

Baffling Law, Wobbling Justice: A Strong Argument for Doctrine of Increment Punishment - Aruna Shanbag Case in Point

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Abstract

This article is based after prolong research on the subject matter whether the doctrine of incremental punishment is practicable. The pathetic case of Aruna Shanbag has been taken as the central theme of the research. The Doctrine of Double Principle looks all right till such time cases of this nature confront us. And such incidences are on the rise. The responsible society cannot look the other day and wish that such nagging questions may fade away. Not any longer. The idea of Doctrine of Incremental Punishment is being raised which may be applicable in grievous and dangerous hurt particularly when this has far-reaching effect on the victim.

Keywords: Incremental Punishment, Stranger Legal System, Frayed Punishment, Compounded Punishment, Aruna Shanbag

Background of the case

Aruna Shanbag was sodomized at KEM Hospital, Mumbai, in November 1973 because the assaulter realized that she was menstruating at that time. To restrain her assaulter used a dog chain which came handy and tied it around her neck. The man was said to be drunk [1]. Due to severe anoxia of brain, she went into a coma and was found on all fours the next morning in a pool of her own blood and vomit [2]. She remained in a coma till her death on May 18, 2015, at the age of 66 after remaining in comatose state for 42 years long [3].

Discussion on the proposition of incremental punishment

To understand why incremental punishment would be desirable and not despicable we have to dwell on the pathetic state of Aruna Shanbag right from 1973 and victims like her. Her body remained incarcerated for 42 long years while her bodily instincts remained intact. She menstruated, generated body wastes like nails and showed displeasure. All through her existence, she was under the care of strangers while her assaulter served seven years and was released from penal servitude. He is a grandfather now and pater familia to a large brood. To this what, a conscientious mind would have to say! The first author has followed her travails after it was reported in 1973 in *The Illustrated Weekly* (now discontinued) edited by Khushwant Singh.

Another incident of late lends teeth to the doctrine of incremental punishment. A schoolgirl 14 years old was assaulted and beaten by bullies in Russia, all 13-14 years old girls resulting in damage to her reproductive organs. Doctors believe she won't be able to have children in future – complete sterility induced by beating [3].

A doctrine of Double Jeopardy

English laws and by extrapolation all former British ruled colonies are based on the Principle of Double Jeopardy [4, 5, 5(a), 5(b)]. The Double Jeopardy phrase was coined by Sir William Blackstone in the 18th century which states that “no person shall be subject for the same offense to be twice put in jeopardy of life and limb”⁶. Little did William Blackstone realize that this phrase would back-fire. If this is the case why would the victim put in double jeopardy; one, for the primary offense and two, rendering him or her to ultimate agony throughout life like Aruna Shanbag? Ask Aruna Shanbag whose body was cocooned in lifeless form for 42 long years confined to bed with no access to sunshine. We would dare say that this is not double jeopardy but [ⁿth times] jeopardy.

What is the proposed incremental punishment?

Now is the time to ask questions and weave answers. The law must think in terms of awarding incremental punishment to the convict exclusive to primary punishment awarded in lieu of grievous/dangerous hurt. It is our suggestion that in such cases one year before the expiry of their sentencing their cases may be reviewed after examining the progress of the victim. In case the assaulted one is found to be suffering from physical, mental, emotional and social challenges with ignominy and directly attributed to the primary offense then the punishment to the convict may be extended commensurate to regress of victim's life.

Conclusion

With the on-going discussion and oft-repeated protagonist's view regarding extension in punishment at suitable spacing the authors do not feel that this would be demeaning. On the contrary, this would be de-cleansing. For other members of the society keen to embark on the journey of crime this would be purging. The legal decision-making bodies may seriously think on these lines. There is no perceivable harm.

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