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# Death Penalty and Mercy Petition: Examining the Impact of Delay in the Judicial Process

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## ABSTRACT

*The most severe punishment that can be bestowed upon a convict is the death penalty. What further increases the mental and physical agony of the convict is the wait for the date of execution. Under Indian law both the Constitutional and Criminal Procedural Laws the right of filling the mercy petition is provided. Both the President and the Governor of the state have the power to commute. The lengthy trial period and further delay in decision of mercy petition add to the mental agony of the convicts. The present paper is an attempt to clarify the position of death penalty and the present judicial stance on commutation of death penalty to life incarceration in case of sufficient delay in decision on mercy petition.*

**Keywords:** *Death Penalty, Mercy Petition, Delay, Supreme Court, President, Governor, Constitution.*

## I. INTRODUCTION

When a human being takes the life of another, it is regarded as a crime by the nation's following rule of law, however, when the state takes the life of another man in the form of punishment, it is deemed that it is upholding the law. Capital punishment in India has always been a subject matter of discussion among the believers of the retribution theory of punishment. There has been a constant tussle between the abolitionist and retentionist of the death penalty. Despite the relentless efforts of the abolitionists fifty-five countries around the world have retained the death penalty.<sup>2</sup> After the pronouncement of conviction one of the rights that vest with the convict is to apply for mercy petition. These mercy petitions are generally to commute the death penalty to life imprisonment or lesser punishment. However, it has been observed after filing of these mercy laws there is a delay in decision on them. This delay and suspense in the mind of the convicts while in custody is a cause of great mental agony to them.

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<sup>2</sup> (2024, January 24) How many countries still have the death penalty, and how many people are executed? BBC Available at : <https://www.bbc.com/news/world-45835584>

### **(A) Meaning of Punishment**

A common meaning of punishment is an act of punishing the wrongdoer for his misdeeds. It is a reaction of society to crime. As per Jerome Hall punishment involves inflicting pain by the authority of the State.<sup>3</sup> Benn and Flew have pointed out some essential punishments. According to them, punishment must involve some degree of pain, given for a legal wrong, bestowed upon the actual offender and must be inflicted by the authorities.<sup>4</sup> Etymologically, the word Punishment is derived from the Latin word ‘poena’, which means penalty.

The dilemma of the punishment can be best understood in the words of Prof. H.L.A. Hart. According to him “We do not live in a society in order to condemn, though we may condemn in order to live.”<sup>5</sup> According to Justice Caldwell, “Punishment is an art which involves the balancing of retribution, deterrence and reformation in terms not only of the Court but also of the values in which it takes place and in balancing of these purposes of punishments, first one and then the order receives emphasis as the accompanying conditions change.”<sup>6</sup>

Punishment is the major objective of criminal law. Society expects the culprits to be accountable for their transgression or wrongdoings. Punishment endeavors to balance the various theories of punishment such as reformatory, retributive and deterrent theory.

### **(B) Meaning of Capital Punishment**

There are various forms of punishment such as imprisonment, fines, solitary confinement and Capital Punishment. Death Punishment is the most severe form of punishment. The terms Death penalty and Capital Punishment can be used interchangeably. The word capital comes from the latin “Capitalis” which also means the head and punishment denoting loss of head. Since the evolution of civilization, the death penalty has been used as a deterrent to crime and a mode of punishment. Since the ancient time death by torture have and the public display of the execution have been common. This penalty is often reward for serious crimes such as murder, rape, sedition, espionage etc.

The Code of Hammurabi of Babylon is one of the earliest documents which had provided the death penalty for 25 offences. The Mosaic Code of Ancient Hebrew, Draco’s Code of Athens, Twelve Tables of Roman Law also contained a number of misconducts, the punishment for

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<sup>3</sup> Jermone Hall, *The Aims of Criminal Law*, (1958)

<sup>4</sup> H.L.A. Hart, in Radzinowicz and Wofgang (Eds.), *Crime and Justice*, Volume II (1971) p. 21.

<sup>5</sup> S.M.A Qadri, Ahmad Siddique *Criminology and Penology*, Sixth Edn. 2009, Eastern Book Company, Lucknow.

<sup>6</sup> Shikha Mishra, *Theories of Punishment – A Philosophical Aspect*, Imperial Journal of Interdisciplinary Research. Vol-2, Issue-8, 2016.

Available at <https://iftmuniversity.ac.in/iftmuniversity/profile/download/paper/1104.pdf>

which is death penalty.<sup>7</sup> There are various modes of execution of the death penalty. They include stoning, drowning in water, poisoning and beating to death, crucifixion, beheading, hangings, boiling in hot oil, public dissecting, using thumb screws and castrating. The sternness of the death penalty over history has varied according to the change in the political and the penal authorities.<sup>8</sup>

## II. CAPITAL PUNISHMENT AND INTERNATIONAL LAW

There has been a worldwide regulation of the death penalty vide treaties. The International Convention on Civil and Political Rights (ICCPR) is an international human rights document which, though, does not abolish the death penalty but does regulate it. Cls. 2<sup>9</sup>,4<sup>10</sup> and 5<sup>11</sup> to Art 6 of the convention guarantees the right to life and regulates the laws of the signatories country. The Second Optional Protocol to ICCPR which came into force in 1991 under Art. 2 Cl. 1<sup>12</sup> aimed at abolishing the Death Penalty by the signatory's parties. Art. 37(a)<sup>13</sup> of the Convention on the Rights of the Child expressly restrict the imposition of the death sentence on the individuals under the age of 18 years of age.

To restrict the implementation of the death penalty various safeguards have been incorporated by the international bodies. The first United Nation Economic and Social Council resolution adopted in 1984, titled "safeguarding guaranteeing protection of the rights of those facing the death penalty" provided a number of safeguards such imposition only in serious offences, non-imposition on people below 18 years of age, fair trial, right of appeal, minimum suffering.<sup>14</sup> The United Nation General Assembly in 2007 asked states parties to restrict use of capital

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<sup>7</sup> Robert Hoag, Capital Punishment, Internet Encyclopedia of Philosophy. Available at : <https://iep.utm.edu/death-penalty-capital-punishment/>

<sup>8</sup> Ibid.

<sup>9</sup> Article 6(2) states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court."

<sup>10</sup> Article 6(4) provides that "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

<sup>11</sup> Article 6(5) mandates that a "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

<sup>12</sup> Article 2(1) provides, Except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

<sup>13</sup> Article 37(a) states: States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

<sup>14</sup> Economic and Social Resolution 1985/50 dt. 25. May 1984. Available at : <https://www.ohchr.org/en/instruments-mechanisms/instruments/safeguards-guaranteeing-protection-rights-those-facing-death>

punishment and establish a moratorium on execution with a view to abolish the death penalty.<sup>15</sup>

### III. EXTRADITION LAW AND CAPITAL PUNISHMENT

It is a trend that Abolitionist countries often try to ensure while extraditing offenders that on conviction the sentence of death penalty shall not be imposed upon them.<sup>16</sup> Examples of this can be seen under Art. 19(2)<sup>17</sup> of the European Union Charter of Fundamental Rights. In India the principle is shown under section 34C<sup>18</sup> of the Indian Extradition Act, 1962 which provides where the fugitive is returned on the request that it would not be given the death penalty and that request will be given credit. Various judgments<sup>19</sup> of the courts around the world who have abolished the death penalty has also adopted the same approach where the extraction is allowed only on assurance that the capital punishment would be given.

#### (A) Position of Capital Punishment in India

Capital Punishment has existed in Indian society since ancient times have evolved over time. Various attempts have been made to abolish it in the modern times but they have been fruitless. For instance, Sir Gaya Prasad Singh brought a bill to abolish the death penalty under the erstwhile Indian Penal Code, 1860.<sup>20</sup> Similarly the Congress party in the Karachi Session of 1931 passed a resolution for death penalty abolition after the barbaric execution of Bhagat Singh, Sukhdev and Rajguru.<sup>21</sup> After the Independence at the time of making of the Constitution, the Constituent Assembly also debated on the abolition. Dr Bhim Rao Ambedkar also subscribed to the view of abolition of death penalty.<sup>22</sup>

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<sup>15</sup> Moratorium on the use of the death penalty: resolution / adopted by the General Assembly. A/RES/62/149. This resolution was further reaffirmed in 2010, 2012 and 2014.

Available at : <https://digitallibrary.un.org/record/614304?ln=en&v=pdf>

<sup>16</sup> Law Commission of India, 262th Report, 2015, at para 3.8.32 pg 53. Available at <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf>

<sup>17</sup> *Ibid.* Article 19(2) of the Charter of Fundamental Rights of the European Union states: No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

<sup>18</sup> Section 34C. Provision of life imprisonment for death penalty.—Notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central Government and the laws of that foreign State do not provide for a death penalty for such an offence, such fugitive criminal shall be liable for punishment of imprisonment for life only for that offence.

<sup>19</sup> For eg. *US v. Burns*, (2001) 1 SCR 283, *Mohamad and Another v. President of the Republic of South Africa*, 2001 (3) SA 893 (CC), *Roger Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003)

<sup>20</sup> Law Commission of India, Report Number 262, August 2015. Available at : <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf>

<sup>21</sup> *Ibid.*

<sup>22</sup> Constituent Assembly Debates on 3 June, 1949 Part II. According to him, my other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. That, I think, is the proper course to follow, so that it will end this controversy. After all, this

At the time of Independence various colonial laws were retained such as the Code of Criminal Procedure of, 1898 (CrPC,1898) and the Indian Penal Code, 1860 (IPC). The IPC provided various forms of punishment for the convict and the death penalty was one of them. Under sec 367(5) of the CrPC, 1898 the courts while pronouncing sentences for an offence of which one of the punishments was death penalty were required to give reason why they have not imposed the death penalty. This law was however repealed in 1955 and after that the Courts were no longer required to state the reason why death penalty was not imposed.

The Act of 1898 was replaced by the Code of Criminal Procedure, 1973 and several changes were further made. Under section 354(3)<sup>23</sup> of the Act, now the judge awarding the death sentence has to state the special reasons for the imposition of the sentence. In 2023 the government introduced the new Criminal law replacing the CrPC,1983 with Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the IPC,1860 with Bharatiya Nyaya Sanhita,2023(BNS). The new BNSS has retained the procedure in respect of the death penalty with respect to death penalty under section 393(3).<sup>24</sup> The BNS,2023 under section 4<sup>25</sup> provides for six categories of punishment and has retained the death penalty for a total number of fifteen offences which have risen from eleven under the IPC.<sup>26</sup>

Various Law Commission have also after the Independence have given recommendations relating to the death penalty. The 35th Report of the Commission has recommended the

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country by and large believes in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

Available at <http://parliamentofindia.nic.in/ls/debates/vol8p15b.htm>

<sup>23</sup> Section 354(3) in The Code of Criminal Procedure, 1973.

When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

<sup>24</sup> Section 393(3) in Bharatiya Nagarik Suraksha Sanhita, 2023

When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

<sup>25</sup> Bharatiya Nyaya Sanhita, Section 4 Punishments:

The punishments to which offenders are liable under the provisions of this Sanhita are—

- (a) Death;
- (b) Imprisonment for life;
- (c) Imprisonment, which is of two descriptions, namely:—
  - (1) Rigorous, that is, with hard labour;
  - (2) Simple;
- (d) Forfeiture of property;
- (e) Fine;
- (f) Community Service.

<sup>26</sup> Joseph Mathai, Paramjeet Singh, Review Death Penalty Punishments in Bhartiya Nyaya Sanhita 2023, (December 7, 2023). Available at : <https://www.pudr.org/press-statements/review-death-penalty-punishments-in-bhartiya-nyaya-sanhita-2023/>

retention of the death penalty stating that looking at the country's condition the risk of abolition cannot be undertaken.<sup>27</sup> Another peculiar observation in this report was the retention of the section 303 of the IPC<sup>28</sup> which provided a mandatory death punishment on conviction. However, the said provision was later on held to be unconstitutional by the Supreme Court.<sup>29</sup> The Commission in its 187th Report took up the method of execution for the death penalty.<sup>30</sup> Indirectly, the report allowed for the death penalty and also recommended the use of lethal injection as the method of execution under section 354(5) CrPC. It also suggested that the death sentences cases be heard by the 5 judge Bench of the Supreme Court.<sup>31</sup> Lately, the Law Commission in its Report No 262 recommended that the county should abolish the death penalty for all the offences other than terrorism and waging war.<sup>32</sup>

#### IV. CONSTITUTIONALITY OF THE DEATH PENALTY IN INDIA

Judiciary in India is the guardian of human liberty. In *Jagmohan Singh v. State of U.P.*,<sup>33</sup> the constitutionality of the death penalty was considered for the first time before the Supreme Court. The challenge was on the grounds of violation of Article 14, 19 and 21 of the Constitution. The judgment in this case came in the background of US Supreme Court judgment in *Furman v. Georgia*<sup>34</sup> which held the death penalty as being cruel and unusual punishment. The Supreme Court in this case held that the death penalty did not violate the death penalty.<sup>35</sup>

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<sup>27</sup> Law Commission of India, 35th Report, 1967, at para 293. It was observed Having regard, however, to the conditions in India, to the variety of the social upbringing of its inhabitants, to the disparity in the level of morality and education in the country, to the vastness of its area, to the diversity of its population and to the paramount need for maintaining law and order in the country at the present juncture, India cannot risk the experiment of abolition of capital punishment. Available at : <http://lawcommissionofindia.nic.in/1-50/Report35Vol1and3.pdf>

<sup>28</sup> Section 303 in The Indian Penal Code, 1860.

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

<sup>29</sup> *Mithu v. State of Punjab* (1983) 2 SCC 277.

<sup>30</sup> Law Commission of India, 187th Report, 2003 on the "Mode of Execution of Death and Incidental Matter. The Report did not address the question of whether the death penalty was desirable. Instead, the report was restricted to three issues : (a) the method of execution of death sentence, (b) the process of eliminating differences in judicial opinions among Judges of the apex Court in passing sentences of death penalty, and © the need to provide a right of appeal to the accused to the Supreme Court in death sentences matters.

Available at : <http://lawcommissionofindia.nic.in/reports/187th%20report.pdf>

<sup>31</sup> *Ibid.* page 3.

<sup>32</sup> Law Commission of India, 262th Report, 2015, at para 7.2.4. pg 217. Available at <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf>

<sup>33</sup> (1973) 1 SCC 20

<sup>34</sup> 408 U.S. 238 (1972)

<sup>35</sup> *Supra* note 21 at para 26,27. The Court observed : The impossibility of laying down standards is at the very core of the criminal law as administered in India, which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. That discretion in the matter sentences, is liable to be corrected by superior court. The exercise of judicial discretion on well-recognized principles is, in the final analysis, the safest possible safeguard for the accused. If the law has given to the judge a wide discretion in the matter of sentence to be exercised by him after balancing all the aggravating and mitigating circumstances of the crime, it will be impossible to say that there would be at all any discrimination, since facts and circumstances of one case can hardly be the same as the facts and circumstances of another.

The SC judgment of 1979 in *Rajendra Prasad v. State of Uttar Pradesh*, while dealing with the need for special reasons while imposing the death penalty, found that the reason must relate to the criminal and not the crime. The court based its judgement on the theories of reformation and deterrence as opposed to the theory of reformation.<sup>36</sup>

With various confronting judgments of the highest court the constitutional bench in *Bachan Singh v. State of Punjab*,<sup>37</sup> finally settled the matter of constitutionality of the death penalty by 4:1 in favour of the death sentence. Justice Bhagwati was the dissenting judge who opined it arbitrary and discriminatory.<sup>38</sup> The court in the case adopted the rarest of rare guidelines before imposition of the punishment.<sup>39</sup>

In *Shashi Nayar v. Union of India*,<sup>40</sup> again the death penalty was challenged on the basis of recommendation of the 35th Law Commission Report. The court in its judgment rejected the contention of the petitioner on the ground of law-and-order situation in the country.

In *Mithu Singh v. State of Punjab*,<sup>41</sup> the Apex Court was faced with the question of mandatory death sentence under section 303 of the IPC. The Court struck down the section as unconstitutional on the grounds that it does not give the convicted a chance to show why they should be given a death sentence<sup>42</sup> and also the said section failed to consider the circumstances of the case.<sup>43</sup>

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<sup>36</sup> *Ibid.* para 88. Court observed, “the retributive theory has had its day and is no longer valid. Deterrence and reformation are the primary social goals which make deprivation of life and liberty reasonable as a penal panacea.”

<sup>37</sup> (1980) 2 SCC 684

<sup>38</sup> *Ibid.* para 81 He observed, He reasoned that “the death penalty in its actual operation is discriminatory, for it strikes mostly against the poor and deprived sections of the community and the rich and the affluent usually escape from its clutches. This circumstance also adds to the arbitrary and capricious nature of the death penalty and renders it unconstitutional as being violative of Articles 14 and 21.”

<sup>39</sup> *Id. para 209.* The court held, “It cannot be overemphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in section 354 (3). Judges should never be blood-thirsty ... It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in section 354 (3), viz, that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.”

<sup>40</sup> (1992) 1 SCC 96

<sup>41</sup> (1983) 2 SCC 277

<sup>42</sup> *Ibid.* para 18. The court noted, “It is because the death sentence has been made mandatory by section 303 in regard to a particular class of persons that, as a necessary consequence, they are deprived of the opportunity under section 235(2) of the Criminal Procedure Code to show cause why they should not be sentenced to death and the Court is relieved from its obligation under section 354(3) of that Code to state the special reasons for imposing the sentence of death. The deprivation of these rights and safeguards which is bound to result in injustice is harsh, arbitrary and unjust.”

<sup>43</sup> *Id.* para 16. The Court observed, “A standardized mandatory sentence, and that too in the form of a sentence of death, fails to take into account the facts and circumstances of each particular case. It is those facts and circumstances which constitute a safe guideline for determining the question of sentence in each individual case.”

The Supreme Court in *Vikram Singh v. Union of India*,<sup>44</sup> decided the question of constitutionality of Section 364A, IPC<sup>45</sup> with regard to imposition of only the death penalty or life imprisonment in case of conviction. The court upheld the section, while reiterating that death penalty to be imposed in rarest of rare cases.<sup>46</sup>

## V. CLEMENCY POWERS, DELAY AND RIGHT TO LIFE

Since the time immemorial the sovereign of the country has been vested with the power of clemency or mercy on the culprit of the crime. It could absolve them of the crime they have committed or could reduce their sentence. Though it was the personal act of the sovereign in ancient times, in the present democratic country this power is enlisted as a constitutional responsibility of the head of the state. Under Indian Constitution the Clemency Power is scriptural under Art. 72<sup>47</sup> and under Art. 161.<sup>48</sup> However, these powers are to be exercised by them only on the aid of the council of ministers.<sup>49</sup>

In *Kehar Singh v. Union of India*,<sup>50</sup> the five-judge bench of the Supreme Court discussed at great length the clemency power of the President. It was held that the President enjoys wide power like examining the records of the case and to go into the merits of each case. In *Epuru*

<sup>44</sup> AIR 2015 SC 3577

<sup>45</sup> 364A. *Kidnapping for ransom, etc.*— Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

<sup>46</sup> Supra Note 32 at para 50. The court observed that. “It is because the death sentence has been made mandatory by section 303 in regard to a particular class of persons that, as a necessary consequence, they are deprived of the opportunity under section 235(2) of the Criminal Procedure Code to show cause why they should not be sentenced to death and the Court is relieved from its obligation under section 354(3) of that Code to state the special reasons for imposing the sentence of death. The deprivation of these rights and safeguards which is bound to result in injustice is harsh, arbitrary and unjust.”

<sup>47</sup> Article 72. *Power of President to grant pardons, etc. and to suspend, remit or commute sentences in certain cases* – (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence –

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State, under any law for the time being in force.

<sup>48</sup> Article 161. *Power of Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases* – The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

<sup>49</sup> Constitution of India Art. 74 and Art. 164.

<sup>50</sup> (1989) 1 SCC 204.

*Sudhakar v. Govt of A.P.*,<sup>51</sup> it was held that there can be judicial review though on limited grounds by the executive heads.

Delays in execution of the death penalty have become a relevant factor by the various judgments of the courts for commuting death sentences to life imprisonment.<sup>52</sup> The Constitution of India under Article 21 of the Constitution grants every person the right to life and liberty and this right can be taken only through procedure established by law. This right is enjoyed by those convicted also and they are entitled to protection at every stage. In *Sher Singh v. State of Punjab*,<sup>53</sup> Chandrachud, C.J. explained “The horizons of Article 21 are ever widening and the final word on its conspectus shall never have been said. So long as life lasts, so long shall it be the duty and endeavor of this Court to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation. Therefore, Article 21 is as much relevant at the stage of execution of the death sentence as it is in the interregnum between the imposition of that sentence and its execution. The essence of the matter is that all procedures, no matter the stage, must be fair, just and reasonable.”<sup>54</sup>

In the case of *Triveniben v. State of Gujarat*<sup>55</sup>, by a Constitution Bench. G.L. Oza, J. rendered the main opinion for himself and on behalf of three other Hon’ble Judges. The Court observed, “Making all reasonable allowance for the time necessary for appeal and consideration of reprieve, we think that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death.”

In *Madhu Mehta v. Union of India*,<sup>56</sup> the SC ordered for the commutation of a person who had killed a government servant. In this case the mercy petition filed by his wife remained pending for the period of 8 years. The court in absence of any sufficient reason converted the death sentence into life imprisonment.

In *V. Sriharan @ Murugan v. Union of India & Ors.*<sup>57</sup> the court made an observation on the clemency powers provided under the constitution. It was observed that the clemency power provides a ray of hope for the condemned prisoners. The court further observed that this remedy

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<sup>51</sup> (2006) 8 SCC 161.

<sup>52</sup> *Triveniben v. State of Gujarat*, (1989) 1 SCC 678. In *State of U.P. v. Lalla Singh & Ors.*, [1978] 1 SCC 142 six years delay from the date of judgment of the trial court was a consideration for not giving the death sentence. In *Sadhu Singh v. State of U.P.*, [1978] 4 SCC 428 about three years and seven months during which the accused was under specter of death sentence, was one of the relevant factors to reduce the sentence to life imprisonment.

<sup>53</sup> [1983] 2 SCC 582

<sup>54</sup> *Ibid.* at pg. 593

<sup>55</sup> (1989) 1 SCC 678.

<sup>56</sup> (1989) Cr LJ 2321

<sup>57</sup> (2014) 4 SCC 242

cannot be snatched by executing the death penalty without giving the convict to avail the same. To achieve the objective of the said provision the State before execution has to wait for a reasonable period.

In *Shabnam v. Union of India* (2015) 6 SCC 702, the Supreme Court emphasized that the execution of a death sentence must follow the procedure outlined by the Allahabad High Court in *People's Union for Democratic Rights (PUDR) v. Union of India & Ors.*<sup>58</sup> to uphold Article 21 of the Constitution, which guarantees the right to life and personal liberty. The key principles established by the High Court include:

1. **Right to Legal Representation** – Before issuing a warrant for execution, the convict must be given sufficient notice to consult an advocate and present their case.
2. **Clear Execution Date** – The warrant must specify the exact date and time of execution, avoiding uncertainty that could cause distress to the convict. Additionally, a reasonable period should be provided between issuing the warrant and execution to allow for legal remedies and a final meeting with family.
3. **Immediate Access to Warrant** – A copy of the execution warrant must be given to the convict without delay.
4. **Legal Aid Provision** – If the convict does not have legal representation, legal aid must be provided before issuing the execution warrant.

## VI. CONCLUSION

The Supreme three judge Bench recently in the *State of Maharashtra and Ors. v. Pradeep Yashwant Kokade and Anr.*,<sup>59</sup> settled the law on commutation of the death sentence to life. It was observed that, “*It is well established that Article 21 of the Constitution does not end with the pronouncement of the sentence but extends to the stage of execution of that sentence. An inordinate delay in the execution of the sentence of death has a dehumanizing effect on the accused. An inordinate and unexplained delay caused by circumstances beyond the prisoners control mandates the commutation of a death sentence.*”

However, it is important to understand that commutation is not a right in case of delay. Only in those cases where the delay is caused for reasons beyond convict control can approach the High Courts and Supreme Court under Art. 32 and Ar. 226 of the Constitution.<sup>60</sup> The Supreme Court under Art. 142 in the ambit of doing complete justice can in the cases of delay commute the

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<sup>58</sup> 2015 SCC OnLine All 143

<sup>59</sup> 2024 LiveLaw (SC) 997

<sup>60</sup> *Ibid.*

death sentence to life imprisonment.

The Apex Court further gave certain guidelines<sup>61</sup> to prevent delay in the mercy petition. The court issued specific directions to all State Governments and Union Territories regarding the processing of mercy petitions to ensure efficiency and uniformity. These directions include:

1. **Setting-up of the dedicated Mercy Petition Cell** – Every State and Union Territory must formulate a dedicated cell within the Home or Prison Department to handle mercy petitions with a designated officer who will oversee communication and processing within a set time frame. The details of the officer so designated must be informed to all the prisons.
2. **Duty of Timely Collection of the Relevant Details of the Prisoners** - Immediately after receiving the mercy petition, the prison authority must immediately forward all the petition copy and all for crucial details from the concerned police station, such as:
  - a. Criminal Antecedent of the convict including his family background and financial condition.
  - b. Date of arrest and time spent in prison before conviction.
  - c. Copy of Chargesheet and committal order.

The police station must provide the aforementioned information without delay.

3. **Forwarding of Collected Information** - The Prison Authorities must after collection of the required information send them to the dedicated cell. The dedicated cell must send the copies of the petition further to the concerned office of Governor or President.
4. **Communication** : Every communication barring the confidential information must take place via e-mails.

The above-mentioned measures must aim for prompt, pellucid and systematic processing of mercy petitions. However, the above guidelines are not sufficient to solve the plight of the mercy seekers. There are certain areas of concern which are still left untouched by the judgments. For e.g. the minimum time-frame has still not been provided for deciding the petition. Right of physical hearing is still not entitled to the convicts which shall be allowed. The mercy petition should made the sole prerogative of the executive i.e. President and the Governors. The executive decision shall not be made subject to the aid and advice of the council of ministers.

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<sup>61</sup> *Id.*