CHAPTER - V
CAPITAL PUNISHMENT : ANALYSIS OF SOCIO-ECONOMIC BACKGROUND OF THE ACCUSED AND THE VICTIMS

5.1 INTRODUCTION

To understand and to reach at an irresistible conclusion about the socio-economic background of the accused and the victims is an uphill task. It needs a broad decision in our criminal justice delivery system where introduction of the accused and the victim, their socio-economic background, their family structure, their educational record and avocation must be made mandatory so as to achieve principle sentencing regime in our country. The researcher undertook the task of examining 578 decisions so as to have an idea as to who are the persons tried and convicted in cases involving heinous crime of murder. In most of the cases, there was not even an iota of evidence which could prove the socio-economic background of the accused or the victims.

5.2 JUDICIAL TRENDS - STATISTICS AT A GLANCE

The detailed examination of 578 cases provides a sketch of death sentences awarded by the Supreme Court of India. The Supreme Court has awarded a total number of 315 death penalties which include 162 death penalties in rural area cases, 128 death penalties in urban area cases and 25 death penalties pertain to the cases where area is not specified. It is also noteworthy to mention that out of total 315 awarded death penalties, 306 death penalties belonged to the cases where the High Court had confirmed the sentence and 9 death penalties belonged to the cases where the Supreme Court awarded death sentence by reversing the High Court’s judgments of life imprisonment or acquittal.

A survey of the 578 cases shows that 290 cases (50.17%) pertain to the Rural Areas; 257 cases pertain to the Urban Area (44.46%). In the remaining 31 cases (5.36%) there was no mention of the area to which the cases pertained. From 1950 till 1990, majority of the crime was in rural areas. After 1990, the ratio of crime increased in urban area. The total figure of the cases for the period 1991 to 2015 comes to 276 (rural + urban), which is 47.75% of the total cases. This was the period when due to liberalization of economy, money flow
started rising and people started moving to the cities. During the period 2006-2015, the cases in urban area were double in comparison to rural area. During the years 1991–2015, a substantial increase has been seen in crime against women, that includes the categories of Rape and Matrimonial Disputes/Dowry Deaths/Honour Killing. An increase has also been seen in certain other categories of crime, viz., Kidnapping/Abduction & Ransom, Robbery, Dacoity & Theft, Revenge/Personal Enmity, Communal Riots, Terrorism, Financial Matters and Murder of Public Servants. The crime relating to land and property dispute has been seen at the same pace for years together. The crime concerning professional enmity and murder of witnesses has been a new introduction in post liberalization regime.

5.3 **IMPORTANCE OF SOCIO-ECONOMIC BACKGROUND**

Socio-economic condition of an accused now plays an important role in sentencing regime of our criminal justice system. Section 235(2) further mandates that in case of conviction of the accused, the Judge shall hear the accused on the question of sentence before passing any sentence on him. The Courts are usually discussing about socio-economic condition of an accused while considering the sentence to be imposed on a convicted accused. Section 354(3) also mandates for Special reasons to justify as to why the accused is required to be hanged and why life imprisonment will not suffice. Poverty, socio-economic and undeserved adversities in life are now some of the mitigating factors to be considered in addition to those laid down in *Bachan Singh and Machhi Singh*. It is now well settled position by way of dictum laid down in certain cases that socio-economic condition of an accused plays an important role while imposing sentence on the accused. Absence of the antecedents of the accused, their socio-economic conditions, the impact of their crime on the community etc. would make the choice of punishment difficult.²

It is now settled law with regard to hearing of the accused under Section 235(2) in case of his conviction and for special reasons under Section 354(3) in case of death sentence. In both the cases, socio-economic condition plays a substantial role. However, when an accused is acquitted, the requirement in question stands dispensed with. The result is – socio-economic condition of the accused hardly comes on the record. There is no provision or

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practice in our criminal justice system to give an introduction of the accused or the victims. Trial in a case goes on the basis of factual position on case to case basis.

5.4 WHO IS POOR? AND, WHAT ARE THE PARAMETERS OF RECKONING POVERTY?

When the Supreme Court directs poverty and socio-economic condition as mitigating factors, the question arises – as to who is poor in our country and what are the parameters reckoning such factors.

The researcher went on to examine 578 cases to find out the answer to the present query for reaching at an irresistible conclusion. When law provides no parameters, the best way is to grope into the celestial city created by the lawmakers as it would surely orchestrate a perfect result by demystifying the path set forth. Therefore, it becomes need of the hour to have a brief survey of the policy of the Government of India on the subject concerning poor, poverty and socio-economic factors.

Who is poor? And, - What are the parameters of reckoning poverty? - are two important questions which need to be answered unequivocally but have got different answers from time to time and as on date, the lawmakers are grappling within the system to redefine the “poor” and “poverty”. In general terms, a person will be recognized as a poor who is unable to acquire the basic amenities required for subsistence. However, the issue in question is contentious for many decades.

5.4.1 DADABHAI NAOROJI

The history of poverty estimation in India goes back to 19th century when Dadabhai Naoroji3 brought out his study concluding subsistence based poverty line at 1867-68 prices, though he never used the word “poverty line”. It was based on the cost of a subsistence diet consisting of ‘rice or flour, dhal, mutton, vegetables, ghee, vegetable oil and salt’. According to him, subsistence was what is necessary for the bare wants of a human being, to keep him in ordinary good health and decency. His studies included the scale of diet and he came to a

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3 Dadabhai Naoroji, known as the Grand Old Man of India, was a Liberal Party member of parliament (MP) in the United Kingdom House of Commons between 1892 and 1895, and the first Asian to be a British MP. He is also credited with the founding of the Indian National Congress, along with A.O. Hume and Dinshaw Edulji Wacha. His book Poverty and Un-British Rule in India brought attention to the draining of India's wealth into Britain.
conclusion on the subsistence costs based poverty line that varied from Rs.16 to Rs.35 per capita per year in various regions of India⁴.

5.4.2 NATIONAL PLANNING COMMITTEE

In 1938, Congress President Shri Subhash Chandra Bose set up the National Planning Committee (NPC) with Shri Jawaharlal Nehru as Chairman and Professor K. T. Shah as secretary for the purpose of drawing up an economic plan with the fundamental aim to ensure an adequate standard of living for the masses. The Committee regarded the irreducible minimum income between Rs.15 to Rs.25 per capita per month at Pre-war prices. However, this was also not tagged something as a poverty line of the country⁵.

5.4.3 FIRST PLANNING COMMISSION WORKING GROUP

The concept of the poverty line was first introduced by a working group of the Planning Commission in 1962 and subsequently expanded in 1979 by a task force. The 1962 working group recommended that the national minimum for each household of five persons should be not less than Rs.100 per month for rural and Rs.125 for urban at 1960-61 prices. These estimates excluded the expenditure on health and education, which both were expected to be provided by the state.

5.4.4 DR. Y. K. ALAGH COMMITTEE (1977)

Till 1979, the approach to estimate poverty was traditional i.e. lack of income. It was later decided to measure poverty precisely as starvation i.e. in terms of how much people eat. This approach was first of all adopted by the YK Alagh Committee’s recommendation in 1979 whereby, the people consuming less than 2100 calories in the urban areas or less than 2400 calories in the rural areas are poor. The logic behind the discrimination between rural and urban areas was that the rural people do more physical work. Moreover, an implicit assumption was that the states would take care of the health and education of the people. Thus, Y.K. Alagh eventually defined the first poverty line in India⁶.

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⁵ Supra Note 126
⁶ Supra Note 126
5.4.5 **PROF. D.T. LAKDAWALA FORMULA (1989)**

Till 2011, the official poverty lines were based entirely on the recommendations of the Lakdawala Committee of 1993. This poverty line was set such that anyone above them would be able to afford 2400 and 2100 calories worth of consumption in rural and urban areas respectively in addition to clothing and shelter. These calorie consumptions were derived from YK Alagh committee only.

According to the Lakdawala Committee, a poor is one who cannot meet these average energy requirements. However, Lakdawala formula was different in the following respects in comparison to the previous models:

- In the earlier estimates, both health and education were excluded because they were expected to be provided by the States.
- This committee defined poverty line on the basis of household per capita consumption expenditure. The committee used CPI-IL (Consumer Price Index for Industrial Laborers) and CPI-AL (Consumer Price Index for Agricultural Laborers) for estimation of the poverty line.
- The method of calculating poverty included first estimating the per capita household expenditure at which the average energy norm is met, and then, with that expenditure as the poverty line, defining as poor as all persons who live in households with per capita expenditures below the estimated value.

The fallout of the Lakdawala formula was that number of people below the poverty line got almost double. The number of people below the poverty line was 16 per cent of the population in 1993-94. Under the Lakdawala calculation, it became 36.3 per cent.

5.4.6 **SURESH TENDULKAR COMMITTEE (2005)**

In 2005, Suresh Tendulkar Committee was constituted by the Planning Commission. The current estimations of poverty are based upon the recommendations of this Committee. This Committee recommended to shift away from the calorie based model and made the poverty line somewhat broad based by considering monthly spending on education, health, electricity and transport also.

It strongly recommended target nutritional outcomes i.e. instead of calories; intake nutrition support should be counted. It suggested that a uniform Poverty Basket Line be used for rural and urban region. It recommended a change in the way prices are adjusted and
demanded for an explicit provision in the Poverty Basket Line to account for private expenditure in health and education.

Tendulkar adopted the cost of living as the basis for identifying poverty. The Tendulkar panel stipulated a benchmark daily per capita expenditure of Rs.27 and Rs.33 in rural and urban areas, respectively, and arrived at a cut-off of about 22% of the population below poverty line. However, this amount was such low that it immediately faced a backlash from society. Since the numbers were unrealistic and too low, the Government appointed another committee under Prime Minister’s Economic Advisory Council Chairman Dr. C. Rangarajan to review the poverty estimation methodology.

5.4.7 DR. C. RANGARAJAN COMMITTEE (2012)

Rangarajan Committee submitted its report in 2014 giving ‘per capita monthly expenditure’ as Rs.972/- in rural areas and Rs.1407/- in urban areas as poverty line. It preferred to use ‘Monthly expenditure of Household of five’ for the poverty line purpose which came out to be Rs.4860/- in rural areas and Rs.7035/- in urban areas. It argued that considering expenditure of household is more appropriate than that of individuals. Living together brings down expenditure and as expenses such as house rent, electricity etc. gets divided into 5 members.

The Committee reverted to the practice of having separate all-India rural and urban poverty basket lines and deriving state-level rural and urban estimates from these. As per its estimates, the 30.9% of the rural population and 26.4% of the urban population was below the poverty line in 2011-12. The all-India ratio was 29.5%. In rural India, 260.5 million individuals were below poverty and in urban India 102.5 million were under poverty. Totally, 363 million were below poverty in 2011-12. The poverty ratio has declined from 39.6% in 2009-10 to 30.9% in 2011-12 in rural India and from 35.1% to 26.4% in urban India. The decline was thus a uniform 8.7 percentage points over the two years. The all-India poverty ratio fell from 38.2% to 29.5%. Totally, 91.6 million individuals were lifted out of poverty during this period.

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7 Supra Note 126
5.4.8 **CURRENT STATUS: ARVIND PANAGARIYA TASK FORCE**

The discussion about Lakdawala Formula, Suresh Tendulkar Committee and Rangarajan Committee make it clear that defining a poverty line in India has been a controversial issue since 1970s. The latest poverty line defined was by Rangarajan Formula. However, this report also did not assuage the critics. The Government turned down this report also.

To define the poverty line, the Government had constituted a 14-member task force under NITI Aayog’s Vice-Chairman Arvind Panagariya to come out with recommendations for a realistic poverty line. After one and half years work, this task force also failed to reach a consensus on poverty line. In September 2016, it suggested to the Government that another panel of specialists should be asked to do this job {if defining poverty line}. Informally, this Committee supported the poverty line as suggested by Tendulkar Committee.

5.5 **ANALYSIS & CONCLUSION:**

In view of the foregoing, the position concerning recognition of poor remains ambiguous. In absence of any settled guidelines by the Government of India, it becomes difficult to judge the socio-economic condition of an accused, thereby making such an assessment judge-centric in case to case basis.

National Law University, Delhi has also in recent past made an attempt to answer questions concerning socio-economic profile of the prisoners sentenced to death\(^9\). A team of almost 80 undergraduate law students and a dozen other external volunteers were part of the research work initiated by NLU, Delhi. Interviews of the prisoners and their families were conducted to get necessary details. An attempt was made to know about multiple factors in order to better understand the extent of social and economic conditions of the accused including their educational profile and source of income. The NLU, Delhi made a serious attempt to explore the socio-economic condition of the death-row convicts. It also accepted the fact that there was a woeful lack of information on the socio-economic profile of death-row convicts. It was also not oblivious of the fact that the information provided in its report may not hold true information of the prisoners but documenting socio-economic profile was an initial step in that direction. Further, any report in absence of settled follow-up formula of the Government of India recognizing the status of a poor and the poverty measures sans merit

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\(^9\) **DEATH PENALTY INDIA REPORT, NATIONAL LAW UNIVERSITY, DELHI 2016**
and it is more so when the stakeholders of the crime (the victims) are left away from being examined to reach at an irresistible conclusion of the socio-economic profile of the accused and the victims of the crime.

At this stage, it is worthy to mention that in Rajendra Prasad, Hon’ble Krishna Iyer, J. observed - “Who, by and large, are the men whom the gallows swallow? The white-collar criminals and the corporate criminals whose wilful economic and environmental crimes inflict mass deaths or who hire assassins and murder by remote control? Rarely. With a few exceptions, they hardly fear the halter. The feuding villager, heady with country liquor, the striking workers desperate with defeat, the political dissenter and sacrificing liberator intent on changing the social order from satanic misrule, the waifs and strays whom society has hardened by neglect into street toughs, or the poor householder — husband or wife — driven by dire necessity or burst of tantrums — it is this person who is the morning meal of the macabre executioner”. In Bachan Singh, Hon’ble Bhagwati, J., in his dissenting opinion, observed that “there is also one other characteristic of death penalty that is revealed by a study of the decided cases and it is that death sentence has a certain class complexion or class bias inasmuch as it is largely the poor and the downtrodden who are the victims of this extreme penalty. We would hardly find a rich or affluent person going to the gallows. Capital punishment, as pointed out by Warden Duffy, is a privilege of the poor.”

Both the above remarks got punched by Hon’ble Judges of the Supreme Court of India in their decisions relating to the period 1979-1980. It is not clear from the decisions as to what was the basis of their remarks. The scenario of criminal justice system in India has now travelled a long way. The philosophy of one’s needs statistical base in this era of technological advancement. The sentencing of criminals to the extreme though may be tilting this or that way being judge-centric but it is now difficult to say that extreme sentencing is ‘a privilege of the poor’. A survey of death sentence regime of present day India will overrule such a thought as the law and the human rights jurisprudence of the day declares it non est. Death sentencing is no more a class bias. Anyone who passes the rigorous test of the rarest of rare may become morning meal of the macabre executioner.

Reverting back to the issue in question, as stated earlier, a survey of the 578 cases shows that 290 cases (50.17%) pertain to the Rural Areas; 257 cases pertain to the Urban Area (44.46%). In the remaining 31 cases (5.36%) there was no mention of the area to which
the cases pertained. There being no formula applied by the Courts so as to gather information about the socio-economic condition of the accused and victims, in general, it can be said that the accused concerning rural area cases are poor in comparison to those in urban area, one of the reasons being, the accused in rural area cannot be presumed to have possessed basic amenities as mentioned by certain Panels estimating the poverty. Mere possession of land cannot make a person rich. By virtue of possessing land may be a reason for consuming good diet but people living in rural areas may not be having ample opportunities of education, employment and health services in comparison to the opportunities available to the accused in urban areas.

In view of the foregoing, grappling with so many questions, the researcher made an attempt to assess the socio-economic profile of the accused as well as the victims by categorizing the cases. As mentioned above, 578 cases were categorized in (i) Cases pertaining to Rural Areas [290 cases (50.17%)]; (ii) Cases pertaining to Urban Areas [257 cases 44.46%]; and (iii) Cases where no area was mentioned [31 cases (5.36%)]. It was an uphill task to assume socio-economic background of accused and victims. A minute examination of the cases that provided a glimpse of the socio-economic profile is to the effect that in Rural Area category of cases (290), the facts based on case to case basis held 45 cases (15.51%) of the accused and 63 cases (21.72%) of the victims as rich persons. Likewise, in Urban Area category of cases (257), the facts based on case to case basis held 53 cases (20.62%) of the accused and 82 cases (31.90%) of the victims as rich persons. However, in third category i.e. the cases concerning ‘No Area’ (31 cases), none of the cases categorized anyone as rich. On examination of 578 cases, in nutshell, the picture that came out is to the effect that in 98 cases (16.95%), the accused were found rich and in 145 cases (25.08%), the victims were found rich. In rest of the cases, since no ingredients were available to mark any remark, all those cases have been treated to that of the poor accused and the victims. It is pertinent to mention here that the researcher also tried to know about the aspects of “poverty” and “rich” by examining the weapons used in the variety of crimes. Even though the weapons used in variety of crimes on some occasions differ, yet nothing could come out to a level where the weapons of crime may be attached to either of the aspects so as to identify the socio-economic profile of the accused or the victims. There being no mechanism or parameters being applied by the Indian Courts to give a specific introduction of the accused and the victims in all the cases including conviction or acquittal cases, and further there being
no parameters introduced by the Government concerning the question ‘who is poor’ and ‘who is rich’, it becomes very difficult to reach at an irresistible conclusion based on the exact socio-economic profile of the accused and the victims and, therefore, this area has become judge-centric based on case to case. However, in view of the foregoing discussion, be it the rural area or the urban, one aspect becomes very clear that by and large the majority of the accused who are involved in variety of crimes is that of the poverty ridden class of our society.

In view of the foregoing, it is need of the hour that Indian Judicial System must make it mandatory for providing socio-economic profile of accused as well as victims in every criminal trial, which will help the judiciary and also the researchers to reach at a just conclusion about the socio-economic background of accused and victims of a criminal trial and thereby various facets of crime scenario in India.

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