

## CASE ANALYSIS

# *SHABNAM v UOI*

2015 SCC OnLine SC 484

## REAFFIRMING THE PRIMACY OF JUSTICE OVER RETRIBUTION

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# THE DEATH DISCOURSE

- Death warrant or 'black' warrant proceedings have been the cynosure of public attention since time immemorial.
- The lack of specificity in recording the time, date, and place of execution, as per the order of the Court of First Instance in such proceedings, often invites 'premature death' for the prisoner.
- The abundance of speculative conjecture on a life hanging in the balance only perpetuates his psychological trauma, despite the availability of constitutional safeguards and multiple legal options.
- The contents of such death warrants are found in the deceptively ordinary named Form No. 42 of the Cr.P.C.

- Considerable obscurity surrounds the issue of a death warrant, and the relevant laws.
- The **basic principles of procedural fairness are often not observed**, as noted in *PUDR v. Union of India*, (PIL No. 57810 of 2014 decided on 28.01.2015) where the Allahabad High Court commuted three **“open-ended” death warrants** issued against Surinder Koli, convicted in the serial Nithari killings in Noida.
- These principles of fairness were reaffirmed in *Shabnam v. Union of India*, decided by the Supreme Court on 27 May, 2015.



**JUSTICE VS. VENGEANCE: DRAWING THE  
LINE**

## CASE BACKGROUND

- The basis of the writ petition in *Shabnam* was the hasty, almost enthusiastic, manner in which the sentencing court in Moradabad issued death warrants against Shabnam and Salim, lovers who killed seven of the girl's family members.
- The court had ordered that their executions take place 'as soon as possible' despite a host of legal options remaining open.
- On 15th May 2015, a three-judge Supreme Court Bench affirmed the confirmation of these death sentences.

- **Within merely six days**, Sessions Judge of Amroha issued the execution warrant of capital punishment.
- It is essential to note that **under the Supreme Court Rules, 2013**, a review petition can be filed against any judgment or order within 30 days of such order.
- This blatant disregard for the convict's right to file review petitions led the National Law University, Delhi – Death Penalty Litigation Clinic to file the writ petition along with Shabnam.

# HOLDING, REASONING & DISPOSITION

- The Supreme Court vacation bench, comprising Justices AK Sikri and UU Lalit, quashed the warrants for execution of death sentence.
- They observed that the **death warrants were issued without waiting for the mandatory 30 days to allow the convicts to file petitions for review of the May 15 judgment of the Supreme Court.**
- The **right to life** under Article 21 of the Constitution **was held to extend to death row convicts as well.**

- The court strongly disapproved of the haste with which the death warrant was signed by the Sessions Judge, without waiting for the convict to exhaust all legal remedies. For instance, the couple can-

1. seek review of the conviction upholding judgment of the Supreme Court;
  2. seek mercy from the Governor for commuting their sentences.
- The court directed that the respondents follow the guidelines laid down in the judgments of the Allahabad High Court and the Supreme Court, intended to make the execution least painful.



- The court also referred to the case of *Mohd. Arif v. Supreme Court of India*, (2014) 9 SCC 737, where a Constitution Bench of the Supreme Court held that review petitions filed against confirmation of death sentences by the Supreme Court should be heard in an open court by a bench of three judges.
- This is an exception to the normal rule of deciding the review petitions by circulation in chambers of the judges.
- It reiterated Order VI, Rule 3 of the Supreme Court Rules, 2013 which provides that every appeal arising out of a case in which death sentence has been confirmed by the High Court shall be heard by a Bench consisting of not less than three Judges.

- The court enumerated **five elements** that must be satisfied in death warrant proceedings-

1. The proceeding **cannot take place without the presence of the accused** and his lawyer. He must be given **prior notice** of such proceeding.

2. The warrant must **specify the exact date and time of execution and not a range of dates.**

3. A **reasonable period** must be fixed between the date of the warrant order and date set for execution, to enable the convict to **meet his family and pursue legal remedies.**

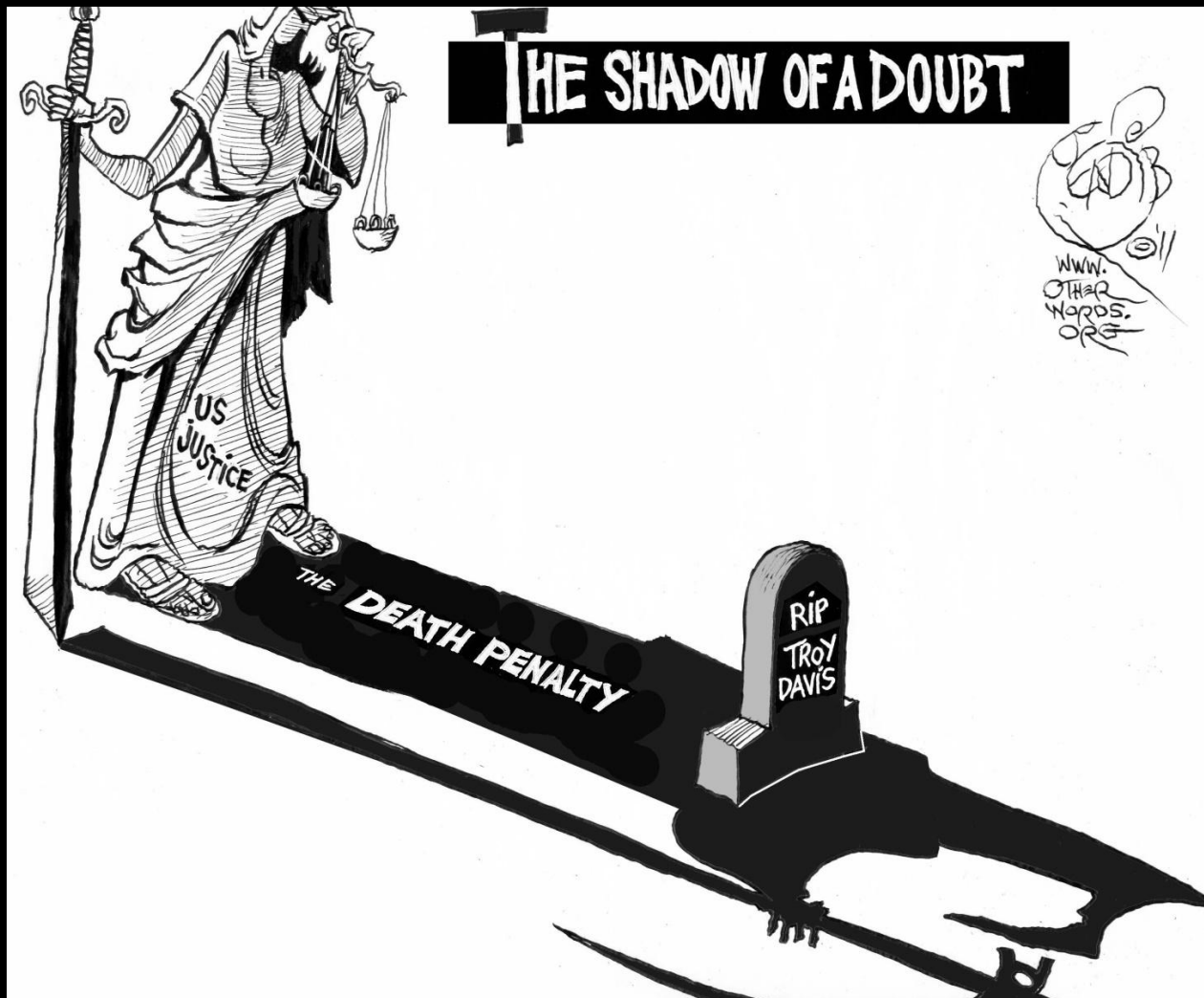
4. A **copy of the execution warrant must be made available** to him.

5. He/she should be given **legal aid** at these proceedings.

# COMMENT AND ANALYSIS

- The Supreme Court's observation that **at least three judicially trained minds need to apply their minds at the final stage of the journey of a convict on death row, given the vagaries of the sentencing procedure,** shows the graveness that should be accorded to such sentencing orders.
- Such oral hearing in open court affirms the primacy of transparency and fairness in these 'black warrant' proceedings.
- The Amroha Judge's unwarranted alacrity in moving for execution in a clandestine manner, evinces a **retributive philosophy, rather than a philosophy of justice.**

- It is also reflective of a nebulous hope that the prisoner would not exercise his constitutional and legal options.
- It must be remembered that such procedural discrepancies, though apparently minor at first glance, set a dangerous precedent for ignoring constitutional safeguards that ensure avoidance of hurried, arbitrary and secret executions.
- Though the proponents of Kantian justice and the general public would prefer to circumvent law to punish these convicts, the rule of law demands that individual rights are not sacrificed merely because sections of society find it inconvenient.



**JUSTICE DENIED, LIFE DENIED: THE  
SHADOW OF A DOUBT**

# CONCLUSION

- In a modern constitutional democracy like India that recognizes certain inalienable rights of all human beings, **arbitrariness and tardiness in death row proceedings** posit serious threats to the sanctity of **our fundamental rights**.
- *Shabnam v. UOI* is a noteworthy judicial milestone that entrenches the philosophy of justice, for it mandates that **all legal remedies ought to be exhausted before initiating 'black warrant proceedings'**.
- Thus public demands for vengeance cannot infringe on our **sacrosanct right to seek and receive justice**.

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