determine a sovereign post independence but that is the case with all democratic modern states. That does not reduce the validity of such law in this case.

2) H.L.A Hart

Hart gave the world another dimension towards the positive law school through his work in the Concept Of Law which was published in the year 1961. The work of his tries to evaluate how a legal system functions and his point of enquiry. For a law to be considered valid, Hart is only concerned with the questions:-

- Who made the law?

⁹ JOHN AUSTIN, The Province of Jurisprudence Determined (1832)

- What procedure was required to be followed to make that law?
- Whether procedure was followed or not?

According to Hart, Laws are simply guidelines and rules made by human authority where there is no direct or indirect connection in between the laws that are framed and morality. He says that there are several matters in the society which influence human behavior. As per Hart, Laws are obligations upon humans who are part of the society which have a physical sanction attached to them. Laws are further subdivided as primary rules and secondary rules. Primary rules are basic do's and don'ts of the society. Doing something you were not allowed to do or not doing something you were supposed to do will lead upto a physical sanction. Secondary rules comprise of :-

- Rules of Recognition: - make very clear how law is supposed to be made.
- Rules of Change: - if laws are to be changed, they have to be changed by a certain process.
- Rules of Adjudication: - what court to approach to address quantum of punishment¹⁰.

Even though according to several experts, Hart is supposed to be a 'soft positivist' and has certain inclinations towards natural law theory, he should be placed as an outright positivist given that he sees absolutely no connection between morality and laws. Although later on he acknowledges that there might be a relation between law and morality, he makes it clear in Chapter 9 of the Concept of Law, that whatever relation does exist, it's not substantial to carry out any type of study over it.

In regards to Section 303 of IPC, Hart would say that this is a valid law as it falls fit with all requirements for being considered as a valid law. Even though Hart says that physical sanction is not necessary for all laws for starters, the sections lays down a physical sanction in the form of death punishment at the very first instance for any convict serving a life imprisonment sentence if he commits the crime of murder. Then, the penal code was framed by competent authority and through a proper procedure headed by Sir Thomas Babington Macaulay as can be substantiated via the fact the code was drafted in 1860 on the recommendations of the first law commission of India established in the year 1834 under the Charter Act of 1833. It also falls fit with the requirements of primary rules as it is a well set notion in any law abiding that state killing another man will attract a sanction i.e. you are not supposed to kill another man because if you do, you will be punished for that act. Therefore the section was very much a valid law in colonial India.

The situation is rather complicated when it comes to independent India. Here although most of the provisions discussed earlier will make section 303 a valid law, it will be difficult to place the law under the provisions of secondary rules and especially under the Rules of Recognition. As in

¹⁰HLA HART, The Concept Of Law, 1961

India, The Constitution of India sets the benchmark for any law to be considered as valid or invalid. Looking at the arguments of the present case from the side of the appellants it is clear that the section is violative of articles 14 and 21 as it deprives the convicts serving term of life imprisonment the provisions of equity, justice and good conscience as provided by the constitution to all citizens. Therefore the section cannot be held to be a valid law in independent India as per the justifications given in judgment given by CJI Chandrachud, as mentioned earlier.

B) Natural School

Natural Law theorists feel that laws made by man must be in consonance to the laws of a higher principle or natural law. Natural law is normative law, which gives us a framework following which something would invariably become a law. Law should be such that it helps us fulfill some purposes. Natural law is discoverable. The word 'natural' in natural law expresses the idea that gives us the very foundation of the natural law school or the answer to the questions as to why we should obey natural law in the first place. Natural law is therefore something that helps man to attain the ends of nature. Natural law is also anything that helps man to fulfill his purpose of life. For example, if man wants to achieve a favorable business environment so that he can maximize trade and in turn help him grow and prosper. Now violence will impede this dream of his and will stop him from achieving his purpose, therefore violence is something that is against natural law.

Natural ends are the same for all men and they remain the same for the whole of the mankind at all times, they can be said to remain constant. Natural Law can be termed as a body of permanent natural truths, truths that define universal applicability, truths that are eternal and the ones which do not get affected by any change in human beliefs or attitudes¹¹.

1) Plato

Plato was the disciple of Socrates. Plato was not directly related to natural school as he never directly mentioned natural law or natural school in his teachings. He opposed conventionalism and propagated virtue of natural rights for all humans. This virtue of natural right was an idea of justice borne out of moral and reasonable thinking. Plato advocated for this virtue of natural order and justice before laying down any type of legislation. He says that the qualities of justice and truth have an independent existence of their own that is coined by the term idealism which means that every idea has an existence of their own. For Plato, values and virtues of justice,

¹¹ It Stands To Reason, Chapter 5, pg 56-57

morality and good conscience were omnipresent and constant and cannot be changed by changing human behavior or their beliefs¹².

According to Plato, Section 303 of the IPC will definitely not be a valid law simply because of the fact that the law laid down by the section is question would not be held to be reasonable by Plato as it lacks morality and reasonableness. Moreover, it is important to take into consideration that a convict undergoing a sentence of life imprisonment is in a different state of mind when he commits another crime of murder than an ordinary and free man. Giving him death penalty without even giving him a chance to defend himself or allowing him a chance to explain the reasons that lead him to commit another crime that too as grave as murder is simply beyond natural order and justice. The convict undergoing a sentence of life imprisonment must get a chance to defend himself via a trial just like any other free citizen would cause only then would value of justice remain constant even when human behavior and human circumstances are changing.

2) Aristotle

Aristotle's understanding of justice is much more apt to modern judiciary than Plato's. Like Plato, Aristotle too only gives a peripheral idea of natural law school by discussing natural rights. Through his Rhetoric¹³ he talks of natural law as the unchangeable law common to all men and women. In his work, Aristotle expressly talks about commutation and punishments and the circumstances that need to be studied before arriving at such conclusions. According to him, there are two types of justice, one natural and other legal. Natural Justice is where there is a same validity everywhere and there is zero need for acceptance. Legal Justice is one which can change forms depending upon circumstances.¹⁴

According to Aristotle, as per natural justice Section 303 of IPC will be invalid as it cannot change forms so if a free man gets a fair and detailed trial if he commits murder, a convict undergoing life imprisonment must also get the same fair and detailed trial and a direct death sentence would be unjust, lacking goodness and immoral according to Aristotle. If legal justice is taken into question, as a convict for life imprisonment has already committed a grave crime that has landed him the particular scenario, committing murder then would definitely place him on a different stead as compared to a free man who commits murder.

¹² International Encyclopedia of the Social Sciences, Natural Law, Plato, (1968), http://www.encyclopedia.com/topic/natural_law.aspx

¹³ *Rhetoric* 1373b4-18

¹⁴ JAK THOMPSON, CHAPTER 5 NICHOMACHEAN ETHICS, PENGUIN CLASSIC EDITION.

3) Lon Fuller:-

Through his work, morality of law, Fuller tries to give a legal system comprising of natural law. Fuller gives a set of 8 principles failing any one of which a legal system would become invalid.

1. Laws should be general and not ad-hoc.
2. Laws should be published and publicized.
3. Laws should be clear and understandable.
4. Laws should be practical and implementable.
5. Laws should have scope for amendments but amendments should not be made every now and then.
6. Laws should be retrospective and not retroactive.
7. Laws should be implemented.
8. Laws should not be contradictory.

According to Lon Fuller, section 303 of IPC would be an invalid law because it contradicts point no. 8 i.e. Laws should not be contradictory. Section 303 is violative of articles 14 and 21 of Constitution of India. This section also stands violative of Section 235(2) of the CrPc, 1973, which guarantees a convict a right to be heard while deciding the question of a sentence. In furtherance, it also infringes Section 354(3) of CrPc, 1973 whereby the court is bound to provide special reasons for imposing death sentence.

Conclusion:-

This section 303 is mostly invalid when it is weighed in scale of natural law school and mostly valid when it's judged under positive law school. This is so because natural school demands a just, fair and equitable reasoning behind a law. As Section 303 clearly lacked those qualities because of its immoral and arbitrary nature, I think the judges in Mithu Singh vs. State of Punjab gave an accurate and just judgment while striking down section 303 of the IPC as it lacks reasonableness and according to me, for any law to stand, it must have reason to go with it.