



DELAY IN DISPOSAL OF CLEMENCY PETITION BY THE PRESIDENT OF INDIA: AN IMPORTANT FACTOR FOR COMMUTATION OF DEATH SENTENCE INTO LIFE IMPRISONMENT

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ABSTRACT

The power of clemency in India is vested in the highest authority by way of prerogative. The authority exercises the power in its discretion. However the discretion is not absolute and is subjected to certain limits, and if the authority disposes of the clemency petition in an arbitrary manner by going beyond the limits, then the courts may declare such an order to be void. On being awarded death penalty and after exhaustion of all other judicial remedies, one may approach the President who is constitutionally empowered to grant pardon or reprieves. India remains one of over a hundred countries who have retained death penalty. The question which often arises is what should be done in cases where there has been a delay in the execution of death sentence. Off late, delay in the disposal of mercy petition has been considered to be a ground to commute death sentences into life imprisonment. In the present paper, the authors have discussed the various cases in which death penalty has been converted into life imprisonment because of delay in disposal of mercy petition. The first half of the paper deals with delay in execution of

death sentence and its impact on right to life and then goes into the effects of delay on execution and the validity of a delayed execution. The text also includes information regarding various international conventions and their take on the issue at hand. The paper does not delve into any debate regarding the validity of death penalty be it for any sociological, penological, or any constitutional purpose. The discussion is limited as to how delay can become a ground for commutation of death sentence into life imprisonment.

KEYWORDS: clemency, President, death penalty, life imprisonment, delay, commutation.

INTRODUCTION

Death Penalty as a form of punishment has always been debated. These debates are largely based on constitutionality of death sentence, its importance in criminal jurisprudence and the human rights dealing with justice to convicts. The debates regarding the same has been taken up at various international forums. In India also, abolitionists have repeatedly tried to acquire legislative sanction to their demands and have raised the issue in the Parliament thrice but they were either rejected or withdrawn. Thus India remains a country that has retained death penalty.

A question that is often asked is that what must be done if there is a delay in the execution of the death sentence. Many convicts whose mercy petitions to the President have been rejected, have employed this delay in the execution of the death sentence caused due to the delay in the



disposal of the mercy petition, as a ground for the commutation of their death sentence into life imprisonment. What has been noticed is the fact that this weapon has been used by many convicts to escape a stricter punishment. It has been seen that the convicts file a mercy petition hoping that there will be a delay in its disposal and then he can use the same delay as a ground or commutation of his death sentence. In this paper, the focus is not placed on the constitutional validity of death sentence as a punishment but on the effects which delay in disposal of the mercy petition by the President of India will have on the death sentence which is awarded to the convict.

DELAY AND RIGHT TO LIFE

Prolonged delay in execution of a sentence of death has the constitutional implication of depriving the person, of his life in an unjust, unfair and unreasonable way to offend Article 21.¹ The criminal justice system necessarily interferes or encroaches upon fundamental rights guaranteed under article 21 and thus in case of doubt or dispute the interpretation must lean in favour of the accused.² In the case of *Bandhua Mukti Morcha v. Union of India*³, Bhagwati, J. observed:

It is the fundamental right of everyone in this country....to live with human dignity free from exploitation.

The precious right guaranteed by Article 21 cannot be denied to convicts, under trials, detenus and other prisoners in custody

¹ 1990 Cri LJ 2314A (2317) (DB)

² 2002 (64) DRJ 379 (388) (DB)

³ (1984) 3 SCC 161

except according to the procedure established by law. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21.⁴ Moreover, Article 21 of the Constitution of India is not a limitation on the powers of the legislature but only on those of the executive.⁵ In matters where the liberty of citizens is involved, it is necessary for the officers to act with expedition and in strict compliance with the mandatory provisions of law, as it is not permissible in such cases to take a liberal or generous view of the lapses on part of officers.⁶ Since the case of *Maneka Gandhi v. Union of India*⁷, the Supreme Court has tested various aspects of criminal justice and prison administration on the touchstone that the Sunil Batra case had set out. The protection of Article 21 extends to all persons – persons accused of offences, under – trial prisoners, prisoners undergoing jail sentences etc. and thus all aspects of criminal justice fall under the umbrella of Article 21.

In the case of *Jumman v. State of Uttar Pradesh*⁸, it was held by the Supreme Court that it may under Article 32 read with Article 21 commute the sentence of death into one of life imprisonment on the ground of undue delay in execution of death since it was confirmed.

However, it is also a fact that a prisoner who is sentenced to death and is kept in jail custody under a warrant under Section 366(2) of the Code of Criminal Procedure

⁴ D.K. Basu v. State of West Bengal (1997) 1 SCC 416

⁵ AIR 1956 All 589 (592) (DB)

⁶ AIR 1987 SC 762 (766)

⁷ (1978) 1 SCC 248

⁸ (1991) 1 SCC 752



Code, 1973, is neither serving rigorous imprisonment nor simple imprisonment. In substance he is in jail so that he is kept safe and protected with the purpose that he may be available for execution of the sentence which has been awarded. He must be kept safe as it is the purpose of the jail custody to make him available for execution after the sentence is finally confirmed.

In the case of *Shatrugan Chauhan v. Union of India*⁹, the Hon'ble Supreme Court held:

Prolonged delay in execution of a sentence of death has a dehumanising effect and this has the Constitutional Implication of depriving a person of his life in an unjust, unfair, and unreasonable way to offend the Fundamental Right under Article 21 of the Constitution. Except the specific ratio relating to delay exceeding 2 years in execution of sentence of death laid down in T.V. Vatheeswaran¹⁰, all other propositions laid down therein are acceptable, and in fact, have been followed in subsequent decision and should be considered sufficient to entitle the person under a sentence of death to invoke Article 21 of the Constitution and plead for commutation of the sentence. Delay caused by circumstances beyond the control of death convict mandates commutation of death sentence. Articles 14, 19 and 21 of the Constitution supplement one another and the right to commutation of the death penalty due to undue and inordinate delay in execution of mercy petition is a substantive right of the

convict and not merely a matter of procedure established by law.

Addressing the issue of delay, the first relevant judgement would be from the Constitution Bench in *State of West Bengal v. Committee for Protection of Democratic Rights*¹¹ has laid down a guideline which says that Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. An accused unless convicted or acquitted is bound to remain in custody, especially when he is accused of a crime like terrorism.

EFFEC • OF DELAY ON EXECUTION

Delayed execution serves no penological purpose and is, therefore, excessive. The Supreme Court has also held that delayed execution of the death sentence does not serve any of the penal purposes originally expected of it at the time the court confirmed the same on the convict. A delayed death sentence to that extent only embodies mindless and medieval retributive quality which offends the present civilizational norms of punishment. The 208 Supreme Court in *Jagdish v. State of M.P.*¹², invoked the embargo against cruel and unusual punishment in Eighth Amendment to the US Constitution to rule that delayed executions fail to serve both the retributive and deterrence rationales of death penalty. The Court observed that “the deterrent value of incarceration during that period of uncertainty may well be comparable to the consequences of the ultimate step itself” and when the death penalty “ceases realistically

⁹ (2014) 3 SCC 1 *relied on by State of West Bengal v. Committee for Protection of Democratic Rights*

(2010) 3 SCC 571

¹⁰ (1983) 2 SCC 68

¹¹ (2010) 3 SCC 571

¹² 2016 SCC MP 9198



to further these purposes, ... its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes.” The Courts have, however, said that the time taken by the accused in pursuing legal and constitutional remedies cannot be taken against him. It has been repeatedly emphasised that the death sentence has two underlying philosophies:

- (1) That it should be retributive, and
- (2) It should act as a deterrent

And as the delay has the effect of obliterating both the above factors, there can be no justification for the execution of a prisoner after much delay. While examining the matter in the background of the Eighth Amendment to the US Constitution which provides that: “excessive bail should not be required, nor excessive fine imposed, nor cruel and unusual punishment inflicted” it has been observed that though the death penalty was permissible, its effect is lost in case of delay.¹³

In the case of *Sher Singh v. State of Punjab*¹⁴, the Supreme Court took serious note of the delay in decisions of the mercy petitions filed under Article 72 of the Constitution of India. The Court observed that, “A self-imposed rule should be followed by the executive authorities vigorously, that every such petition shall be disposed of within a period of 3 months from the date when it is received. Long delays in the disposal of these petitions are a

serious hurdle in the dispensation of justice and indeed such delays tend to shake the confidence of people in the system of justice.”

The Case of *Gurmeet Singh*: When a convict on death row has already spent a considerable period of time in prison, before the mercy plea is decided by the President, it becomes a strong factor in deciding whether or not such a prisoner still deserves the additional punishment of execution. Gurmeet was arrested on 16.10.1986, convicted and sentenced to death by the trial court on 20.7.1992. The High Court confirmed his death sentence (per majority) on 8.3.1996, and the Supreme Court upheld the conviction and death sentence on 28.9.2005. The convict’s mercy petition was decided on 1.3.2013, by which time he had spent 27 years in custody, of which about 21 years were under a death sentence. These factors were ignored and his mercy petition was rejected. The Supreme Court in *Shatrughan Chauhan* commuted the death sentence of Gurmeet Singh on account of inordinate time taken by the executive in disposal of his mercy petition.¹⁵

On 14.7.1993, and convicted by the trial court under the Terrorist and Disruptive Activities (Prevention) Act on 29.9.2001. They were sentenced to life imprisonment. The state appealed to the Supreme Court for enhancement of sentence, but its special leave petition was dismissed due to delay. When the criminal appeal filed by the

¹³ *Gregg v. Georgia* [49 L Ed 2d 859: 428 US 153 (1976)]

¹⁴ AIR1983 SC 465

¹⁵ 262nd Law Commission of India Report, *The Death Penalty* 192 (2015), available at <http://lawcommissionofindia.nic.in/reports/report262.pdf>, last seen on 04/03/2019



convicts was being heard, the Supreme Court, *suo motu*, issued notice for enhancement of sentence, and then sentenced the convicts to death on 29.1.2004. This was the first time the convicts had been sentenced to death, and since it had been done by the Supreme Court there was no appeal possible after this. When the convict's mercy pleas were decided 9 years later, they had already spent 19 years and 7 months in custody in prison. Simon, Bilavendran, Gnanprakasam and Madiah were aged 50, 55, 60 and 64 years when their mercy petitions were rejected by the President on 8.2.2013 after a delay of about 9 years. Their petitions were finally allowed by the Supreme Court.¹⁶

Shatrughan Chauhan vs Union of India¹⁷, decision was passed in favour of commuting death sentences on grounds of delay and held that delay in execution may be the sole ground for commutation of death sentence. In Vivian Rodrick v. The State of West Bengal¹⁸, six years delay was considered sufficient for imposing a lesser sentence of imprisonment for life. In State of U.P. v. Paras Nath Singh & Ors.¹⁹, the Court, while reversing the order of acquittal awarded life imprisonment on the ground that the accused was under sentence of death till he was acquitted by the High Court. Similar was the view taken in State of Bihar v. Pashupati Singh²⁰; State of U.P. v. Suresh²¹ and State

of U.P. v. Sahai²². In State of U.P. v. Suresh²³, the accused was given life imprisonment in view of the fact that seven years had elapsed after the date of murder. In Ram Adhar v. State of U.P.²⁴ the delay of six years from the date of occurrence was held sufficient to commute the sentence of death to life imprisonment. The court also observed that the accused was not responsible in any manner for the lapse of time that has occurred. In Nethi Sreeramulu v. State of A. P.²⁵, the Court while disposing of the appeal in 1973 commuted the sentence of death given in 1971 to life imprisonment. In State of U.P. v. Lalla Singh & Ors.²⁶ 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.²⁷, about three years and seven months during which the accused was under spectre of death sentence, was one of the relevant factors to reduce the sentence to life imprisonment.

In Madhu Mehta v. Union of India²⁸, the death sentence of the prisoner was commuted to life imprisonment because of delay in executing it due to inordinate delay in the disposal of mercy petition by the President of India. In Shivaji Jaisingh Babar v. State of Maharashtra²⁹, the death sentence was changed into one of life imprisonment because of undue delay in disposal of the mercy petition.

¹⁶ 262nd Law Commission of India Report, *The Death Penalty* 193 (2015), available at <http://lawcommissionofindia.nic.in/reports/report262.pdf>, last seen on 04/03/2019

¹⁷ *Supra*. 9

¹⁸ [1971] 1 SCR 468

¹⁹ [1973] 3 SCC 647

²⁰ [1974] 3 SCC 376

²¹ [1981] 3 SCC 635 at 643

²² [1982] 1 SCC 352

²³ *supra*. 21

²⁴ [1979] 3 SCC 774 at 777

²⁵ [1974] 3 SCC 3 14

²⁶ [1978] 1 SCC 142

²⁷ [1978] 4 SCC 428

²⁸ AIR 1989 SC 2299

²⁹ AIR 1991 SC 2147



The Supreme Court in *Sher Singh*³⁰ held that in such Article 32 petitions a death row convict cannot be allowed to take advantage of delay which is caused on account of proceedings filed by him to delay the execution. The Court held that the equitable basis of a prisoner's plea for commutation in such a case is compromised if he has in any way contributed to the delay caused in disposal of his mercy petition. In this case which was a decision of a three Judges' Bench it was held that a condemned prisoner has a right of fair procedure at all stages, trial, sentence and incarceration but delay alone is not good enough for commutation and two years rule could not be laid down in cases of delay. It was held that the Court in the context of the nature of offence and delay could consider the question of commutation of death sentence. The Court observed:

"Apart from the fact that the rule of two years run in the teeth of common experience as regards the time generally occupied by proceedings in the High Court, the Supreme Court and before the executive authorities. We are of the opinion that no absolute or unqualified rule can be laid down that in every case in which there is a long delay in the execution of a death sentence; the sentence must be substituted by the sentence of life imprisonment. There are several other factors which must be taken into account while considering the question as to whether the death sentence should be vacated. A convict is undoubtedly entitled to pursue all remedies lawfully open to him to get rid of the sentence of death imposed upon him

and indeed, there is no one, be he blind, lame, starving or suffering from a terminal illness, who does not want to live." It was further observed: "Finally, and that is no less important, the nature of the offence, the diverse circumstances attendant upon it, its impact upon the contemporary society and the question whether the motivation and pattern of the crime are such as are likely to lead to its repetition, if the death sentence is vacated, are matters which must enter into the verdict as to whether the sentence should be vacated for the reason that its execution is delayed. The substitution of the death sentence by a sentence of life imprisonment cannot follow by the application of the two years' formula, as a matter of "quod erat demonstrandum".

Each and every delay does not necessarily prejudice the accused.³¹ In *Devender Pal Singh Bhullar v. State of NCT of Delhi*³² the court rejected the petition and opined that delay could not be a ground for commutation in terror cases.

The Court held that in such circumstances where appeal is still pending, the convict does not suffer from mental torture of waiting for an eventual execution as the sentence of death has not yet become a sure certainty. Further, in the case of *Triveniben v. State of Gujarat*³³ it has been held that no fixed period of delay could be held to make the sentence of death inexecutable. The Supreme Court of India in *Sher Singh v. The State of Punjab*³⁴ held that a sentence of

³¹ A.R. Antulay v. R.S. Nayak AIR1992 SC 1701

³² (2013)6 SCC 195

³³ AIR1989 SC 1335

³⁴ *supra*.14, 30

³⁰*Supra*. 14



death imposed by the “Apex Court”, which will itself have considered delay when imposing the death sentence, can only be set aside thereafter upon petition to the Supreme Court upon grounds of delay occurring after that date. Oza J. said, at page 410: - “If, therefore, there is inordinate delay in execution, the condemned prisoner is entitled to come to the court requesting to examine whether, it is just and fair to allow the sentence of death to be executed.” In their Lordships’ view a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve. It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is to be attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.” The Triveniben case in certain terms held that the delay for the purpose of an Article 21 claim made by the convict could only be said to kick in once the judicial process has come to an end after the Supreme Court has dismissed the appeal.

It is therefore clear that the prisoner who is sentenced to death and is kept in jail custody under a warrant under Section 366(2) of the Code of Criminal Procedure Code, 1973, is neither serving rigorous imprisonment nor

simple imprisonment. In substance he is in jail so that he is kept safe and protected with the purpose that he may be available for execution of the sentence which has been awarded. He must be kept safe as it is the purpose of the jail custody to make him available.

RAREST OF RARE DOCTRINE

In the case of Purushottam Dasharath Borate v. State of Maharashtra³⁵, it was held that:

The “Rarest of the Rare” case exists when an accused would be a menace or threat to an incompatible with harmony in the society. In a case where the accused does not act on provocation or on the spur of the moment but meticulously executes a deliberate, cold – blooded and pre – planned crime, giving scant regard to the consequences of the same, the precarious balance in the sentencing policy evolved by Indian Criminal Jurisprudence would tilt heavily towards the death sentence. The criminal law requires strict adherence to the rule of proportionality in awarding punishment and the same must be in accordance with the culpability of the criminal act. Furthermore, the Supreme Court is also conscious to the effect of not awarding just punishment on the society.

In this aspect one may analyse the recent Supreme Court decision in, Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra³⁶. The court stated that it was duty bound to equally consider both aggravating and mitigating circumstances and then arrive at conclusion. In its opinion, gravity, nature and motive relating to crime plays an important role in analysis in capital sentencing. The court held that the

³⁵ (2015) 6 SCC 652

³⁶ (2009) 6 SCC 498



protections emanating from Articles 14 and 21 of the Constitution were to be applied in strictest possible terms in context of punishments. Also in the case of *Macchi Singh v. State of Punjab*,³⁷ 5 circumstances were laid down in which death penalty can be considered to be a suitable option. The 4th point states about magnitude of crime, when multiple murders have taken place of a community, caste, locality or other, death sentence may be awarded. Further, the Court has held in cases like *Gurvail Singh @ Gala v. State of Punjab*³⁸, that three tests have to be satisfied before awarding the death penalty: the crime test, meaning the aggravating circumstances of the case; the criminal test, meaning that there should be no mitigating circumstance favouring the accused; and if both tests are satisfied, then the rarest of rare cases test, “which depends on the perception of the society and not “judge-centric”, that is whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the Court has to look into variety of factors like society’s abhorrence, extreme indignation and antipathy to certain types of crimes...” Explaining this test, the Court in *Mofil Khan v. State of Jharkhand*³⁹, stated that the test is to “basically examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community.” In this, the test is in keeping with the spirit of *Bachan Singh*⁴⁰ that the death penalty should be imposed only in the most exceptional of circumstances. In *Dhanonjoy Chatterjee v.*

*State of West Bengal*⁴¹ as well, the court held that the measure of punishment in a given case must depend upon the atrocity of the crime, conduct, of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society’s cry for justice against the criminals.

Where the accused committed cold blooded murder with professional stamp, the only sentence which could possibly be imposed upon him would be that of death and no circumstances exist for interference with that sentence. Hence it cannot be said that in refusing to commute the sentence of death into a lesser sentence, the President has in any manner transgressed his discretionary power under Article 72, whatever may be the guidelines observed for the exercise of the power conferred by Article 72.⁴²

INTERNATIONAL CONVENTIONS AND HUMAN RIGHTS

In cases involving violation of human rights, the Courts forever remain alive to the International Instruments & conventions and apply the same to a given case when there is no inconsistency between the international norms and domestic law occupying the field.⁴³

In Geneva on 30th January 2014, two United Nations independent experts welcomed a recent decision by the Supreme Court of India to commute into life imprisonment the death sentences of 15 individuals, and to introduce guidelines safeguarding the rights of people on death row. “This judgment by

³⁷ (1983) 3 SCC 470

³⁸ (2013) 2 SCC 713

³⁹ (2015) 1 SCC 67

⁴⁰ 1980(2) SCC 684

⁴¹ (2004) 9 SCC 751

⁴² AIR 1982 SC 774

⁴³ AIR 1999 SC 625 (634)



the Supreme Court reaffirms the value of human rights and respect for human life, as enshrined in the Indian Constitution,” said UN Special Rapporteur on extrajudicial, summary or arbitrary executions Christ of Heyns. “If the death penalty is to be used at all, international law clearly requires that it must follow a trial that meets the highest standards of fairness and due process guarantees,” he added. On 21 January 2014, the Indian Supreme Court commuted the death sentences of 13 individuals after finding that there had been an unexplained and unreasonable delay by the authorities in deciding on their petitions for mercy. Two other individuals had their death sentences commuted to life sentence on the ground of mental illness.⁴⁴ It is the fundamental principle of British jurisprudence, which has also been adopted by Indian Courts, that the executive cannot deprive any person of his life, liberty of property or any other rights except in accordance with law.⁴⁵ It can be safely said that an 8 year delay by the executive to dispose of a matter of life and death of a human being is certainly not in accordance with law.

The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as “the supreme right” because without its effective guarantee, all other human rights would be without meaning. The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of

those within their jurisdiction. In addition, international and regional human rights law has recognized that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual, which certainly includes terrorists. Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This of course includes terrorist threats. States have a right and a duty to take effective counter-terrorism measures to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts.

In order to fulfil their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts. At the same time, the countering of terrorism poses grave challenges to the protection and promotion of human rights. As part of States’ duty to protect individuals within their jurisdiction, all measures taken to combat terrorism must themselves also comply with States’ obligations under international law, international human rights, refugee and humanitarian law.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. The destructive impact of terrorism

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<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14205&LangID=E>

⁴⁵ AIR 1931 PC 248 (251, 252)



on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council. International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security.

CONCLUSION

Public mawkishness channelled through the efforts of the legislators in the sanctified chambers of Parliament has reflected time and again a resolve to hold the death penalty. This mawkishness is not the consideration of some mindless 'mob mentality'. The intellectuals, as evidenced through the reports of the Law Commission, and many judgments by the highest judicial establishments has time and again felt the need to retain such a punishment. Such a belief continues not just in India, but exceeds jurisdictions of 'civilised nations', many of whose legal schemes are also premised on justice, equity, fairness and rule of law. Moreover, this debate is not merely academic, neither is it correct to solely rely on practical methods of collecting statistics and other empirical facts, since they can never truly capture the incorporeal sentiment and impact that the idea of the death penalty has on the awareness of society. Therefore, courts must tread with caution when they

impose such a penalty, and moreso when they choose to commute the same.

Perhaps a day may come when India decides to do away with this punishment altogether, and likely, it rightfully may. However, until that day comes it must be noted that the apprehensions of most abolitionists have found voice by way of judgments, which have narrowed the scope of when the death penalty may be awarded. In fact, one would say, in the present scheme of things, the number of cases in which the death penalty may be inflicted, if correctly applied according to judicial guidelines, would only further dwindle. The issue at hand to be understood, though, is not the legality or morality of awarding such a punishment. The fact that remains is, in post-mercy cases such a punishment has already been awarded and reaffirmed by the various organs of the state based on notions of rule of law.

It must ultimately be remembered, that the power to commute death sentences has not been derived from any codified legal principles. The court in exercise of its supervening powers to do "complete justice"⁴⁶ vacates the sentence if it is the most appropriate remedy. However, the courts, primarily enforcers of individual rights, must not lose sight of the fact that justice is not a one-sided concept. Looking merely at the effects of delay on the prisoner alone does not satisfy the interests of justice, since it does not factor in the interests of society at large, or the agony of the friends and families of those who have lost their loved ones, for whom no amount of compensation can have a restorative effect. The Supreme Court, essentially a

⁴⁶ The Constitution of India, 1950, Art. 142



constitutional court, must be mindful of its role in setting the law of the land, which has far-reaching implications that permeate the lives of real people, and goes deep into the hearts and minds of society, to which not only the victims and their families belong, but also the convicts themselves. The courts must find it in themselves to be humanitarian in their approach, yet not shy away from their responsibility to steel their hearts and award the correct, exemplary punishment when the situation so demands.⁴⁷ Delay matters represent a special category of cases where as discussed above, after due consideration, both the judiciary, as well as the legislature, in all their wisdom have not found it fit to commute the sentence of the those convicted for the rarest of rare cases. The question of commuting their sentences must therefore be treated with caution. So long as the judge considering the matter does not find himself going against the *Triveniben dicta*, he must not commute the sentences of death row inmates. As Justice Mukherjeed had put it when reaffirming the death penalty, "If, in spite thereof, we commute the death sentence to life imprisonment we will be yielding to spasmodic sentiment, unregulated benevolence and misplaced sympathy".⁴⁸ Accordingly, in light of the arguments advanced above, we conclude that delay simpliciter must not be the only ground to commute the death sentences of a convict.

⁴⁷ Mahesh v. State of Madhya Pradesh, (1987) 3 SCC 80

⁴⁸ Govindaswami v. State of T.N., (1998) 4 SCC 531