

EXECUTION OF DEATH PENALTY IN INDIA: A CRITICAL
ANALYSIS OF THE PROCEDURE OF EXECUTION WITH THE
LENS OF INDIAN CONSTITUTION

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Submitted by

Deepak Tiwari

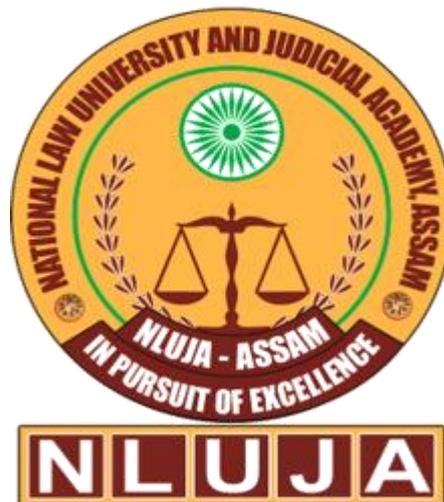
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2021-2022 & II Semester

Supervised by

Dr. Ishrat Husain

Associate Professor



National Law University and Judicial Academy, Assam

(July, 2022)

CERTIFICATE

This is to certify that Deepak Tiwari has completed his dissertation titled "Execution of death penalty in India: a critical analysis of the procedure of execution with the lens of Indian constitution" under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

Date: 30-6-22



Dr. Ishrat Husain

Associate Professor

National Law University and Judicial Academy, Assam

DECLARATION

I, Deepak Tiwari, do hereby declare that the dissertation titled “Execution of death penalty in India: a critical analysis of the procedure of execution with the lens of Indian constitution” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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Deepak Tiwari

UID: SM0221011

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47. *State of Andhra Pradesh v. Challa Ramkrishna Reddy.*
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60. *Sevaka Perumal and another vs. State of Tamil Nadu.*
61. *Triveniben v. State of Gujrat.*
62. *Vinay Sharma v. State of NCT of Delhi.*
63. *Vatheeswaran v. State of Tamil Nadu.*

Table of Statutes

1. Criminal Procedure Code No.2 of 1974(1973).
2. Constitution of India.
3. Indian Penal Code, No.45 of 1860.
4. Universal declaration of human rights acts 1948.
5. International Covenant on Civil and Political Rights.
6. Prisons act 1894.

Table of Abbreviations

SL. NO.	ABBREVIATIONS	MEANING
1.	Anr.	Another
2.	ART.	Article
3.	CrPC.	The Code of Criminal Procedure
4.	COI.	Constitution of India
5.	Edn,	EDITION
6.	ECHR	The European Convention on Human Rights
7.	ECtHR	The European Court of Human Rights
8.	HC.	High court
9.	ICCPR	International Covenant on Civil and Political Rights
10.	IPC	The Indian Penal Code
11.	J.	Justice
12.	OHCHR	Office of the United Nations High Commissioner for Human Rights
13.	S.	Section
14.	SC.	Supreme court
15.	UDHR	The Universal Declaration of Human Rights
16.	UN	The United Nations
17.	UNGA	The United Nations General Assembly

18.	US	The United States
19.	UK	The United Kingdom

CHAPTER 1-INTRODUCTION

1.1. Introduction

Capital Punishment has a long and illustrious history dating back to the dawn of time. The first instance in the Western world appears to be "The Law of Moses," which punishes with death. Murder had become a capital offence by 1179 B.C. in which Egyptians and Greeks were both involved and the capital punishment was given to offenders who were committing heinous crimes. The Mahabharata and Ramayana, two Indian epics, are also popular in India; contain references to the offender being sentenced to vadha-danda, or disfigurement.¹In more primitive societies, death by violence were a common occurrence. Tribal or group warfare was often the only way to survive. in that period the value of Life was considered very low , and take the personal vengeance in the name of punishment. Exile and death were two of the most common methods for removing dangerous members of the group. "As a result capital punishment was the most expedient mode of punishment at the time and hence it was a medium to attain retribution as well as deterrence when a competent court condemns a person to death for committing a criminal offense against the nation that the government has sanctioned capital punishment is imposed Murder, rape, and mass murder are only a few examples As a tool of social manipulation, criminal law employs coercive strategies to elicit positive wants, and these coercive techniques rely on punishment which can entail deprivation of liberty and even life".²

When a competent court condemns a person to death for committing a criminal offense against the nation that the government has sanctioned, capital punishment is imposed. Murder, rape, and mass murder are only a few examples. As a tool of social manipulation, criminal law employs coercive strategies to elicit positive wants, and These coercive techniques depend upon punishment, which may include taking away one's freedom or even one's life.

The primary goal of the all punishments, including capital punishment, is deterrence, which can also be referred to as "general prevention." As per the views of Salmond, "Punishment is, above all things, deterrent, and the chief end of the criminal law is to make the evil doer an example and a warning to all who are like minded with him,"

¹ Subhash C. Gupta, Capital Punishment in India (1st Edn, Deep and Deep Publications, 1986) 29-30.

² R.K. Sen, Penology Old and New (Tagore Law Lectures, 1929) 219.

The primary goal of all punishments, including capital punishment, is deterrence, which can also be referred to as "general prevention".³As we can clearly conclude from the findings of the abovementioned statements that the main aim of the legislature in inflicting the punishment of death sentence to the accused is to create deterrence among the society but due to the shortcomings in the procedure of execution of death sentence in India such legislative goal remains unfulfilled.

Furthermore, the State must and can only guarantee people's safety by properly punishing those who are guilty. It can be considered as to be true that the basic goal of penology of contemporary times cannot be "eye for an eye," but on the other hand one should not overlook the motive of the offenders who commit the heinous acts such as committing culpable homicide amounting to murder for monetary or personal gain or committing rape and then doing murder and thereby the offenders of such kind should be punished and not expected to be committing such acts again.⁴

“Even though all murders cannot be classified into one category, capital punishment can-not be used as a punishment for all of them. Murders in workplace fights, family feuds, and unforeseen provocations are viewed differently, which is why the Indian judiciary has adhered to the principle of enforcing capital punishment only in the rarest of circumstances. So it is clearly evident from the principle evolved in the above mentioned case law that death sentence should be awarded in the rarest of the rare cases and the contentions that death penalty should be abolished seems not to be relevant as the punishment of death sentence is given only in rarest cases when there is utmost surety in the wisdom of judge and the reasons for the same are recorded The procedure should be questioned rather than the capital punishment itself. Capital Punishment is the social condemnation to death of a person who has taken the life of another person in a premeditated and gruesome manner with no regard for the victim's rights for the rest of the victims life without any sense of remorse or guilt and it is considered that the accused was aware of the repercussions of his actions”.⁵

As a result, the issue of the punishment meted out to such a person should not be taken lightly and such decision should be made by the utter wisdom of the judge.

³ N.V Paranjapae, *Criminology and Penology, including Victimology* (8th Edn, Central Law Publications, 2019)

⁴ *ibid.*

⁵ *Bacchan v. State of Punjab*, [1980] 2 SCC 684.

In contemporary times, The State must take responsibilities for safeguarding society from criminal elements; “as a consequence of which, it is also the state's responsibility to punish offenders Punishment is thus used to reduce the number of crimes committed either by deterring potential offenders or by prohibiting current offenders from committing additional crimes This postulate is often used to justify capital punishment The reason for punishment changes as per the convictions of the individuals every now and then In the times past punishment was dispensed to fulfill human longing to get revenge as of now it has become reformation of the lawbreaker As capital punishment concedes no reformation, the abolitionists need that it ought to be taken out from the statute books Nonetheless so far we have not abrogated it totally despite the fact that it has been kept at most in the rarest of the rare cases”.⁶

“1948 saw the adoption of the Universal Declaration of Human Rights (UDHR). Every person is guaranteed the right to life, liberty, and personal security under Article 3 of the UDHR”.⁷ However, “the International Covenant on Civil and Political Rights was not adopted until 1966, and at that time the death penalty was not included (ICCPR). Since then, the death sentence and its effects on the right to life have been the subject of on-going discussion”.

“Article 6 of the ICCPR is the most significant treaty provision relating to the death sentence at the international level. Article 6 offers crucial safeguards that signatories who still impose the death penalty must abide by and guarantees the right to life. It is clear from this Article's provisions that severe limitations are placed on the application of the death penalty”.

Such limitations include, but are not limited to, “the right to a fair trial prior to the imposition of capital punishment, the restriction of the use of the death penalty to only the most serious offenses, the ban on the execution of capital punishment retroactively, the right to request amnesty or the commutation of a death sentence, and express provisions. The application of the death penalty on people with intellectual or

⁶ N.V Paranjapae, Studies in Jurisprudence & Legal Theory (9th Edn, Central Law Publications, 2019)

⁷ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948)

mental disability is one such constraint that is growing outside of the restrictions of Article 6 as well”.⁸

“Article 6 of the ICCPR states that nothing in the article may be invoked by any party State to delay or obstruct the abolishment of the death penalty, notwithstanding the fact that it permits the employment of the death penalty subject to its limitations”

The first in-depth discussion of “Article 6 of the ICCPR was done by the UN Human Rights Committee in its general opinion from 1982”. The committee made it clear that, even though the death penalty was not explicitly required by this treaty, its elimination was preferred. This organization likewise declared that the death penalty should only be used as an “exceptional measure and that it would view any step toward abolition as progress in the enjoyment of the right to life. The committee continued by reiterating crucial procedural safeguards, such that the death sentence should only be applied in conformity with the law now in effect and that everyone has the right to a fair trial and the presumption of innocence”.

The Indian legal system has time and time again faced repeated challenges to the constitutionality of capital punishment. “Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to a procedure established by law”. The right to equality under Article 14 entitles a person to equality before laws and equal protection of laws, meaning that no person shall be discriminated against or treated unfairly or arbitrarily. “So, it stands to reason that the equal protection clause under Article 14 applies to the judicial process during sentencing⁹. The finding of arbitrariness in sentencing may violate the idea of the equal protection under Article 14 and may also fall foul of the due process requirement under Article 21”¹⁰.

“In this respect, it is still true that the question of death penalty is not free from the subjective element and the court’s confirmation of a death sentence, or its

⁸ AMNESTY INTERNATIONAL REPORT 2020/21 (Amnesty International, 2021).

⁹ S.B. Sinha, To Kill or Not to Kill: (The Unending Conundrum, 24 Nat’l L. Sch. INDIA REV, 2012)1.

¹⁰ Santosh Kumar SatishbhusanBariyar v. State of Maharashtra [2009] 6 SCC 498

commutation relies heavily on the personal predilection of the judge's"¹¹. This issue is crucial to the argument for or against the death sentence in India.

“In India, capital punishment is carried out in one of two ways: via suffocation through the neck or by being shot to death. In India, the technique of carrying out a death sentence is outlined in various state jail manuals as well as the right provisions of the Code of Criminal Procedure. When a death penalty is imposed and proven after all other alternatives and remedies to convict have been exhausted, the execution is carried out in line with section 354(5) of the Code of Criminal Procedure 1973, which mandates hanging by the neck until death”.¹²

“The death row convict can also avail the chance to represent before the president under Article 72 of Constitution of India and represent before the governor under Article 161 of Constitution of India. In the country of United States of America, the President of the nation also has the power to grant pardon for the crimes or the offences against the State bearing one exception of impeachment”.¹³The exercise of the functions and powers which are carried away by the Sovereign to provide remission to the convict is embedded in the domain which is exclusive and this particular power has been bestowed upon the executive through the mandate of the constitutional provisions to guarantee the completion and serve public purpose by providing with the remission in the respective cases. It's crucial to keep in mind that the power of granting remission by the State appropriate authorities does not undo the acts of judicial mandate and the observations of the judiciary. The sentence which is awarded to the convict by the virtue of the judgment is not at all over ruled but the death row convict avails the benefit of the serving of public purpose through the pardoning power of the State.¹⁴

It is clearly evident from the findings of the abovementioned judgment, that the objective of the pardoning power of the executive is the power of reprieve and to serve the social justice. This paper focuses on the ill application in disposal of such mercy petitions. The convict is inflicted upon the physical and mental pain due to

¹¹ Swamy Shraddananda v. State of Karnataka, [2008] 12 SCC 288.

¹² R.V. Kelkar, Criminal Procedure (6th Edn, EBC, 2016).

¹³ U.S. Const., art.II, §2.

¹⁴ State of Harayana v. Jagdish, AIR 2010 SC 1690.

such long undue delays in the disposal and as a consequence of which in many cases the death row convicts punishment is remitted into the punishment of life imprisonment in the cases in which health issues are cited or where in which no reason for such long delay is given.¹⁵ “Legal reformers in England and the United States sought to restrict the death penalty to the most serious crimes during the nineteenth century. The use of capital punishment has become increasingly contentious especially in the United States and Japan, which are the only industrialized democracies that still use it”.¹⁶

The contemporary nation and its increasing recognition of the responsibility to keep regulation and order in any respect costs may be said to have birthed capital punishment for homicide and different extreme crimes. “A murder primarily injures a single victim but because of the murderer's flagrant disregard for human life it is not a matter of compensation between the murderer and the victim's kin. As experience has shown through the study of historical comparisons the death penalty is ineffective as a social deterrent and as a means of retributive punishment. The number of executions in developed countries such as the United States is much less than the number of murders committed per year indicating that the death penalty is no longer favored and is quickly becoming obsolete”¹⁷.

This paper will focus to go into detail as to why the numbers of executions have been way less as it would have been expected by the State and what effects such less amount of executions death sentence impose in creating deterrence. Clearly, the less number of executions have dented the implementation of deterrence theory which was originally meant by the legislature through the capital punishment. As a consequence to it, it has been regularly contended that the death penalty should be abolished but the research paper tries to focus on the very aspect of law relating to the procedure of execution of death sentence which clearly contains certain loopholes and irregularities which results in the undue long delay in executing the penalty in our country. Since ancient times, death penalty has been the one of a kind punishment. The reasons in favor and against haven't changed much over the years. Wrongdoing, like the system

¹⁵ Dr. J.N Pandey, Constitutional Law of India (56th Edn, Central Law Agency, 2019) 349-352.

¹⁶ *ibid.*

¹⁷ Ram Kumar Khanna, SC Doubts Good Behaviour Is Enough to Commute a Death Sentence, But Case Law Says Otherwise, The Wire (Jan 24, 2020), <<https://thewire.in/law/supreme-court-death-sentence-commutation>> accessed 7 April 2022.

of punishment, is related to the society and stage of human evolution from which it occurs. Despite the fact that the methods of capital punishment have undergone significant refinement as a result of evolution, very little has been discussed or challenged in India about the method of execution of capital punishment.

In case of *State of Andhra Pradesh v. Challa Ramkrishna Reddy*¹⁸ If a condition persists in which the execution of a death sentence is postponed unduly and for an extended period of time, the hon'ble Supreme Court is said to have established a legal theory on death sentences. If this condition persists, it can be called a practice that is "unjust, unfair, and irrational" when it comes to the execution of this form of sentence. When a needless delay in the executing the death sentence occurs, a convict's right to life is often denied and dehumanized, since it is considered irrational, unfair, and unjust, and would appear to breach the provisions of Art 21. SC over the period of time has repeatedly in many cases emphasized on the rights of death row convicts who is subjected to the mental and physical torture by the appropriate jail authorities. As against abolitionists there are numerous solid people who support for the retention of the capital punishment too who solidly have faith in continuation of capital punishment. Individuals who are against capital punishment just think about the lawbreaker. They ought to likewise think about the families that are fallen to pieces as a result of the demonstrations of hoodlums. In the event that we don't rebuff the lawbreaker, we toss our general public into situation of misery and allow the lawbreakers to do openly what they need.¹⁹ In the modern world we are all aware of the very fact that the capital punishment is a form of punishment used in our country for the most heinous of crimes under different clauses outlined in relevant legislation. However, the difficulty exists in the execution of death sentences due to gaps in the laws governing the execution portion of death sentences. To begin with, the process for carrying out a death sentence in India is very time consuming and lengthy, and there is a well-known phrase that goes, "Justice Delayed is Justice Denied," which clearly implies that undue delay in carrying out a death penalty would result in the convicted person's basic human rights being violated²⁰. Furthermore, the procedure of death row is often considered to be exacerbated by the invention of

¹⁸ AIR 2000 SC 2083.

¹⁹ K.D. Gaur, "An Introduction to the Study of The Law of the Constitution" (10th Edn, Universal Law Publication,2000) 234-235.

²⁰ V.N Shukla, Constitution of India (13th Edn ,E.B.C 2019) 223.

degrading and oppressive effects of incarceration conditions that are commonly enforced on a person who is a prisoner in the penalty of death sentence, which typically involves factors such as solitary confinement and prevailing harsh conditions²¹.

By permitting death punishment ethically nothing is accomplished aside from more death, enduring and torment. Furthermore, for what reason should an individual be permitted to kick the bucket a brisk, practically effortless death on the off chance that he killed someone else fiercely? Rather he should mull in jail up to his common death. Rather the answer of the aforementioned question lies in the very fact, if the truth is told, if the social qualities truly imply that executing is off-base, at that point the general public should cancel death punishment. Death punishment legitimizes an irreversible demonstration of brutality by the state. It is a common misconception that the punishment of death sentence devalues human life. In reality, we affirm the highest importance of human life by enforcing the harshest penalty for the taking of human life²². Ajmal Kasab was hanged taking into consideration all the judicially mandates in Pune's Yerawada jail on November 21, 2012. India demonstrated to the rest of the world that no terror attack, no matter where it occurs, would be tolerated.

The case of Sarat Chandra Rabha & Others v. Khagendranath Nath & Others²³ distinguished between executive and judicial power: executive remission only decreases the duration or sum of the sentence, leaving the court's order of conviction and sentence unaffected. If, on the other hand, an order under Art.142 is issued by an appellate court or a court which is hearing on revision, the entire sentence is amended.

Another very essential aspect of procedure of death sentence which would be discussed in this particular paper would be the discussion of the important principles of various provisions of Jail Manuals of various States. Some shortcomings which exist in the abovementioned provisions of the manuals will also be discussed along with some of the essential and basic human rights which are infringed of the death row convict due to the undue and unexplained delay in the completion of such

²¹ Sher Singh v. State of Punjab AIR 1983 SC 465.

²² *ibid.*

²³ [1961] SCR (2) 133.

procedure. Provisions of jail manual of States such as Punjab, Haryana and Rajasthan would be discussed in this particular paper and a thorough study is made. Another important aspect which needs to be discussed in this contemporary times is that the constitutional validity of death sentence and the capital punishment is often questioned but time and again the various detailed judgments of the respective courts has appeared to be made a judicial trend that The requirements of Part III of the Indian Constitution are not violated by the death penalty and such cases in detail are explained in the paper in the further chapters of this paper. The aspect which is not much talked about in the modern world is the procedure of execution of Capital Punishment and such provisions needs a detailed study as it contains certain discrepancies which often tend to affect the death row convict in a severe manner.

“It is an undeniable fact that litigation in India takes a considerable amount of time. Extensive pause or the unexplained lapse of time serves no role in the execution of a death sentence, and it is necessary to invoke Article 21 and demand that it be replaced with a sentence of life in prison. Indian Criminal jurisprudence depends on a mix of deterrent and reformatory theories of punishment. While the punishments are to be forced to make dissuade among the wrongdoers or the offenders, the convicts or the guilty parties are likewise to be given freedom for renewal The courts while announcing death sentence needs to record its exceptional reasons concerning why the court arrived at the resolution”.²⁴ Another important legal issue which always remains in question is that up to what amount of duration of time a mercy petition would be disposed of by the executive. Due to the abovementioned legal issue various punishment of certain death row convicts were converted into the punishment of rigorous life imprisonment by the apex court as various genuine reasons were cited by the convict who would in general seem to be legitimate enough for the court to change the mode of punishment²⁵ and such cases are explained in detail in the following chapters. “The court has ruled that if a condition arises under which the process of execution of death is delayed, the convict in the case can easily seek relief from the esteemed court for the aforementioned issue under the provisions of Article 32 of the Indian Constitution. When the case is brought before a respected court, the court will assess and define the main cause of the delay as well as investigate the

²⁴ *ibid.*

²⁵ M.P Jain, *Indian Constitutional Law* (7th Edn, Lexis Nexis 2016) 1150-1051.

circumstances that led to such an unduly long delay in the execution of the death penalty”.²⁶

²⁶ Javed Ahmed v. State of Maharashtra, [1984] CrLJ 1909.

1.2. Statement of Problem

As we all know capital punishment is a mode of punishment that is given for rarest of rare cases in our country through various provisions that are explained in respective statutes but the problem arises in the execution of death sentences because there is presence of lacunae in the laws regarding the execution part of the death sentences. First of all the procedure of execution of death sentence in India is quite time taking and lengthy and there is famous saying i.e., “Justice Delayed is Justice Denied which clearly imparts that such prolonged unnecessary delay in the execution of death sentence would lead to infringement of certain essential human rights of the convicted person. At first instance when a sessions judge convicts a person of death sentence then proceedings shall be submitted to High Court for conformation and the person shall not be sentenced to death unless High court confirms to it .According to Article 72(1) of the Indian Constitution the President has the authority to grant pardons, reprieves, respites, or remissions in lieu of punishment, or to suspend, remit, or make an order for the commuting of the sentence of a person who has been convicted of a crime”.²⁷

During the following of above mentioned procedure a considerable amount of time lapses which has mostly resulted in finally the death penalty is reduced to a life term in various cases or in most cases the convicted person has gone through a mental or physical change in health which also results in a death sentence is commuted to a life term. “In the case of Shatrughan Chauhan v. Union of India²⁸ the apex court of India clearly mentioned that as the sentence of death is pronounced lawfully so the process of the execution of death sentence should also meet up with the mandates of the constitution and the apex court further held that such process should not violate the constitutional principles”.

“In its 262nd report, released on August 31, 2015, the Law Commission stated that the discretionary mercy powers granted to the president of India and the governor of India under Article 72 and Article 161 of the Indian Constitution, respectively have failed to act as the last line of defense against miscarriage of justice during the execution of death sentences in India. The Supreme Court of India has repeatedly

²⁷ Criminal Procedure Act 1973, S 366.

²⁸ [2014] 3 SCC 1.

pointed out flaws and illegalities in the way the government has exercised its mercy powers”²⁹. Further the process of death row is often considered to be compounded by the creation of repressive and demeaning consequences of widely imposed prison conditions and individual who is a convict in the punishment of death sentence which usually includes the aspects such as the solitary confinement and prevailing harsh conditions.

Further the case of Mukesh Singh & Anr v. State for Nct of Delhi & Ors³⁰ has clearly shown us that there is clear presence of certain contingencies in the procedure of the execution of capital punishment as the legal counsel of the accused repeatedly filed various petitions in different courts by looking into certain loopholes of the law and “clearly trying to delay the justice by filing various petitions even after the rejection of mercy petition by the President under Article 72 of Indian Constitution”.

²⁹ 262 Law commission report <<https://lawcommissionofindia.nic.in/reports/report262.pdf>> accessed 10 April 2022 .

³⁰ [2017] 6 SCC 1.

1.3. Review of Literature

1) Author has tries to lay emphasis on the legal principle that is evolved by the Supreme Court in the span of time that any undue delay in the Implementation of a Death sentence would always violate the various constitutional and the fundamental rights of the person that is a death row convict. Such case laws and the observations of the court through which the author has tried to explain the above mentioned phenomena are mentioned as follows.

Legal principle that is considered to be developed by the SC regarding to death sentences is that if situation persists in which undue and the Continuous delay in the process of execution of death penalty. If such situation continues to exist then it could be considered as a procedure that would be “unjust, unfair and unreasonable” used for the execution of this type of sentence. Whenever a situation of delay that is prolonged in nature occurs in the execution of death sentence then in this type of particular situation a convicts is often deprived and dehumanized his right of life as it is considered to unreasonable, unfair and unjust way that would tend to violate the provisions of Article 21.³¹

The SC in its another ruling ruled that “the jurisprudence of the world that is considered to be civilized in nature has reckoned and acknowledged that the undue delay in the process of execution of death sentence could lead into making the punishment of death sentence as degrading and vexatious”, and further the supreme court added that “undue delay that is prolonged in nature in the process of execution of the process of death sentence would be regarded undoubtedly as a relevant aspect for the determination whether the execution of death sentence should be allowed to be completed”.³²

And in case of Javed Ahmed v. State of Maharashtra³³, the SC in its verdict pronounced the death sentence is commuted to a life term as the person who was the convict in the given case was subjected to suffering for more than 2 years and 9 months, the thought of receiving a death sentence having a great mental toll.

The court has given the verdict that if there is a presence of situation in which delay in the process of execution of death becomes prolonged then the person who is the

³¹ State of Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083

³² Sher Singh v. State of Punjab AIR 1983 SC 465.

³³ [1984] CrLJ 1909.

convict in the given case could easily reach out to the respected court for the above mentioned problem by virtue of the provisions of Article 32 of Indian constitution. If the matter is reached before the respected court then the court will determine and identify the major reason for the delay that is caused and could examine the circumstances which resulted in such undue delay in executing the death penalty.

In another case of “Shivaji Jaising Babar v. State of Maharashtra³⁴ the capital punishment was converted and commuted into the punishment of life imprisonment due to the undue and prolonged delay in the execution of punishment of death sentence and the completion of the process of the mercy petition”.

2) “V.N Shukla, Constitution of India (13th edition, 2019)”: There always has been a debate regarding the constitutionality of death sentence being awarded in certain offences in India and in various other countries. In this appropriate commentary which is specialized in constitutional law constitutional validity of death sentence in India has been explained thoroughly through various case laws and the observations of the court. Such case laws and the observations of the court has been explained in detail in the following content.

The various judgments over a period of time that have been given by the apex court imply that slowly a legal trend has been made that the capital punishment i.e., death sentence is legal in nature and is not violative of Part III of Indian Constitution. There has been a timeline of cases which has been pronounced by the apex court somehow in a sequence which determine the legality of the abovementioned impugned punishment.

In the case of “Jagmohan Singh v. State of Uttar Pradesh³⁵, the The constitutionality of the death penalty was questioned. on the ground that the impugned punishment was violative of Article 21 and Article 19 of Indian Constitution”. And further contended that the procedure that was defined under Section 354(3) was arbitrary in nature.

“However, the Supreme court which consist of 5 member bench has held that procedure and the discretion to award the death sentence is often completed with the

³⁴ AIR 1991 SC 2147.

³⁵ AIR 1973 SC 947.

following of procedure established by law. It was further held by the apex court that impugned punishment is not violative of Article 14, 19 and Article 21 of Indian Constitution because the judges give the punishment of capital punishment by looking upon the facts and circumstances of each case which is brought on record during the trial of a particular case”.³⁶

Then came the case of Rajendra Prasad v. State of Uttar Pradesh³⁷, the SC of India did not reiterate with the findings of Jagmohan Singh case as Krishna Iyer J. held that unless the offender or the criminal imposes sheer amount of danger to the society, capital punishment should not be justified.

The court further held that by giving discretion to the judges to award death sentence to the convict by providing “special reasons as provided in Section 354(3) of CrPC would imply arbitrariness and would violate Article 14 of Indian Constitution”.

Finally “in the case of Bacchan Singh v. State of Punjab³⁸, The Supreme Court, by a 4:1 majority, overturned the findings of the case of Rajendra Prasad v State of Uttar Pradesh stating that the imposition of the death penalty does not violate Article 21 of the Indian Constitution. The apex court docket additionally held that capital punishment must be provided in the rarest of the uncommon cases, and the discretion granted to judges to award loss of life sentence with the aid of providing 'unique reasons' under Section 354(3) of CrPC isn't a violation of Article 14 of the Indian Constitution and special motives furnished by judges must be in accordance with the standards of the rarest of the rare cases”

³⁶ Ibid.

³⁷ AIR 1979 SC 916

³⁸ AIR 1980 SC 898

3) Durga Das Gupta, *Commentary on Constitution of India* (9th Edition, 2015): There always has been a debate in the various courts in which the issue of prisoner rights in the jail premises are discussed or debated. The author of this particular commentary on Indian constitutional law has explained through various case laws that the prisoner even in the jail premises doesn't lose his some basic fundamental rights and without a process that is fair, just and reasonable in nature such rights should not be abridged or taken away at the whims and fancies of the jail authorities or the other inmates of jail.

“Supreme Court has laid importance that a prisoner whether he is detenu under-trial or a convict, does not end to be a human being and he could avail all the rights that are fundamental in nature which includes the right to life which is enshrined in the provisions of Indian Constitution while he is in jail premises. Whenever there arises a situation in which a person is pronounced as a convict and such individual's right to liberty is taken away in accordance with the procedure established by law a prisoner will still continue to retain his constitutional rights”.³⁹

Supreme Court has made an assumption under the provisions of Article 32 of Indian Constitution, jurisdiction to consider all problems of an individual prisoner that has not been provided with proper treatment. SC has in the case of *Charles Sobraj v. Supdt. Jail Tihar*⁴⁰, has held that the apex court could have the jurisdiction to interfere in the administration of prison when the fundamental rights or the statutory prescription or any of the constitutional rights are taken away or abridged which as a consequence leads to the causing of injury and damage an individual who is the prisoner. In case of *Sunil Batra v. Delhi Administration*⁴¹, The court has emphasized on the point of accessing its powers under Article 32 of Indian Constitution that are completely independent from the rigid restraints of the orthodox writs of the English Laws. The individual who is a prisoner is inherited with certain constitutional rights that are inalienable and even if a person is convicted of the punishment of the death sentence such rights should not be abridged or taken away from an individual who is a prisoner.

³⁹ *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, AIR 2000 SC 2083

⁴⁰ AIR 1978 SC 1514.

⁴¹ [1978] 4 SCC 409.

4) Dr. J.N Pandey, Constitutional Law of India, 349-352(56th Edition, 2019): Author of this particular commentary has tried to lay emphasis on the aspect of procedural fairness and the infringement of legal principles enshrined in Article 21 of Indian Constitution which is caused due to undue and continuous delay in the procedure of execution of death sentence.

The apex court has clearly been able to rule that any person who has been given the punishment of death sentence can avail the benefit of procedural fairness and the fundamental rights of the given convict should not be abridged until the last breath of that individual's life. Article 21 implies that if any procedure is being followed which abridges the liberty and right to life of any person then such given procedure should be fair, just and reasonable. Any delay that is prolonged in nature which occurs in the process of disposal of mercy petition by the executive which certainly means the President would result into the mental torture caused to the convicted person and as a consequence such situation clearly violates Article 21 of Indian Constitution⁴². If the above mentioned situation continues to exist, then the person who is a convict in a given case is subjected to the mental suffering even if no physical mistreatment is caused to such convict. Such individual could easily be given the basic requirements that include the pleasure or support of the other inmates that are present in jail but no person in such given mental distortion could give any peace of the mind to that person.

Article 21 has its traces in the dignity of human being. Human dignity is an intrinsic part of human life and it is considered as part of Article 21 of the Indian Constitution⁴³. The author in this aspect tries to explain that once public in large starts to examine this very particular point of dignity of an individual and human being, then that particular right of human dignity does not simply finishes with the confirmation of punishment of the death sentence but it extends up to and beyond and it continues to remain till the individual who is a convict would meet its destiny. As a result of which, the phenomena which starts from punishing the convict with the sentence of death punishment which continues from confirming the sentence of death from the higher courts and eventually that carries up to the execution of death sentence, the respected person who is a convict has to be given a proper treatment

⁴² Triveniben v. State of Gujrat, AIR 1989 SC 142.

⁴³ National Legal Services Authority v. Union Of India, AIR 2014 SC 1863.

This involves the right to live in dignity which could extend up to the limits that is permissible in the law and which is reasonable in nature. “In the case of *Vinay Sharma v. State of NCT of Delhi*⁴⁴ the apex court of India clearly held that the punishment of death sentence is constitutional and legal in nature and further the apex court also rejected the appeals of the defendants and ordered for the confirmation of the death sentence for the offence of murder and the offence of rape”. The major finding of the above mentioned case was that merely an argument citing that the punishment of death sentence has been made unconstitutional and illegal in various countries like the United Kingdom, Australia (some states) and some states of the Countries of America would not be considered a reason *per se* for making such type of punishment illegal in nature in the country of India. Court ruled that as far as the punishment of death sentence remains constitutional and continues to be defined in the punishment of various provisions of the Penal Code such type of punishment would not be abolished from the legal system of India.

5)“V.G Awasthi, SC Doubts Good Behavior Is Enough to Commute a Death Sentence, But Case Law Says Otherwise, *The Wire*”(Jan. 24, 2020): In this article, the author is mainly focusing on the fact that long delay in the process of implementation of the death penalty should not be done. The author has particularly focused on the aspect that executive on its own whims should not make any unnecessary delay in the practicing of powers that are explained under Article 72 of Indian Constitution i.e., disposal of the mercy petitions.

“In case of *Shatrughan Chauhan v. Union of India*⁴⁵ the SC of India clearly mentioned that as the sentence of death is pronounced lawfully so the process of the execution of death sentence should also meet up with the mandates of the constitution and by the supreme court further has been held that such process should not violate the constitutional principles”. The bench clearly mentioned: “Every Constitutional duty that has to be done by the executive should generally be fulfilled with diligence and practice of due care; otherwise judicial interference should be the directive of the Constitution of India so that the constitutional values could be upheld. More

⁴⁴ AIR 1980 SC 898

⁴⁵ [2014] 3 SCC 1.

importantly, the list of current events that the Shatrughan Chauhan seat accepted as mitigating circumstances for commuting a death sentence in 2014 is not exhaustive”.

6) J.P Sharma, How Convicts and Courts Contributed to Delay Justice, The Hindu (Mar.16, 2000): Author in this article has tried to explain the main causes behind the delay in executing the death penalty of the convicts in case of Mukesh Singh & Anr v. State for Nct of Delhi & Ors.⁴⁶ “In February 2019, victim's mother moved to a Delhi court looking for execution orders for all convicts. She had fought that it was the need of great importance and law that capital punishment be executed as ahead of schedule as could be expected under the circumstances and not deferred any further. Seven months under the watchful eye of that, the top court had just dismissed the audit petitions of three of the convicts against their capital punishment. The Tihar Jail specialists informed the inmates in late October of last year that they had only seven days to register compassion petitions before the President because they had exhausted all legal avenues. On January 7, a Delhi courtroom, while hearing a petition from the victims' guardians to expedite the prisoners' executions, issued their execution orders for January within Tihar jail. The ensuing execution orders were issued by a Delhi court on January 17 for February 17 on the same day that President Ram Nath Kovind dismissed Mukesh Kumar's mercy request. Yet, on January 31, a Delhi court postponed the execution of Vinay's death sentence for the second time, claiming that the President had not chosen Vinay's mercy request. This event resulted into formation of a bench of Delhi High Court which heard several issues regarding this matter. High Court rejected the plea of Centre which wanted that the death row convicts should be executed separately but the high court gave the order that the death row convicts should be able to wind up and extinguish their all of the available remedies in the time span of seven days”.⁴⁷ Simultaneously in the same time, the president gave orders for the rejection of mercy plea of other three remaining death row convicts (Akshey, Mukesh and Vinay).

⁴⁶ [2017] 6 SCC 1.

⁴⁷ J.P Sharma, How Convicts and Courts Contributed to Delay Justice, The Hindu (Mar.16, 2000)<<https://www.thehindu.com/news/national/supreme-court-underscores-need-for-holistic-picture-of-convicts-facing-death-penalty-sentencing/article65306267.ece>> accessed 12 may 2022.

1.4. Aim

This research work Aim is to highlight how the convicted person gets affected due to presence such long legal procedure of execution of death sentence. And try to focus on various conclusions made by certain law commission reports, various case laws and other statistics which try to show that there is presence of certain deep problems related to such legal procedure. Furthermore here author try to focus on what are the various reasons for delay in execution and its effect and then what are remedies can be adopted.

1.5. Research Objectives:

- 1) Firstly this research work would try to focus on the detailed study of laws related to procedure of execution of death sentences
- 2) Secondly this research work would try to explain the various case laws of the appropriate courts regarding the above subject matter
- 3) Thirdly this research work would try to focus on various lacunae in legal system due to which this procedure gets delayed.
- 4) Fourthly this research work would try to highlight how the convicted person gets effected due to presence such long legal procedure of execution of death sentence.
- 5) Fifthly this research work would try to focus on various conclusions made by certain law commission reports and other statistics which try to show that there is presence of certain deep problems related to such legal procedure.
- 6) Sixthly this research work would try to establish that the constitutional validity of capital punishment should not be in question time and again. Rather it is the procedure of its execution which should be in question and such procedure should be amended.

1.6. Research Questions

- 1) Whether there is a presence of certain loopholes in the laws relating to the execution of death sentence?
- 2) Whether due to the long process of execution of death sentence certain basic human rights of the convicted person are infringed?
- 3) Whether the long undue delay in the execution of death penalty has resulted into the commutation of the punishment?

1.7. Research Methodology

The author shall adopt the following methodology:

- Type of the study:

The doctrinal method of the study will be used by the researcher to analyze the legal propositions and try to find out the answers of research questions by referring the different sources.

- Nature of the Study:

The present study is Analytical, Descriptive and Explanatory.

Analytical studies: Through this study from samples of research this paper will identified and provide information related to the process of execution of death sentence. Through the analytical study of research paper issues and problems in the process of execution of death sentence would be analyzed.

Descriptive study: - Descriptive research is defined as a research method that describes the characteristics of the relevant topic under study in all circumstances. This research is not based on statistics, but rather on more qualitative methodologies, and might incorporate both quantitative and qualitative data. Only some reference from the already present quantifiable data has been taken in order to determine the statistics in relation to the number of death penalty pronounced, and the how many of them has been executed, regarding the mercy petitions that have been already disposed by the executive or the regarding the mercy petitions that are already pending before the president of India.

Explanatory study: Explanatory research is a valuable study for a problem that hasn't been thoroughly investigated using other methodologies. It is a type of research which design to focus on explaining the aspects of our study in an accurate manner.

Sources of data collection: Source of the Data collection would include:-

- The primary sources are litigation, statutes or provisions related to the constitution of India. Like interpretation by judiciary of the various statutes can be considered.
- And secondary source like books, articles and journals.
- Then, it includes commentaries, experts' opinions in seminars and workshops, newspapers and websites.

1.8. Research Hypothesis

The current study project “aims to investigate and analyze the applicability of the death penalty in India as well as the causes and consequences of postponed executions. It also looks at the aspects of Indian law that deal with the death penalty. This study is predicated on the idea that current legal frameworks can limit the application of the death penalty”. The issue is how these laws are really put into practice in letter and spirit.

1.9. Scope of the study

Although there is widespread support for ending the death sentence internationally, India continues to recognize it as a valid and legal punishment option. The retention of the death sentence in India has a long history due to numerous causes that support and celebrate it as a crucial component of Indian law.

The causes and implications of delayed execution are covered in this paper. Delay in execution also violated the rights of the condemned that are outlined in our constitution; including Executions that were postponed actually harmed both society and the victim's family.

1.10. Chapterisation

1) Introduction: Capital punishment is a mode of punishment that is given for rarest of rare cases in our country through various provisions that are explained in respective statutes but the problem arises in the execution of death sentences because there is presence of lacunae in the laws regarding the execution part of the death sentences.

2) Critical analysis of the Procedure of Execution of Death Penalty: “When a session’s judge sentences someone to death in the first instance, the case is sent to the High Court for confirmation. Until the High Court gives its approval, the sentence cannot be carried out”. Further procedure would be explained in detail in the dissertation paper.

3) Constitutional Validity of Death Penalty: “In the case of Jagmohan Singh v. State of Uttar Pradesh⁴⁸, the constitutional validity of death sentence was challenged on the ground that the impugned punishment was violative of Article 21 and Article 19 of Indian Constitution. Then came the case of Rajendra Prasad v. State of Uttar Pradesh⁴⁹, the apex court of India did not reiterate with the findings of Jagmohan Singh case as Krishna Iyer J. held that unless the offender or the criminal imposes sheer amount of danger to the society, capital punishment should not be justified. Finally in the case of Bacchan Singh v. State of Punjab⁵⁰, the apex court through a 4:1 majority overruled the findings of the case of Rajendra Prasad v State of Uttar Pradesh by stating that awarding death sentence would not be violative of Article 21 of Indian Constitution”.

4) Rights infringed due to delay in execution: Supreme Court has laid importance that a prisoner whether he is detenu , under-trial or a convict, does not end to be a human being and he could avail all the rights that are fundamental in nature which includes the right to life which is enshrined in the provisions of Indian Constitution while he is in jail premises. “When a circumstance occurs in which a person is declared to be guilty and that person's right to liberty is taken away in accordance with the steps prescribed by law, that person will nevertheless be able to exercise his constitutional rights while incarcerated”.

⁴⁸ A.I.R.1973 S.C 947.

⁴⁹ [1979] 3 SCC 646.

⁵⁰ [1980] 2 SCC 684.

5) Reasons for delay and its effect and remedies for better execution: Here I talked about various pre trial and post trial delay in executing the death sentence, and its effect on both parties. And further I talked about various remedies for better execution.

6) Cases evident of commutation due to prolonged delay: In case of “Shivaji Jaising Babar v. State of Maharashtra”⁵¹ the capital punishment was converted and commuted into the punishment of life imprisonment due to the undue and prolonged delay in the execution of punishment of death sentence and the completion of the process of the mercy petition. Further case laws have been explained in the dissertation paper in which death sentence was commuted in the punishment of life imprisonment.

7) Conclusion and Suggestions

⁵¹ AIR 1991 SC 2147

CHAPTER 2-CRITICAL ANALYSIS OF THE PROCEDURE OF EXECUTION

In India, there is a presence of a detailed procedure of execution of capital punishment which is embedded in the respective statutes of Crpc 1973, Jail Manuals of various States and the death row convict could also opt for getting the chance to go for filing mercy petition under the Constitutional provisions of India.

An appropriate session judge of a session court makes the judgment under Section 235 and after the completion and the conclusion of the trial as specified by the Crpc. According to Section 235(2) of the Crpc, if the accused is convicted, a mandatory pre sentencing is required⁵². When a sessions judge convicts a person of a death sentence in the first place, the case is sent to the H.C for confirmation, and the person is not sentenced to death until the H.C confirms it under S 366 of crpc.⁵³ “A high court must affirm the Court of Sessions verdict and sentencing in order for the death penalty to be lawful. The high court has the authority to uphold the death sentence imposed by the Court of Sessions to impose any other sentence authorized by statute to overturn the conviction to convict the person of any crime for which the Court of Sessions may have found them guilty, or to order a new trial on the same or revised charge or to acquit the accused under Section 368 of the Crpc 1973. There is also a presence of an important provision or clause in the 1973 Code of Crpc about assigning of special reasons for death sentences. Where a conviction of an accused is done for an offence which is punishable by death or as we can term it in the alternative by life imprisonment or a period of imprisonment of certain amount of years in jail the decision must state the reasons for the penalty imposed as well as the special reasons for a death sentence”.⁵⁴

Another important aspect or provision which although is not directly a part of execution of death sentence but it is a kind of provision which a death row convict could apply for getting pardon or remission in the death sentence. “The President of India has the power to grant pardons, reprieves, respites, or remissions in punishment,

⁵² S.N. Misra, The Code of Criminal Procedure (20th Edn, Central Law Publications 2016) 321.

⁵³ Criminal Procedure Act 1973, S 366

⁵⁴ Criminal Procedure Act 1973, S 354(3)

or to suspend, remit, or order the commutation of a person's sentence who has been convicted of an offence, according to Article 72(1) of the Indian Constitution”.⁵⁵

The provision of mercy petition has an extensive scope and this provision aims for social welfare and serves public purpose. “The scope of mercy petition was broadly discussed by the S.C of India in case of *Kehar Singh v. Union of India*⁵⁶ in which the court held that while the president has to exercise the powers of pardon then he has the liberty to examine the evidence which is available on the record. Court in this above mentioned judgment further held that Indian citizens are granted the right to life and personal liberty under Article 21 of the Constitution is of paramount importance, according to Pathak, C.J. Court on further discussing the scope of this provision held that because human fallibility makes judicial error inevitable, the Indian Constitution provides for recourse from erroneous judgments in the form of the executive power to pardon”. Since, judicial mistake can't be blocked because of human untrustworthiness; response from wrong decisions has been given in the Constitution of India as the chief ability to pardon. It was noticed that under the British custom, this force was practiced by the sovereign top of the State that is the ruler in order to defend against judicial mistake just as based on reasons of State.

The power of pardon is often considered to be an essential aspect of the constitutional scheme, and we believe it should be regarded as such in the Indian Republic as well. The ability to issue pardons is solely a responsibility of the executive branch. “The tendering of advice to His Majesty as to the exercise of the prerogative of pardon is a matter for the executive Government, and is beyond their lordships' province,” the Judicial Committee said in *Balmukund v. King Emperor*⁵⁷. The study of the legal and practical application of power aids our understanding of the Indian situation. The current tradition of pardoning has its roots in the British scheme, where the King's ability to forgive was a Royal Prerogative. On ministerial advice, the Constitutional monarch in the United Kingdom may pardon or show grace to a conviction. The National Parole Board considers pardons in Canada under the Criminal Records Act. “The President of India and the Governors of States in India have the right to issue pardons under Articles 72 and 161 of the Indian Constitution. The people have placed

⁵⁵ Constitution of India, article 72.

⁵⁶ AIR 1989 SC 653.

⁵⁷ AIR 1915 PC 29.

it in charge of the state through the Constitution and it has a high status. It is a significant constitutional obligation that must be exercised when the occasion occurs and in accordance with the context's discretion".⁵⁸ The ability to pardon as it exists in the Constitution of India must be analyzed considering the authentic development of the idea of pardon also, the reason tried to be accomplished by vesting such a force in the presidential part of the State. This looks to dive into an applied comprehension of the thought of pardon or clemency as it is regularly alluded to and the powers usually are put into the whims of the execution in order to give importance and to develop the concept of the Social Justice. Pardoning Power is used in a variety of countries around the world.

Although the concept of mercy petition is a well explained principle and aims to serve for the betterment of general public at large but the main problem with such concept in these contemporary times is the undue and the unexplained long, the executive in India take too long to decide on mercy pleas. The S.C clearly in case of *Shamsher Singh & Anr v. State of Punjab*⁵⁹ answered to all the confusions and questions by stating that "the President is now legally obligated to act with the assistance and advice from the Council of Ministers, which established this principle authoritatively". The above mentioned principle which the court stated is incorporated in our judicial system with the inspiration of rule of English Constitutional law which explains as the Crown must find advisors to bear responsibility for the sovereign's actions, which limits the sovereign's authority. The House of Commons must have faith in those advisors⁶⁰. The problem with the above mentioned principle is that this whole complete procedure takes a lot of time which affects several rights of the death row convict.

The SC stated "in *Maru Ram v. Union of India*⁶¹ that guidelines are necessary while also acknowledging that all public power, including constitutional power, must not be applied indiscriminately or in bad faith". According to the court, no legal authority should be used in an unruly manner. This aforementioned judgment of the apex court of India clearly demands for clear guidelines and a legal framework for determining

⁵⁸ Andrew Novak: "The Constitutional Pardon Power and the Prerogative of Mercy in Global Perspective" (1st Edn, Routledge Publishers 2015) 225.

⁵⁹ [1975] SCR (1) 814.

⁶⁰ Durga Das Gupta, Commentary on Constitution of India (9thEdn, E.B.C 2015)

⁶¹ [1981] SCR (1)1196.

basic rules or aspects which are needed to be considered so that quick disposal of mercy petitions can be made by the executive. “Since granting pardons is an administrative rather than a judicial act it follows that exercising this power would not in any way change the judgment of the court qua judgment that it would not in any way interfere with the course of justice and that the courts would be free to decide whether the individual involved is guilty or not”.⁶²

The current framework in the constitutional aspect in India contains no rules that the government or the President must follow when considering whether or not to grant mercy or when approving or rejecting such an application. “There is no chance for a personal hearing before the authorities because pardoning power is executive in nature under the Constitution. As a result, in the absence of a prescribed form, the petitioner who filed a simple application may not provide all of the information requested, either out of ignorance or a deliberate attempt to conceal certain facts”.⁶³In the contemporary times, it is now considered to be well-established rule, as shown by the Supreme Court's decision “in *Ajay Kumar Pal v. Union of India and Others*”,⁶⁴ under which the Court granted the Writ Petition, finding that after hearing the convict's grievance and determining that the delay in execution was not caused by the accused, the Court had the authority to commute a death sentence to life imprisonment. The unreasonable delay in the execution of the death penalty has been a subject of public attention in high-profile cases such as that of Mumbai terror attack convict Ajmal Kasab, Parliament explosion prisoner Afzal Guru, and in 2012 Delhi rape case known as the Nirbhaya rape case”.

There are some provisions of the jail manuals of the different states which also provide for the execution of death penalty. For instance, Jail Manual of Punjab and Haryana's chapter 31 explains about the execution of death sentence. Paragraph 847(2) of the above mentioned jail manual explains as Every such prisoner who is a death row convict must be kept in a separate cell from the rest of the inmates and must be under the supervision of a guard at all times of the day and night. This particular jail provision of Haryana State Jail Manual clearly explains that the death

⁶² Channugadu, Re, AIR 1954 Mad 911.

⁶³ Viti Bansal, Mercy Petitions: The Need for Regulation, The Criminal Law Blog (Jan. 26, 2020), <<https://criminallawstudiesnluj.wordpress.com/2020/01/26/mercy-petitions-the-need-for-regulation/>> accessed 12 May 2022.

⁶⁴ [2015] 88 ACrC 629.

row convict is subject to confinement which is solitary in nature and the problem starts to begin when there exists undue long delays in the decision of a mercy plea or in the death penalty's execution. The man on death row is subject to solitary confinement up to a long amount of duration which starts to abridge certain basic fundamental rights namely right to life. If a situation continues in which the execution of a death sentence is delayed unduly and for an extended period of time, the hon'ble apex court is said to have formulated a legal principle regarding death sentences. If this situation persists, it may be called a process that is "unjust, unfair, and unreasonable" when it comes to the execution of this type of sentence. When needless delay happens in executing of a capital punishment, a convict's right to life is often deprived and dehumanized, as it is considered irrational, unfair, and unjust, and would tend to violate the provisions of Art.21.⁶⁵

After “the High Court's confirmation of the death penalty, a Special Leave Petition (SLP) under Article 136 of the Constitution is likely to be submitted. The Supreme Court may also grant special leave to appeal under Article 136 of the Constitution after it has considered the issues. In exercising its authority under Article 136 of the Indian Constitution, the Supreme Court decides whether extraordinary leave requests have the right to be heard as appeals. So the following thing was held in these two cases, Babasaheb Maruti Kamble v. State of Maharashtra⁶⁶ and Jitendra alias Jeetu v. State of Madhya Pradesh⁶⁷ and Others, that it was amending or correcting a previous trend of dismissal of SLPs, including the capital punishment in limine (excusal of SLP at the limit without providing any point by point reasons), in any case, qua death penalty, A special leave appeal filed in circumstances where the courts below have given a death sentence should not be excused without explanation, in July 2020. It was thought that in such cases a more profound investigation combined with reasons on the side of death punishment ought to be given by the Court”. The basic reasoning behind citing these principles that are involved in the implementation of capital punishment is that if the death row convict loses its remedy of appeal and the special leave petition is rejected then after the proper following of such procedure and given reasonable reasons for the upholding of death sentence, then the death row convict should not further unnecessarily cause delay in the implementation of capital

⁶⁵ State of Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083

⁶⁶ [2019] 13 SCC 631.

⁶⁷ criminal appeal no.1630 of (2019).

punishment by filing various petitions through taking the advantage of loopholes in the laws regarding the execution of death sentence.

“Within thirty days of the date of the judgment or order, a petition for review of the Supreme Court's decision or order may be filed with the Supreme Court under Article 137 of the Constitution. Review petitions for death penalty cases should be heard in open court, according to the Supreme Court in *Mohd Arif alias Ashfaq v. The Registrar, Supreme Court of India & Ors*”.⁶⁸ “Following the dismissal of the review petition in *Rupa Ashok Hurrah v. Ashok Hurrah & Ors*”⁶⁹, if it is decided that there was a breach of natural justice principles or fear of prejudice on the part of a judge, the S.C may authorize a curative petition to reconsider its decision or order. In the case at hand, the Supreme Court ruled that it may use its inherent powers to reconsider its decisions in order to prohibit the abuse of its mechanism and correct grave injustices, and after a review appeal against the most recent conviction is granted, a curative petition can be filed. Its aim is to ensure that there is no artificial birth cycle of equity and to avoid interaction maltreatment. Unless a formal solicitation for an open-court hearing is made, a curative petition is often decided by judges sitting in chambers. In a decision that could have an effect on the administration of justice, the court ruled that technical problems and concerns about reopening cases had to give way to a final forum for fixing errors. The court ruled that if the plaintiff would prove that there was a violation of natural justice principles and that he was not heard by the court until an order was made, a curative petition should be granted”. It will also be appropriate if a judge fails to reveal information that raises questions about his or her prejudice. In the aforementioned case law, the Supreme Court rejected the argument that curative petitions should be uncommon rather than prevalent and should be handled carefully. A senior advocate's certification outlining strong reasons to take into consideration a curative petition must come after it.

“It must first be circulated to a bench of the three most senior judges, as well as the judges who handed down the applicable judgment, if any are available. And when a majority of the judges decides that the case needs to be heard should it be scheduled preferably before the same Bench of the respected apex court. The Indian Constitution, in Article 137, confirms or confirms the notion of a curative petition. In

⁶⁸ writ petition, criminal no.77 of (2014).

⁶⁹ Writ Petition, civil 509 of (1997).

the event of laws and rules created under Article 145, the Supreme Court has the authority to examine any decision it has issued (or order it has issued). Within 30 days of the date of the judgment or order, a petition for this type of relief must be filed. Before today's situation, where the two Nirbhaya case convicts filed Curative petitions in the Supreme Court, the convicts also filed a Mercy petition and a review petition, both of which were dismissed by the court. In India, a limiting choice of the Supreme Court or of the High Court can be reevaluated in a review petition. Also, if a review petition is excused by the Apex Court, it might contemplate a curative petition documented by the petitioner to forestall net maltreatment of the whole legal process".⁷⁰

“Form No. 42 in the Second Schedule of the Crpc, 1973, includes the form of the death warrant or black warrant in cases where the death penalty is imposed. It is addressed to the appropriate prison superintendent, who is responsible for returning the warrant to the court once the death sentence has been carried out”.⁷¹

And in another landmark case of *Mukesh Singh & Anr v. State for Nct of Delhi & Ors*⁷² it was quite clear that the death row convicts by filing various different petitions were able to get the execution process of death sentence delayed. “For instance, despite exhausting all legal options, Vinay (one of the death row convict) had filed a new mercy petition with Lieutenant-Governor Anil Bajjal, asking for his death sentence to be commuted to life imprisonment”. As many as four death warrants were passed against the death row convicts in this particular case but they continued to file different petitions on different grounds as a consequence to which the execution process of death sentence of the Nirbhaya Rape Case took 8 years to complete. So because principle of pardoning power is in the executive's jurisdiction under the Constitution, there exists no chance of an individual hearing before the specialists. Accordingly, it is very conceivable that without an endorsed structure, the solicitor who recorded a straightforward application may not give data its aggregate as a result of either sheer obliviousness or even in a conscious endeavor to shroud certain data. As long as capital punishment is in effect, the administrative structure does not seem

⁷⁰ Shubham Roy, What is a curative petition? Indian Express (02 Apr., 2020), <<https://indianexpress.com/article/what-is/what-is-curative-petition-december-2012-gangrape-case-sc-6204629/>> accessed 12 may 2022.

⁷¹ K D Gaur, Textbook on the Code of Criminal Procedure (2nd Edition, E.B.C 2019) 336-338.

⁷² [2017] 6 SCC 1.

to pause or lose interest after the inmates have been sentenced to death. No one may deny a prisoner his or her humanity or right to integrity or right to live as a dignified life which is listed under Article 21.⁷³ Both the legislature and the administration must make decisions in concert. If the death penalty is to be held, the procedure must be streamlined and free of loopholes that allow for illegal torture. It can also be ignored. Commuting death sentences for rape and murder, on the other hand, sends a somewhat mixed message or a confused state of mind that intention of the sentence giver was different but due to the happening of certain events the punishment was commuted which often happens due to the delay caused because of the undue delay in the execution process of the death row convict. The legal counsels who are having expertise in their field of knowledge know it expeditiously that filing various petitions at regular intervals could easily amount to delay in the implementation of the capital punishment as by the findings of the incidents which occurred in the afore mentioned case law it can be made quite clear that several petitions were filed regarding the legality of mercy petitions and various amount of death warrants were needed to be made by the appropriate sessions court as after the passing of every death warrant some or the other new petitions were being filed by the death row convicts and their legal counsels.

⁷³ Ramesh Banerjee, The death penalty delayed, The Telegraph Online
<<https://www.telegraphindia.com/opinion/the-death-penalty-delayed/cid/1696175>> accessed on 10 April 2022.

CHAPTER 3-CONSTITUTIONAL VALIDITY OF CAPITAL PUNISHMENT

Through the years there has been an extensive debate regarding the constitutionality of the capital punishment and still in contemporary times such debate never seem to end. The group or sect of people who argue or contend that the death penalty should be abolished by stating the argument that the capital punishment has failed to meet the constitutional goal for which it was introduced i.e., deterrence. It has been regularly been argued that crime rate in the nation is not reducing despite the very fact that there is a presence of various provisions in respective statutes in which the punishment of several offence is death sentence.⁷⁴ The main reason behind the reducing effect of deterrence can be explained by the very reason that there have been few executions which have been carried on and the another important aspect can be “the undue delay in the implementation of the death penalty in India due to lack of clear guidelines or principles in the execution of the death penalty in India”.

Article 21 of the Constitution, according to the contentions or aspects which are providing against the constitutionality of the capital punishment, guarantees to the “right to life”. It makes it illegal for the government to deprive anyone of their right to life unless they follow a legal process. Nothing is a good law if it does not give effect to the Constitution of India's fundamental principles and purposes. The legal contentions which are made for the retention of the death sentence claim that, rather than saying that the death penalty is prohibited by the Constitution, Article 21 states that the State may take away a citizen's life in certain conditions, but only after following the legal procedure. As a result, death penalty is legally legal, according to the limitations imposed by Article 21. The severity of the crime, the criminal's behavior, and the victim's defenseless and unprotected condition must all be considered when determining the appropriate punishment.⁷⁵

⁷⁴ Srishti Chawla, Critical Analysis of Death Penalty in India, IPleader (Apr. 20, 2019), <<https://blog.ipleaders.in/death-penalty/>> accessed 12 April 2022

⁷⁵ *ibid.*

The doubt or the concerns related to the constitutional validity of capital punishment has been brought up in front of the Supreme Court various times by arguing that this provision or punishment directly infringes the principles embedded in Art. 14, 19 and Art. 21. The contentions which are against the legality of death sentence argue that the principle of capital punishment is incompatible with different clauses of India's Constitution. They claim that different human freedoms have fundamental rights under Article 19. On different grounds in that Article, fair limitations on these freedoms can inevitably be enforced. These grounds are based on the principle that limits on freedoms must be fair and in the public interest⁷⁶. Legality of capital punishment in Indian situation might be considered in regard of two parts of the matter. Right off the bat, the inquiry is regardless of whether capital punishment as such is illegal and can't be granted regardless at all.

In “Jagmohan Singh v. State of Uttar Pradesh”⁷⁷, the constitutional validity of the capital punishment was disputed on the grounds that it violated Articles 21 and 19. It was also argued that the process described in Section 354(3) was arbitrary. However, a five-judge S.C panel ruled that the process and power to enforce the death penalty are often accomplished by observing the law's procedures. The apex court also held that the contested punishment does not violate Art. 14, 19, and 21 because judges impose capital punishment depending upon each case's specific facts and circumstances that are brought to light during the trial of a particular case. Then the case of Rajendra Prasad v. State of Uttar Pradesh⁷⁸ came before the SC, in which Supreme Court of India did not agree with the conclusions of the Jagmohan Singh case, holding that capital punishment should not be justified unless the convict or criminal presents a grave threat to society. The court said that granting judge, power to sentence prisoner to death by citing "special reasons" as given in Section 354(3) of the CrPC would mean arbitrariness and violate Article 14. “The Supreme Court upheld the constitutionality of death penalty in the case of Jagmohan Singh v. State of Uttar Pradesh, arguing that it is not only a deterrent but also a sign of society's rejection of crime. The Supreme Court also believed that India should not risk playing with the abolition of the death penalty”.

⁷⁶ P. K. Agrawal, K.N. Chaturvedi, Commentary on the Constitution of India (4th Edn, Prabhat Prakhasan 2018) 145.

⁷⁷ AIR 1973 SC 947.

⁷⁸ AIR 1979 SC 916.

Finally, in *Bacchan Singh v. State of Punjab*⁷⁹, the S.C overruled the conclusions of *Rajendra Prasad v State of Uttar Pradesh* by a 4:1 majority, holding that imposing a death sentence would not be a breach of Article 21. apex court went on to say that capital punishment can only be used in the rarest of circumstances, and that judges' power to grant death sentences by giving "special reasons" as per CrPC Section 354(3) does not violate Article 14, and that special reasons given by judges should meet the requirements for the rarest of rare cases. The *Bachan Singh* decision made by the apex court of India just makes a cursory and convenient reference to Article 21. The argument made in the judgment that the statute has the authority to deprive anyone of their life and liberty is not always so straightforward. The S.C ruled "in *Santosh Kumar Bariyar v. State of Maharashtra*⁸⁰ that the rarest of rare dictum acts as a guideline in applying Section 354(3) and defines the policy that the law is life imprisonment, and the death sentence is an exception".

S.C ruled "in *Mithu v. State of Punjab*⁸¹ that the mandatory death penalty is unconstitutional. We should also consider the essential fact that subsequent legislation for drug and violent offences requires the death penalty, the S.C has not specifically ruled it unconstitutional".

Over the period of time again and again there have been contentions that the capital punishment should be abolished and the supreme court over a period of time has made a judicial trend by giving judgments through a period of time that capital punishment is constitutional in nature and does not violates Part III of Indian constitution.

In *Allaudin Mian v. State of Bihar*⁸², the plea for *Bacchan Singh*'s case needs reconsideration but the S.C out rightly rejected the plea and said that plea does not need any reconsideration. The privilege to life isn't the something that Constitutions make or indeed, even present. The Constitution just perceives this basic and vital right. The Constitutional provision is accordingly, as it were evidentiary worth. In a portion of the more established nations the privilege to life and liberty gets more successful security from Constitutional shows than they do in nations with constitutions expounding the right. The level of individual liberty delighted in by the

⁷⁹ AIR 1980 SC 898.

⁸⁰ [2009] 6 SCC 498.

⁸¹ AIR 1983 SC 473.

⁸² AIR 1989 SC 1456.

normal Indian isn't amazingly not exactly that delighted in by a resident of some other parliamentary majority rules system.

For a situation under Section 302 of the IPC, 1860 the judges should pick among death and detainment forever. They delighted in an extraordinary tact with that impact; however the circumspection is not absolutely inadequate. “The topic of life and demise is left to an appointed authority, defenseless to esteem inclinations and mistake or judgment like some other. It is here that the legality of laws giving Capital Punishment gets suspect Furthermore, the Indian Constitution guarantees to every person a basic right to life, subject to deprivation by statute, and it can be argued that the death penalty in its current form violates the citizen's right to life. The statutory validity of the death penalty under the Indian Penal Code, 1860, has been questioned in several cases in India, with the Supreme Court of India repeatedly finding that the death penalty under the I.P.C. is legally valid”.⁸³ The groups of people who contend for the unconstitutionality of the death sentence, on the other hand, have not been discouraged by numerous Supreme Court of India pronouncements finding the death penalty to be constitutional.

Another important and essential regarding the implementation of a death penalty is the “Doctrine of Rarest of the Rare” which constitutes an important aspect while the pronouncement of the decision in which death sentence is in question. In case of *Bacchan v. State of Punjab*⁸⁴, “the doctrine of Rarest of the Rare was created, in this decision the Supreme Court attempted to eliminate a theory that only applied to crimes punishable by death, in order to reduce judicial ambiguity regarding when the highest sentence available should be used. By a 4-1 vote, the Supreme Court maintained the death penalty's constitutionality, establishing the notion that the death penalty or capital punishment should only be employed in the rarest of circumstances. Notwithstanding, the extent of this expression was left vague The Ratio Decidendi of *Bacchan Singh* case is that capital punishment is established in the event that it is recommended as an option for the offense of homicide and if the typical sentence endorsed by law for homicide is detainment forever. This implies that capital punishment must be forced on most extraordinary of uncommon situations where an

⁸³ Ratanlal & Dhirajlal, *The Indian Penal Code* (36th Edn, Lexis Nexis 2020) 345.

⁸⁴ *ibid.*

elective choice is avoided”.⁸⁵ After that, on the account of “Macchi Singh v. State of Punjab⁸⁶ The court endeavored to establish criteria for determining whether a transgression came into the category of most uncommon of uncommon wrongdoings”.

On account of “Santosh Kumar Bariyar v. State of Maharashtra⁸⁷, The S.C determined that, in upholding Section 354(3), the most unusual of unusual proclamation fills in as a rule and establishes the arrangement that life detention is the standard and passing sentence is the exception. All guilty parties who carried out a daily existence punishment were sentenced to death under Section 303 of the Indian Penal Code”. This portion was removed from the show because it was deemed illegal.

In 2008 represented the perfect illustration in “Prajeet Kumar Singh v. State of Bihar”⁸⁸, where honorable court controlled precisely on what might establish the most extraordinary of uncommon case. When a death sentence is presented in a very violent, twisted, devilish, repulsive, or annoying manner in order to generate remarkable and outrageous ire in the local area, the Court concluded that capital punishment would be justified.

“In the contemporary times criticism revolves around the formulation of rarest of rare, just as they will any other subject. Many critics have argued that this doctrine is highly vague and open to different interpretations. In his dissenting opinion, Justice Bhagwati expressed concern, saying that such a criterion would lead to more subjectivity in decision-making and would make the decision of whether an individual should live or die contingent on the composition of the Bench. He argues that the fact that an offender's life is dependent on the decisions of a judge is a blatant violation of the Indian Constitution's Fundamental Rights, which are enshrined in Articles 14 and 21 of Constitution of India”.⁸⁹ “It has also been said that decisions concerning this doctrine are made arbitrarily. For example, when a man suspected his wife of

⁸⁵ Ibid.

⁸⁶ AIR1983 SC 947

⁸⁷ Ibid.

⁸⁸ Appeal (crl.) 1621 of 2007.

⁸⁹ Ibid.

infidelity cut her head and killed her, the Supreme Court had no hesitation in classifying the case as one of the rarest of rare cases and enforcing death”.⁹⁰

In case of “Amruta v. State of Maharashtra⁹¹ is informative in this regard, because it is a case in which the court denied the death punishment despite the fact that the facts were identical to those in the prior case. The court ruled that the deliberate, cold-blooded, and barbaric murder of a young girl after committing rape on her was unquestionably among the rarest of rare acts”.⁹² However, in “Kumudi Lai v. State of U.P.”⁹³, here court declined to affirm the death penalty a fourteen-year-old girl was raped and murdered in this case. A second-grade girl was raped in a terrible manner in “Amrit Singh v. State of Punjab⁹⁴. As a result of the excessive bleeding, she died. Both the trial and high courts found the accused guilty of violating section 302 and sentenced him to death. Despite the rape's savagery, the Supreme Court determined that the death was not premeditated”.

The two constitution seats on account of judgments made by the SC “in the cases of Jagmohan and Bacchan Singh wouldn't frame a normalized categorization of situations where the teaching of most uncommon of uncommon could be applied regardless of sharp supplications from the showing up insight to do as such. In judgment made by the Supreme Court of India in the Jagmohan case, the Court expressed that setting down guidelines would not fill any need rather judicial discretion will be practiced to guarantee most secure conceivable shield for included gatherings”.⁹⁵ “The constitutional validity of section 354(5) of the IPC was questioned in Deena vs. Union of India⁹⁶ on the grounds that hanging by a rope was barbarous and thus violated Art. 21. The court held that section 354(5) of the I.P.C., which defines hanging as a fair execution process, is a just and rational practice within the scope of Article 21 of Constitution of India, and therefore constitutional”.

The 3 judges of the S.C held in Sher Singh vs. the State of Punjab⁹⁷ that the death sentence is legally legitimate and legal under the constraints of the Bachan Singh rule,

⁹⁰ Bhaeru Singh v. State of Rajasthan, [1994] 2 SCC 407.

⁹¹ AIR 1983 SC 629.

⁹² Laxman Naikv. State of Orissa, [1994] 3 SCC 381

⁹³ [1999] 4 SCC 108.

⁹⁴ [2007] 1 SCC 41.

⁹⁵ K.D Gaur, Textbook on Indian Penal Code (7th Edition, Lexis Nexis 2020) 456.

⁹⁶ [1984] SCR (1) 1.

⁹⁷ [1983] SCR (2) 582.

and hence stands as a valid law of the country. In landmark decisions, guidelines for applying the death penalty were given.

“The Law Commission had previously recommended the death penalty's preservation in India in its 35th report (Capital Punishment, 1967) Thus, the Commission has recommended that the jurisprudence on the issue of the retention or abolition of death penalty has progressed from 1955, when no special reasons were required for imposing life imprisonment instead of death, to 1973, when special reasons were required for imposing the death penalty, and to 1980, when the Supreme Court limited the death penalty to the rarest of rare cases; this shows the direction in which we have progressed”⁹⁸. On one hand, there is an interest for cancelation of capital punishment and then again, there is an expanded manner of speaking for capital punishment for assault, offensive violations against women, exchange and trafficking of women and opiates. A significant part of the contentions for provisions of capital punishment have solid rationale on good and friendly grounds. Along these lines, remembering the adage 'Salus populi est suprema lex' a legitimate way to deal with issue maybe will be, that capital punishment should be held for incorrigibles and solidified lawbreakers however its utilization ought to be restricted to the 'most extraordinary of uncommon cases'. The courts may utilize capital punishment sparingly yet its maintenance on the statute book appears to be fundamental as a convenience related to penology. Therefore, it very well may be securely reasoned that capital punishment ought not to be exposed to inauspicious capital punishment⁹⁹.

In the case of *Vinay Sharma v. State of NCT of Delhi*¹⁰⁰, here a court heard an argument that the death penalty had been already ruled unconstitutional in the United Kingdom, Australian states, and some states in the USA, and that as a result, such punishment should be declared unconstitutional in India as well. The S.C ruled that the prohibition of the death penalty in other countries does not imply that the death penalty should be abolished in India as well. Every nation has its own legal structure, which includes specific legal statutes and sentencing policies. As a result, the court ruled that the death penalty will continue to be applied as long as it is specified in the

⁹⁸ Mahesh Deshpande, Law Commission Report on Death Penalty, The SCC Outline Blog (Sep. 1, 2015) <<https://www.sconline.com/blog/post/2015/09/01/262-law-commission-report-on-death-penalty/>> accessed 1 may2022.

⁹⁹ *ibid.*

¹⁰⁰ AIR 2018 SC 3290.

IPC and is not declared unconstitutional. If we apply the findings of the above mentioned case in this particular set of paper it could easily be inferred from the legal findings of the judgment that court could not simply abolish the principle or phenomena of the death sentence on mere contentions that various countries around the globe and over the period of time have been making the punishment of death sentence illegal and unconstitutional in nature. It is pertinent to note that all of the warrants which are issued to demonstrate a lack of adherence to the guidelines issued in the case of *Shabnam vs Union of India*¹⁰¹, which notes that a warrant for execution should not be issued before all legal options have been exhausted and defines the procedures to be followed while issuing such a warrant. The importance and the peculiar nature of every legal system has been highlighted elaborately in the above mentioned judgment that it is the necessity of every legal framework which tempts a nation or the state to abolish certain principle and discontinue its practice. It could not simply just remove it on comparing the legal framework of various countries. There are different perspectives on which capital punishment debate in India is going on. Numerous academics and research groups have argued that the existence of such obtuse penalty is unnecessary in the present day. There is no need for India to bother with it. It is contended that no examination has shown that capital punishment stops murder more than life detainment and that proof is actually.

The Indian Law Commission, “led by Justice A.P. Shah, has released its 262nd report on the death sentence in India. In *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*¹⁰², and *Shankar Kisanrao Khade v. State of Maharashtra*¹⁰³, the Supreme Court referred the matter to the Law Commission”. In its 35th report however made it clear that the capital punishment or the death sentence should be retained in the Indian Legal system. Notwithstanding, since the 35th study, the country's social, monetary, and social conditions have changed significantly, and Since the creation of the key point of reference on the subject, In situations involving the capital punishment, discretion has remained a key issue. Recognizing that capital punishment is a sensitive subject, the Commission decided to conduct a broad investigation into the matter. 262nd Report also has reported that after thorough study, the Commission came to the conclusion that the death penalty, like life imprisonment, would not fulfill

¹⁰¹ [2015] 3 SCC 484.

¹⁰² [2009] 6 SCC 498.

¹⁰³ [2013] 5 SCC 546.

the penology purpose of deterrence. In fact, it fails to accomplish any legally legitimate judicial objectives.¹⁰⁴ With connection to supporting passing for those sentenced in dread arguments and for taking up arms against the country, The Report acknowledged that there is no plausible defense associated with criminology for separating illegal terrorism from other offenses, yet the worry of a occasions is by all accounts that eliminating of capital punishment for these offenses will influence public safety. Although the report has suggested that the punishment like death sentence has failed to achieve the goal of deterrence but on the other hand there has been demand over a period of time that the offenders who commit heinous crimes such as rape of child or gang rape should be punished through fast track courts and there is a clear demand of more harsh punishments on those offenders. So there is a clear contrary in both of these abovementioned opinions and it can be concluded that constitutionality validity of capital punishment should not be questioned as over a period of time the apex courts, various high courts of different states have made a judicial trend that death sentence is constitutional in nature but there is a dire need of hour that certain clarity regarding the concept of rarest of rare cases should be made as there is a presence of lot of irregularities in the following of the principle of “rarest of rare” in the cases in which capital punishments is in question.

¹⁰⁴ *ibid.*

3.1. THE APPLICATION OF “RAREST OF RARE” DOCTRINE

The leading cases on capital sentencing are those of Bachan Singh and Machhi Singh. “Bachan Singh v. State of Punjab¹⁰⁵ laid down a sentencing framework in an attempt to guide judicial discretion in sentencing. In its essence, this framework was aimed to guide the judiciary in choosing between life imprisonment and the death penalty, and attempted to give substance to the ‘special reasons’ provided under Section 354(3) of the CrPC”.

Following the decision on Bachan Singh in 1983, Machhi Singh v. State of Punjab¹⁰⁶, expanded on the “rarest of rare” formulation and listed out five instances where the death penalty would be suitable. Furthermore, “Court held that the death penalty may be imposed where the collective conscience of society is so shocked that it will expect the holders of the judicial power to inflict death penalty. Machhi Singh, thus, cemented the applicability of the rarest of rare doctrine to distinct categories, which was something the Court had expressly sought not to do in Bachan Singh. By doing so, Machhi Singh considerably enlarged the scope for imposition of the death penalty beyond what was set out in Bachan Singh”¹⁰⁷.

Although, the Court in Bachan Singh set out principles to guide sentencing in the hopes that it would cure the deficiencies in sentencing and thus minimize the risk of arbitrariness, the concerns that capital punishment is being “arbitrarily or freakishly imposed” still persist. “And on perusal of how the Supreme Court had applied rarest of rare concept, it can be concluded that it was indeed applying the penalty quite rarely, but that it was proving very difficult to develop satisfactory criteria for when the ultimate penalty should be applied. Frequent findings as to arbitrariness in sentencing under Section 302 may violate the idea of equal protection clause implicit under Article 14 and may also fall foul of the due process requirement under Article 21”¹⁰⁸.

“In judgments such as Alope Nath Dutta v. State of West Bengal¹⁰⁹, Swamy Shraddhananda v. State of Karnataka¹¹⁰, Santosh Bariyar v. State of Maharashtra¹¹¹,

¹⁰⁵ AIR 1980 SC 898

¹⁰⁶ [1983] 3 SCC 470

¹⁰⁷ Swamy Shraddhananda v. State of Karnataka, [2008] 12 SCC. 288

¹⁰⁸ S.B. Sinha, To Kill or Not to Kill: The Unending Conundrum, 24 NAT’L L. Sch. INDIA REV. 1 (2012)

¹⁰⁹ [2007] 12 SCC 230.

Mohd. Farooq Abdul Gafur v. State of Maharashtra¹¹², and Shankar Kisanrao Khade v. State of Maharashtra¹¹³ the Supreme Court has in no unclear terms acknowledged that the imposition of the death penalty is subjective and arbitrary. The Court admitted in Alope Nath Dutta the failure on its part to evolve a uniform sentencing policy in capital punishment cases and to conclude as to what amounted to rarest of rare”.

The Supreme court in Swamy Shraddananda stated that “the confirmation of death sentence or its commutation by this Court depends a good deal on the personal predilection of the judges constituting the Bench”¹¹⁴ Following suit, “in Santosh Bariyar the Supreme Court admitted that here is inconsistency in how Bachan Singh has been implemented, as Bachan Singh mandated principled sentencing and not judge centric sentencing”¹¹⁵. The Court further noted that the “rarest of rare” formulation in Bachan Singh has been applied inconsistently and the balance sheet of aggravating and mitigating factors being implemented on an individual case basis has not served well enough to rid capital sentencing from arbitrariness .

“Despite the decision in Bachan Singh holding that well recognized principles evolved through judicial precedent would guide courts in capital sentencing, the Supreme Court has admitted that the precedent on death penalty is constitutionally infirm owing to the content of the doctrine”¹¹⁶.

Assessing Bachan Singh, “Justice Kurian Joseph in Chhannu Lal Verma v. State of Chattisgarh”¹¹⁷ called for a re-examination of the need for the death penalty. He said “Bachan Singh has failed to prevent death sentences from being arbitrarily and freakishly imposed and capital punishment has failed to achieve any constitutionally valid penological goals”

“The sentencing framework developed in Bachan Singh offered a transformative potential for the death penalty jurisprudence in India which was not sufficiently utilized in subsequent judgments. Though the framework is subject to its inherent weaknesses, its essence lay in the crucial embracing of the spirit of individualized

¹¹⁰ [2008] 13 SCC .

¹¹¹ [2009] 6 SCC 498.

¹¹² [2010] 14 SCC.

¹¹³ [2013] 5 SCC 546.

¹¹⁴ Swamy Shraddananda v. State of Karnataka, [2008] 13 SCC.

¹¹⁵ Santosh Bariyar v. State of Maharashtra, [2009] 6 SCC 498.

¹¹⁶ Mohd. Farooq Abdul Gafur v. State of Maharashtra, [2010]14 SCC 641

¹¹⁷ [2019] 12 SCC 438.

justice under Section 235(2) of the CrPC by emphasizing the questions of individual culpability and proportionate punishment, and stressing on the relevance of mitigating factors with a liberal and expansive construction. The incredibly high standard for ruling out life imprisonment and imposing death sentence in Bachan Singh truly embodied the legislative mandate in Section 354(3) of the CrPC”.

However, the sentencing framework is now unrecognizable, characterized by error inconsistency and arbitrariness, serving as little more than an empty judicial doctrine. Owing in part to its misplaced penological justifications, and dilution by Machhi Singh, which turned the framework into a more crime centric one that often time completely disregarded the mitigating circumstances of the criminal.

“Despite the rarest of the rare doctrine in death penalty cases, having very specific requirements as laid down by the Supreme Court in Bachan Singh, multiple and varied notions of the doctrine exists among different judges. It is evident that there exists no uniform understanding of the requirements of the ‘rarest of rare’ doctrine and this gave rise to serious concerns of judgecentric sentencing”¹¹⁸. The Supreme Court has itself acknowledged the same in the decisions of Alope Nath Dutta, Bariyar, Gafur, Sangeet and Khade. Inconsistent and arbitrary application of the Bachan Singh framework has been at the forefront of the problems in the capital sentencing system. Similar cases with similar circumstances have resulted in different outcomes.

“These failing are more likely to affect the weaker sections of society as 74.1% of prisoners are socio-economically disadvantage”¹¹⁹. Quality of representation in capital cases contributes a great deal to the outcome. So, for such persons who cannot afford such a quality of legal representation coupled with the evidentiary gaps in the Bachan Singh framework regarding the presentation of mitigating factors would further add to the large number of disadvantaged persons imprisoned and on death row. “Justice Bhagwati while expressing his dissent had commented in Bachan Singh that the death penalty has a certain class bias, and it is usually the poor and downtrodden who are victims of this extreme penalty”.

¹¹⁸ Dr. Anup Surendranath, Matters of Judgment, (Project 39A) < <https://issuu.com/p39a/docs/combined231117> > accessed 6 may 2022

¹¹⁹ The Death Penalty India Report, National Law University, Delhi (2016).

3.2. THE ABOLITION OR RETENTION WITH RESPECT TO GLOBAL PERSPECTIVE

It has always been the subject of heated debate, owing to its brutal character and far-reaching human rights implications.

“The countries of the world cannot be neatly divided into abolitionist and retentionist States, there are countries who retain the death penalty to varying degrees. There are states that are abolitionist for ordinary offences such as Brazil and Chile for example, where the death penalty is available only for crimes of an exceptional nature, and de facto abolitionist counties like Laos and Mali, where executions have not been carried out in the past ten consecutive years”.¹²⁰

“The UN General Assembly stated that the main objective of the United Nations, in accordance with Article 3 of the Universal Declaration of Human Rights and Article 6 of the ICCPR is to progressively restrict the number of offenses for which capital punishment might be imposed, with a view to its eventual abolition, However, the UDHR is not legally binding, and while the ICCPR is legally binding, it applies to only party States. It does not prohibit capital punishment. Instead, it sets out procedural safeguards to be followed by those member States who still retain the death penalty”.¹²¹

Nevertheless, “over recent years there has been a global trend tending toward abolition with 2020 marking a further decline in the use of the death penalty, the number of known executions was 483, this was a 26% decrease from 2019 and a 70% decrease from 2015 where executions peaked at 1634, This is in continuation of the year-on-year reduction recorded since 2015 and in 2020 reached the lowest figure recorded in the last decade. The number of known executing countries in 2020 decreased by two (Chad and Kazhakstan) from the previous year. Currently, 108 nations oppose the death penalty for all crimes, 8 oppose it for lesser offenses, and 28 support it in practice, bringing the total number of nations that have abolished the death penalty to 144. Only a select group of 55 countries that support continued use of the death penalty have used them. Along with an increase in commutations, there was a considerable dip in the number of fresh death sentences that were known to have

¹²⁰ David T. Johnson, A Factful Perspective on Capital Punishment. *Journal of Human Rights Practice*, 2 (2019)

¹²¹ G.A. Res. 28/57 (Dec. 20, 1971).

been issued globally in 2020, which was marked by a 36% drop from 2019 and a 53% drop from 2016. In 30 of the 54 countries where death sentences were known to have been applied, there was a drop in the number of fresh executions. While at the same time increases were also recorded in 13 countries”.¹²²

The main pattern over the years has been a striking decline in the use of the death penalty. “Analysis of the reasons for this decline have pointed to two main forces namely, economic development and the general political orientation of the government have a strong influence. While economic development and national prosperity is not by it, a condition for abolition, economic development tends to encourage declines in executions and the political make up of a country does have a strong influence on the capital punishment policy. Higher execution rates tend to be observed in countries under authoritarian rule in countries such as North Korea, Saudi Arabia, etc, and lower executions have been noticed in democratized States, like South Korea and India, for instance”.¹²³ However, some exceptions exist like the U.S. being on the higher end of the spectrum in spite of being a democracy. Aside from these reasons, concerns about wrongful conviction and executing innocent people have made States more cautious about executing people.

This drive toward abolition has also been influenced by the global movement and the impact of new human rights dynamics a growing awareness of human rights, the establishment of international covenants, treaties, and legal institutions that enshrine a commitment to abolish and never reinstate the death penalty , as well as the impact of abolitionist States on retentionists, are all significant influencing elements.¹²⁴

While some analysts argue that abolition of the capital punishment will have the added benefit of ensuring that the State killing of its citizens will no longer have any legitimacy, and stigmatize extra judicial executions. “Others are of the opinion that State killing will survive abolition, such as in the instances of Mexico, Brazil, etc., and in countries where the death penalty has not been abolished, extra judicial

¹²² AMNESTY INTERNATIONAL REPORT 2020/21 (Amnesty International, 2021)

¹²³ David T. Johnson, A Factful Perspective on Capital Punishment, *Journal of Human Rights Practice*, 11.2 (2019)

¹²⁴ Hood, R., Hoyle, C. (2009) ‘Abolishing the Death Penalty Worldwide: The Impact of a ‘New Dynamic’, *Crime and Justice*, (Vol. 38, no. 1, 2009), pp. 1–63.

executions are frequently carried out even after the number of executions have fallen, as seen in Indonesia, Bangladesh, etc”.¹²⁵

Additionally, the death penalty survives in certain places because of the welcome functions it performs for some interests. One example is how it has been used by government against dissenters and anti-government demonstrators after the Arab Spring movements in Egypt and other Middle Eastern countries. Besides, for its instrumental value for the government, capital punishment is retained for its performativity value, i.e. as a political token in elections. It is also an instrument that enables the judiciary to harness the power of death in pursuit of professional objectives. It is also a conduit for moral outrage for the on looking public¹²⁶. In addition to these long standing obstacles to abolition, there have also been instances of capital punishment making its way back to the statute books after being removed.

The death penalty has very rarely been reintroduced in countries that have once abolished it, but this phenomenon is not unheard of, “In 2004, Sri Lanka declared an end to its moratorium on the death penalty which, was in force since 1976, although it has not yet performed any further executions. The Philippines abolished the death penalty in 1987, reintroduced it in 1993, but abolished it again in 2006. However, officials are lobbying for the reimposition of the death penalty for drug-related offences”.¹²⁷

The aforementioned evidence demonstrates that the death penalty is gradually being reduced or eliminated. This is demonstrated by a decrease in the number of executions and the countries that carry out executions. The international community and advancements in human rights can be held responsible for this decrease in the usage of the death sentence. Obstacles to abolition have also been present, as governments that support the death sentence do so for a variety of reasons. However, the decrease in the death penalty's use is not a recent development; rather, it is a continuation of a longer trend away from the death sentence, one that doesn't appear to be slowing down any time soon.

¹²⁵ David T. Johnson, A Factful Perspective on Capital Punishment, *Journal of Human Rights Practice* 11.2 (2019)

¹²⁶ David T. Johnson, A Factful Perspective on Capital Punishment, *Journal of Human Rights Practice* 11.2 (2019)

¹²⁷ Preeti Jha, Philippines death penalty: A fight to stop the return of capital punishment, *BBC News*, (August 22, 2021) < <https://www.bbc.com/news/world-asia-53762570> > accessed 10 May 2022.

CHAPTER 4-CASES EVIDENT OF COMMUTATION DUE TO PROLONGED DELAY

The death penalty in India, which involves hanging until death and is thought to discourage serious crimes by instilling a sense of deserving death as a punishment for a person's heinous act, has been the subject of much debate.. Punishment is also divided into two parts: retaliation and deterrence. “Excessive and unexplained or undue delay in the carrying out of a death sentence would constitute a violation of the Right to Life, which is the most basic of all the rights secured by the Constitution, which serves as a basis for commuting the death penalty to a life sentence. It is unquestionably exasperating for a prisoner to be kept in suspense as the President considers his mercy petition. It puts the prisoner under death penalty under extreme psychological stress and physical hardship. When a death sentence is upheld by a final judicial forum, any hope which is in existence of acquittal that may have lingered in the mind of the condemned prisoner is extinguished, and the threat of death begins to loom over that person One never knows when he will be summoned to answer the executioner's call”¹²⁸. Supreme Court in the case regarding the above mentioned issue held that "A form of additional suffering not imposed by statute, not part of the punishment awarded to the prisoner, and therefore, it violates the constitutional safeguards, the court said. Inasmuch as it deprives one of his lives in an unequal, unjust, and unreasonable way, this delay adds a dehumanizing dimension to the execution of the death penalty, violating the due process of law enshrined in Article 21 which explains the principle or phenomena of protection of life and personal liberty of the Constitution”.¹²⁹

The 262nd Law Commission report also dealt with the problems caused due to prolonged delay and the loopholes regarding the execution of death sentence. “Lack of infrastructure, obsolete investigation methods, an overworked police department, inadequate prosecution, and insufficient legal assistance are just a few of the issues plaguing the system. Since the death penalty works within this framework, it faces the same institutional and systemic challenges. As a result, the execution of capital punishment remains fallible and susceptible to violence. It was also decided that the use of mercy powers under Articles 72 and 161 of Constitution of India has failed to serve as a final check against a lack of justice in the imposition of the death penalty

¹²⁸ Supra note 3.

¹²⁹ Ram Prasad Sharma v. State of Karnatka, AIR 1998 SC 112.

the executive's use of mercy powers has long been criticized by the Supreme Court for flaws and abuses. The Law Commission also observed in its report that death sentence becomes unacceptable when even the exercise of mercy powers is tainted by major procedural flaws and a lack of mental applicability. Consequently, the demoralizing and repressive effects of detention conditions laid down on the inmate, such as solitary confinement, as well as contemporary harsh prison conditions, exacerbate the death penalty problem. Death row has become an unfortunate and distinguishing characteristic of India's death penalty apparatus, which violates Article 21's prohibition on humiliating and unreasonable punishment. A capital punishment is a judicial process in which the state sentenced a person to death for committing a crime. A death sentence is a court order that someone should be executed in this way, while execution is the actual method of executing someone in this manner. Capital offences are crimes that can result in the death penalty”.¹³⁰

Justice deferred is justice withheld; Delay is therefore considered a negative aspect of the legal system. Delay in bringing justice to the citizens of the State would result into rendering of the term "justice" meaningless and as a consequence of which it would make hollow to the citizens. Prompt justice has long been considered a fundamental human right. Art 72 and 160 place the power to commute to the President and the Governor, respectively, have death sentences in their custody. The main rationale for giving them this authority is to repair any perceived judicial faults, because no human system of judicial administration is perfect. “The mental pain imposed on the accused during the period of delay in executing out a sentence of death should be taken into account when deciding whether to commute the sentence to life term”. The SC has consistently ruled that the long delay in imposing out the death penalty, which causes a dehumanizing effect on the executed inmate, is unconstitutional. Impact that contributes to the torment of alternating between hope and despair, makes the capital punishment too inhumane to be carried out, and thus entitles the prisoner to a life sentence.

Some other crucial or important phenomena which is introduced or developed by the S.C in context of the punishment of the death sentence can be explained as when a situation persists in which there constitutes long delay in the completion of process of

¹³⁰ *ibid.*

capital punishment then it would amount to ‘unjust, unfair and unreasonable’ phenomena regarding capital punishment. Any delay which is unexplained and which amounts as lengthy in the completion of process of capital punishment is considered as ungrateful and would infringe the principles that are enshrined in the provisions of Article 21¹³¹.

S.C in case of “Vatheeswaran v. State of Tamil Nadu¹³²” out rightly held that hindrance which constitutes the long time of 2 years in the imposing the sentence of death would make the process of execution of death sentence as unreasonable”. If the abovementioned situation would continue to persistent then as per this particular case law the causes of delay would not be taken into consideration. In this particular case and as the case maybe, the relevant or respective relief could be considered as to the commutation of punishment from capital punishment of the punishment of life term imprisonment by the respected courts. But in *Sher Singh v. State of Punjab*¹³³, SC again took the matter into consideration and they rethought about the decision made in their earlier decision in the Vatheeswaran case. In this particular case, the convict Sher Singh was given punishment of death sentence in the year of 1978 and in the year of 1983 the convicted prisoner filled a writ petition in SC ,banking on the judgment given by Vatheeswaran case and further argued that in his case the period of delay in this case exceeded the time span of two years in execution of death sentence and hence such punishment should be commuted to life imprisonment. Later it was found in this particular case that when we look in detail upon the facts of the case that delay in the imposing of the capital punishment occurred due to the pointless petitions filed by him and his counsels. The apex court further held that the civilized world's jurisprudence has recognized and accepted that a prolonged delay in carrying out a capital punishment will render the penalty inhumane and degrading, and that a prolonged delay in carrying out a capital punishment is unquestionably a very important factor in deciding whether the sentence should be carried out. “The implication of Article 21 is that a prisoner who has been sentenced to years of living death has the right to approach the court and ask it to consider whether it is just and equitable to allow the death penalty to be carried out after all the suffering and torture he has undergone. It can be easily implied from the principle embedded in provision

¹³¹ *Earl Pratt v. Attorney General of Jamaica* [1994] 2 AC 1

¹³² AIR 1983 SC 361.

¹³³ AIR 1983 SC 465.

of Article 21 is that a prisoner who has been sentenced to years of living death has the right to approach the court and ask it to consider whether it is just and equitable to allow the death penalty to be carried out after all the suffering and torture he has undergone”.

In case of *Munawar Harun v. State of Maharashtra*¹³⁴, the apex court of India clearly rejected to change the decision of the capital punishment into the punishment of life term imprisonment although the death sentence was not completed for the time period of five years as it was concluded that the death row convict himself was himself responsible for this particular delay in the execution. Extreme delay is generally considered as a severe hindrance to the administration of justice, as evidenced by the Justice Department's delay in ruling on a mercy petition, in addition to creating emotional suffering to the condemned individual living under the prospect of death. Extreme delays in disposition of the petitions are a severe impediment to administration of justice, according to Justice Chandrachud, and such delays appear to shake people's confidence in the system of justice itself¹³⁵. Although, in case of *Javed Ahmed v. State of Maharashtra*¹³⁶ here S.C held that death row convict was of age of 22 years and the amount of delay in the imposition of his capital punishment was 2 years and 9 months. While deciding on the matter of commutation of capital punishment into the life term the behavior of the death row convict was taken into consideration as the behavior and the nature of the convict was pretty decent. After looking into the abovementioned particulars the SC of India commuted the capital punishments of the convict into the rigorous life imprisonment. There are typically two sections of a pause or the drawn out delay in the execution of punishment of capital punishment. The main segment or the perspective tends to the measure of time it takes the court to finish the procedures in the indictment, offer, further allure, and assessment techniques. The subsequent segment considers the time spent by the chief in practicing its right of clemency. Delays can occur as a result of the length of time it takes for death sentences to be confirmed. This is the main explanation for the delay in the execution of death row inmates. Other factors include the fitness of convicts who are awaiting execution, as they must be physically and psychologically fit when their sentence is carried out. Also, because of the extreme pain they experience during

¹³⁴ [1983] 3SCC 354.

¹³⁵ *ibid.*

¹³⁶ [1984] CrLJ 1909.

the whole process of being tried for a capital punishment the mental health of the awaiting prisoners is a doubtful matter. The S.C has clearly stated that any person who has been sentenced to death will benefit from procedural fairness, and that the constitutional rights of the given prisoner should not be abridged until the last breath of that person's life. Article 21 stipulates that every procedure that limits a person's liberty or right to life must be fair, just, and rational. Any prolonged pause in the process of deciding on a mercy petition by the executive, which in this case means the President, would result in mental torture for the convicted individual, and as a result, such a condition clearly violates Art 21 of the Indian Constitution.¹³⁷

In *Triveniben v. State of Gujrat*¹³⁸, here S.C of India through a 5 judge constitution bench addressed the issue of delay in the implementation of capital punishment . Justice Jagannatha Shetty while pronouncing the majority judgment on the behalf of majority held that: If the court wants to look into the complaint about the delay, it goes without saying that the subject must be listed and decided as soon as possible. The person who worries about the execution being postponed should not be subjected to any further delays. As a result, the matter must be resolved quickly and on a high priority basis. Unfortunately, the Supreme Court's dictum is not followed entirely. “It should also be noted that in the aforementioned *Triveniben* case, the Supreme Court's Constitution bench decided the legal issue of what would happen if the death penalty was not carried out on time. The Supreme Court's two decisions in the *T.V. Vatheeswaran* and *Sher Singh* cases were in dispute, so this Constitution bench was created to resolve the matter. Supreme Court in this particular case law further held that If a death penalty is not carried out within a reasonable time, the convicted person has the right to appeal to the Supreme Court under Article 32”. However, the only time period that may be considered when deciding whether or not to commute the capital punishment into life term imprisonment is from the date Apex Court's judgment is issued, i.e. when the judicial process is completed. When establishing the duration of delay after the final decision, time spent on applications for review and repeated mercy petitions at the request of the condemned individual will not be taken into account. The delay which could only be taken into account is the time it takes to process mercy petitions or delays that occur at the executive's request. “It is assumed

¹³⁷ *Dinesh Kumar Singh v. State of Chattisgarh*, AIR 1979 SC 222.

¹³⁸ [1989] 1 SCC 678.

that when mercy petitions under Article 72 or 161 are received by the President and Governor, they will be dealt with quickly. The Supreme Court can only look at the essence of the delay and the circumstances that followed after the execution was eventually upheld it would not have the authority to reopen the court's conclusions if the death penalty is eventually upheld by the judicial process. In deciding whether the sentence should be carried out or transferred to life imprisonment, the Indian Supreme Court, on the other hand, could consider the question of undue delay in light of all the circumstances of the case. To the degree that the decision in the aforementioned *Vatheeswaran* case did not lay down the correct law and thus to that extent that decision was overruled, the decision in the aforementioned *Vatheeswaran* case was held not to lay down the correct law and thus to that extent that decision was overruled".¹³⁹

It could be easily concluded that by the virtue of a "Supreme Court Constitution bench of five judges has already determined the legal issue of the delay in determining death penalty mercy petitions. Furthermore, the aforementioned Constitution bench decision was applied in case of *Jumman Khan v. State of U.P.*¹⁴⁰, where court held that the delay in imposition of the capital punishment in that case due to mercy petitions was not an undue long delay, and the Supreme Court refused to intervene in the execution of the death penalty". In case of "*Daya Singh v. Union of India*¹⁴¹, the S.C decided to commute the capital punishment to life term imprisonment due to a long delay of more than 2 years in ruling on a mercy petition in the absence of a fair explanation".

If a person has a chance to get or has any opportunity to get clemency, an individual can move toward the Governor or the President, according to the case. Be that as it may, now and again mercy petitions and review petitions are over and over documented by the convict or his family members, prompting a preposterous deferral, which ought not to be taken in consideration. "Because of a long postponement in the decisions of the legal executive, a sentenced individual must be given treatment on account of the torment which is psychological in nature then the death row convict would go through and then as a consequence to which, offender loses the desire to

¹³⁹ Ibid.

¹⁴⁰ [1991] 1 SCC 752.

¹⁴¹ [1991] 3 SCC 61.

live. There have been many instances on the occasion of which there have been circumstances where convicts on the death row, whose execution is being kept postponed endlessly in a real sense need to ask the authorities to do their sentence so their enduring can reach a conclusion”.¹⁴² It was deduced in the circumstance of realities of “Devender Pal Singh Bhullar and Anr versus State Of NCT Of Delhi”¹⁴³, a Khalistani psychological militant who has been mulling in Tihar Jail for as far back as couple of years has created schizophrenia because of mental torture as his execution has been over and over delayed. However long the execution is deferred, the resolution of the detainee who is condemned to death will go down at last driving him to a state where he needs to at last ask to the authorities to complete his execution. Because of the limit postpone looked by him in conviction on 31 March 2014, the Supreme Court drove his capital punishment to life Imprisonment on the grounds of exorbitant deferral in choosing his mercy petition and his experiencing schizophrenia. Excessive delay entails the execution of a convicted man without due process of law”. “The Supreme Court ruled in the case of Maneka Gandhi”¹⁴⁴ that the term procedure defined by law in Art. 21 would mean a fair, just, and rational procedure”. This interpretation has led to the contention that, while a death penalty may be justified, it may not be carried out if subsequent events render it harsh, unjust, and unfair. The inordinate delay in the implementation of the capital punishment is of particular concern because the penalty has a negative psychological impact on the minds of those who have been sentenced to death. As a result, excessive delay in carrying out the capital punishment has constitutional consequences. The Apex Court of India summarized that the broad scope of Article 21 clearly demanded that the process be just, equitable, and appropriate at all stages of the conviction, sentencing, incarceration, and sentence execution. And a properly imposed death penalty may be overturned if subsequent circumstances rendered the execution unjust and unequal. The court, however, did not recognize the two-year rule imposed in the Vatheeswan case. It deemed the setting of this time limit unsatisfactory and held that no hard and

¹⁴² Suhrith Parthasarathy, Goutham Shivanskar, Condemned to die, but not to wait, The Hindu (18 May,2016)<<https://www.thehindu.com/opinion/lead/condemned-to-die-but-not-to-wait/article5653592.ece>. (2002) 5 SCC 234> accessed 15 may2022

¹⁴³ [2013] 6 SCC 195.

¹⁴⁴ Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 62.

fast rule could be established about the length of delay that would enable the condemned person to invoke Art 21 and have his death sentence overturned.¹⁴⁵

At the same time, Article 14 prohibits the executive from exercising arbitrary discretion. In *State of West Bengal vs. Anwar Ali Sarkar*¹⁴⁶, Supreme Court ruled that the law was unconstitutional because vague words like "Speedier Trial" gave the government broad power, potentially leading to arbitrary classification. As a result, the risk of arbitrariness and prejudice in the current system is unconstitutional. Apex court of India concurred that each sentenced individual reserved an option to seek after all cures legitimately open to him to dispose of capital punishment. And yet the court was additionally mindful that it was not difficult to overcome the finishes of judges. In this vein, he argued that the deferral induced by the denounced himself should not be included when determining the recompense for capital punishment. The court went on to say that postponing the execution of capital punishment was not the only consideration in deciding whether or not it should be replaced. Different variables had to be considered as well when thinking about this issue. "If an individual's liberty is taken away because of a practice that isn't sensible, logical, or just, this is a violation of his Fundamental Rights under Article 21, and he will be qualified to sanction such a vital right and protect his delivery. Clearly, the methodology defined by law for depriving a person of his liberty cannot be sensible, rational, or easy unless that system ensures an expedient preliminary for ascertaining that individual's fault. While it is clearly considered to be true that Article 21 expressly guarantees the right to a speedy trial, it is also true that the judicial system has become notorious for its delays. As a result, it is important to take action to ensure that cases are tried quickly, but this should not come at the expense of society's protection. Article 21 of the Constitution guarantees the right to life and liberty, which includes the right to a speedy trial. The right to a speedy trial can be an explicitly guaranteed fundamental right to a fair trial, which has been held to be part of Article 21 of the Constitution's right to life and liberty".¹⁴⁷ Additionally, certain set or group of rules must be set down concerning the execution of execution orders inside a predetermined time limit. In the event that there is an unequivocal postponement (besides in instances of dread), at that point provisions should be made whereby the

¹⁴⁵ *ibid.*

¹⁴⁶ AIR 1952 SC 233.

¹⁴⁷ *Ram Prakash Yadav v. State of Uttar Pradesh*, AIR 1973 SC 239

state of mind of the convict, his capital punishment can be changed over into life detainment.

“Torture, cruel, inhuman, or degrading treatment or punishment was strictly prohibited in Article 7 of the ICCPR (International Covenant on Civil and Political Rights)”.¹⁴⁸ SC in case of *Shatrughan Chauhan & Ors v. Union of India*¹⁴⁹ expeditiously held that the unnecessary, inordinate, and excessive delay in the imposition of capital punishment, as the case may be, is unquestionably torture. “In *Shatrughan Chauhan* case, a three-judge bench of the Supreme Court, led by then-Chairman of the Supreme Court P. Sathasivam and Justices Ranjan Gogoi and Shiva Kirti Singh, examined the supervening situations of each of the 15 death-row convicts before it to reach a coherent decision. The executive orders refusing their mercy requests were contested by all 15 convicts because the subsequent incidents, which were critical to the decision, were ignored. The right to life is established in Article 6 of the ICCPR, of which India is a member, as an innate, inalienable right that cannot be taken away arbitrarily. Article 7 of the Universal Declaration of Human Rights guarantees equality before the law and equal treatment under the law to all citizens”.¹⁵⁰ This rule of law is violated by any unequal treatment or incitement to discrimination. This suggests that the absence of an acceptable protocol, with the potential for nonsensical differential care, is in breach of international standards. If we look deep into the facts in this particular abovementioned case, the petitioners alleged five supervening causes in front of the court: delay, madness, isolation, per cause am choices, and procedural breaches. The seat concurred with the petitioners that the rule of happening episodes emerged from the law developed by the Supreme Court in the instances of *Vatheeswaran* and *Triveniben*. The expression "judicial review" isn't determined in these choices, and the death sentence have been driven exclusively as a result of mediating occasions like deferral, according to the bench. The bench of the apex court of India in case of *Shatrughan Chauhan* made it clear that, the capital punishment must be carried out in accordance with the constitutional requirement and without violating constitutional values, just as it was legally enacted. “The *Shatrughan Chauhan* bench, contrary to the Centre's claims in a recent Supreme Court application, held that the right to seek mercy under Articles 72 and 161 is a constitutional right,

¹⁴⁸ International Covenant on Civil and Political Rights, art.7, (March 23, 1976, 999 UNTS 171).

¹⁴⁹ [2014] 3 SCC 1.

¹⁵⁰ *Shatrughan Singh Chauhan and another Vs Union of India & ors.* [2014] 3 SCC 1.

not a matter of the executive's whims". The bench in this case further reasoned that "every constitutional obligation must be carried out with due care and diligence; otherwise, judicial intervention is the command of the Constitution for upholding its values." Owing to the undue and lengthy delay in the execution of the capital punishment and the completion of the mercy petition process in case of Shivaji Jaising Babar v. State of Maharashtra¹⁵¹, capital punishment was converted and commuted into the punishment of life imprisonment.

In case of, Jagdish v. State of Madhya Pradesh¹⁵² The issue of sentence is of utmost importance, and it is the issue that the knowledgeable appellant's attorney has advocated most passionately. In light of the circumstantial evidence, it has been argued that the death penalty was not appropriate. "Additionally, there seemed to be some indications that the appellant was mentally ill, and the enormity and senselessness of the murders also seemed to support this theory. Additionally, the killings also suggested that something unusual had occurred on the day in question. Counsel also has argued that the death sentence should be remitted to life in prison because the killings happened in 2006 and because the appellant has been facing the death penalty for more than three years, which is itself a punishment. He has also cited a few of the aforementioned rulings. The enormity of the crime necessitates that the society's cry for justice against such a criminal be heard, and the court would be failing in its duty if it failed to impose an adequate punishment for a crime that had been committed not only against the individual victim but also against the society to which the criminal and victim belonged".

"The court underlined in a clear and unequivocal opinion the brutality and torment of a prisoner on death row induced by the excessive delay in resolving his petition. The court referenced a ruling from the U.S. Supreme Court that stated, The cruelty of capital punishment lay not in the execution itself and the anguish consequent thereto, but rather in the degrading consequences of the lengthy confinement prior to execution. In the ineluctable, protracted period between the imposition of the sentence and the execution itself, the thought of impending execution exacts a horrifying toll. There is no maximum time frame specified by the Constitution for the resolution of a mercy petition".

¹⁵¹ AIR 1991 SC 2147.

¹⁵² criminal appeal no. 338 of 2007.

“The Madras High Court stated that the 11-year delay in the death penalty's execution was a breach of fundamental rights in and of itself, making it illegal, in Rajiv Gandhi Murder Case. The needless delay violated Article 21. The death penalty becomes immoral, illegal, and unconstitutional when there is a delay, unless it is adequately justified or explained. In this case, the eventually rejected the three death row inmates Murugan, Santhan, and Perarivalans mercy requests on August 11, 2011, after an inordinate delay of 11 years. This is just one example of the cruel, outrageous, and arbitrary ways in which the government delays mercy requests from death row inmates for years on end. The courts of civilized nations have acknowledged and recognized that a protracted period of time before a death sentence is carried out might render the penalty inhumane and degrading”.¹⁵³

¹⁵³ State v. Nalini , [1999] 5 SCC 253.

<p>1. In <i>Vatheeswaran v. State of Tamil Nadu</i>¹⁵⁴</p>	<p>“Here in this case he had served 11 years and 10 months in prison and had received a death sentence in February 2002. His proposal was referred to the Governor in question by the President's office in December 2003 for review in accordance with Article 161. In a decision dated Sep. 30, 2004, the Governor declined to use his authority after carefully examining the numerous court rulings. As a result, the President was once more in possession of the petition. In the end, the President didn't make a decision regarding the mercy request until March 2013. Court stated that the case which constitutes the long-time of 2 years in the imposing the sentence of death would make the process of execution of death sentence as unreasonable”.</p>
<p>2. In <i>Sher Singh v. State of Punjab</i>¹⁵⁵</p>	<p>“In this particular case, the convict Sher Singh was given punishment of death sentence in the year of 1978 and till the year of 1983 his death penalty was not executed then the death row convict filed a writ petition in the apex court banking on the judgment given by <i>Vatheeswaran</i> case”.</p>

¹⁵⁴ AIR 1983 SC 361.

¹⁵⁵ AIR 1983 SC 465.

<p>3. In Javed Ahmed v. State of Maharashtra¹⁵⁶</p>	<p>“The S.C held that death row convict was of age of 22 years and the amount of delay in the imposition of his capital punishment was 2 years and 9 months. While deciding on the matter of commutation of capital punishment into the punishment of life imprisonment the behaviour of the death row convict was taken into consideration as the behaviour and the nature of the convict was pretty decent. After looking into the abovementioned particulars the bench of the supreme court of India commuted the death sentence of the death row convict into the rigorous life imprisonment”.</p>
<p>4. In Triveniben v. State of Gujrat¹⁵⁷</p>	<p>“Here session court gave him death penalty in 1981 After the HC and SC rejected the appeal, a mercy petition was submitted to the Governor under Article 161 of the Indian Constitution, and then to the President of India under Article 72. Following these submissions, the Supreme Court stayed the execution of the death sentence and ordered the writ petition to be heard concurrently with other writ petitions. On February 7th, 1989, the Supreme Court denied the writ petition”. So here it took 8-9 years to decide the mercy petition and writ petition so it cause delay in execution of death sentence.</p>

¹⁵⁶ [1984] CrLJ 1909.

¹⁵⁷ [1989] 1 SCC 678.

<p>5. In Devender Pal Singh Bhullar & Anr vs State Of NCT Of Delhi¹⁵⁸</p>	<p>“He received a death sentence in 2001, and after the court denied his request for a review, he has filled a mercy petition to the president in 2003. Eight years later, in 2011, the president dismissed the mercy petition. The Supreme Court commuted the man's death sentence to life in prison on March 31, 2014, citing the excessive delay in deciding his mercy petition and his schizophrenia-related suffering. he has been in Tihar Jail for the past few years and has been suffering from schizophrenia as a result of mental torture because his execution kept being delayed. The death row detainee's willpower will inevitably deteriorate as the execution date approaches, leaving him in a position where he must finally ask the authorities to carry out his execution”.</p>
<p>6. In Shatrughan Chauhan & Ors. v. Union of India¹⁵⁹</p>	<p>“The petitioners were given a death sentence after being found guilty of murdering five members of the first petitioner's brother's family on December 19, 1997, in accordance with Section 302 of the IPC. Their conviction and death sentence were upheld by the Allahabad High Court on February 23, 2000. On March 2, 2001, the Supreme Court dismissed their criminal appeal. On March 9, 2001, they submitted a petition for compassion. The President denied the mercy pleas on February 8th, 2013. The petitioners were only made aware of this by news reports and had not yet received any written notification regarding it. In this case, the court ruled that the death penalty was appropriate and that the lengthy delay in execution was a</p>

¹⁵⁸ [2013] 6 SCC 195.

¹⁵⁹ [2014] 3 SCC 1.

	crucial mitigating element in the commutation request”.
7. In Rajiv Gandhi Assassination Case ¹⁶⁰	“The Madras High Court stated that the 11-year delay in the death penalty's execution was a breach of fundamental rights in and of itself, making it illegal, in Rajiv Gandhi Murder Case. The Indian Constitution's Article 21 was broken by the unnecessary delay. The death penalty becomes immoral, illegal, and unconstitutional when there is a delay, unless it is adequately justified or explained”.
8. In State vs Mohd. Afzal And Ors ¹⁶¹	"He has been sentenced to death for his involvement in the terrorist attack on the British Parliament in 2001, and he has been there for almost five years now after the Supreme Court rejected his appeal on August 5, 2005. His death sentence, which was scheduled to be carried out on October 20, 2006, was postponed by the Indian government when his family petitioned the President for clemency. In 2013, a decision about the clemency petition was made. He was suffering alone and in solitude in the interim. The death-row phenomenon, which combines physical and emotional anguish with isolation for criminals, is in and of itself a brutal punishment. In civilized society, prolonged suffering characterized by swings between hope and despair, the agony of uncertainty, and the effects of such suffering on the mental, emotional, and physical integrity and health

¹⁶⁰ State v. Nalini , [1999] 5 SCC 253.

¹⁶¹ [2003] 71 DRJ 178.

of both the prisoner and his family should not be tolerated”.

CHAPTER 5- REASONS FOR DELAY AND ITS EFFECT AND REMEDIES FOR BETTER EXECUTION

5.1. Reasons for Delay

"For the reasons why there are delays in execution, the delay in the investigation must be addressed first in order to put the issue in the appropriate perspective and come up with solutions to the problem. The judiciary is frequently blamed without understanding the true causes of delays, even if it is not responsible for many of them in the eyes of the public. The judiciary, on the other hand, keeps quiet and avoids informing the public that some delays are out of its control". As a result of the current situation, the judiciary is expected to reflect on the delays that are attributable to it and zealously take the necessary steps to clean house. In light of this, some crucial corrective actions that the court must take are underlined. These actions may directly or indirectly affect the investigation and prosecution of powerful public figures.

Pre-trial delay

1. The police role: Police involvement plays a significant impact in the postponement of the death sentences execution. There are some crucial elements of police activity they are as follows:
 - Police inaction and indolence in registering the initial investigation reports and starting the investigation in a serious manner for a number of reasons. This is true despite the fact that police manuals stress the importance of a quick inquiry.
 - They are either reluctant to pursue investigations against powerful people or they feel pressure not to move quickly, especially if the accused is a member of the ruling party or in a position of authority. When the accused are such individuals, they develop a scared disposition.
 - "Corruption within the police station is slowing down the timely and complete investigation". Additionally, there is a dearth of staffing at the police stations, and the officers lack the desire to behave impartially.
 - There is no internal machinery to adequately check this before the FIR is not registered within a reasonable amount of time or the investigation phase is delayed.

- There seems to be no timely appropriate exercise to improve investigative skills. Neither intelligence network deserving of the name can gather information on violence and corruption and implement preventative measures.

2. Recordkeeping and Investigation Quality

- Police are frequently unable to conduct successful investigations because they lack current tools like cameras, video technology, forensic science laboratories, etc. There aren't many labs, and there isn't even one at the district level that the investigating Police can use right away. Furthermore, it is well known that police departments in many States lack forensic and cyber professionals. As a result, the police mainly favor oral testimony rather than focusing on circumstantial and scientific evidence.
- The witness statements are not examined and recorded with enough attention and effort. In this sense, promptness is also observed to be lacking.
- The lack of a computer system, a lack of employees with the necessary skills, a lack of clear instructions, or any one of these factors prevents the computer from receiving the recorded information right away.
- The charge-sheets are not written with enough care and time. "The incomplete charge-sheets or charge-sheets without accompanying annexures frequently cause procedures to be delayed. Usually authored by a Writer at the Police Station, this important document is not thoroughly reviewed by the Station House Officer". The "Writer" assigned to busy Police Stations are overworked and barely have time to spare.

3. "Delay under the trial

- "Delay during trial The Police is not making serious attempts to locate and bring the missing accused to justice. The police now place the least importance on carrying out warrants for a variety of real and fictitious grounds.

- The delays by this reason are becoming commonplace in situations where there are several accused. The situation is made worse if the accused are residing outside of the District or the State.
 - Police frequently default, even investigation officers, and fail to ensure that prosecution witnesses show up on time. Trials are frequently delayed when official witnesses fail to show up.
 - In order to delay the trial or give the accused person leverage to influence the witnesses, one or both of the attorneys representing the accused will ask for adjournments without providing sufficient justification. The attorneys use the court's overwhelming workload against it to push for adjournments. Frequently, the witnesses are forced to leave court without being questioned. On occasion, the prosecution will request a continuance without first notifying the defense attorney for the accused.
 - Judges failing to implement efficient case management strategies, such as setting up suitable time plans, guaranteeing trial continuity, and handling the attorneys with firmness and sensitivity. Additionally, some judges have a propensity to become comfortable once they reach the required number of disposals per month.
 - Too few courts, particularly in certain large States.
 - “The Insufficient staffing levels and a poor hiring procedure”.
 - The High Court lacks an efficient system for identifying old cases, particularly Session cases, and regularly taking the necessary corrective action.
4. Adjournments: A litigant's difficulty in receiving justice on time starts at the sessions Court level. “Every wise individual does his best to avoid knocking on the door of the Court since the District Courts' procedures are so cumbersome and expensive. There are several reasons why cases in the Sessions Courts take longer to be resolved than they should, but case adjournments are by far the biggest one. One side always seeks to postpone the resolution of issues; this party will use all means at their disposal to do so. The HC ought to publish clear guidelines outlining the requirements and

window of time for granting adjournments. No lawsuit should be postponed more than twice; on the third, the court should eminently set the hearing date. The judge who adjourns a peremptorily tried matter should note the reasons for the adjournment and make sure that the case is resolved within a month of the date it was established for peremptory hearing. A peremptorily fixed case should not be adjourned except in exceptional situations”.

5. Public Prosecutors role:

- Vacancy in the Public Prosecutor's office cause one Public Prosecutor to shuttle between Courts, disrupting the work of the Court. There is no reliable system in place to monitor the Public Prosecutor's operations. Either the hiring procedure is flawed or it has been politically controlled. Many States have omitted or changed the requirement in Section 24(4) of the Criminal Procedure Code that the District Magistrate draft a panel of names suitable for appointment as PPs/Additional Public Prosecutors for the district in conjunction with the Sessions Judge. In many States, the appointment of PPs and Additional Public Prosecutors is entirely up to the State Government.
- Between both the Police and Public Prosecutor, there is a lack of cooperation. Public prosecutors rarely have access to involved Police Officers' assistance.

6. "Role of Judges”:

- “Absence of timeliness, carelessness, and inability to control over case files and court processes, as well as attending social and other events during working hours, contribute significantly to delays in the resolution of cases," the statement reads”¹⁶².
- Some judges are extremely lenient when it comes to postponements.

¹⁶² CJI A.S. Anand, Indian Judiciary and Challenges of 21st century, The Indian Journal of Public Administration, (July-Sept 1999) vol XLV No. 3, p 300 .

- Because some judges attend court sessions without reviewing case files, it takes a lot of time for the attorneys to lay out the facts of the case and the pertinent legal issues. As a result, they dispute for a long time, wasting valuable "Courts Time." Judges need to significantly better themselves.
7. "Role of Lawyers": The practice of law plays a crucial part in the administration of justice. These professionals' dedication has the power to completely alter the situation. Unfortunately, they are also to blame for delays brought on by a variety of factors.
- To impress their clients, lawyers engage in protracted oral arguments even though they lack precision.
 - Postponements on flimsy grounds are a common practice among lawyers. The causes can be anything from a distant relative's death to family gatherings. The procedure is more expensive for the court and the parties involved with each adjournment, but the attorneys still receive paid for their time and attendance. Most of the time, attorneys are preoccupied in another court. As a result of the fact that they have more cases than they can handle, adjournments are routinely requested.
8. "Procedural regulations' complexity and rigidity: There are two categories of laws: procedural laws and substantive laws. Substantive law establishes the rights and obligations. However, the procedural laws can be used to enforce these rights and obligations.
- "The majority of these statutes are poorly written and date back over a century. Since they cannot be eliminated, the only option is to restructure them because they have grown to be the main obstacles to the swift resolution of cases. Through its several findings, the Indian Law Commission has brought these challenges to light. Arguments about jurisdiction, cause of action, adequacy of notice, plaint revisions, and other procedural issues take up a lot of time. Additionally, the language employed in the Bare Acts is highly

technical and complex, making it difficult for the average person to understand. It is necessary to simplify procedural laws because, no matter how good a substantive law may be, it cannot function effectively without efficient procedural regulations. These Acts contain a number of clauses that offer numerous chances to postpone case resolution. Execution is likely to be returned unsatisfied even after the initial verdict because there is a chance to file appeals, which adds to the delay. All of this causes delays”¹⁶³.

9. Ratio of Judges to Population:

"The fact that there are far more judges than people is another factor contributing to the terrible state of affairs. No of how knowledgeable they are, humans have a finite amount of work capacity. The judges agree. Our country has a population of over 100 million people, however there are only 17,615543 judges to serve this size of population. As a result, there are 10.5 judges for every million people in the population. It has increased to 13 judges per million from the anticipated 50 judges per million of the population”¹⁶⁴.

¹⁶³ The Code of Civil Procedure 1908, the Code of Criminal Procedure 1973, and the Indian Evidence Act 1872 are the principal procedural laws .

¹⁶⁴ R.C. Lahoti , Envisioning Justice in the “21st Century” (2004) 7 SCC Journal p 13.

Delay after the post-trial:

Execution delays are also conceivable post-trial, or after the proceedings are over. So some of them are as follows

- The prayer for clemency to the governor or president: The State and Central Govt. Have the authority to commute death sentences after they have been formally affirmed by the court. “In contrast to judicial power, this power has the greatest range and is unrestricted, with the exception that it must be legitimately exercised. Morality, ethics, the public interest, and policy concerns are inherently appropriate for the use of clemency powers. These topics are frequently foreign and irrelevant to judicial adjudication. These powers exist because it is sometimes necessary to relax and deviate from the rigid letter of the law in order to achieve a really just conclusion in the broadest sense”. In other words, the executive's ability to remit a death sentence serves to correct flaws in the rigid execution of the law. Because human lives depend on the correct use of compassion powers, it is crucial in countries that still practice the death penalty. Every person has the right to request the government to commute any death sentence because the state's power to take life emanates from the people and executions are carried out in their names. Clemency powers, which include the ability to pardon an offender or lessen or change the punishment imposed, derive from analogous ones that have been vested in the sovereign since all of recorded history. However, today's democratic states consider their exercise to be a solemn constitutional duty rather than a private act of grace as it was in the past”¹⁶⁵. The Indian Constitution explicitly recognizes the right to clemency. These powers are granted to the President by Article 72, while the Governors of the States are granted equivalent authority by Article 161 .

Due to several flaws, the time restriction for requesting mercy is not fixed, which causes the execution to be delayed. After the trial process, many years went by without an execution while a mercy appeal was still waiting

¹⁶⁵ Epuru Sudhakar v. Govt. of A.P., [2006] 8 SCC 161.

5.2. The effect of delay in execution:

1. Greater suffering than real execution: More often than the actual execution, the pain of waiting to be put to death kills and injures the convict. “Additionally, the executive needs a consultant who can bring a different set of values to bear on the situation and whose independent political accountability can give the president some measure of protection from public criticism”. This advisor should also have some degree of independence from those who handled the prosecution of the underlying criminal case.
2. Double Jeopardy: Nemo debet vis vexari is a common law principle that states that no individual should face punishment twice for the same offense. “The accused is protected from double jeopardy under Article 20(b), but there is no provision prohibiting the twofold punishment that the convict countenanced for delaying the execution of the death penalty”.

The effect on the victim of a delay in execution:

1. Injustice to the Victim: The victim goes to court to seek justice, but if there is such a long delay, the victim loses faith in justice . Delay causes unfairness to the victim.
2. Mentally torment: During the course of the case, both the accused and the victim experienced mental torture. The victim feels daily agony as a result of the police investigation, judicial proceedings, witness testimony, lawyer interrogation, and media attention .
3. Zero Compensation: No compensation was given to the sufferer for the daily suffering they endured until the lawsuit was resolved.
4. Social stigma, particularly in situations of sexual assault: Victims have various issues that are not their fault, “such as the difficulty the victim has in seeking justice and carrying on with normal life in rape situations. She hears remarks about the accident everywhere she goes”.

5.3. Remedies for better execution

The alarming scenario begs out for prompt solutions. These ought to be worthwhile and functional. These reforms should be implemented so that the average person can obtain quick and effective justice.

“The implementation of judicial accountability and independence should also be given high priority. Numerous law commission studies have argued in favour of a wide range of specific and useful judicial reforms. However, not much has been done to stop this calamity from getting worse. To begin with, the government, judges, attorneys, and litigants must all have a strong desire to eradicate these flaws from our legal system”¹⁶⁶.

Certainly, it is not feasible to build more courts due to financial constraints. “At any level, it costs a lot of money to start a new court. The government is unable to pay the frequent and significant costs associated with hiring full-time administrative and judicial employees for new courts and constructing infrastructure. There is a solution if the current court could operate in two shifts with the same infrastructure, using the services of retired judges and judicial officers who are renowned for their integrity and ability and who are physically and mentally fit. This would greatly improve the situation and offer the litigants a great deal of relief. There was a quick and painless way to eliminate the accrued arrears”¹⁶⁷.

There are some following ways we should adopt:

1. Technology implementation in police stations:
 - establishing a network between all local police stations and courts
 - Police stations will soon be equipped with digital videography. There should be a requirement for videography at the time a FIR or complaint is received. The oldest iteration of the informant will become clear during this approach. Videography should be required throughout the assessment of the crime scene and the retrieval of tangible items .

¹⁶⁶ Law Commission of India, 125th report of has recommended introducing shift system in the Supreme Court to clear backlog of cases by deploying retired judges (May 11,1988)

¹⁶⁷ P.P Rao, Access to justice and delay in disposal of cases published Souvenir on in All India Seminar on judicial reforms with special reference to arrears of court cases held on (29th& 30th April 2005)

- Interrogation Rooms: “So every local police station should have a secure interrogation room with dual audio-visual recording capabilities, one camera focusing on a close-up of the witness or suspect's face and the other providing a wide-angled view to demonstrate that there was no coercion to change the witness or suspect's statement. All suspect and witnesses' statements should be legally mandated to be recorded in these mirror-lined, windowless interrogation rooms. The issue of considering the statements of the accused and witnesses questioned in secure interrogation rooms as admissible deserves careful thought”.
 - Forensic mobile vans: Every District Offices should at the very least have mobile forensic vans available so they may travel to the crime scene with the homicide squads. In addition to the capabilities of removing finger prints and blood samples from the scene of the crime , the mobile forensic vans should be equipped with equipment that allows for instantaneous blood testing and on-the-spot fingerprint comparison.
 - Charge sheets from CDs: Wherever such facility exists, it should be mandated that all charge sheets be submitted electronically on a non-rewritable compact disc. “To achieve this, Section 173 of crcp may use a relevant amendment. Police may be asked to provide as many CDs as there are defendants listed on the charge sheets”. This will shorten the lengthy delays seen in Court of Sessions-triable matters.
2. Improving and enhancing the infrastructure of criminal courts:
- Carefully planned court systems: “It is imperative that the High Court provide for a uniform design of the criminal court compound, which shall, among other things, take care of separate quarters for witnesses, under trial convicts, Police officials, attorneys, and prosecutors”.
 - Summons/ warrants service through emails: All court notifications, summonses for appearance, and summonses for the production of documents may be served through email. The police station is required to report compliance with regard to service via email on a weekly basis. In the case of official witnesses, the summons can be delivered through email or, if the email

ID cannot be determined, it can be forwarded to the head of office, such as the District Medical Officer who has administrative control over the hospitals, in order to prevent delays in service . For delivery to the convicts who are awaiting trial, all bail orders must be sent to the jail by email.

- Evidence recording: To enable the appellate courts to use the recordings to determine the precise statement made by the witnesses, every criminal courts should be equipped with audio or video recording devices using tamper-proof technology.
 - Centralize Registry: “Instead of retaining separate records for each court, all criminal courts housed in a single or close complex must have a consolidated record room. The centralized record-keeping system will guarantee that the pertinent portion of the file is presented to the relevant court as and when necessary”.
3. There is an urgent need to fill current openings and create new positions: “The speedy filling of judge vacancies in the court must be accorded top priority. The law commissioners examined the issue of understaffing in the judiciary in their 120th report, and the Supreme Court ruled on it. The High Court was authorized to have 877 judges, of which 593 were actively serving. This left 284 vacancies. The number of subordinate judges who were sanctioned to serve was 15917, while the number of active judges was 12524, leaving 3393 vacancies. We must cultivate a culture of zero or almost zero vacancies”¹⁶⁸. Therefore, there is a pressing need to fill open positions and create new ones. “In the All India Judges Association case¹⁶⁹, the Supreme Court ordered that there should be 50 judges for every million people, in accordance with recommendations made by both the Law Commission of India in its 120th Report¹⁷⁰ and the Parliamentary Standing Committee (Rajya Sabha) in its 85th report¹⁷¹. The Court observed that there were only 13 sanctioned judges for every million people at the time”.

¹⁶⁸ CJI Justice K.G Bala Krishnan: Efficient functioning of Indians Justice delivery System (2007)4 SCC 19

¹⁶⁹ AIR 2002 SC 1752

¹⁷⁰ Manpower Planning in Judiciary: A Blueprint (31st July, 1987), para 9

¹⁷¹ Law’s Delays, Arrears in Courts (December, 2001)

4. Limitations on Adjournments: Only emergencies and extreme instances will be granted an adjournment. A well-known lawyer usually handles numerous cases each day that require him to appear in different courts. As a result, he is forced to focus on one or two cases while asking for postponements on others.
5. Special courts: In cases involving capital offenses like “murder, gang rape, child rape, terrorism, kidnapping and murder, etc., special courts are frequently established. Special Courts established on ad hoc bases by the Governments also try crimes with interstate criminal, communal implications endangering societal security, or terrorist offenses. Crimes purportedly committed by powerful people in high positions during extraordinary circumstances, such as an emergency, were considered to be a justifiable reason to establish Special Courts. However, any general directive to establish Special Courts whenever prominent public figures are involved should be avoided, especially when evaluated from an Article 14 perspective. In addition to the accused having a powerful position in society, there should be special and extraordinary circumstances”.
6. Computerization: The Supreme Court's full backlog of cases has been computerized, making it possible to determine when a certain case will be heard from anywhere in the nation where the Supreme Court computer system is connected by satellite. Similar to this, “all Supreme Court decisions have been computerized, and you can access information about any of them by pressing a button in locations where the computer system is linked to a satellite. These are all marvels of the use of computers in the legal system”. There are numerous software floppies on the market that include case law digested by subject.

“Justice J.K. Mathur made several incredibly helpful recommendations regarding the usage of computers in courts with regard to management information systems. Although his ideas in his article Court Management- A Prospect published in the Allahabad High Court's Post Centenary Silver Jubilee Volume are obviously aimed for dealing with the High Court's arrears, the use of computers today is crucial at the District level”.

7. **Enhancing the Prosecution Machinery:** As has previously been said, the prosecution apparatus is in disarray. “For the Directorate of Prosecution to efficiently oversee the processing of PPs/APPs, it is necessary to grant it independent powers. The hiring/appointment process must be open and unbiased, based on qualifications and prior experience. Significant improvements must be made to their working circumstances. In-depth training, review sessions, and regular review meetings are required. It is crucial that open positions for PPs and APPs are filled right away”. Additionally, there is always a need to write new posts.
8. **Legal Assistance at all Phases:** Another concern is whether or not trial and early appeal stages should be the only times that people have access to legal aid. “Legal representation and assistance can be extremely helpful in preventing torture and other ill-treatment, which can lead to illegal confessions, immediately following an arrest as well as throughout remand and bail proceedings (particularly in cases where detainees are detained under particular anti-terrorism legislations where the law allows for long periods in police detention and confessions made to a police officer to be used as evidence)”. Furthermore, neither the state, which is responsible for ensuring the provision of such services, nor the Supreme Court, in its adjudication of specific cases, has adequately addressed the need for legal representation and legal aid during the preparation of mercy petitions and in filing writ petitions in the SC or the HC (after the appeals stage is complete).
9. **The right to be compensated:** There are a significant number of cases where the Supreme Court issued acquittals after an appeal, according to the current research of Supreme Court rulings. – “The Supreme Court may have expressed disappointment in acquitting people who had been wrongfully convicted, but it never mentioned how long they had been imprisoned—some of it on death row, where solitary confinement is common—or how much time they had spent behind bars”. This is notable in the judgments in the cases.

“In the case of Gambhir v. State of Maharashtra¹⁷², the defendant was found not guilty after serving more than seven years in jail, nearly three of which were spent in a death row”.

¹⁷² [1982] 2 SCC 351.

CHAPTER 6-RIGHTS INFRINGED DUE TO DELAY IN EXECUTION

“Prisoners in the jail authorities are held in captivity as a result of their breaches of a country's land rules, but their basic human rights, which are protected by several treaties and constitutional laws, must not be infringed upon at any cost. In prisons, basic human rights that are conferred on every person are routinely violated. They are forced to suffer in a crowded atmosphere in small jail cells with other inmates. Custodial rapes are on the rise in jails, where a person is confined for the sake of society's welfare but loses his or her dignity. Physical torture and the level of brutality inflicted on prisoners are intolerable, and it often results in what we refer to as custodial deaths”.¹⁷³

The S.C has emphasized that the prisoners, whether detained, under investigation, or convicted, continues to be a human being who is entitled to all basic human rights, including the right to life, as enshrined in the Indian Constitution. Whenever a person is declared a prisoner and his or her right to liberty is stripped away in compliance with the legal process, a jail may maintain his or her civil rights.¹⁷⁴ When they are behind bars, prisoners have certain liberties similar to those of a normal human being. There are no codified protections for prisoners in India. However, our cherished legal code has established a list of protections for inmates, which all institutions must adhere to. “It has been described time in memorial that the human rights are rights that all citizens have, regardless of their nationality, residence, sex, national or ethnic origin, color, faith, language, or other status”. Human rights are fundamental to us as humans, and we are all entitled to them fairly and without prejudice. Both of these privileges are intertwined, interdependent, and inseparable.¹⁷⁵

“Treaties, laws, customary international law, general principles, and other sources of international law, such as the Universal Declaration of Human Rights, are often used to articulate and guarantee universal human rights. International human rights law imposes obligations on governments to act in certain ways or refrain from acting in

¹⁷³ Moniksha Chatterjee, Prisoner Rights: India v. The World, Blog Ipleaders (May 12, 2020) <<https://blog.ipleaders.in/prisoner-rights-india-v-world/#:~:text=The%20prisoners%20who%20are%20in,be%20infringed%20at%20any%20cost.&text=They%20suffer%20human%20rights%20abuse%20while%20in%20jail>> accessed 15 may 2022

¹⁷⁴ State of Andhra Pradesh v. Challa Ramkrishna Reddy, AIR 2000 SC 2083.

¹⁷⁵ Sam Taylor, Prisoners' Rights, HG Legal Resources (Sept. 15,2016), <<https://www.hg.org/legal-articles/prisoners-rights-40930>> accessed 16 may 2022.

certain ways in order to promote and protect individuals' and groups' human rights and fundamental freedoms. In international human rights law, non-discrimination is a pre-requisite. The concept is contained in all major human rights treaties, and it serves as the basic and unique theme of several international human rights conferences, such as the Convention on the Abolition of All Types of Discrimination against Women. The theory extends to all in regards to all human rights and freedoms, and it forbids discrimination based on a seemingly endless list of factors such as sex, ethnicity, color, and so on. The theory of equality complements the principle of non-discrimination: It is made quite clear that all the human beings are born free and equal in dignity and rights. Furthermore, while we have the right to our own human rights, we must also respect the rights of others.”¹⁷⁶ Common liberties are those rights that are considered to play a key role to the human existence. Basic liberties are rights and possibilities for all people around the world in various situations. These rights ensure that man is free. A component of basic liberties is ensuring that rights are universal and unqualified. The most fundamental human desires and needs are recognized by these rights. Every nation should guarantee the fundamental liberties of its people. It is important to determine where human rights stand in each nation's constitution.

In case of *Charles Sobraj v. Supdt. Jail Tihar*¹⁷⁷, the apex court of India held that the apex court has jurisdiction to intervene in prison administration when human rights, legislative prescriptions, or constitutional rights are stripped away or abridged, resulting in injury or harm to a prisoner.

The SC in case of *Sunil Batra v. Delhi Administration*¹⁷⁸, the court stressed the value of exercising powers under Article 32 that are unregulated by the rigid constraints of orthodox English writs. An individual who is imprisoned inherits some civil rights that are unalienable, and these rights cannot be abridged or stripped away from a person who is the country's vast scale, incredible diversity, and dual status as a developing country and an independent, secular, democratic republic make human rights in India a complicated problem. India's Constitution guarantees fundamental rights, including religious freedom. Freedom of speech, division of powers between

¹⁷⁶ Universal Declaration of Human Rights, art.1, (Dec. 10, 1948), G.A. Res. 217A.

¹⁷⁷ AIR 1978 SC 1514.

¹⁷⁸ [1978] 4 SCC 409.

the executive and judiciary, and freedom of movement both within and outside the country are all included in the clauses. The nation also has an independent judiciary and agencies that prosecute human rights abuses. incarcerated, even though they are convicted of a crime punishable by death. In India, the issue of human rights differs from society to society. Individuals' legal, political, economic, and social rights vary from country to country, depending on the laws that govern these rights for the people of that country.

In case of “Joginder Kumar v. State of UP and Ors”¹⁷⁹ the Hon'ble Supreme Court of India declared that the consistency of a nation's civilization can be largely determined by the methods it uses in the enforcement of criminal law." Human rights are broadening their reach. At the same time, the rate of crime is on the rise. The court has received allegations about human rights violations as a result of indiscriminate arrests. In this direction, a practical approach should be taken. The principle or the phenomena enshrined under the provision of “Article 21 of the Constitution guarantees personal liberty and, as a result, prohibits any inhumane, barbaric, or degrading treatment of anybody, whether a national or a foreigner. No one's personal liberty can be taken away from them unless they follow the legal procedure. This article also prohibits citizens from being prosecuted after they have committed an act that has been designated as a felony”¹⁸⁰. Prisoners, too, have the right to equality and equal treatment under the law, as mentioned in Article 14. Any excesses perpetrated by the police on an inmate are considered a violation of rights and should be brought to the attention of the legislature and judiciary. Articles 14 and 21 guarantee the right to consult with friends, family, and lawyers. These are fairly reasonable and non-arbitrary rights. And prison rules agree that inmates have the right to a fair interview with a legal adviser. Articles 14 and 21 also guarantee the right to free legal assistance. In case of “State of M.P. v Shyamsundar Trivedi”¹⁸¹, Justice V.R. Krishna Iyer said, Convicts are not deprived of all the constitutional rights which they otherwise possess by virtue of their conviction, and it was further held by the honorable bench of the apex court that If a person commits a crime, it does not mean that he or she has lost his or her humanity or that certain facets of life that define human dignity can be taken away from him or her”.

¹⁷⁹ [1994] 4 SCC 260.

¹⁸⁰ Selvi v. State of Karnataka; [2010] 7 SCC 263.

¹⁸¹ [1994] 4 SCC 395.

In the 2018 research report, *Death Penalty in India: Annual Statistics Report*, attempts were made to look at trial court death penalty sentencing, mental health of death row inmates, pro bono legal representation of nearly 65 death row inmates across India. “According to the death penalty study released in January 2018, there were 371 convicts on death row in India as of the end of December 2017, with the oldest case dating back to 1991, or 27 years ago. Despite this, only four death row inmates have been executed in the past 13 years, one of whom was a rapist of a young child and the other three of whom were accused of terrorist offences. Death row inmates continue to face lengthy delays in trials, appeals, and executive clemency, according to a 2015 Law Commission report on the death penalty”.¹⁸² As per the survey conducted by the Death Penalty Information Center, the total trial time for the 373 convicts on death row was 5 years. The trial time for 127 inmates was more than 5 years, and for 54 convicts it was more than 10 years. In our report, 80 percent of the prisoners who talked about their experiences in police custody confessed to having been tortured while in custody. Not only was the total astounding, but the techniques used by the police when torturing people was inhumane, degrading, and inflicted heinous acts of violence suffering, both physical and emotional. Any arrested person has the right under Article 22 of the Constitution to consult or be assisted by a lawyer of her choosing. But, according to interviews, such a clause failed to provide meaningful security to the inmates in our report. 185 (97 percent) of the 191 prisoners who exchanged information about having access to a lawyer at the time of questioning said they did not have one. 82.6 percent of the 185 inmates who talked about their time in detention said they had been tortured by the police¹⁸³. It could be easily concluded from the above mentioned data regarding the situation of death row convicts that the convicts of death row face immense difficulties while they are in the prisons and they face the problems caused due to the prolonged undue delay in executing the capital punishment. It can be clearly evident from the aforementioned set of facts that there is the presence of clear discrepancy in the laws related to the execution of death sentence of the convict who is subjected to the capital punishment by the respective court. The wait has been so long in some cases that a prisoner has spent 21 years on death row waiting to be executed. “Custodial deaths, physical violence/torture, police

¹⁸² Ramesh Singh, NLU Delhi: *Death Penalty in India: Annual Statistics Report 2018*; Project 39A, Latest Law Blogs (Feb.04, 2019) <<https://www.latestlaws.com/latest-news/nlu-delhi-death-penalty-in-india-annual-statistics-report-2018-project-39a-read-full-report/>> accessed 17 may 2022

¹⁸³National Law University Delhi, *the Death Penalty in India: Annual Statistics*, (4th Edn, 2019).

excess, degrading care, custodial rape, very bad quality of food, less water supply, poor health system support, failure to deliver prisoners to the court, unjustified prolonged detention, forced labor, and other problems found by the S.C have led to the apex court's decision”.

The perspectives of the offender's family are often overlooked in discussions about crime and punishment. If a sentence like the death penalty is enforced, there is very little room to consider the consequences for those who have no moral responsibility for the crime. As a culture, we have never really paid attention to the repercussions that families face when a member of their family is associated with the criminal justice system. The crimes for which death sentences have been levied offer the starkest image in this sense. Governments will approach the original sentencing courts for death sentences under the existing system for death warrants even before the inmate has exhausted any of her constitutional options. As a result, inmates have been brought to the point of execution only to be granted a stay of execution just hours before the scheduled execution. Now, the prisoner must be given fair notice of the proceedings and must appear in court with her counsel. In case of Shatrughan Chauhan¹⁸⁴, the SC ruled that there must be a 14-day delay between the issuance of the death warrant and the execution date, during which a final meeting with the family must be held. The officials of department of prison must ensure “that inmates are monitored and handled in compliance with the law, with due consideration for their human rights, and that their time in prison is used to prepare them for life after release. However, national laws and regulations governing prison administration are often obsolete and in need have changed”.¹⁸⁵

¹⁸⁴ *ibid.*

¹⁸⁵ Rama Murthy V State of Karnatka, [1997] 2 SCC 642.

CHAPTER 7-CONCLUSION AND SUGGETION

Main aspect which is needed to be focused while concluding this particular set of paper is that there is a presence of loopholes or lacunae in the legal aspect or the law related to the execution of death sentence. The constitutionality of delaying the whole process of the execution of death penalty has long been a point of contention. Many reasons in this particular set of field for and against the problem have been raised. The S.C of India also has also been split on the topic on many occasions. All of these decisions, it can be deduced, are considered to be of minor importance in determining the constitutionality of the matter. If the issue is examined critically in terms of the Indian Constitution and other laws and regulations, it is apparent that no specific time limit has ever been set for the case to be resolved. The President and the Governor of the India are not required by the laws of the legal system to decide on the mercy petition within a certain time frame. It would seem to demonstrate that a delay in implementation of the whole process cannot be used to question the constitutionality of a decision. Furthermore, challenging an execution under Article 21 is a contentious topic, with the Supreme Court often divided on the subject. It is made quite clear that in the absence of a deadline stipulated by the Constitution of India, the extension can be questioned on the grounds which are legal and humanitarian in nature. Morality, on the other hand, cannot make anything illegal unless the law forbids it. However, certain modifications to the scheme are particularly beneficial in terms of moral jurisprudence canons. There is undoubtedly a need to hold those responsible for the delay accountable. A fair timetable for the resolution of cases and mercy petitions should be created. It should be looked upon the facts and judgment given in the case and it should be looked upon that what were the causes which led to the undue delay in the execution of death.

If we look into the findings of 262nd Law Commission Report which came in the year 2015, it is quite clear that dealt with the problems which are generated or caused because of the tedious and the prolonged delay and the loopholes regarding the

execution of death sentence. Infrastructure challenges, outdated investigation procedures, an overloaded police department, insufficient prosecution, and insufficient legal support are just a few of the problems afflicting the system

. Since the death penalty works within this framework, it faces the institutional and systemic challenge which as a consequence results into the violation or infringement of various human and fundamental rights. Another important conclusion or suggestion which could be made in respect to the process of imposition of death penalty, a mechanism should be put in place where the President is held responsible for the delay, and he should work with legal experts to ensure that clemency requests are handled properly and quickly, as the delay obviously causes enormous emotional distress to the aggrieved parties, which is against humanity and falls within the purview of human rights violations. As a result, one might easily argue that declaring capital punishment unconstitutional on the grounds of delay is ambiguous and debatable, and that, although the delay does not make the execution unconstitutional in and of itself, proposed measures to remedy the issue must be taken.

Another important area which needs to be queried upon regarding the whole process of execution of the death sentence is that while such process and formalities of imposition of death penalty is being carried upon by the courts, jail authorities and further by the executive, various human rights of the death row convict should not be embarked upon by the respective authorities and the mental health and the physical health of the convict who is in death row should not decline drastically due to happening of tedious and lengthy delay in the complete process of execution of the death sentence. “Another crucial component or principle to remember is that equality of treatment and the right to life is the principles that apply to all prisoners, who are entitled to the same high-quality medical treatments as the general public. In prisons, on the other hand, where care is frequently inadequate, this privilege is rarely utilized. In jails, health facilities are frequently underfunded and understaffed, and in some cases, non-existent”. Another important suggestion after concluding this particular set of paper is that there is a dire need of hour that scheme related to the welfare of prison should be implemented in jails all over the world so that inmates can engage in some constructive work and not engage in other nefarious practices while incarcerated.

After following the above mentioned procedure, “the authorities of jail department assist the prisoners or inmates, as they are referred by the jail authorities, in behaving better so that they can lead a better life after their release. The environment created by the jail authorities forces the inmates to work, diverting their attention away from other nefarious activities”.

Some other important conclusions regarding the abovementioned set of paper is that due to the prolonged delay in the process of completion of the imposition of capital punishment there have been many cases in the history of Indian Legal system that the respective courts have commuted the punishment of death sentence assigned to the convict into the punishment of life imprisonment. This commutation is often done by the apex court of India because there exists a prolong delay in the imposition of capital punishment which in some cases causes a terror state of mind in the death row convict and which affects the health of the convict or in some cases due to the long delay in the disposal of mercy petitions the health of the death row convict gets so critical that he considered to be subjected for the commutation from the capital punishment to the life imprisonment. The Annual report which is brought up by the deemed respected institute of India i.e., National Law University Delhi has been looked upon in this particular dissertation paper and from the findings of that particular one could easily conclude or contend that there is the presence of certain loopholes regarding the procedure of death sentence. The atrocities or the hardships which the death row convict suffer are also clearly evident from afore mentioned set of report. Another important aspect which needs to be focused or mentioned is that the constitutional validity of death sentence should not be in question as the supreme court of India through a period of time have often dealt with cases which constitute the question of law that whether the punishment of death sentence infringes the fundamental rights of the citizen or whether it is cruel or inhumane in nature. But the apex court through the passing of time in various set of judgments or cases has made it quite clear that the death sentence punishment or capital punishment does not infringes the fundamental right and takes life of an individual who is an offender of particular set of crime through a due process and the process which is just and fair in nature. In the “recent judgment given by the S.C in the case of Vinay Sharma”¹⁸⁶, the respective bench of the apex court of India made it quite clear that on the ground of

¹⁸⁶ Supra note 71.

mere contentions that other western countries and the countries around the globe are making the punishment of death sentence illegal and such practice should be followed in India also, so the court clearly rejected these set of contentions and held that the legal system of every country is different and since the capital punishment which is given in India does not abridge the fundamental rights of the citizens so such punishment would stand as legal and would continue to prevail. The process or the practice which needs some serious introspect is the principle involved in the process of execution of the death sentence. Various death warrants are carried out by the session courts but somehow by filing certain amount of petitions regarding the loophole in the legal system and hence the delay procures. Some instances happen in which the executive is responsible for the delay as the disposal of mercy petition is not done properly in the reasonable set of time and in some cases delay occurs due to the death row convict and his legal counsels as they file various petitions which result into the delay in the execution of the process of capital punishment.

From the previous chapters it can be seen that, Capital sentencing in India is prone to error subjectivity and arbitrariness. There has been blaring inconsistencies in the sentencing practices of different judges and different benches. The ‘rarest of rare’ doctrine evolved in *Bachan Singh* has been subject to disparate interpretations and misinterpretations¹⁸⁷, “and the judge-centric approach to sentencing that had been outlined in this case's principles has ultimately changed. The intrinsic flaws in *Bachan Singh*'s framework, which offer no normative basis for the significance of or consideration of mitigating elements, and the weighting of aggravating and mitigating factors, contribute to this issue in part. The judges have been left to fill these gaps. In addition to this, *Bachan Singh* is also silent about procedure; it provides no clarity on who has to present evidence of mitigating factors and what factors what constitutes such evidence. The shortcomings of the *Bachan Singh* framework have only been aggravated by the introduction of public opinion into sentencing”.

The decision in *Machhi Singh* involved the element of “collective conscience” and has since resulted in the courts considering the outrage of the public as one of the factors which affect capital sentencing. This has significantly diluted what was set out in *Bachan Singh*'s framework, and made sentencing crime-centric. *Bachan Singh*

¹⁸⁷ S.B. Sinha, *To Kill or Not to Kill: The Unending Conundrum*, 24 NAT’I L. Sch. INDIA REV. 1 (2012)

called punishment based on proportionality to culpability. The punishment has to fit the guilt of the criminal. However, public opinion has resulted in focus shifting from the guilt of the accused to the sentiments of the people. Additionally, decisions made on the sentiments of the people or the community ethic always runs the risk of the judge unconsciously substituting his views for the views of the public. Thus, furthering the concerns of subjectivity.

However, the most significant of the issues in the capital sentencing and criminal justice system relate to the human factor. “Hundreds of people are on death row in India, and of these more than half are disadvantaged either socio-economically or in some other way. Since the result in trials depends in large part on the quality of representation, those who cannot afford or have sufficient access to the adequate representation are more than likely to end up with less than the desired result. And when the element of death is also introduced, the potential results are far more chilling, fortunately however, very few executions are carried out India however, spending time imprisoned while waiting out a long appeal process or clemency is not ideal. Living with the uncertainty of death strips the remaining life away from a death row convict, and is a fate almost as painful as death”. It has also been seen that the issues extend beyond inconsistencies in sentencing, torture to elicit evidence in capital cases, wrongful conviction, etc. all mar the criminal justice system.

“The real crux of what has been set out in Bachan Singh is what is mentioned in paragraph 209 of its judgment, i.e. the real litmus test of ‘rarest of rare’ is whether the alternative option is unquestionably foreclosed in a given situation. At the time, the only lesser or alternative option was life imprisonment for a fourteen-year term. Since then, however the alternative to death has been expanded, so revisiting the Bachan Singh decision in light of these changes would be prudent. The enlarged area of unquestionably foreclosed in Swamy Shraddananda should include into the Bachan Singh framework, judges have been torn about the validity of this punishment, so amending the IPC to add the life imprisonment envisaged in Swamy Shraddanada to make it statutorily valid is suggested”¹⁸⁸.

¹⁸⁸ R. Basant, An ideal death penalty law, Youtube <
<https://www.youtube.com/watch?v=qOP0jb5hM8g>> accessed on 25 may 2022.

“In Swamy Shraddanada, Justice Aftab Alam had voiced his opinion that the resort to the death penalty must be less frequent. Enlarging the scope of unquestionably foreclosed is one way to do the same, and using this as a standard in deciding whether a case was deserving of the death penalty, i.e. fell into the rarest of rare category would limit subjectivity is a way. However, there are parallel concerns of judges being less likely of looking into the circumstances of the accused and passing an order of conviction based solely on the nature of the crime, as the consequence is not as drastic as death, and following the recent decision in V. Sriharan, several examples have cropped up of where life imprisonment has been invoked without really considering the mitigating circumstances, or in cases lacking necessary evidence”. So, in order to avoid unjust results, a proper examination of both the death sentence and life imprisonment must be made before passing a sentence.

The public's desires to keep the death penalty have repeatedly been reflected in the legislators' efforts to transmit public sentiment into the parliament's chambers. The "intelligentsia," as evidenced by numerous law commission studies and numerous judgments handed down by the highest legal authorities, has occasionally felt the need to uphold the penalty, though. This emotion does not, then, represent a "mob mentality" that is ganging up on a criminal.

“Despite the fact that other civilized countries base their legal systems on the ideals of equality, fairness, and adherence to the law, this kind of belief is not unique to India. Additionally, an academic discussion that is solely dependent on providing figures and performing an empirical survey is insufficient to paint a whole picture of the invisible effects the death penalty concept has on the criminal and his family's social lives. Therefore, the court must proceed cautiously when issuing such a sentence, commuting it, or declaring it unconstitutional”.

The legality or morality of such a penalty, however, should not be the only thing should be examined in order to analyse the current situation; instead, it is important to consider how such an excessive delay affects how demeaning and inhumane a capital punishment is.

“Furthermore, it is important to keep in mind that the ability of courts to commute death sentences has not been established in any legal principles. The court commutes the sentence if it determines that doing so will best serve its supervening power to uphold the rule of law and the ideals of justice, but the court, which is responsible for carrying out justice and enforcing the law, must not view justice as a one-sided idea. It is important to realize that focusing solely on how a delay affects the prisoner does not advance justice. It is necessary to embrace a more comprehensive viewpoint that includes the general public, the victim's family, and their friends who have also lost loved ones”.

The problem of delay can be minimized by effectively defining the deadlines for submitting a mercy petition, handling such requests, and providing legal recourse in the event that such a plea is rejected. By rigorously sticking to the deadlines, without compromising the already accessible legal remedies, the efficiency of the legal process can be increased. According to the proverb, "justice delayed is justice denied but justice hurried is not justice at all." The court should therefore attempt to strike a balance between the death row prisoners' human rights and the delay in carrying out the death sentence. It would be very horrible if prisoners' rights were infringed just to delay issues.

Another suggestion is when the higher judiciary is deciding on death sentence matters, all judges be made to write their own judgment. Mere concurrence with one opinion lacks initiative and enterprise. Separate judgement should be written in these cases and a sentence of death be upheld only in cases where all individual judgements agree on the same. Since invariably all death penalty cases go the Supreme Court, make this suggestion part of procedure could reduce subjectivity.

And on the matter of delays, it is suggested that capital offence cases get priority and be fast tracked to the HC for confirmation, and that separate Bench of Supreme Court be constituted solely for dealing with the death penalty. Increased efficiency can mitigate delays and in turn not subject death row convicts to more suffering.

Another suggestion is removing public opinion from capital sentencing. As when the public lays in on the legitimacy of the death sentence in major cases, one of two things can happen. One, this could become an avenue for legal change, or two the court give in to majoritarian opinion, and use the accused as a scapegoat. The latter

has usually been observed to happen. The former could bring about great benefits to society and death penalty jurisprudence, but involving public opinion in deciding on the life of a person has too high a risk to reward ratio.

A study of death row convicts has shown that 74% of them are economically disadvantaged, 61% of them have little to no education, and 76% of them belong to socially marginalized groups. This is a testament to the how much the quality of representation contributes to the outcome in capital trials. In order to mitigate the inadvertent discrimination in capital sentencing, the monitoring of such cases in trial courts is suggested. The court must be vigilant of the nature of the crime, the criminal, the evidence etc. “It is to be noted that ideally the death sentence was envisaged to deter others from future crime, but it has devolved into a broken tool that preys on the weakest in society”

The primary purpose of death is to deter others. “Deterrence is the primary objective for the imposition of death in a modern society”. The actual question is not whether death deters; it is whether death deters more than life imprisonment. But the concern about death as a deterrent has been the lack of evidence to substantiate this point. It cannot be argued with empirical evidence that the deterrence of death is productive. In general however, since the deterrent theory of punishment is based on threat of punishment deterring future crime, it must objectively deter as the threat to life is the greatest threat of all. “Since no correlation could be found between the rate of crime and the death penalty, the only other way to find out the same is by measuring the crime not committed because of the death penalty, which is impossible to quantify”.

Deterrence lies not in the severity of the punishment but in the promptness and certainty of the punishment, death in an uncertain future. Death deters less than a timely penalization of any kind. It is promptness and not severity that show results, therefore refining the criminal justice system should be a top priority India can do more to deter future crime by way of a more efficient criminal justice system than by the looming threat of death. There will always be an inevitable. Distance between crime and punishment, so shorter the distance, the better.

Domestic laws can always be improved upon by analyzing global trends, and in the case of the capital punishment, the trend has been toward abolition. More than 60% of the countries of the world have bid farewell to capital punishment, either in law or

practice. India could also attempt the same. The judiciary has expressed its lack of faith in the capital sentencing machinery and the effectiveness of death as a deterrent remains questionable, and executions in India have always been infrequent, however out rightly abolishing the death penalty is not possible at the present.

The judiciary cannot be more refined than the polity of a country. The criminal justice system is weak to the pressures on external forces, and political, religious, and sectarian violence is characteristic to India. If the capital punishment is removed altogether, a more violent outcome awaits. The Current climate does not make it conducive to eliminate the death penalty altogether, but it should be the eventual goal.

Currently what India needs is a death penalty law that can meet the requirements of the present, one that is just and subject to as much subjectivity as can be avoided. Above all, one that is humane. “There is also a need for a criminal justice system that minimizes error and delay”. Deterrence is served best in an efficient system. Moreover the rights of the accused cannot be abridged. A conviction will not override the right to life under the Constitution, and a prisoner does not become any less of person. “A society should be judged not by how it treats its outstanding citizens but by how it treats its criminals”.

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