Supreme Court of India
Shatrughan Chauhan & Anr vs Union Of India & Ors on 21 January, 1947
Author: . .....
Bench: P Sathasivam, Ranjan Gogoi, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

1 WRIT PETITION (CRIMINAL) NO. 55 OF 2013

Shatrughan Chauhan & Anr. .... Petitioner (s)

Versus

Union of India & Ors. .... Respondent(s)

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3 WITH

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5 WRIT PETITION (CRIMINAL) NO. 34 OF 2013

6 WRIT PETITION (CRIMINAL) NO. 56 OF 2013

7 WRIT PETITION (CRIMINAL) NO. 136 OF 2013

8 WRIT PETITION (CRIMINAL) NO. 139 OF 2013

9 WRIT PETITION (CRIMINAL) NO. 141 OF 2013

10 WRIT PETITION (CRIMINAL) NO. 132 OF 2013

11 WRIT PETITION (CRIMINAL) NO. 187 OF 2013

12 WRIT PETITION (CRIMINAL) NO. 188 OF 2013

13 WRIT PETITION (CRIMINAL) NO. 190 OF 2013

14 WRIT PETITION (CRIMINAL) NO. 191 OF 2013

15 WRIT PETITION (CRIMINAL) NO. 192 OF 2013

16 WRIT PETITION (CRIMINAL) NO. 193 OF 2013

17

J U D G M E N T

P.Sathasivam, CJI.

1) Our Constitution is highly valued for its articulation. One such astute drafting is Article 21 of the Constitution which postulates that every human being has inherent right to life and mandates that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Over the span of years, this Court has expanded the horizon of 'right to life' guaranteed under the Constitution to balance with the progress of human life. This case provides yet another momentous occasion, where this Court is called upon to decide whether it will be in violation of Article 21, amongst other provisions, to execute the levied death sentence on the accused notwithstanding the existence of supervening circumstances. Let us examine the supervening circumstances of each individual case to arrive at a coherent decision.

2) All the above writ petitions, under Article 32 of the Constitution of India, have been filed either by the convicts, who were awarded death sentence or by their family members or by public-spirited bodies like People's Union for Democratic Rights (PUDR) based on the rejection of mercy petitions by the Governor and the President of India.

3) In all the writ petitions, the main prayer consistently relates to the issuance of a writ of declaration declaring that execution of sentence of death pursuant to the rejection of the mercy petitions by the President of India is unconstitutional and to set aside the death sentence imposed upon them by commuting the same to imprisonment for life. Further, it is also prayed for declaring the order passed by the Governor/President of India rejecting their respective mercy petitions as illegal and unenforceable. In view of the similarity of the reliefs sought for in all the writ petitions, we are not reproducing every prayer hereunder, however, while dealing with individual claims, we shall discuss factual details, the reliefs sought for and the grounds urged in support of their claim at the appropriate place. Besides, in the writ petition filed by PUDR, PUDR prayed for various directions in respect of procedure to be followed while considering the mercy petitions, and in general for protection of rights of the death row convicts. We shall discuss discretely the aforesaid prayers in the ensuing paragraphs.

4) Heard Mr. Ram Jethmalani, Mr. Anand Grover, Mr. R. Basant, Mr. Colin Gonsalves, learned senior counsel and Dr. Yug Mohit Chaudhary, learned counsel for the petitioners and Mr. Mohan Parasaran, learned Solicitor General, Mr. L.N. Rao, Mr. Siddharth Luthra, learned Additional Solicitor Generals, Mr. V.C. Mishra, learned Advocate General, Mr. V.N. Raghupathy, Ms. Anitha Shenoy, Mr. Rajiv Nanda, Mr. C.D. Singh, learned counsel and Mr. Manjit Singh, Additional Advocate General for the respondents. We also heard Mr. T.R. Andhyarujina, learned senior counsel as amicus curiae.

5) Before considering the merits of the claim of individual case, it is essential to deliberate on certain vital points of law that will be incidental and decisive for determining the case at hand.

Maintainability of the Petitions

6) Before we advert to the issue of maintainability of the petitions, it is pertinent to grasp the significance of Article 32 as foreseen by Dr. Ambedkar, the principal architect of the Indian Constitution. His words were appositely reiterated in Minerva Mills Ltd. and Ors. vs. Union of India and Ors. (1980) 2 SCC 625 as follows:-

> "87. ....If I was asked to name any particular Article in this Constitution as the most important – an Article without which this Constitution would be a nullity – I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it." (emphasis supplied) The fundamental right to move this Court can, therefore, be appropriately described as the corner-stone of the democratic edifice raised by the Constitution. At the same time, this Court, in A.R Antulay vs. Union of India (1988) 2 SCC 602, clarified and pronounced that any writ petition under Article 32 of the Constitution challenging the validity of the order or judgment passed by this Court as nullity or otherwise incorrect cannot be entertained. In this light, let us examine the maintainability of these petitions.

7) The aforesaid petitions, under Article 32 of the Constitution, seek relief against alleged infringement of certain fundamental rights on account of failure on the part of the executive to dispose of the mercy petitions filed under Article 72/161 of the Constitution within a reasonable time.

8) At the outset, the petitioners herein justly elucidated that they are not challenging the final verdict of this Court wherein death sentence was imposed. In fact, they asserted in their respective petitions that if the sentence had been executed then and there, there would have been no grievance or cause of action. However, it wasn't and the supervening events that occurred after the final confirmation of the death sentence are the basis of filing these petitions.

9) It is a time-honored principle, as stipulated in R.D Shetty vs. International Airport Authority (1979) 3 SCC 489, that no matter, whether the violation of fundamental right arises out of an executive action/inaction or action of the legislature, Article 32 can be utilized to enforce the fundamental rights in either event. In the given case, the stand of the petitioners herein is that

exercise of the constitutional power vested in the executive specified under Article 72/161 has violated the fundamental rights of the petitioners herein. This Court, as in past, entertained the petitions of the given kind and issued appropriate orders as in T.V. Vatheeswaran vs. State of Tamil Nadu (1983) 2 SCC 68, Sher Singh and Ors. vs. State of Punjab (1983) 2 SCC 344 Triveniben vs. State of Gujarat (1988) 4 SCC 574 etc. Accordingly, we accede to the stand of the petitioners and hold that the petitions are maintainable.

Nature of power guaranteed under Article 72/161 of the Constitution

10) It is apposite to refer the relevant Articles which give power to the President of India and the Governor to grant pardons and to suspend, remit or commute sentences in certain cases. They are as follows:

> "Article 72. Power of President to grant pardons, etc. and to suspend, remit or commute sentences in certain cases – (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence –
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> a) in all cases where the punishment or sentence is by a Court Martial;
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> b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
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> c) in all cases where the sentence is a sentence of death.
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> 2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

3) Nothing in sub-clause of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State, under any law for the time being in force." Article 161. Power of Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases – The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends."

11) The memoir and scope of Article 72/161 of the Constitution was extensively considered in Kehar Singh vs. Union of India & Anr., (1989) 1 SCC 204 in the following words:

> "7. The Constitution of India, in keeping with modern constitutional practice, is a constitutive document, fundamental to the governance of the country, whereby, according to accepted political theory, the people of India have provided a constitutional polity consisting of certain primary organs, institutions and functionaries to exercise the powers provided in the Constitution. All power belongs

to the people, and it is entrusted by them to specified institutions and functionaries with the intention of working out, maintaining and operating a constitutional order. The Preambular statement of the Constitution begins with the significant recital:

We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic... do hereby adopt, enact and give to ourselves this Constitution.

To any civilized society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order, and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of the deprivation of life by the action of the State is in most civilised societies regarded seriously and, recourse, either under express constitutional provision or through legislative enactment is provided to the judicial organ. But, the fallibility of human judgment being undeniable even in the most trained mind, a mind resourced by a harvest of experience, it has been considered appropriate that in the matter of life and personal liberty, the protection should be extended by entrusting power further to some high authority to scrutinise the validity of the threatened denial of life or the threatened or continued denial of personal liberty. The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the State. In England, the power is regarded as the royal prerogative of pardon exercised by the Sovereign, generally through the Home Secretary. It is a power which is capable of exercise on a variety of grounds, for reasons of State as well as the desire to safeguard against judicial error. It is an act of grace issuing from the Sovereign. In the United States, however, after the founding of the Republic, a pardon by the President has been regarded not as a private act of grace but as a part of the constitutional scheme. In an opinion, remarkable for its erudition and clarity, Mr Justice Holmes, speaking for the Court in W.I. Biddle v. Vuco Perovich 71 L Ed 1161) enunciated this view, and it has since been affirmed in other decisions. The power to pardon is a part of the constitutional scheme, and we have no doubt, in our mind, that it should be so treated also in the Indian Republic. It has been reposed by the people through the Constitution in the Head of the State, and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when occasion arises in accordance with the discretion contemplated by the context. It is not denied, and indeed it has been repeatedly affirmed in the course of argument by learned Counsel, Shri Ram Jethmalani and Shri Shanti Bhushan, appearing for the Petitioner that the power to pardon rests on the advice tendered by the Executive to the President, who subject to the provisions of Article 74(1) of the Constitution, must act in accordance with such advice.....” (Emphasis Supplied) In that case, the Constitution Bench also considered whether the President can, in exercise of the power under Article 72 of the Constitution, scrutinize the evidence on

record and come to a different conclusion than the one arrived at by the Court and held as under:

"10. We are of the view that it is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinise the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on, the accused. In doing so, the President does not amend or modify or supersede the judicial record. The judicial record remains intact, and undisturbed. The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it. and this is so, notwithstanding that the practical effect of the Presidential act is to remove the stigma of guilt from the accused or to remit the sentence imposed on him....

The legal effect of a pardon is wholly different from a judicial supersession of the original sentence. It is the nature of the power which is determinative....

It is apparent that the power under Article 72 entitles the President to examine the record of evidence of the criminal case and to determine for himself whether the case is one deserving the grant of the relief falling within that power. We are of opinion that the President is entitled to go into the merits of the case notwithstanding that it has been judicially concluded by the consideration given to it by this Court.

16. ...the power under Article 72 is of the widest amplitude, can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assisted by prevailing occasion and passing time. and it is of great significance that the function itself enjoys high status in the constitutional scheme."

12) Both Articles 72 and 161 repose the power of the people in the highest dignitaries, i.e., the President or the Governor of a State, as the case may be, and there are no words of limitation indicated in either of the two Articles. The President or the Governor, as the case may be, in exercise of power under Article 72/161 respectively, may examine the evidence afresh and this exercise of power is clearly independent of the judiciary. This Court, in numerous instances, clarified that the executive is not sitting as a court of appeal rather the power of President/Governor to grant remission of sentence is an act of grace and humanity in appropriate cases, i.e., distinct, absolute and unfettered in its nature.

13) In this context, the deliberations in Epuru Sudhakar & Anr. vs. Govt. of A.P. & Ors., (2006) 8 SCC 161 are relevant which are as under:

> "16. The philosophy underlying the pardon power is that "every civilized country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality, and in that attribute of Deity whose judgments are always tempered with mercy. [See 59 American Jurisprudence 2d, page 5]
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> 17. The rationale of the pardon power has been felicitously enunciated by the celebrated Justice Holmes of the United States Supreme Court in the case of Biddle v. Perovich in these words 71 L.

Ed. 1161 at 1163: A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed." (emphasis added)

14) Article 72/161 of the Constitution entail remedy to all the convicts and not limited to only death sentence cases and must be understood accordingly. It contains the power of reprieve, remission, commutation and pardon for all offences, though death sentence cases invoke the strongest sentiment since it is the only sentence that cannot be undone once it is executed.

15) Shri Andhyarujina, learned senior counsel, who assisted the Court as amicus commenced his submissions by pointing out that the power reposed in the President under Article 72 and the Governor under Article 161 of the Constitution is not a matter of grace or mercy, but is a constitutional duty of great significance and the same has to be exercised with great care and circumspection keeping in view the larger public interest. He referred to the judgment of the U.S. Supreme Court in Biddle vs. Perovoch 274 US 480 as also the judgments of this Court in Kehar Singh (supra) and Epuru Sudhakar (supra).

16) In this context, in Kuljeet Singh vs. Lt. Governor (1982) 1 SCC 417, this Court held:

> "1. The question as regards the scope of the power of the President under Article 72 of the Constitution to commute a sentence of death into a lesser sentence may have to await examination on an appropriate occasion. This clearly is not that occasion because insofar as this case is concerned, whatever be the guide-lines observed for the exercise of the power conferred by Article 72, the only sentence which can possibly be imposed upon the petitioner is that of death and no circumstances exist for interference with that sentence. Therefore we see no justification for saying that in refusing to commute the sentence of death imposed upon the petitioner into a lesser sentence, the President has in any manner transgressed his discretionary power under Article 72. Undoubtedly, the President has the power in an appropriate case to commute any sentence imposed by a court into a lesser sentence and as said by Chief Justice Taft in James Shewan and Sons v. U.S., the "executive clemency

exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law" and that the administration of justice by the courts is not necessarily or certainly considerate of circumstances which may properly mitigate guilt. But the question as to whether the case is appropriate for the exercise of the power conferred by Article 72 depends upon the facts and circumstances of each particular case. The necessity or the justification for exercising that power has therefore to be judged from case to case. In fact, we do not see what useful purpose will be achieved by the petitioner by ensuring the imposition of any severe, judicially evolved constraints on the wholesome power of the President to use it as the justice of a case may require. After all, the power conferred by Article 72 can be used only for the purpose of reducing the sentence, not for enhancing it. We need not, however, go into that question elaborately because insofar as this case is concerned, we are quite clear that not even the most liberal use of his mercy jurisdiction could have persuaded the President to interfere with the sentence of death imposed upon the petitioner, in view particularly of the considerations mentioned by us in our judgment in Kuljeet Singh v. Union of India. We may recall what we said in that judgment that "the death of the Chopra children was caused by the petitioner and his companion Billa after a savage planning which bears a professional stamp", that the "survival of an orderly society demands the extinction of the life of persons like Ranga and Billa who are a menace to social order and security", and that "they are professional murderers and deserve no sympathy even in terms of the evolving standards of decency of a mature society."

17) In concise, the power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is a Constitutional duty. As a result, it is neither a matter of grace nor a matter of privilege but is an important constitutional responsibility reposed by the people in the highest authority. The power of pardon is essentially an executive action, which needs to be exercised in the aid of justice and not in defiance of it. Further, it is well settled that the power under Article 72/161 of the Constitution of India is to be exercised on the aid and advice of the Council of Ministers.

Limited Judicial Review of the executive orders under Article 72/161

18) As already emphasized, the power of the executive to grant pardon under Article 72/161 is a Constitutional power and this Court, on numerous occasions, has declined to frame guidelines for the exercise of power under the said Articles for two reasons. Firstly, it is a settled proposition that there is always a presumption that the constitutional authority acts with application of mind as has been reiterated in Bikas Chatterjee vs. Union of India (2004) 7 SCC 634. Secondly, this Court, over the span of years, unanimously took the view that considering the nature of power enshrined in Article 72/161, it is unnecessary to spell out specific guidelines. In this context, in Epuru Sudhakar (supra), this Court held thus:

"36. So far as desirability to indicate guidelines is concerned in Ashok Kumar case it was held as follows: (SCC pp. 518-19, para 17) "17. In Kehar Singh case on the question of laying down guidelines for the exercise of power under Article 72 of the Constitution this Court observed in para 16 as under: (SCC pp. 217-18, para 16) 'It seems to us that there is sufficient indication in the terms of Article 72 and in the history of the power enshrined in that provision as well as existing case-law, and specific guidelines need not be spelled out. Indeed, it may not be possible to lay down any precise, clearly defined and sufficiently channelised guidelines, for we must remember that the power under Article 72 is of the widest amplitude, can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assisted by prevailing occasion and passing time. And it is of great significance that the function itself enjoys high status in the constitutional scheme.' These observations do indicate that the Constitution Bench which decided Kehar Singh case was of the view that the language of Article 72 itself provided sufficient guidelines for the exercise of power and having regard to its wide amplitude and the status of the function to be discharged thereunder, it was perhaps unnecessary to spell out specific guidelines since such guidelines may not be able to conceive of all myriad kinds and categories of cases which may come up for the exercise of such power. No doubt in Maru Ram case the Constitution Bench did recommend the framing of guidelines for the exercise of power under Articles 72/161 of the Constitution. But that was a mere recommendation and not a ratio decidendi having a binding effect on the Constitution Bench which decided Kehar Singh case. Therefore, the observation made by the Constitution Bench in Kehar Singh case does not upturn any ratio laid down in Maru Ram case. Nor has the Bench in Kehar Singh case said anything with regard to using the provisions of extant Remission Rules as guidelines for the exercise of the clemency powers."

19) Nevertheless, this Court has been of the consistent view that the executive orders under Article 72/161 should be subject to limited judicial review based on the rationale that the power under Article 72/161 is per se above judicial review but the manner of exercise of power is certainly subject to judicial review. Accordingly, there is no dispute as to the settled legal proposition that the power exercised under Article 72/161 could be the subject matter of limited judicial review. [vide Kehar Singh (supra); Ashok Kumar (supra); Swaran Singh vs. State of U.P AIR 1998 SC 2026; Satpal and Anr. vs. State of Haryana and Ors. AIR 2000 SC 1702; and Bikas Chatterjee (supra)]

20) Though the contours of power under Article 72/161 have not been defined, this Court, in Narayan Dutt vs. State of Punjab (2011) 4 SCC 353, para 24, has held that the exercise of power is subject to challenge on the following grounds:

a) If the Governor had been found to have exercised the power himself without being advised by the government;

b) If the Governor transgressed his jurisdiction in exercising the said power;

c) If the Governor had passed the order without applying his mind;

d) The order of the Governor was mala fide; or

e) The order of the Governor was passed on some extraneous considerations.

These propositions are culmination of views settled by this Court that:

i) Power should not be exercised malafidely. (Vide Maru Ram vs. Union of India, paras 62, 63 & 65).

ii) No political considerations behind exercise of power. In this context, in Epuru Sudhakar (supra), this Court held thus: "34. The position, therefore, is undeniable that judicial review of the order of the President or the Governor under Article 72 or Article 161, as the case may be, is available and their orders can be impugned on the following grounds:

a) that the order has been passed without application of mind;

(b) that the order is mala fide;

(c) that the order has been passed on extraneous or wholly irrelevant considerations;

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness.

35. Two important aspects were also highlighted by learned amicus curiae; one relating to the desirability of indicating reasons in the order granting pardon/remission while the other was an equally more important question relating to power to withdraw the order of granting pardon/remission, if subsequently, materials are placed to show that certain relevant materials were not considered or certain materials of extensive value were kept out of consideration. According to learned amicus curiae, reasons are to be indicated, in the absence of which the exercise of judicial review will be affected.

37. In Kehar Singh case this Court held that: (SCC p. 216, para

13) "There is also no question involved in this case of asking for the reasons for the President's order."

> 38. The same obviously means that the affected party need not be given the reasons. The question whether reasons can or cannot be disclosed to the Court when the same is challenged was not the subject-matter of consideration. In any event, the absence of any obligation to convey the reasons does not mean that there should not be legitimate or relevant reasons for passing the order."
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> 21) A perusal of the above case-laws makes it clear that the President/Governor is not bound to hear a petition for mercy before taking a decision on the petition. The manner of exercise of the power under the said articles is primarily a matter of discretion and ordinarily the courts would not interfere with the decision on merits. However, the courts retain the limited power of judicial review to ensure that the constitutional authorities consider all the relevant materials before arriving at a conclusion.

22) It is the claim of the petitioners herein that the impugned executive orders of rejection of mercy petitions against 15 accused persons were passed without considering the supervening events which are crucial for deciding the same. The legal basis for taking supervening circumstances into account is that Article 21 inheres a right in every prisoner till his last breath and this Court will protect that right even if the noose is being tied on the condemned prisoner's neck. [vide Sher Singh (supra), Triveniben (supra), Vatheeswaran (supra), Jagdish vs. State of Madhya Pradesh (2009) 9 SCC 495].

23) Certainly, delay is one of the permitted grounds for limited judicial review as stipulated in the stare decisis. Henceforth, we shall scrutinize the claim of the petitioners herein and find out the effect of supervening circumstances in the case on hand.

Supervening Circumstances

24) The petitioners herein have asserted the following events as the supervening circumstances, for commutation of death sentence to life imprisonment.

i) Delay

ii) Insanity

iii) Solitary Confinement

iv) Judgments declared per incuriam

v) Procedural Lapses

25) All the petitioners have more or less asserted on the aforesaid grounds which, in their opinion, the executive had failed to take note of while rejecting the mercy petitions filed by them. Let us discuss them distinctively and come to a conclusion whether each of the circumstances exclusively or together warrants the commutation of death sentence into life imprisonment.

(i) Delay

26) It is pre-requisite to comprehend the procedure adopted under Article 72/161 for processing the mercy petition so that we may be in a position to appreciate the aspect of delay as one of the supervening circumstances.

27) The death row convicts invariably approached the Governor under Article 161 of the Constitution of India with a mercy petition after this Court finally decided the matter. During the pendency of the mercy petition, the execution of death sentence was stayed. As per the procedure, once the mercy petition is rejected by the Governor, the convict prefers mercy petition to the President. Thereafter, the mercy petition received in President's office is forwarded to the Ministry of Home Affairs. Normally, the mercy petition consists of one or two pages giving grounds for mercy. To examine the mercy petition so received and to arrive at a conclusion, the documents like copy of the judgments of the trial Court, High Court and the Supreme Court are requested from the State Government. The other documents required include details of the decision taken by the Governor under Article 161 of the Constitution, recommendations of the State Government in regard to grant of mercy petition, copy of the records of the case, nominal role of the convict, health status of the prisoner and other related documents. All these details are gathered from the State/Prison authorities after the receipt of the mercy petition and, according to the Union of India, it takes a lot of time and involve protracted correspondence with prison authorities and State Government. It is also the claim of the Union of India that these documents are then extensively examined and in some sensitive cases, various pros and cons are weighed to arrive at a decision. Sometimes, person or at their instance some of their relatives, file mercy petitions repeatedly which cause undue delay. In other words, according to the Union of India, the time taken in examination of mercy petitions may depend upon the nature of the case and the scope of inquiry to be made. It may also depend upon the number of mercy petitions submitted by or on behalf of the accused. It is the claim of the respondents that there cannot be a specific time limit for examination of mercy petitions.

28) It is also the claim of the respondents that Article 72 envisages no limit as to time within which the mercy petition is to be disposed of by the President of India. Accordingly, it is contended that since no time limit is prescribed for the President under Article 72, the courts may not go into it or fix any outer limit. It is also contended that the power of the President under Article 72 is discretionary which cannot be taken away by any statutory provision and cannot be altered, modified or interfered with, in any manner, whatsoever, by any statutory provision or authority. The powers conferred on the President are special powers overriding all other laws, rules and regulations in force. Delay by itself does not entail the person under sentence of death to request for commutation of sentence into life imprisonment.

29) It is also pointed out that the decision taken by the President under Article 72 is communicated to the State Government/Union Territory concerned and to the prisoner through State Government/Union Territory. It is also brought to our notice that as per List II Entry 4 of the Seventh Schedule to the Constitution of India, "Prisons and persons detained therein" is a State subject. Therefore, all steps for execution of capital punishment including informing the convict and his/her family, etc. are required to be taken care of by the concerned State Governments/Union

Territories in accordance with their jail manual/rules etc.

30) On the contrary, it is the plea of the petitioners that after exhausting of the proceedings in the courts of law, the aggrieved convict gets right to make a mercy petition before the Governor and the President of India highlighting his grievance. If there is any undue, unreasonable and prolonged delay in disposal of his mercy petition, the convict is entitled to approach this Court by way of a writ petition under Article 32 of the Constitution. It is vehemently asserted that the execution of death penalty in the face of such an inordinate delay would infringe fundamental right to life under Article 21 of the Constitution, which would invite the exercise of the jurisdiction by this Court.

31) The right to life is the most fundamental of all rights. The right to life, as guaranteed under Article 21 of the Constitution of India, provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. According to learned counsel for the Union of India, death sentence is imposed on a person found guilty of an offence of heinous nature after adhering to the due procedure established by law which is subject to appeal and review. Therefore, delay in execution must not be a ground for commutation of sentence of such a heinous crime. On the other hand, the argument of learned counsel for the petitioners/death convicts is that human life is sacred and inviolable and every effort should be made to protect it. Therefore, inasmuch as Article 21 is available to all the persons including convicts and continues till last breath if they establish and prove the supervening circumstances, viz., undue delay in disposal of mercy petitions, undoubtedly, this Court, by virtue of power under Article 32, can commute the death sentence into imprisonment for life. As a matter of fact, it is the stand of the petitioners that in a petition filed under Article 32, even without a presidential order, if there is unexplained, long and inordinate delay in execution of death sentence, the grievance of the convict can be considered by this Court.

32) This Court is conscious of the fact, namely, while Article 21 is the paramount principle on which rights of the convicts are based, it must be considered along with the rights of the victims or the deceased's family as also societal consideration since these elements form part of the sentencing process as well. The right of a victim to a fair investigation under Article 21 has been recognized in State of West Bengal vs. Committee for Democratic Rights, West Bengal, (2010) 3 SCC 571, which is as under:

> "68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:
>
> (i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its

broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State..." We do comprehend the critical facet involved in the arguments by both the sides and we will strive to strike a balance between the rights of the accused as well as of the victim while deciding the given case.

33) This is not the first time when the question of such a nature is raised before this Court. In Ediga Anamma vs. State of A.P., 1974(4) SCC 443 Krishna Iyer, J. spoke of the "brooding horror of haunting the prisoner in the condemned cell for years". Chinnappa Reddy, J. in Vatheeswaran (supra) said that prolonged delay in execution of a sentence of death had a dehumanizing effect and this had the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way so as to offend the fundamental right under Article 21 of the Constitution. Chinnappa Reddy, J. quoted the Privy Council's observation in a case of such an inordinate delay in execution, viz., "The anguish of alternating hope and despair the agony of uncertainty and the consequences of such suffering on the mental, emotional and physical integrity and health of the individual has to be seen." Thereby, a Bench of two Judges of this Court held that the delay of two years in execution of the sentence after the judgment of the trial court will entitle the condemned prisoner to plead for commutation of sentence of death to imprisonment for life. Subsequently, in Sher Singh (supra), which was a decision of a Bench of three Judges, it was held that a condemned prisoner has a right of fair procedure at all stages, trial, sentence and incarceration but delay alone is not good enough for commutation and two years' rule could not be laid down in cases of delay.

34) Owing to the conflict in the two decisions, the matter was referred to a Constitution Bench of this Court for deciding the two questions of law viz., (i) whether the delay in execution itself will be a ground for commutation of sentence and (ii) whether two years' delay in execution will automatically entitle the condemned prisoner for commutation of sentence. In Smt. Triveniben vs. State of Gujarat (1988) 4 SCC 574, this Court held thus:

> "2. .....Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but this Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to re-open the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in Vatheeswaran case cannot be said to lay down the correct law and therefore to that extent stands overruled."
>
> 35) While giving full reasons which is reported in Smt. Triveniben vs. State of Gujarat, (1989) 1 SCC 678 this Court, in para 22, appreciated the aspect of delay in

execution in the following words:-

"22. It was contended that the delay in execution of the sentence will entitle a prisoner to approach this Court as his right under Article 21 is being infringed. It is well settled now that a judgment of court can never be challenged under Article 14 or 21 and therefore the judgment of the court awarding the sentence of death is not open to challenge as violating Article 14 or Article 21 as has been laid down by this Court in Naresh Shridhar Mirajkar v. State of Maharashtra and also in A.R. Antulay v. R.S. Nayak the only jurisdiction which could be sought to be exercised by a prisoner for infringement of his rights can be to challenge the subsequent events after the final judicial verdict is pronounced and it is because of this that on the ground of long or inordinate delay a condemned prisoner could approach this Court and that is what has consistently been held by this Court. But it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict reached by a competent court convicting and sentencing the condemned prisoner and even while considering the circumstances in order to reach a conclusion as to whether the inordinate delay coupled with subsequent circumstances could be held to be sufficient for coming to a conclusion that execution of the sentence of death will not be just and proper. The nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court while finally passing the verdict. It may also be open to the court to examine or consider any circumstances after the final verdict was pronounced if it is considered relevant. The question of improvement in the conduct of the prisoner after the final verdict also cannot be considered for coming to the conclusion whether the sentence could be altered on that ground also."

36) Though learned counsel appearing for the Union of India relied on certain observations of Shetty, J. who delivered concurring judgment, particularly, para 76, holding that "the inordinate delay, may be a significant factor, but that by itself cannot render the execution unconstitutional", after careful reading of the majority judgment authored by Oza, J., particularly, para 2 of the order dated 11.10.1988 and para 22 of the subsequent order dated 07.02.1989, we reject the said stand taken by learned counsel for the Union of India.

37) In Vatheeswaran (supra), the dissenting opinion of the two judges in the Privy Council case, relied upon by this Court, was subsequently accepted as the correct law by the Privy Council in Earl Pratt vs. AG for Jamaica [1994] 2 AC 1 – Privy Council, after 22 years. There is no doubt that judgments of the Privy Council have certainly received the same respectful consideration as the judgments of this Court. For clarity, we reiterate that except the ratio relating to delay exceeding two years in execution of sentence of death, all other propositions are acceptable, in fact, followed in subsequent decisions and should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and plead for commutation of the sentence.

38) In view of the above, we hold that undue long delay in execution of sentence of death will entitle the condemned prisoner to approach this Court under Article 32. However, this Court will only examine the circumstances surrounding the delay that has occurred and those that have ensued after sentence was finally confirmed by the judicial process. This Court cannot reopen the conclusion already reached but may consider the question of inordinate delay to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life.

39) Keeping a convict in suspense while consideration of his mercy petition by the President for many years is certainly an agony for him/her. It creates adverse physical conditions and psychological stresses on the convict under sentence of death. Indisputably, this Court, while considering the rejection of the clemency petition by the President, under Article 32 read with Article 21 of the Constitution, cannot excuse the agonizing delay caused to the convict only on the basis of the gravity of the crime.

40) India has been a signatory to the Universal Declaration of Human Rights, 1948 as well as to the United Nations Covenant on Civil and Political Rights, 1966. Both these conventions contain provisions outlawing cruel and degrading treatment and/or punishment. Pursuant to the judgment of this Court in Vishaka vs. State of Rajasthan, (1997) 6 SCC 241, international covenants to which India is a party are a part of domestic law unless they are contrary to a specific law in force. It is this expression ("cruel and degrading treatment and/or punishment") which has ignited the philosophy of Vatheeswaran (supra) and the cases which follow it. It is in this light, the Indian cases, particularly, the leading case of Triveniben (supra) has been followed in the Commonwealth countries. It is useful to refer the following foreign judgments which followed the proposition :

i) Earl Pratt vs. AG for Jamaica [1994] 2 AC 1 – Privy Council

ii) Catholic Commission for Justice & Peace in Zimbabwe vs. Attorney General, 1993 (4) S.A. 239 – Supreme Court of Zimbabwe

iii) Soering vs. United Kingdom [App. No. 14038/88, 11 Eur. H.R. Rep. 439 (1989)] – European Court of Human Rights

iv) Attorney General vs. Susan Kigula, Constitutional Appeal No. 3 of 2006 – Supreme Court of Uganda

v) Herman Mejia and Nicholas Guevara vs. Attorney General, A.D. 2000 Action No. 296 – Supreme Court of Belize.

41) It is clear that after the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage, viz., calling for the records, orders and documents filed in the court, preparation of the note for approval of the Minister concerned, and the ultimate decision of the constitutional authorities. This court, in Triveniben (supra), further held that in doing so, if it is

established that there was prolonged delay in the execution of death sentence, it is an important and relevant consideration for determining whether the sentence should be allowed to be executed or not.

42) Accordingly, if there is undue, unexplained amd inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the grievance of the convict and commute the death sentence into life imprisonment on this ground alone however, only after satisfying that the delay was not caused at the instance of the accused himself. To this extent, the jurisprudence has developed in the light of the mandate given in our Constitution as well as various Universal Declarations and directions issued by the United Nations.

43) The procedure prescribed by law, which deprives a person of his life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. In this line, although the petitioners were sentenced to death based on the procedure established by law, the inexplicable delay on account of executive is unexcusable. Since it is well established that Article 21 of the Constitution does not end with the pronouncement of sentence but extends to the stage of execution of that sentence, as already asserted, prolonged delay in execution of sentence of death has a dehumanizing effect on the accused. Delay caused by circumstances beyond the prisoners' control mandates commutation of death sentence. In fact, in Vatheeswaran (supra), particularly, in para 10, it was elaborated where amongst other authorities, the minority view of Lords Scarman and Brightman in the 1972 Privy Council case of Noel Noel Riley vs. Attorney General, (1982) Crl.Law Review 679 by quoting "sentence of death is one thing, sentence of death followed by lengthy imprisonment prior to execution is another". The appropriate relief in cases where the execution of death sentence is delayed, the Court held, is to vacate the sentence of death. In para 13, the Court made it clear that Articles 14, 19 and 21 supplement one another and the right which was spelled out from the Constitution was a substantive right of the convict and not merely a matter of procedure established by law. This was the consequence of the judgment in Maneka Gandhi vs. Union of India (1978) 1 SCC 248 which made the content of Article 21 substantive as distinguished from merely procedural.

44) Another argument advanced by learned ASG is that even if the delay caused seems to be undue, the matter must be referred back to the executive and a decision must not be taken in the judicial side. Though we appreciate the contention argued by the learned ASG, we are not inclined to accept the argument. The concept of supervening events emerged from the jurisprudence set out in Vatheeswaran (supra) and Triveniben (supra). The word 'judicial review' is not even mentioned in these judgments and the death sentences have been commuted purely on the basis of supervening events such as delay. Under the ground of supervening events, when Article 21 is held to be violated, it is not a question of judicial review but of protection of fundamental rights and courts give substantial relief not merely procedural protection. The question of violation of Article 21, its effects and the appropriate relief is the domain of this Court. There is no question of remanding the matter for consideration because this Court is the custodian and enforcer of fundamental rights and the final interpreter of the Constitution. Further, this Court is best equipped to adjudicate the content of those rights and their requirements in a particular fact situation. This Court has always granted

relief for violation of fundamental rights and has never remanded the matter. For example, in cases of preventive detention, violation of free speech, externment, refusal of passport etc., the impugned action is quashed, declared illegal and violative of Article 21, but never remanded. It would not be appropriate to say at this point that this Court should not give relief for the violation of Article 21.

45) At this juncture, it is pertinent to refer the records of the disposal of mercy petitions compiled by Mr. Bikram Jeet Batra and others, which are attached as annexures in almost all the petitions herein. At the outset, this document reveals that the mercy petitions were disposed of more expeditiously in former days than in the present times. Mostly, until 1980, the mercy petitions were decided in minimum of 15 days and in maximum of 10-11 months. Thereafter, from 1980 to 1988, the time taken in disposal of mercy petitions was gradually increased to an average of 4 years. It is exactly at this point of time, the cases like Vatheeswaran (supra) and Triveniben (supra) were decided which gave way for developing the jurisprudence of commuting the death sentence based on undue delay. It is also pertinent to mention that this Court has observed in these cases that when such petitions under Article 72 or 161 are received by the authorities concerned, it is expected that these petitions shall be disposed of expeditiously. In Sher Singh (supra) their Lordships have also impressed the Government of India and all the State Governments for speedy disposal of petitions filed under Articles 72 and 161 and issued directions in the following manner:

> "23. We must take this opportunity to impress upon the Government of India and the State Governments that petitions filed under Articles 72 and 161 of the Constitution or under Sections 432 and 433 of the Criminal Procedure Code must be disposed of expeditiously. A self- imposed rule should be followed by the executive authorities rigorously, that every such petition shall be disposed of within a period of three months from the date on which it is received. Long and interminable delays in the disposal of these petitions are a serious hurdle in the dispensation of justice and indeed, such delays tend to shake the confidence of the people in the very system of justice.

46) Obviously, the mercy petitions disposed of from 1989 to 1997 witnessed the impact of the observations in the disposal of mercy petitions. Since the average time taken for deciding the mercy petitions during this period was brought down to an average of 5 months from 4 years thereby paying due regard to the observations made in the decisions of this Court, but unfortunately, now the history seems to be repeating itself as now the delay of maximum 12 years is seen in disposing of the mercy petitions under Article 72/161 of the Constitution.

47) We sincerely hope and believe that the mercy petitions under Article 72/161 can be disposed of at a much faster pace than what is adopted now, if the due procedure prescribed by law is followed in verbatim. Although, no time frame can be set for the President for disposal of the mercy petition but we can certainly request the concerned Ministry to follow its own rules rigorously which can reduce, to a large extent, the delay caused.

48) Though guidelines to define the contours of the power under Article 72/161 cannot be laid down, however, the Union Government, considering the nature of the power, set out certain criteria in the

form of circular as under for deciding the mercy petitions.

• Personality of the accused (such as age, sex or mental deficiency) or circumstances of the case (such as provocation or similar justification);

• Cases in which the appellate Court expressed doubt as to the reliability of evidence but has nevertheless decided on conviction;

• Cases where it is alleged that fresh evidence is obtainable mainly with a view to see whether fresh enquiry is justified;

• Where the High Court on appeal reversed acquittal or on an appeal enhanced the sentence;

• Is there any difference of opinion in the Bench of High Court Judges necessitating reference to a larger Bench;

• Consideration of evidence in fixation of responsibility in gang murder case;

• Long delays in investigation and trial etc.

49) These guidelines and the scope of the power set out above make it clear that it is an extraordinary power not limited by judicial determination of the case and is not to be exercised lightly or as a matter of course. We also suggest, in view of the jurisprudential development with regard to delay in execution, another criteria may be added so as to require consideration of the delay that may have occurred in disposal of a mercy petition. In this way, the constitutional authorities are made aware of the delay caused at their end which aspect has to be considered while arriving at a decision in the mercy petition. The obligation to do so can also be read from the fact that, as observed by the Constitution Bench in Triveniben (supra), delays in the judicial process are accounted for in the final verdict of the Court terminating the judicial exercise.

50) Another vital aspect, without mention of which the present discussion will not be complete, is that, as aforesaid, Article 21 is the paramount principle on which rights of the convict are based, this must be considered along with the rights of the victims or the deceased's family as also societal consideration since these elements form part of the sentencing process as well. It is the stand of the respondents that the commutation of sentence of death based on delay alone will be against the victim's interest.

51) It is true that the question of sentence always poses a complex problem, which requires a working compromise between the competing views based on reformative, deterrent and retributive theories of punishments. As a consequence, a large number of factors fall for consideration in determining the appropriate sentence. The object of punishment is lucidly elaborated in Ram Narain vs. State of Uttar Pradesh (1973) 2 SCC 86 in the following words:-

"8. ...the broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crimes does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs. The sentence to be appropriate should, therefore, be neither too harsh nor too lenient...."

52) The object of punishment has been succinctly stated in Halsbury's Laws of England, (4th Edition: Vol. II: para 482) thus:

"The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided."

53) All these aspects were emphatically considered by this Court while pronouncing the final verdict against the petitioners herein thereby upholding the sentence of death imposed by the High Court. Nevertheless, the same accused (petitioners herein) are before us now under Article 32 petition seeking commutation of sentence on the basis of undue delay caused in execution of their levied death sentence, which amounts to torture and henceforth violative of Article 21 of the Constitution. We must clearly see the distinction under both circumstances. Under the former scenario, the petitioners herein were the persons who were accused of the offence wherein the sentence of death was imposed but in later scenario, the petitioners herein approached this Court as a victim of violation of guaranteed fundamental rights under the Constitution seeking commutation of sentence.

This distinction must be considered and appreciated.

54) As already asserted, this Court has no jurisdiction under Article 32 to reopen the case on merits. Therefore, in the light of the aforesaid elaborate discussion, we are of the cogent view that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 and thereby entails as the ground for commutation of sentence. However, the nature of delay i.e. whether it is undue or unreasonable must be appreciated based on the facts of individual cases and no exhaustive guidelines can be framed in this regard.

Rationality of Distinguishing between Indian Penal Code, 1860 And Terrorist and Disruptive Activities (Prevention) Act Offences for Sentencing Purpose

55) In Writ Petition No. 34 of 2013 – the accused were mulcted with TADA charges which ultimately ended in death sentence. Mr. Ram Jethmalani, learned senior counsel for the petitioners in that writ petition argued against the ratio laid down in Devender Pal Singh Bhullar vs. State (NCT) of Delhi (2013) 6 SCC 195 which holds that when the accused are convicted under TADA, there is no question of showing any sympathy or considering supervening circumstances for commutation of sentence, and emphasized the need for reconsideration of the verdict. According to Mr. Ram Jethmalani, Devender Pal Singh Bhullar (supra) is per incuriam and is not a binding decision for other cases. He also prayed that inasmuch as the ratio laid down in Devender Pal Singh Bhullar (supra) is erroneous, this Court, being a larger Bench, must overrule the same.

56) He pointed out that delay in execution of sentence of death after it has become final at the end of the judicial process is wholly unconstitutional inasmuch it constitutes torture, deprivation of liberty and detention in custody not authorized by law within the meaning of Article 21 of the Constitution. He further pointed out that this involuntary detention of the convict is an action not authorized by any penal provision including Section 302 IPC or any other law including TADA. On the other hand, Mr. Luthra, learned ASG heavily relying on the reasonings in Devender Pal Singh Bhullar (supra) submitted that inasmuch as the crime involved is a serious and heinous and the accused were charged under TADA, there cannot be any sympathy or leniency even on the ground of delay in disposal of mercy petition. According to him, considering the gravity of the crime, death sentence is warranted and Devender Pal Singh Bhullar (supra) has correctly arrived at a conclusion and rejected the claim for commutation on the ground of delay.

57) From the analysis of the arguments of both the counsel, we are of the view that only delay which could not have been avoided even if the matter was proceeded with a sense of urgency or was caused in essential preparations for execution of sentence may be the relevant factors under such petitions in Article 32. Considerations such as the gravity of the crime, extraordinary cruelty involved therein or some horrible consequences for society caused by the offence are not relevant after the Constitution Bench ruled in Bachan Singh vs. State of Punjab (1980) 2 SCC 684 that the sentence of death can only be imposed in the rarest of rare cases. Meaning, of course, all death sentences imposed are impliedly the most heinous and barbaric and rarest of its kind. The legal effect of the extraordinary depravity of the offence exhausts itself when court sentences the person to death for that offence. Law does not prescribe an additional period of imprisonment in addition to the sentence of death for any such exceptional depravity involved in the offence.

58) As rightly pointed out by Mr. Ram Jethmalani, it is open to the legislature in its wisdom to decide by enacting an appropriate law that a certain fixed period of imprisonment in addition to the sentence of death can be imposed in some well defined cases but the result cannot be accomplished by a judicial decision alone. The unconstitutionality of this additional incarceration is itself inexorable and must not be treated as dispensable through a judicial decision.

59) Now, in this background, let us consider the ratio laid down in Devender Pal Singh Bhullar (supra).

60) The brief facts of that case were: Devender Pal Singh Bhullar, who was convicted by the Designated Court at Delhi for various offences under TADA, IPC and was found guilty and sentenced to death. The appeal as well as the review filed by him was dismissed by this Court. Soon after the dismissal of the review petition, Bhullar submitted a mercy petition dated 14.01.2003 to the President of India under Article 72 of the Constitution and prayed for commutation of his sentence. Various other associations including Delhi Sikh Gurdwara Management Committee sent letters in connection with commutation of the death sentence awarded to him. During the pendency of the petition filed under Article 72, he also filed Curative Petition (Criminal) No. 5 of 2013 which was also dismissed by this Court on 12.03.2013. After prolonged correspondence and based on the advice of the Home Minister, the President rejected his mercy petition which was informed vide letter dated 13.06.2011 sent by the Deputy Secretary (Home) to the Jail Authorities. After rejection of his petition by the President, Bhullar filed a writ petition, under Article 32 of the Constitution, in this regard praying for quashing the communication dated 13.06.2011. While issuing notice in Writ Petition (Criminal) Diary No. 16039/2011, this Court directed the respondents to clarify as to why the petitions made by the petitioner had not been disposed of for the last 8 years. In compliance with the courts direction, the Deputy Secretary (Home) filed an affidavit giving reasons for the delay. This Court, after adverting to all the earlier decisions, instructions regarding procedure to be observed for dealing with the petitions for mercy, accepted that there was a delay of 8 years. Even after accepting that long delay may be one of the grounds for commutation of sentence of death into life imprisonment, this Court dismissed his writ petition on the ground that the same cannot be invoked in cases where a person is convicted for an offence under TADA or similar statutes. This Court also held that such cases stand on an altogether different footing and cannot be compared with murders committed due to personal animosity or over property and personal disputes. It is also relevant to point out that while arriving at such conclusion, the Bench heavily relied on opinion expressed by Shetty, J. in Smt. Triveniben (supra). Though the Bench adverted to paras 73, 74, 75 and 76 of Triveniben (supra), the Court very much emphasized para 76 which reads as under:-

> "76. ... The court while examining the matter, for the reasons already stated, cannot take into account the time utilised in the judicial proceedings up to the final verdict. The court also cannot take into consideration the time taken for disposal of any petition filed by or on behalf of the accused either under Article 226 or under Article 32 of the Constitution after the final judgment affirming the conviction and sentence. The court may only consider whether there was undue long delay in disposing of mercy petition; whether the State was guilty of dilatory conduct and whether the delay was for no reason at all. The inordinate delay, may be a significant factor, but that by itself cannot render the execution unconstitutional. Nor it can be divorced from the dastardly and diabolical circumstances of the crime itself..." (emphasis supplied)

61) On going through the judgment of Oza, J. on his behalf and for M.M.

Dutt, K.N. Singh and L.M. Sharma, JJ., we are of the view that the above quoted statement of Shetty, J. is not a majority view and at the most this is a view expressed by him alone. In this regard, at the cost of repetition it is relevant to refer once again the operative portion of the order dated 11.10.1988 in Triveniben (supra) which is as under:-

> "2. We are of the opinion that:
>
> Undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under Article 32 but this Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to re-open the conclusions reached by the court while finally maintaining the sentence of death.

This Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in Vatheeswaran case cannot be said to lay down the correct law and therefore to that extent stands overruled."

62) The same view was once again reiterated by all the Judges and the very same reasonings have been reiterated in Para 23 of the order dated 07.02.1989. In such circumstances and also in view of the categorical opinion of Oza, J. in para 22 of the judgment in Triveniben (supra) that "it will not be open to this Court in exercise of jurisdiction under Article 32 to go behind or to examine the final verdict...the nature of the offence, circumstances in which the offence was committed will have to be taken as found by the competent court...", it cannot be held, as urged, on behalf of the Union of India that the majority opinion in Triveniben (supra) is to the effect that delay is only one of the circumstances that may be considered along with "other circumstances of the case" to determine as to whether the death sentence should be commuted to one of life imprisonment. We are, therefore, of the view that the opinion rendered by Shetty, J. as quoted in para 76 of the judgment in Triveniben (supra) is a minority view and not a view consistent with what has been contended to be the majority opinion. We reiterate that as per the majority view, if there is undue long delay in execution of sentence of death, the condemned prisoner is entitled to approach this Court under Article 32 and the court is bound to examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and to take a decision whether execution of sentence should be carried out or should be altered into imprisonment for life. It is, however, true that the majority of the Judges have not approved the fixed period of two years enunciated in Vatheeswaran (supra) and only to that extent overruled the same.

63) Incidentally, it is relevant to point out Mahendra Nath Das vs. Union of India and Ors. (2013) 6 SCC 253, wherein the very same bench, taking note of the fact that there was a delay of 12 years in the disposal of the mercy petition and also considering the fact that the appellants therein were prosecuted and convicted under Section 302 IPC held the rejection of the appellants' mercy petition as illegal and consequently, the sentence of death awarded to them by the trial Court which was confirmed by the High Court, commuted into life imprisonment.

64) In the light of the same, we are of the view that the ratio laid down in Devender Pal Singh Bhullar (supra) is per incuriam. There is no dispute that in the same decision this Court has accepted the ratio enunciated in Triveniben (supra) (Constitution Bench) and also noted some other judgments following the ratio laid down in those cases that unexplained long delay may be one of the grounds for commutation of sentence of death into life imprisonment. There is no good reason to disqualify all TADA cases as a class from relief on account of delay in execution of death sentence. Each case requires consideration on its own facts.

65) It is useful to refer a Constitution Bench decision of this Court in Mithu vs. State of Punjab (1983) 2 SCC 277, wherein this Court held Section 303 of the IPC as unconstitutional and declared it void. The question before the Constitution Bench was whether Section 303 of IPC infringes the guarantee contained in Article 21 of the Constitution, which provides that "no person shall be deprived of his life or personal liberty except according to the procedure established by law". Chandrachud, J. the then Hon'ble the Chief Justice, speaking for himself, Fazal Ali, Tulzapurkar and Varadarajan, JJ., struck down Section 303 IPC as unconstitutional and declared it void. The Bench also held that all the cases of murder will now fall under Section 302 IPC and there shall be no mandatory sentence of death for the offence of murder. The reasons given by this Court for striking down this aforesaid section will come in aid for this case. Section 303 IPC was as under:

> "303. Punishment for murder by life convict.—Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death."

> 66) Before striking down Section 303 IPC, this Court made the following conclusion:

> "3...The reason, or at least one of the reasons, why the discretion of the court to impose a lesser sentence was taken away and the sentence of death was made mandatory in cases which are covered by Section 303 seems to have been that if, even the sentence of life imprisonment was not sufficient to act as a deterrent and the convict was hardened enough to commit a murder while serving that sentence, the only punishment which he deserved was death. The severity of this legislative judgment accorded with the deterrent and retributive theories of punishment which then held sway. The reformative theory of punishment attracted the attention of criminologists later in the day... 5...The sum and substance of the argument is that the provision contained in Section 303 is wholly unreasonable and arbitrary and thereby, it violates Article 21 of the Constitution which affords the guarantee that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law.

> Since the procedure by which Section 303 authorises the deprivation of life is unfair and unjust, the Section is unconstitutional. Having examined this argument with care and concern, we are of the opinion that it must be accepted and Section 303 of the Penal Code struck down."

67) After quoting Maneka Gandhi (supra), Sunil Batra vs. Delhi Administration (1978) 4 SCC 494 and Bachan Singh (supra), this Court opined:

"19...To prescribe a mandatory sentence of death for the second of such offences for the reason that the offender was under the sentence of life imprisonment for the first of such offences is arbitrary beyond the bounds of all reason. Assuming that Section 235(2) of the Criminal Procedure Code were applicable to the case and the court was under an obligation to hear the accused on the question of sentence, it would have to put some such question to the accused:

"You were sentenced to life imprisonment for the offence of forgery. You have committed a murder while you were under that sentence of life imprisonment. Why should you not be sentenced to death" The question carries its own refutation. It highlights how arbitrary and irrational it is to provide for a mandatory sentence of death in such circumstances..."

23. On a consideration of the various circumstances which we have mentioned in this judgment, we are of the opinion that Section 303 of the Penal Code violates the guarantee of equality contained in Article 14 as also the right conferred by Article 21 of the Constitution that no person shall be deprived of his life or personal liberty except according to procedure established by law. The section was originally conceived to discourage assaults by life convicts on the prison staff, but the legislature chose language which far exceeded its intention.

The Section also assumes that life convicts are a dangerous breed of humanity as a class. That assumption is not supported by any scientific data. As observed by the Royal Commission in its Report on "Capital Punishment" "There is a popular belief that prisoners serving a life sentence after conviction of murder form a specially troublesome and dangerous class. That is not so. Most find themselves in prison because they have yielded to temptation under the pressure of a combination of circumstances unlikely to recur." In Dilip Kumar Sharma v. State of M.P. this Court was not concerned with the question of the vires of Section 303, but Sarkaria, J., in his concurring judgment, described the vast sweep of that Section by saying that "the section is Draconian in severity, relentless and inexorable in operation" [SCC para 22, p. 567: SCC (Cri) p. 92]. We strike down Section 303 of the Penal Code as unconstitutional and declare it void. It is needless to add that all cases of murder will now fall under Section 302 of the Penal Code and there shall be no mandatory sentence of death for the offence of murder."

68) Chinnappa Reddy, J., concurring with the above view, held thus:

"25. Judged in the light shed by Maneka Gandhi and Bachan Singh, it is impossible to uphold Section 303 as valid. Section 303 excludes judicial discretion. The scales of justice are removed from the hands of the Judge so soon as he pronounces the

> accused guilty of the offence. So final, so irrevocable and so irrestitutable [sic irresuscitable] is the sentence of death that no law which provides for it without involvement of the judicial mind can be said to be fair, just and reasonable. Such a law must necessarily be stigmatised as arbitrary and oppressive. Section 303 is such a law and it must go the way of all bad laws. I agree with my Lord Chief Justice that Section 303, Indian Penal Code, must be struck down as unconstitutional."
>
> 69) It is clear that since Section 303 IPC excludes judicial discretion, the Constitution Bench has concluded that such a law must necessarily be stigmatized as arbitrary and oppressive. It is further clear that no one should be deprived of equality contained in Article 14 as also the right conferred by Article 21 of the Constitution regarding his life or personal liberty except according to the procedure established by law.
>
> 70) Taking guidance from the above principles and in the light of the ratio enunciated in Triveniben (supra), we are of the view that unexplained delay is one of the grounds for commutation of sentence of death into life imprisonment and the said supervening circumstance is applicable to all types of cases including the offences under TADA. The only aspect the courts have to satisfy is that the delay must be unreasonable and unexplained or inordinate at the hands of the executive. The argument of Mr. Luthra, learned ASG that a distinction can be drawn between IPC and non-

IPC offences since the nature of the offence is a relevant factor is liable to be rejected at the outset. In view of our conclusion, we are unable to share the views expressed in Devender Pal Singh Bhullar (supra).

(ii) Insanity/Mental Illness/Schizophrenia

71) In this batch of cases, two convict prisoners prayed for commutation of death sentence into sentence of life imprisonment on the ground that the unconscionably long delay in deciding the mercy petition has caused the onset of chronic psychotic illness, and in view of this the execution of death sentence will be inhuman and against the well-established canons of human rights.

72) The principal question raised in those petitions is whether because of the aforementioned supervening events after the verdict of this Court confirming the death sentence, the infliction of the most extreme penalty in the circumstances of the case, violates the fundamental rights under Article 21. The petitioners have made it clear that they are not challenging the death sentence imposed by this Court. However, as on date, they are suffering from insanity/mental illness. In this background, let us consider whether the petitioners have made out a case for commutation to life sentence on the ground of insanity.

73) India is a member of the United Nations and has ratified the International Covenant on Civil and Political Rights (ICCPR). A large number of United Nations international documents prohibit the execution of death sentence on an insane person. Clause 3(e) of the Resolution 2000/65 dated

27.04.2000 of the U.N. Commission on Human Rights titled "The Question of Death Penalty" urges "all States that still maintain the death penalty...not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person". It further elaborates:

> "3. Urges all States that still maintain the death penalty:
>
> (a) To comply fully with their obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, notably not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, not to impose it for crimes committed by persons below 18 years of age, to exclude pregnant women from capital punishment and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;
>
> (b) To ensure that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent financial crimes or for non-violent religious practice or expression of conscience;
>
> (c) Not to enter any new reservations under article 6 of the International Covenant on Civil and Political Rights which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 of the Covenant enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;
>
> (d) To observe the Safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under the Vienna Convention on Consular Relations;
>
> (e) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;
>
> (f) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;
>
> 4. Calls upon all States that still maintain the death penalty:
>
> (a) Progressively to restrict the number of offences for which the death penalty may be imposed;
>
> (b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;

(c) To make available to the public information with regard to the imposition of the death penalty;

5. Requests States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out;

6. Requests the Secretary-General to continue to submit to the Commission on Human Rights, at its fifty-seventh session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty;

7. Decides to continue consideration of the matter at its fifty- seventh session under the same agenda item.

66th meeting 26 April 2000"

74) Similarly, Clause 89 of the Report of the Special Rapporteur on Extra- Judicial Summary or Arbitrary Executions published on 24.12.1996 by the UN Commission on Human Rights under the caption "Restrictions on the use of death penalty" states that "the imposition of capital punishment on mentally retarded or insane persons, pregnant women and recent mothers is prohibited". Further, Clause 116 thereof under the caption "Capital punishment" urges that "Governments that enforce such legislation with respect to minors and the mentally ill are particularly called upon to bring their domestic criminal laws into conformity with international legal standards".

75) United Nations General Assembly in its Sixty-second session, adopted a Resolution on 18.12.2007, which speaks about moratorium on the use of the death penalty. The following decisions are relevant:

"1. Expresses its deep concern about the continued application of the death penalty;

2. Calls upon all States that still maintain the death penalty:

(a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;

*** *** ***

76th plenary meeting
18 December 2007"

76) The following passage from the Commentary on the Laws of England by William Blackstone is relevant for our consideration:

"...In criminal cases therefore idiots and lunatics are not chargeable for their own acts, if committed when under these incapacities: no, not even for treason itself. Also, if a man in his sound memory commits a capital offense, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defense? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced;

and if, after judgment, he becomes of nonsane memory, execution shall be stayed: for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution."

77) India too has similar line of law and rules in the respective State Jail Manuals. Paras 386 and 387 of the U.P. Jail Manual applicable to the State of Uttarakhand are relevant for our purpose and are quoted hereinbelow:

"386. Condemned convicts developing insanity – When a convict under sentence of death develops insanity after conviction, the Superintendent shall stay the execution of the sentence of death and inform the District Magistrate, who shall submit immediately a report, through the Sessions Judge, for the orders of the State Government.

387. Postponement of execution in certain cases – The execution of a convict under sentence of death shall not be carried out on the date fixed if he is physically unfit to receive the punishment, but shall not be postponed unless the illness is both serious and acute (i.e.

not chronic). A report giving full particulars of the illness necessitating postponement of execution should at once be made to the Secretary to the State Government, Judicial (A) Department for the orders of the Government." Similar provisions are available in Prison Manuals of other States in India.

78) The above materials, particularly, the directions of the United Nations International Conventions, of which India is a party, clearly show that insanity/mental illness/schizophrenia is a crucial supervening circumstance, which should be considered by this Court in deciding whether in the facts and circumstances of the case death sentence could be commuted to life imprisonment. To put it clear, "insanity" is a relevant supervening factor for consideration by this Court.

79) In addition, after it is established that the death convict is insane and it is duly certified by the competent doctor, undoubtedly, Article 21 protects him and such person cannot be executed without further clarification from the competent authority about his mental problems. It is also highlighted by relying on commentaries from various countries that civilized countries have not executed death penalty on an insane person. Learned counsel also relied on United Nations Resolution against execution of death sentence, debate of the General Assembly, the decisions of International Court of Justice, Treaties, European Conventions, 8th amendment in the United States which prohibits execution of death sentence on an insane person. In view of the well established laws both at national as well as international sphere, we are inclined to consider insanity as one of the supervening circumstances that warrants for commutation of death sentence to life imprisonment.

(iii) Solitary Confinement

80) Another supervening circumstance, which most of the petitioners appealed in their petitions is the ground of solitary confinement. The grievance of some of the petitioners herein is that they were confined in solitary confinement from the date of imposition of death sentence by the Sessions Court which is contrary to the provisions of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, Prisons Act and Articles 14, 19 and 21 of the Constitution and it is certainly a form of torture. However, the respective States, in their counter affidavits and in oral submissions, have out rightly denied having kept any of the petitioners herein in solitary confinement in violation of existing laws. It was further submitted that they were kept separately from the other prisoners for safety purposes. In other words, they were kept in statutory segregation and not per se in solitary confinement.

81) Similar line of arguments were advanced in Sunil Batra vs. Delhi Administration and Ors. etc. (1978) 4 SCC 494, wherein this Court held as under:-

> “87. The propositions of law canvassed in Batra's case turn on what is solitary confinement as a punishment and what is non-punitive custodial isolation of a prisoner awaiting execution. And secondly, if what is inflicted is, in effect, 'solitary', does Section 30(2) of the Act authorise it, and, if it does, is such a rigorous regimen constitutional. In one sense, these questions are pushed to the background, because Batra's submission is that he is not 'under sentence of death' within the scope of Section 30 until the Supreme Court has affirmed and Presidential mercy has dried up by a final 'nay'. Batra has been sentenced to death by the Sessions Court. The sentence has since been confirmed, but the appeal for Presidential commutation are ordinarily precedent to the hangmen's lethal move, and remain to be gone through. His contention is that solitary confinement is a separate substantive punishment of maddening severity prescribed by Section 73 of the Indian Penal Code which can be imposed only by the Court; and so tormenting is this sentence that even the socially less sensitive Penal Code of 1860 has interposed, in its cruel tenderness, intervals, maxima and like softening features in both Sections 73 and

74. Such being the penal situation, it is argued that the incarceratory insulation inflicted by the Prison Superintendent on the petitioner is virtual solitary confinement unauthorised by the Penal Code and, therefore, illegal. Admittedly, no solitary confinement has been awarded to Batra. So, if he is de facto so confined it is illegal. Nor does a sentence of death under Section 53, I.P.C. carry with it a supplementary secret clause of solitary confinement. What warrant then exists for solitary confinement on Batra? None. The answer offered is that he is not under solitary confinement. He is under 'statutory confinement' under the authority of Section 30(2) of the Prisons Act read with Section 366(2) Cr.P.C. It will be a stultification of judicial power if under guise of using Section 30(2) of the Prisons Act, the Superintendent inflicts what is substantially solitary confinement which is a species of punishment exclusively within the jurisdiction of the criminal court. We hold, without hesitation, that Sunil Batra shall not be solitarily confined. Can he be segregated from view and voice and visits and comingling, by resort to Section 30(2) of the Prisons Act and reach the same result ? To give the answer we must examine the essentials of solitary confinement to distinguish it from being 'confined in a cell apart from all other prisoners'.

88. If solitary confinement is a revolt against society's humane essence, there is no reason to permit the same punishment to be smuggled into the prison system by naming it differently. Law is not a formal label, nor logomachy but a working technique of justice. The Penal Code and the Criminal Procedure Code regard punitive solitude too harsh and the Legislature cannot be intended to permit preventive solitary confinement, released even from the restrictions of Section 73 and 74 I.P.C., Section 29 of the Prisons Act and the restrictive Prison Rules. It would be extraordinary that a far worse solitary confinement, masked as safe custody, sans maximum, sans intermission, sans judicial oversight or natural justice, would be sanctioned. Commonsense quarrels with such nonsense.

89. For a fuller comprehension of the legal provisions and their construction we may have to quote the relevant sections and thereafter make a laboratory dissection thereof to get an understanding of the components which make up the legislative sanction for semi-solitary detention of Shri Batra. Section 30 of the Prisons Act rules :

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Deputy Superintendent, and all articles shall be taken from him which the Deputy Superintendent deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner, shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under charge of a guard.

This falls in Chapter V relating to discipline of prisoners and has to be read in that context. Any separate confinement contemplated in Section 30(2) has this disciplinary limitation as we will presently see. If we pull to pieces the whole provision it becomes clear that Section 30 can be applied only to a prisoner "under sentence of death". Section 30(2) which speaks of "such" prisoners necessarily relates to prisoners under sentence of death. We have to discover when we can designate a prisoner as one under sentence of death.

90. The next attempt is to discern the meaning of confinement "in a cell apart from all other prisoners". The purpose is to maintain discipline and discipline is to avoid disorder, fight and other untoward incidents, if apprehended.

91. Confinement inside a prison does not necessarily import cellular isolation. Segregation of one person all alone in a single cell is solitary confinement. That is a separate punishment which the Court alone can impose. It would be a subversion of this statutory provision (Section 73 and 74 I.P.C.) to impart a meaning to Section 30(2) of the Prisons Act whereby a disciplinary variant of solitary confinement can be clamped down on a prisoner, although no court has awarded such a punishment, by a mere construction, which clothes an executive officer, who happens to be the governor of the jail, with harsh judicial powers to be exercised by punitive restrictions and unaccountable to anyone, the power being discretionary and disciplinary.

92. Indeed, in a jail, cells are ordinarily occupied by more than one inmate and community life inside dormitories and cells is common. Therefore, "to be confined in a cell" does not compel us to the conclusion that the confinement should be in a solitary cell.

93. "Apart from all other prisoners" used in Section 30(2) is also a phrase of flexible import. 'Apart' has the sense of 'To one side, aside,... apart from each other, separately in action or function' (Shorter Oxford English Dictionary). Segregation into an isolated cell is not warranted by the word. All that it connotes is that in a cell where there are a plurality of inmates the death sentencees will have to be kept separated from the rest in the same cell but not too close to the others. And this separation can be effectively achieved because the condemned prisoner will be placed under the charge of a guard by day and by night. The guard will thus stand in between the several inmates and the condemned prisoner. Such a meaning preserves the disciplinary purpose and avoids punitive harshness. Viewed functionally, the separation is authorised, not obligated. That is to say, if discipline needs it the authority shall be entitled to and the prisoner shall be liable to separate keeping within the same cell as explained above. "Shall" means, in this disciplinary context, "shall be liable to". If the condemned prisoner is docile and needs the attention of fellow prisoners nothing forbids the jailor from giving him that facility.

> 96. Solitary confinement has the severest sting and is awardable only by Court. To island a human being, to keep him incommunicado from his fellows is the story of the Andamans under the British, of Napoleon in St. Helena ! The anguish of aloneness has already been dealt with by me and I hold that Section 30(2) provides no alibi for any form of solitary or separated cellular tenancy for the death sentence, save to the extent indicated.

111. In my judgment Section 30(2) does not validate the State's treatment of Batra. To argue that it is not solitary confinement since visitors are allowed, doctors and officials come and a guard stands by is not to take it out of the category."

82) It was, therefore, held that the solitary confinement, even if mollified and modified marginally, is not sanctioned by Section 30 of the Prisons Act for prisoners 'under sentence of death'. The crucial holding under Section 30(2) is that a person is not 'under sentence of death', even if the Sessions Court has sentenced him to death subject to confirmation by the High Court. He is not 'under sentence of death' even if the High Court imposes, by confirmation or fresh appellate infliction, death penalty, so long as an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if this Court has awarded capital sentence, it was held that Section 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, has not been disposed of. Of course, once rejected by the Governor and the President, and on further application, there is no stay of execution by the authorities, the person is under sentence of death. During that interregnum, he attracts the custodial segregation specified in Section 30(2), subject to the ameliorative meaning assigned to the provision. To be 'under sentence of death' means 'to be under a finally executable death sentence'.

83) Even in Triveniben (supra), this Court observed that keeping a prisoner in solitary confinement is contrary to the ruling in Sunil Batra (supra) and would amount to inflicting "additional and separate" punishment not authorized by law. It is completely unfortunate that despite enduring pronouncement on judicial side, the actual implementation of the provisions is far from reality. We take this occasion to urge to the jail authorities to comprehend and implement the actual intent of the verdict in Sunil Batra (supra).

84) As far as this batch of cases is concerned, we are not inclined to interfere on this ground.

(iv) Judgments Declared Per Incuriam

85) Many counsels, while adverting to the cause of the petitioners, complained that either the trial court or the High Court relied on/adverted to certain earlier decisions which were either doubted or held per incuriam such as Machhi Singh vs. State of Punjab (1983) 3 SCC 470, Ravji alias Ramchandra vs. State of Rajasthan (1996) 2 SCC 175, Sushil Murmu vs. State of Jharkhand (2004) 2 SCC 338, Dhananjoy Chatterjee vs. State of W.B. (1994) 2 SCC 220, State of U.P. vs. Dharmendra Singh (1999) 8 SCC 325 and Surja Ram vs. State of Rajasthan (1996) 6 SCC 271. Therefore, it is the claim of the petitioners herein that this aspect constitutes a supervening circumstance that warrants for commutation of sentence of death to life imprisonment.

86) It is the stand of few of the petitioners herein that the guidelines issued in Machhi Singh (supra) are contrary to the law laid down in Bachan Singh (supra). Therefore, in three decisions, viz., Swamy Shraddananda (2) vs. State of Karnataka (2008) 13 SCC 767, Sangeet and Another vs. State of Haryana (2013) 2 SCC 452 and Gurvail Singh vs. State of Punjab (2013) 2 SCC 713 the verdict pronounced by Machhi Singh (supra) is held to be per incuriam.

87) In the light of the above stand, we carefully scrutinized those decisions. Even in Machhi Singh (supra), paragraphs 33 to 37 included certain aspects, viz., I. manner of commission of murder; II. motive for commission of murder; III. anti-social or socially abhorrent nature of the crime; IV. magnitude of crime and V. personality of victim of murder. Ultimately, in paragraph 38, this Court referred to the guidelines prescribed in Bachan Singh (supra). In other words, Machhi Singh (supra), after noting the propositions emerged from Bachan Singh (supra), considered the individual appeals and disposed of the same. In this regard, it is useful to refer a three-Judge Bench decision of this Court in Swamy Shraddananda (2) (supra). The Bench considered the principles enunciated in Machhi Singh (supra), Bachan Singh (supra) and after analyzing the subsequent decisions, came to the conclusion in paragraph 48:

> "48...It is noted above that Bachan Singh laid down the principle of the rarest of rare cases. Machhi Singh, for practical application crystallised the principle into five definite categories of cases of murder and in doing so also considerably enlarged the scope for imposing death penalty. But the unfortunate reality is that in later decisions neither the rarest of rare cases principle nor the Machhi Singh categories were followed uniformly and consistently."

> 88) Except the above observations, the three-Judge Bench has nowhere discarded Machhi Singh (supra). In other words, we are of the view that the three-Judge Bench considered and clarified the principles/guidelines in Machhi Singh (supra). It is also relied by the majority in Triveniben (supra). As regards other cases, in view of the factual position, they must be read in consonance with the three-Judge Bench and the Constitution Bench.

89) As pointed out by learned ASG for the Union of India, no decision mentioned above was found to be erroneous or wrongly decided. However, due to various factual situations, certain decisions were clarified and not applied to the facts of the peculiar case. In these circumstances, we are of the view that there is no need to give importance to the arguments relating to per incuriam.

(v) Procedural Lapses

90) The last supervening circumstance averred by the petitioners herein is the ground of procedural lapses. It is the claim of the petitioners herein that the prescribed procedure for disposal of mercy petitions was not duly followed in these cases and the lapse in following the prescribed rules have caused serious injustice to both the accused (the petitioners herein) and their family members.

91) Ministry of Home Affairs, Government of India has detailed procedure regarding handling of petitions for mercy in death sentence cases. As per the said procedure, Rule I enables a convict under sentence of death to submit a petition for mercy within seven days after and exclusive of the day on which the Superintendent of Jail informs him of the dismissal by the Supreme Court of his appeal or of his application for special leave to appeal to the Supreme Court. Rule II prescribes procedure for submission of petitions. As per this Rule, such petitions shall be addressed to, in the case of States, to the Governor of the State at the first instance and thereafter to the President of India and in the case of Union Territories directly to the President of India. As soon as mercy petition is received, the execution of sentence shall in all cases be postponed pending receipt of orders on the same. Rule III states that the petition shall in the first instance, in the case of States, be sent to the State concerned for consideration and orders of the Governor. If after consideration it is rejected, it shall be forwarded to the Secretary to the Government of India, Ministry of Home Affairs. If it is decided to commute the sentence of death, the petition addressed to the President of India shall be withheld and intimation to that effect shall be sent to the petitioner. Rule V states that in all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the Lt. Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be, shall forward such petition, as expeditiously as possible, along with the records of the case and his or its observations in respect of any of the grounds urged in the petition. Rule VI mandates that upon receipt of the orders of the President, an acknowledgement shall be sent to the Secretary to the Government of India, Ministry of Home Affairs, immediately in the manner prescribed. In the case of Assam and Andaman and Nicobar Islands, all orders will be communicated by telegraph and the receipt thereof shall be acknowledged by telegraph. In the case of other States and Union Territories, if the petition is rejected, the orders will be communicated by express letter and receipt thereof shall be acknowledged by express letter. Orders commuting the death sentence will be communicated by express letters, in the case of Delhi and by telegraph in all other cases and receipt thereof shall be acknowledged by express letter or telegraph, as the case may be. Rule VIII(a) enables the convict that if there is a change of circumstance or if any new material is available in respect of rejection of his earlier mercy petition, he is free to make fresh application to the President for reconsideration of the earlier order.

92) Specific instructions relating to the duties of Superintendents of Jail in connection with the petitions for mercy for or on behalf of the convicts under sentence of death have been issued. Rule I mandates that immediately on receipt of warrant of execution, consequent on the confirmation by the High Court of the sentence of death, the Jail Superintendent shall inform the convict concerned that if he wishes to appeal to the Supreme Court or to make an application for special leave to appeal to the Supreme Court under any of the relevant provisions of the Constitution of India, he/she should do so within the period prescribed in the Supreme Court Rules. Rule II makes it clear that, on receipt of the intimation of the dismissal by the Supreme Court of the appeal or the application for special leave to appeal filed by or on behalf of the convict, in case the convict concerned has made no previous petition for mercy, the Jail Superintendent shall forthwith inform him that if he desires to submit a petition for mercy, it should be submitted in writing within seven days of the date of such intimation. Rule III says that if the convict submits a petition within the period of seven days prescribed by Rule II, it should be addressed, in the case of States, to the Governor of the State

at the first instance and, thereafter, to the President of India and in the case of Union Territories, to the President of India. The Superintendent of Jail shall forthwith dispatch it to the Secretary to the State Government in the Department concerned or the Lt. Governor/Chief Commissioner/Administrator, as the case may be, together with a covering letter reporting the date fixed for execution and shall certify that the execution has been stayed pending receipt of orders of the Government on the petition. Rule IV mandates that if the convict submits petition after the period prescribed by Rule II, the Superintendent of Jail shall, at once, forward it to the State Government and at the same time telegraphed the substance of it requesting orders whether execution should be postponed stating that pending reply sentence will not be carried out.

93) The above Rules make it clear that at every stage the matter has to be expedited and there cannot be any delay at the instance of the officers, particularly, the Superintendent of Jail, in view of the language used therein as “at once”.

94) Apart from the above Rules regarding presentation of mercy petitions and disposal thereof, necessary instructions have been issued for preparation of note to be approved by the Home Minister and for passing appropriate orders by the President of India.

95) Extracts from Prison Manuals of various States applicable for the disposal of mercy petitions have been placed before us. Every State has separate Prison Manual which speaks about detailed procedure, receipt placing required materials for approval of the Home Minister and the President for taking decision expeditiously. Rules also provide steps to be taken by the Superintendent of Jail after the receipt of mercy petition and subsequent action after disposal of the same by the President of India. Almost all the Rules prescribe how the death convicts are to be treated till final decision is taken by the President of India.

96) The elaborate procedure clearly shows that even death convicts have to be treated fairly in the light of Article 21 of the Constitution of India. Nevertheless, it is the claim of all the petitioners herein that all these rules were not adhered to strictly and that is the primary reason for the inordinate delay in disposal of mercy petitions. For illustration, on receipt of mercy petition, the Department concerned has to call for all the records/materials connected with the conviction. Calling for piece-meal records instead of all the materials connected with the conviction should be deprecated. When the matter is placed before the President, it is incumbent upon the part of the Home Ministry to place all the materials such as judgment of the Trial Court, High Court and the final Court, viz., Supreme Court as well as any other relevant material connected with the conviction at once and not call for the documents in piece meal.

97) At the time of considering individual cases, we will test whether those Rules have been strictly complied with or not on individual basis.

Analysis on Case-to-Case Basis Writ Petition (Crl.) Nos. 55 and 132 of 2013

98) Mr. Shatrughan Chauhan and Mr. Mahinder Chauhan, family members of death convicts – Suresh and Ramji have filed Writ Petition (Crl.) No. 55 of 2013. Subsequent to the filing of the Writ

Petition (Crl.) No. 55 of 2013 by the family members, the death convicts themselves, viz., Suresh and Ramji, aged 60 years and 45 years respectively, belonging to the State of Uttar Pradesh, filed Writ Petition (Crl.) No. 132 of the 2013.

99) On 19.12.1997, the petitioners were convicted under Section 302 IPC for the murder of five family members of the first petitioner's brother for which they were awarded death sentence. On 23.02.2000, the Allahabad High Court confirmed their conviction and death sentence and, subsequently this Court dismissed their Criminal Appeal being No. 821 of 2000, vide judgment dated 02.03.2001.

100) On 09.03.2001 and 29.04.2001, the first and the second petitioners herein filed mercy petitions respectively addressed to the Governor/President of India. On 28.03.2001, Respondent No. 2–State of Uttar Pradesh wrote to the prison authorities seeking information inter alia on the conduct of the first petitioner in prison. On 05.04.2001, the prison authorities informed Respondent No. 2 about his good conduct.

101) On 18.04.2001, this Court dismissed the Review Petition (Crl.) being No. 416 of 2001 which was filed on 30.03.2001.

102) On 22.04.2001, Respondent No. 1–Union of India wrote to Respondent No. 2 asking for the record of the case and for information on whether mercy petition has been rejected by the Governor. Meanwhile, other mercy petitions were received by Respondent No. 1. There is no reference in the affidavit of Respondent No. 1 that the same were forwarded to Respondent No. 2 for consideration.

103) On 04.05.2001, Respondent No. 2 wrote to the Government Advocate, District Varanasi asking for a copy of the trial court judgment, which information is available from the counter affidavit filed by Respondent No.

2. On 23.05.2001, Respondent No. 2 sent a reminder to the Government Advocate, District Varanasi to send a copy of the trial court judgment. On 04.09.2001, the District Magistrate, Varanasi informed Respondent No. 2 that it is not possible to get a copy of the trial court judgment as all the papers are lying in the Supreme Court.

104) On 13.12.2001, without obtaining a copy of the trial court judgment, Respondent No. 2 advised the Governor to reject the mercy petition. On 18.12.2001, the Governor rejected the mercy petition after taking nine months' time. On 22.01.2002, Respondent No. 2 informed Respondent No. 1 that the Governor has rejected the petitioners' mercy petition. It is the grievance of the petitioners that neither the petitioners nor their family members were informed about the rejection.

105) On 28.03.2002, Respondent No. 1 wrote to Respondent No. 2 seeking copy of the trial court judgment. On 12.06.2002, the judgment of the trial court was furnished by Respondent No. 2 to Respondent No. 1.

106) Rule V of the Mercy Petition Rules which exclusively provides that the mercy petition should be sent along with the judgments and related documents immediately, states as follows:

> "In all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the Lieut Governor/Chief Commissioner/Administrator or the Government of the State concerned as the case may be shall forward such petition as expeditiously as possible along with the records of the case and his or its observations in respect of any of the grounds urged in the petition".

107) There is no explanation for the delay of about five months in sending the papers to Respondent No. 1. On 07.12.2002, Respondent No. 2 wrote to Respondent No. 1 seeking information about the status of the petitioners' mercy petition. Twelve reminders were sent between 17.01.2003 and 14.12.2005.

108) On 27.07.2003, Respondent No. 4-Superintendent of Jail, in accordance with the provisions of the U.P. Jail Manual, wrote to Respondent No. 2 seeking information about the petitioners' pending mercy petitions. Thereafter, twenty-seven reminders were sent by the prison authorities between 29.09.2003 and 29.05.2006.

109) On 08.04.2004, Respondent No. 1 advised the President to reject the mercy petition. On 21.07.2004, the President returned the petitioners' file (along with the files of ten other death-row convicts) to Respondent No. 1 for the advice of the new Home Minister. On 20.06.2005, Respondent No. 1 advised the President to reject the mercy petitions. On 24.12.2010, Respondent No. 1 recalled the files from the President. On 13.01.2011, the said files were received from the President. On 19.02.2011, Respondent No. 1 advised the President to reject the mercy petition.

110) On 14.11.2011, Respondent No. 2 wrote to Respondent No. 1 seeking information about the status of the petitioners' mercy petitions.

111) On 29.10.2012, the President returned the file for the advice of the new Home Minister. On 16.01.2013, Respondent No. 1 advised the President to reject the mercy petition. On 08.02.2013, the President rejected the mercy petitions.

112) On 05.04.2013, the petitioners heard the news reports that their mercy petitions have been rejected by the President of India. It is asserted that they have not received any written confirmation till this date.

113) On 06.04.2013, the petitioners authorized their family members, viz. Mr. Shatrughan Chauhan and Mr. Mahinder Chauhan, to file an urgent writ petition in this Court, which was ultimately numbered as Writ Petition (Crl.) No. 55 of 2013. By order dated 06.04.2013, this Court stayed the execution of the petitioners. Only on 20.06.2013, the prison authorities informed vide letter dated 18.06.2013 that the petitioners' mercy petitions have been rejected by the President.

114) All the above details have been culled out from the writ petitions filed by the petitioners and the counter affidavit filed on behalf of the Union of India as well as the State of Uttar Pradesh. The following are the details relating to disposal of mercy petitions by the Governor and the President:

Custody suffered till date	6.10.1996 – 17.12.2013	17 years 2 months
Custody suffered under sentence of death	19.12.1997 – 17.12.2013	16 years
Total delay since filing of mercy petition till prisoner informed of rejection by the President	27.04.2001 – 20.06.2013	12 years 2 months
Delay in disposal of mercy petition by Governor		
First petitioner	9.3.2001 – 28.01.2002	10 months
Second petitioner	27.04.2001 – 28.01.2002	9 months
Delay in disposal of mercy petition by the President	28.01.2002 – 08.02.2013	11 years
Delay in communicating rejection by the President	8.02.2013 – 20.06.2013	4 months

115) There is no dispute that these petitioners killed five members of their family – two adults and three children over property dispute. It is a heinous crime and they were awarded death sentence which was also confirmed by this Court. However, the details furnished in the form of affidavits by the petitioners, counter affidavit filed by Respondent Nos. 1 and 2 as well as the records produced by Mr. Luthra, learned Additional Solicitor General, clearly show that there was a delay of twelve years in disposal of their mercy petitions. To put it clear, the Governor of Uttar Pradesh took around ten months to reject the mercy petitions (09.03.2001 to 28.01.2002) and the President rejected the petitions with a delay of eleven years (28.01.2002 to 08.02.2013). We also verified the summary prepared by the Ministry of Home Affairs for the President and the connected papers placed by learned ASG wherein no discussion with regard to the same was attributed to.

116) On going through various details, stages and considerations and in the light of various principles discussed above and also of the fact that this Court has accepted in a series of decisions that undue and unexplained delay in execution is one of the supervening circumstances, we hold that in the absence of proper, plausible and acceptable reasons for the delay, the delay of twelve years in considering the mercy petitions is a relevant ground for the commutation of death sentence into life imprisonment. We are also satisfied that the summary prepared by the Ministry of Home Affairs for the President makes no mention of twelve years' delay much less any plausible reason. Accordingly, both the death convicts – Suresh and Ramji have made out a case for commutation of their death sentence into life imprisonment.

Writ Petition (Crl.) No. 34 of 2013

117) This writ petition is filed by Shamik Narain which relates to four death convicts, viz., Bilavendran, Simon, Gnanprakasam and Madiah aged 55 years, 50 years, 60 years and 64 years respectively.

118) The case emanates from the State of Karnataka. According to the petitioners, the accused persons are in custody for nearly 19 years and 7 months. All the persons were charged under IPC as well as under the provisions of the TADA. By judgment dated 29.09.2001, the Designated TADA Court, Mysore convicted the accused persons for the offence punishable under TADA as well as IPC and the Arms Act and sentenced them inter alia to undergo rigorous imprisonment for life.

119) All the accused persons preferred Criminal Appeal being Nos. 149-150 of 2002 before this Court which were admitted by this Court. The State of Karnataka also filed a Criminal Appeal being No. 34 of 2003 against the judgment dated 29.09.2001 praying for enhancement of sentence from life imprisonment to death sentence. On 09.01.2003, this Court refused to accept the claim of the State of Karnataka and dismissed its appeal on the ground of limitation. However, this Court, by judgment and order dated 29.01.2004, suo motu enhanced the sentence of the accused persons from life imprisonment to death. In the same order, this Court confirmed the conviction and sentence imposed by the TADA Court and dismissed the appeals preferred by the accused.

120) On 12.02.2004, separate mercy petitions were filed by the petitioners and the Superintendent, Central Jail, Belgaum forwarded the same to Respondent No. 1.

121) On 29.04.2004, the review petitions filed by the petitioners were also dismissed by this Court.

122) On 29.07.2004, the Governor rejected the mercy petitions and, according to the petitioners, they were never informed about the same.

123) On 07.08.2004, Respondent No. 2 forwarded the mercy petitions to Respondent No. 1 which were received on 16.08.2004. Here again, there is no explanation for the delay of six months from 12.02.2004, when the mercy petitions were first forwarded to Respondent No. 1.

124) On 19.08.2004, Respondent No. 1 requested Respondent No. 2 for a copy of the trial court judgment. Here again, the trial court judgment and other relevant documents should have been sent to Respondent No. 1 along with the mercy petitions. We have already extracted Rule V of the Mercy Petition Rules relating to forwarding of the required materials as expeditiously as possible. On 30.08.2004, Respondent No. 2 sent a copy of the trial court judgment to Respondent No. 1 which was received on 09.09.2004.

125) On 18.10.2004, the petitioners' gang leader Veerappan was killed in an encounter by a Special Task Force and his gang disbanded.

126) On 29.04.2005, the Home Minister advised the President to reject the mercy petitions. There was no further progress in the petitions till the files were recalled from the President and received back in the Ministry of Home Affairs, i.e., six years later on 16.05.2011. Though separate counter affidavit has been filed by Respondent No. 1, there is no explanation whatsoever for the delay of six years. Learned counsel for the petitioners pointed out that it is pertinent to take note of the fact that two consecutive Presidents had deemed it fit not to act on the advice suggested. In any event, this procrastination violated the petitioners' right under Article 21 of the Constitution by inflicting six additional years of imprisonment under the constant fear of imminent death not authorized by judgment of any court.

127) On 28.02.2006, Curative Petition being No. 6 of 2006 was dismissed by this Court.

128) In the meanwhile, letters were sent by the petitioners to the President of India highlighting their grievance about their procrastination for about last twelve years. The information furnished by the Ministry of Home Affairs under the Right to Information Act shows that mercy petitions submitted after the petitions of the petitioners were given priority and decided earlier while the mercy petitions of the petitioners were kept pending.

129) On 16.05.2011, the mercy petitions were recalled by Respondent No. 1 from the President. Here again, there is no explanation for the delay of six years. On 25.05.2011, the Home Minister advised the President for the second time to reject the mercy petition. On 19.11.2012, the President returned the file stating that the views of the new Home Minister may be ascertained. Here again, there is no explanation for the delay of 1 ½ years while the file was pending with the President. On 16.01.2013, the Home Minister advised the President for the third time to reject the mercy petitions. On 08.02.2013, the President rejected the mercy petitions and Respondent No. 2 was informed vide letter dated 09.02.2013.

130) It is the grievance of the petitioners that though they were informed orally and signatures were obtained, the prison authorities refused to hand over the copy of the rejection letter to them or to their advocate. The details regarding delay in this matter are as follows:

Custody suffered till date	14.07.1993 – 17.12.2013	20 years 5 months
Custody suffered under sentence of death	29.01.2004 – 17.12.2013	9 years 11 months
Total delay in disposal of the mercy petitions	12.02.2004 – 08.02.2013	9 years

131) The delay of six months (12.02.2004 – 07.08.2004) when the mercy petitions were being considered by the Governor is attributed to Respondent No. 1 because the mercy petition had been sent to Respondent No. 1 on 12.02.2004 and also because Respondent No. 2/Governor did not have jurisdiction to entertain the mercy petitions and even if clemency had been granted, it would have been null and void.

132) From the particulars furnished by the petitioners as well as the details mentioned in the counter affidavit of Respondent Nos. 1 and 2, we are satisfied that the delay of nine years in disposal of their mercy petitions is unreasonable and no proper explanation has been offered for the same. Apart from the delay in question, according to us, it is important to note that delay is undue and unexplained. Certain other aspects also support the case of the petitioners for commutation.

133) We have already mentioned that on 29.01.2004, this Court, by its judgment and order, suo motu enhanced the sentence from life imprisonment to death. It is relevant to point out that when the State preferred an appeal for enhancement of the sentence from life to death, this Court rejected the claim of the State, however, this Court suo motu enhanced the same and the fact remains that the appeal filed by the State for enhancement was rejected by this Court.

134) In the earlier part of our discussion, we have already held that the decision in Devender Pal Singh Bhullar (supra), holding that the cases pertaining to offences under TADA have to be treated differently and on the ground of delay in disposal of mercy petition the death sentence cannot be commuted, is per incuriam. Further, this Court in Yakub Memon vs. State of Maharashtra (Criminal Appeal No. 1728 of 2007) delivered on 21.03.2013 and in subsequent cases commuted the death sentence passed in TADA case to imprisonment for life.

135) Taking note of these aspects, viz., their age, in custody for nearly twenty years, unexplained delay of nine years in disposal of mercy petitions coupled with other reasons and also of the fact that the summary prepared by the Ministry of Home Affairs for the President makes no mention of the delay of 9 ½ years and also in the light of the principles enunciated in the earlier paragraphs, we hold that the petitioners have made out a case for commutation of death sentence to imprisonment for life.

Writ Petition (Crl.)No. 187 of 2013

136) Praveen Kumar, aged about 55 years, hailing from Karnataka, has filed this petition. He was charged for murdering four members of a family and ultimately by judgment dated 05.02.2002, he was convicted under Sections 302, 392 and 397 IPC and sentenced to death. The petitioner was defended on legal aid.

137) By judgment dated 28.10.2002, death sentence was confirmed by the Division Bench of the High Court of Karnataka and by order dated 15.10.2003, this Court dismissed the appeal filed by the petitioner.

138) On 25.10.2003, the petitioner sent the mercy petition addressed to the President of India wherein he highlighted that he has been kept in solitary confinement since the judgment of the trial Court, i.e., 05.02.2002.

139) On 12.12.2003, Respondent No. 1 requested Respondent No. 2 to consider the petitioner's mercy petition under Article 161 of the Constitution and intimate the decision along with the copies of the judgment of the trial Court, High Court, police diary and court proceedings. Respondent No. 1

also received mercy petition signed by 260 persons. By order dated 15.09.2004, the Governor rejected the mercy petition. On 30.09.2004, Respondent No. 2 informed Respondent No. 1 that the petitioner's mercy petition has been rejected by the Governor.

140) On 18.10.2004, Respondent No. 1 requested Respondent No. 2 for the second time to send the judgment of the trial Court along with the police diary and court proceedings. On 20.12.2004, according to Respondent No. 1, Respondent No. 2 sent the requested documents to Respondent No. 1 but Respondent No. 1 claimed that the same were in Kannada. On 07.01.2005, Respondent No. 1 returned the documents sent by Respondent No. 2 with a request to provide English translation. The State Government was again reminded in this regard on 05.04.2005, 20.04.2005, 04.06.2005 and 21.07.2005. Even after these reminders, the translated documents were not sent.

141) On 06.09.2005, the mercy petition of the petitioner-Praveen Kumar was processed and examined without waiting for the copy of the judgment of the trial Court and submitted for consideration of the Home Minister. The Home Minister approved the rejection of the mercy petition. On 07.09.2005, Respondent No. 1 advised the President to reject the petitioner's mercy petition. On 14.03.2006, Respondent No. 2 sent the translated documents to Respondent No. 1.

142) On 20.08.2006, the petitioner wrote to the President referring to his earlier mercy petition dated 25.10.2003 stating that for the last four years and seven months he has been languishing in solitary confinement under constant fear of death.

143) On 29.09.2006, the petitioner wrote to the Chief Minister of Karnataka referring to his earlier mercy petition dated 25.10.2003 highlighting the same grievance.

144) The information received under RTI Act shows that mercy petitions submitted after the petition of the petitioner were given priority and decided earlier while the mercy petition of the petitioner was kept pending.

145) On 01.07.2011, the petitioner's mercy petition was recalled from the President and received by Respondent No. 1 and thereafter it remained pending consideration of the President of India for five years and 10 months. There is no explanation for this inordinate delay.

146) On 14.07.2011, Respondent No. 1 advised the President to reject the petitioner's mercy petition. The file remained with the President till 29.10.2012, i.e. for 1 year 3 months and no explanation was offered for this delay.

147) On 29.10.2012, the President returned the petitioner's mercy petition to Respondent No. 1 ostensibly on the ground of an appeal made by 14 former Judges. However, this appeal, as is admitted in the counter affidavit filed by Respondent No. 1 itself, "had not indicated any plea in respect of Praveen Kumar". On 16.01.2013, Respondent No. 1 advised the President to reject the petitioner's mercy petition.

148) On 26.03.2013, the President rejected the petitioner's mercy petition. On 05.04.2013, the petitioner heard news reports that his mercy petition has been rejected by the President of India. He has not received any written confirmation of the same till date.

149) On 06.04.2013, this Court stayed the execution of the sentence in Writ Petition (Crl.) No. 56 of 2013 filed by PUDR. The following details show the delay in disposal of petitioner's mercy petition by the Governor and the President:

Custody suffered till date	2.3.94-19.2.95+1.2.99-17.12.13	15 years 9 months
Custody suffered under sentence of death	04.02.02-17.12.13	11 years 10 months
Total delay since filing of mercy petition till prisoner coming to know of rejection by President	25.10.2003-5.4.2013	9 years 5 months
Delay in disposal of mercy petition by Governor	25.10.03-30.09.04	11 months
Delay in disposal of mercy petition by President	30.09.04-26.03.2013	8 ½ years

150) Though learned counsel for the petitioner highlighted that the trial Court relied on certain decisions which were later held to be per incuriam, in view of the fact that there is a delay of 9½ years in disposal of the mercy petition, there is no need to go into the aspect relating to the merits of the judicial decision. On the other hand, we are satisfied that even though the Union of India has filed counter affidavit, there is no explanation for the huge delay. Accordingly, we hold that the delay in disposal of the mercy petition is one of the relevant circumstances for commutation of death sentence. Further, we perused the notes prepared by the Ministry of Home Affairs as well as the decision taken by the President. The summary prepared by the Ministry of Home Affairs for the President makes no mention of the unexplained and undue delay of 9 ½ years in considering the mercy petition. The petitioner has rightly made out a case for commutation of death sentence into life imprisonment.

Writ Petition (Crl.)No. 193 of 2013

151) Gurmeet Singh, aged about 56 years, hailing from U.P. has filed this petition. According to him, he is in custody for 26 years.

152) The allegation against the petitioner is that he murdered 13 members of his family on 17.08.1986. By order dated 20.07.1992, the trial Court convicted the petitioner under Sections 302,

307 read with Section 34 IPC and awarded death sentence.

153) On 28.04.1994, the Division Bench of the Allahabad High Court pronounced the judgment in the petitioner's Criminal Appeal No. 1333 of 1992. The two Hon'ble Judges disagreed with each other on the question of guilt, Malviya, J. upheld the petitioner's conviction and death sentence and dismissed his appeal, while Prasad, J. acquitted the petitioner herein and allowed his appeal.

154) On 29.02.1996, in terms of Section 392 of the Code, the papers were placed before a third Judge (Singh, J.), who agreed with Malviya, J. and upheld the petitioner's conviction and sentence.

155) On 08.03.1996, the Division Bench dismissed the appeal of the petitioner herein and confirmed his death sentence.

156) On 28.09.2005, this Court dismissed the petitioner's appeal and upheld the death sentence passed on him. The petitioner was represented on legal aid.

157) On 06.10.2005, the petitioner sent separate mercy petitions through jail addressed to the President of India and the Governor of Uttar Pradesh.

158) On 24.12.2005, the Prison Superintendent sent a radiogram to Respondent No. 2 reminding about the pendency of the mercy petition. Thereafter, 10 radiograms/letters were sent till 16.05.2006. These 11 reminders are itself testimony of the unreasonable delay by the State Government in deciding the petitioner's mercy petition.

159) On 04.04.2006, the Governor rejected the petitioner's mercy petition.

160) On 26.05.2006, the fact of the rejection by the Governor was communicated to Respondent No. 1 and to the Prison authorities after a delay of more than 1½ months.

161) On 16.06.2006, the President forwarded to Respondent No. 1 letter dated 02.06.2006 of the Additional District & Sessions Judge, Shahjahanpur, addressed to Respondent No. 2 requesting to intimate the status of the petitioner's mercy petition pending before the President.

162) On 07.07.2006, Respondent No. 1 forwarded the letter of the Additional District and Sessions Judge to Respondent No. 2 with a request to forward the petitioner's mercy petition as the same has not been received along with the judgment of the courts, police diary etc.

163) On 09.02.2007, Respondent No. 2 sent the mercy petition and other related documents to Respondent No. 1, i.e., 10 months after the mercy petition was rejected by the Governor. The Mercy Petition Rules, which we have already extracted in the earlier part, explicitly provide that the mercy petition and the related documents should be sent immediately. There is no explanation for the delay of 10 months in sending the papers to Respondent No. 1.

164) On 18.05.2007, Respondent No. 1 advised the President to reject the petitioner's mercy petition.

165) On 04.11.2009, the petitioner's mercy petition file was received from the President's office by Respondent No. 1.

166) Again on 09.12.2009, Respondent No. 1 advised the President to reject the petitioner's mercy petition. There was no progress in the petitioner's case for the next 2 years and 11 months, i.e., till 29.10.2012.

167) On 29.10.2012, the President returned the petitioner's mercy petition to Respondent No. 1, ostensibly on the pretext of an appeal made by 14 former judges, even though, as is admitted in the counter affidavit filed by Respondent No. 1, this appeal does not in any way relate to the case of the petitioner.

168) On 16.01.2013, Respondent No. 1 advised the President to reject the petitioner's mercy petition.

169) On 01.03.2013, the President of India rejected the petitioner's mercy petition.

170) On 05.04.2013, the petitioner heard the news reports that his mercy petition has been rejected by the President of India. However, till date the petitioner has not received any official written communication that his mercy petition has been rejected either by the Governor or by the President.

171) On 06.04.2013, this Court stayed the execution of the death sentence of the petitioner in W.P. (Crl.) No. 56 of 2013 filed by the Peoples' Union for Democratic Rights (PUDR).

172) On 20.06.2013, 3 ½ months after the actual rejection of the petitioner's mercy petition, the news was communicated to the prison authorities. The following are the details regarding the delay in disposal of mercy petition by the Governor and the President:

Custody suffered till date less 1 year of under-trial bail	16.10.1986-17.12.2013	26 years 2 months
Custody suffered under sentence of death	20.07.1992-17.12.2013	21 years 5 months
Total delay since filing of mercy petition till prisoner coming to know of rejection by President	6.10.2005-20.06.2013	7 years 8 months
Delay in disposal of mercy petition by Governor	6.10.2005-4.4.2006	6 months
Delay in disposal of	4.4.2006-1.3.2013	6 years 11 months

mercy petition by President		
Delay in communicating rejection to petitioner	1.3.2013-20.06.2013	3 ½ years

The above details clearly show that there is a delay of 7 years 8 months in disposal of mercy petition by the Governor and the President.

173) Though Respondent No. 1 has filed a separate counter affidavit, there is no acceptable reason for the delay of 7 years 8 months. In the absence of adequate materials for such a huge delay, we hold that the delay is undue and unexplained.

174) In the file of the Home Ministry placed before us, at pages 31 & 32, the following recommendations have been made for commutation of death sentence to life imprisonment which are as under:

> "I think that in this case too, we can recommend commutation of death sentence to life imprisonment for two reasons:
>
> 1) There was a disagreement amongst the Hon. Judges of the High Court implying thereby that there was some doubt in the mind of at least one Hon. Judge that this might not be the 'rarest of the rare cases'.
>
> 2) Unusual long delay in investigation and trial is another reason. This kind of submission was also made by the learned amicus curiae but was disregarded by the Court. I think the submission should have been accepted.
>
> Accordingly, I suggest that we may recommend that the death sentence of Sh. Gurmeet Singh be commuted to that of life imprisonment but he would not be allowed to come out of prison till he lives.

Sd/-" However, this was not agreed to by the Home Minister.

175) In view of the reasons and discussion in the earlier part of our order, the petitioner-convict is entitled to commutation of death sentence into life imprisonment. Even in the summary prepared by the Ministry of Home Affairs for the President makes no mention of the delay of 7 years 8 months. We are satisfied that the petitioner has made out a case for commutation of death sentence into life imprisonment.

Writ Petition (Crl.) No. 188 of 2013

176) Sonia and Sanjeev Kumar, aged about 30 and 38 years respectively, hailing from Haryana, have filed this petition. According to them, they are in custody for about 12 years.

177) On 27.05.2004, both of them were convicted for the offence punishable under Section 302 and sentenced to death by the trial Court. By order dated 12.04.2005, the High Court confirmed their conviction but modified their sentence of death into life imprisonment. The order of the High Court was challenged before this Court in Criminal Appeal No. 142 of 2005 and Criminal Appeal No. 894 of 2005 and Criminal Appeal No. 895 of 2006. By order dated 15.02.2007, this Court upheld their conviction and enhanced the imprisonment for life to death sentence.

178) In February, 2007, the petitioners filed a mercy petition before the Governor of Haryana. Similar mercy petitions were sent to the President.

179) On 23.08.2007, the Review Petitions being Nos. 260-262 of 2007 filed by the petitioners were dismissed.

180) On 31.10.2007, Respondent No. 2 informed Respondent No. 1 that the mercy petitions filed by the petitioners have been rejected by the Governor of Haryana and forwarded the relevant documents.

181) On 08.02.2008, Respondent No. 1 advised the President to reject the petitioner's mercy petitions. The mercy petitions remained pending with the President till 16.04.2009.

182) On 16.04.2009, the President sent the petitioners' file along with the first petitioner's letter dated 17.02.2009 to reject their petitions conveying their difficult position to continue with their life to Respondent No. 1.

183) On 20.05.2009, Respondent No. 1 advised the President for the second time to reject the petitioners' mercy petitions.

184) On 04.02.2010, the President returned the petitioners' file to Respondent No. 1 seeking clarification whether the first petitioner's request to reject the mercy petition amounts to withdrawal of original mercy petition and if so, is there further need to reject the petition? On 17.02.2010, Respondent No. 1 referred the President's query to the Law Department. On 05.03.2010, Respondent No. 1 advised the President for the 3rd time to reject the petitioners' mercy petitions. On 03.01.2012, upon the request of Respondent No. 1, the President returned the petitioners' file to Respondent No. 1. On 18.01.2012, Respondent No. 1 advised the President for the 4th time to reject the petitioners' mercy petitions.

185) On 29.10.2012, the President returned the petitioners' file back to Respondent No. 1 in the light of the appeal made by 14 former judges. It is pointed out by learned counsel that admittedly the appeal was made for other prisoners and not for the petitioners and so there was no need to return the files.

186) On 29.01.2013, since it was found that the judges' appeal did not pertain to the petitioners, Respondent No. 1 advised the President for the 5th time to reject the petitioners' mercy petitions. On 21.02.2013, the petitioners, anxious for a decision on their mercy petitions, wrote to the President again reiterating their plea for mercy.

187) On 28.03.2013, the President returned the petitioners' file to Respondent No. 1, supposedly on account of the petitioners' letter dated 21.02.2013. On 06.06.2013, Respondent No. 1 advised the President for the 6th time to reject the petitioners' mercy petitions "as no mitigating circumstance was found". Finally, on 29.06.2013, the President rejected the petitioners' mercy petitions.

188) On 13.07.2013, the petitioners' family members received a letter dated 11.07.2013 from the prison authorities informing that the petitioners' mercy petitions have been rejected by the President of India. The following are the details regarding the delay in disposal of the mercy petition by the Governor and the President:

Custody suffered till date	26.08.2001/19.09.2001-17.12.2013	12 years 3 months
Total delay since filing of mercy petition till prisoner coming to know of rejection by President	Feb.2007-13.07.2013	6 years 5 months
Delay in disposal of mercy petition by Governor	Feb. 2007-31.10.2007	8 months
Delay in disposal of mercy petition by President	31.10.2007-29.06.2013	5 years 8 months

189) In view of the above details as well as the explanation offered in the counter affidavit filed by Respondent No. 1, we hold that the delay in disposal of mercy petitions is undue and unexplained and in the light of our conclusion in the earlier part of our order, the unexplained and undue delay is one of the circumstances for commutation of death sentence into life imprisonment.

190) In addition, due to unbearable mental agony after confirmation of death sentence, petitioner No.1 attempted suicide. In view of our conclusion that the delay in disposal of mercy petitions is undue and unexplained, we hold that the petitioners have made out a case for commutation of death sentence into life imprisonment.

Writ Petition(Crl.)No. 192 of 2013

191) PUDR has filed this petition for Sundar Singh, who is hailing from Uttarkhand. On 30.06.2004, Sundar Singh was convicted by the Sessions Court under Sections 302, 307 and 436 IPC and

sentenced to death. On 20.07.2005, the High Court confirmed the death sentence passed by the trial Court. On 16.09.2010, this Court dismissed the appeal filed by Sundar Singh through legal aid.

192) On 29.09.2010, Sundar Singh sent a mercy petition through jail authorities addressed to the President of India stating therein that he had committed the offence due to insanity and that he repented for the same each day and shall continue to do for the rest of his life.

193) On 29.09.2010, the prison authorities filled in a nominal roll for Sundar Singh in which they stated that Sundar Singh's mental condition is abnormal. The said form was sent to Respondent Nos. 1 and 2. The prison authorities noticed that Sundar Singh's behaviour had become extremely abnormal. He was initially treated for mental illness by the prison doctor and, thereafter, he was examined by doctors from the HMM District Hospital, Haridwar. Thereafter, when he continued to show signs of insanity, the prison authorities called a team of psychiatrists from the State Mental Institute, Dehradun to examine him. The psychiatrists found him to be suffering from schizophrenia and recommended that he be sent to Benaras Mental Hospital. On 15.10.2010, Sundar Singh was admitted to Benaras Mental Hospital and he remained there for 1 ½ years till his discharge on 28.07.2012 with further prescriptions and advice for follow up treatment.

194) On 19.10.2010, Respondent No. 1 informed Respondent No. 2 in writing that Sundar Singh's mercy petition should be first sent to the Governor.

195) Based on the direction of Respondent No. 1, on 20.10.2010, the prison authorities forwarded the mercy petition of Sundar Singh to the Governor. On 21.01.2011, the Governor rejected the mercy petition of Sundar Singh and Respondent No. 2 forwarded the same to the President.

196) On 24.05.2011, Respondent No. 1 wrote to Respondent No. 2 asking for a copy of Sundar Singh's nominal roll, medical record and crime record. On 01.06.2011, Respondent No. 2 sent Sundar Singh's nominal roll and medical report to Respondent No. 1. In the covering letter, Respondent No. 2 informed Respondent No. 1 that Sundar Singh had been declared to be a mental patient by medical experts and was admitted to Varanasi Mental Hospital for treatment on 11.12.2010.

197) On 03.02.2012, Respondent No. 1 advised the President to reject the mercy petition filed by Sundar Singh. On 30.10.2012, the President returned the mercy petition of Sundar Singh ostensibly because of the petition sent by 14 former judges wherein there was a specific reference to the case of Sundar Singh.

198) On 28.12.2012, Sundar Singh was examined by a doctor in prison who noted that he was "suicidally inclined" and prescribed him very strong anti psychotic medicines. Despite that, on 01.02.2013, Respondent No. 1 advised the President to reject the mercy petition of Sundar Singh.

199) On 16.02.2013, the prison authorities again called a team of three psychiatrists from the State Mental Hospital, Dehradun, who examined Sundar Singh. In their report, they mentioned that Sundar Singh had already been diagnosed as suffering from undifferentiated schizophrenia. They

noted that he was "unkempt and untidy, cooperative but not very much communicative" and his "speech is decreased in flow and content" and "at times is inappropriate and illogical to the question asked." They concluded as follows:

"he is suffering from chronic psychotic illness and he needs long term management".

The prison authorities sent this report to Respondent No. 1.

200) On 31.03.2013, the President rejected the mercy petition of Sundar Singh. On 02.04.2013, Respondent No. 1 informed Respondent No. 2 that the President has rejected the mercy petition of Sundar Singh. On 05.04.2013, Sundar Singh was orally informed by the prison authorities that his mercy petition had been rejected by the President but he did not appear to understand and did not react.

201) On 06.04.2013, this Court stayed the execution of death sentence of Sundar Singh in W.P.(Crl.) No. 56 of 2013 filed by PUDR.

202) On 31.10.2013, at the instance of the prison authorities, Dr. Arun Kumar, Neuro Psychiatrist from the State Mental Institute, Dehradun was brought to the prison to examine Sundar Singh. He opined as follows:

> "Sundar Singh is suffering from schizophrenia (undifferentiated) and requires long term bed rest. He is not mentally fit to be awarded for death penalty."
>
> 203) We have carefully perused all the details. Though there is a delay of only 2 ½ years in considering the mercy petition of Sundar Singh, the counter affidavit as well as various communications sent by the jail authorities clearly show that Sundar Singh was suffering from mental illness, i.e., Schizophrenia.

204) In the earlier part of our order, while considering "mental illness", we have noted Rules 386 and 387 of the U.P. Jail Manual which are applicable to the State of Uttarakhand also, which clearly show that when condemned convict develops insanity, it is incumbent on the part of the Superintendent to stay the execution of sentence of death and inform the same to the District Magistrate. In the reply affidavit filed on behalf of Respondent Nos. 2-4 insofar as mental illness of the convict – Sundar Singh is concerned, it is stated as under:

> "16. As far as illness of the convict Sunder Singh is concerned, he has been regularly medically examined as per the provisions of the jail manual, he was examined by Medical Officers of HMM District Hospital, Haridwar and thereafter on the recommendation of the Doctors of State Mental Health Institute, Dehradun, the Prisoner was sent to Mental Hospital, Varanasi on 15.10.2010 for examination and treatment.

> 17. Convict Sunder Singh was admitted in the Mental Hospital, Varansai for treatment and after his treatment, Board of Visitors under Chairpersonship of District Judge, Varansai, convict Sunder Singh was found fit and, therefore, they discharged the convict Sunder Singh along with certain prescription and advice on 28.7.2012 from Mental Hospital, Varanasi...
>
> 18. In pursuance of above advice of the Doctors of Mental Hospital, Varansai, on the request of the Jail Administration to State Mental Hospital, Selaqui, Dehradun, a panel of three Doctors visited on 16.2.2013 and examined the Convict Sunder Singh and opined that on the basis of information and present assessment, he is suffering from chronic psychiatric illness and he need long term treatment...
>
> 19. Convict has thereafter been regularly provided due medical assistance in the form of medicine and examination. On 31.10.2013, Dr. Arun Kumar, neuro psychiatric from State Mental Health Institute, Selaqui, Dehradun visited to the District Jail for examination of the Convict Sunder Singh and opined: Impression: Sunder Singh is suffering from Schizophrenia (undifferentiated) and require long term bed rest. He is not mentally fit to be awarded for death penalty...
>
> 20. On 5.11.2013, on the aforesaid report dated 31.10.2013, Chief Medical Superintendent, State Medical Health Institute Selaqui Dehradun, has been requested to send a panel of Doctors for thorough examination of the mental state of the said Prisoner Sunder Singh. Upon medical examination by a board of Doctors and receipt of the examination report the State and Jail Authorities shall act in accordance with law.

In view of the above submission, this Hon'ble Court may kindly pass appropriate orders disposing of the present petition. The answering respondent is duty bound to comply the orders passed by the Hon'ble Court." Along with the reply affidavit, the State has fairly enclosed the medical reports, various correspondence/intimation about the Schizophrenia of lunatic nature/mental illness of the petitioner suffering from Schizophrenia. Further, even on 24.05.2011, the Government of India, Ministry of Home Affairs, after receipt of mercy petition of the condemned prisoner – Sundar Singh requested the Principal Secretary, Government of Uttarakhand, Secretariat, Dehradun to furnish the following documents/information at the earliest:

i) Present age of the prisoner along with nominal roll.

ii) Medical report of the prisoner

iii) Previous crime record, if any, of the prisoner.

205) Pursuant to the same, Shri Rajeev Gupta, Principal Secretary, Government of Uttarakhand furnished all the details to the Joint Secretary (Judicial), Ministry of Home Affairs, Government of India, Jaisalmer House, New Delhi enclosing various medical reports. Learned counsel for the State

has also placed mental status of Sundar Singh duly certified by the State Mental Health Institute, Dehradun which is as under:

> "MENTAL STATUS EXAMINATION REPORT Prisoner Name: Mr. Sunder Singh, age about 40 yrs/male, S/o Mr. Har Singh with mark of identification – Black mole over left side lower part of neck, has been assessed by following experts on 16/2/2013 at District Jail, Haridwar.
>
> Dr. J.S. Bisht, Psychiatrist Dr. Arun Kumar, Psychiatrist Dr. Pratibha Sharma, Psychiatrist As per information by jail staff and fellow prisoners above mentioned prisoner is not interacting with others, not concerned about personal hygiene and would like to stay alone.
>
> Previous record show that he was referred to Banaras Mental Hospital on 11/12/2010 for Management after being diagnosed as Undifferentiated Schizophrenia by previous psychiatrist.
>
> Current mental status examination shows that he is unkempt and untidy, cooperative but not very much communicative. Speech is decreased in flow and content. At time it was inappropriate and illogical to the question asked. Affect is blunted. Thought flow is decreased and there is poor awareness... OPINION On the basis of information and present assessments he is suffering from chronic Psychotic illness and he needs long term treatment.
>
> (Signature of Dr. illegible) (Signature of Dr. illegible) (Signature of Dr. illegible) Date 16/2/2013 Dr. J.S. Bisht Dr. Arun Kumar Dr. B. Pratibha Sharma Psychiatrist Thumb Date 16/2/13 Distt. Jail Haridwar" MENTAL STATUS EXAMINATION REPORT Prisoner Name: Mr. Sunder Singh, age about 41 years/male, S/o Mr. Har Singh Identification Mark: Black mole over left side lower part of neck.
>
> Index prisoner is examined by me at District Jail, Haridwar.
>
> As per information by jail staff, prisoner records and current mental status examination, the sufferings from undifferentiated Schizophrenia which is chronic illness. The patient/prisoner require long term treatment to remain in remission period. Person with mentioned diagnose remain in remission and cannot be said as cured.
>
> Impression: Sunder Singh is suffering from Schizophrenia (Undifferentiated) and required long term treatment.
>
> He is not mentally fit to be awarded for death penalty.

(Signature of Dr. Arun Kumar) Date 31/10/13 Dr. Arun Kumar (MBBS, DPM, DNB) Neuropsychiatries State Mental Health Institute Salequi Dehradun Thumb Attested LTI of Sunder Singh (Signature of Dr. Arun Kumar) Date 31/10/13 Dr. Arun Kumar (MBBS, DPM, DNB) Neuropsychiatries State Mental Health Institute Salequi Dehradun"

206) Even if we agree that there is no undue delay in disposal of the mercy petition by the President, we are satisfied that Sundar Singh is suffering from mental illness, i.e., Schizophrenia as noted by 3 doctors, viz., Dr. J.S. Bisht, Dr. Arun Kumar, and Dr. Pratibha Sharma, Psychiatrists attached to the State Mental Health Institute, Salequi, Dehradun.

207) In the earlier part of our discussion, we have highlighted various Rules from the U.P. Jail Manual which are applicable to the State of Uttarakhand also, various international conventions to which India is a party and the decisions by the U.N.O. regarding award of death sentence and execution of persons suffering from mental illness. Though all the details were furnished by the persons concerned to Respondent No. 1, Ministry of Home Affairs, unfortunately, those aspects were neither adverted to by the Home Minister nor the summary prepared by the Ministry of Home Affairs for the President makes any reference to the mental condition as certified by the competent doctors.

208) We are satisfied that in view of the mental illness, he cannot be executed. On this ground, the death sentence has to be commuted to life imprisonment. If the condition of Sundar Sigh requires further treatment, we direct the jail authorities to provide all such medical facilities to him.

Writ Petition (Crl.)No. 190 of 2013

209) The death convict Jafar Ali, aged about 48 years, hailing from U.P., has filed the above writ petition. According to him, he is in custody for more than 11 years (single cell confinement).

210) On 14.07.2003, the petitioner was convicted under Section 302 IPC for the murder of his wife and five daughters and was sentenced to death. On 27.01.2004, the Division Bench of the Allahabad High Court confirmed the death sentence passed on the petitioner. On 05.04.2004, the petitioner through legal aid filed SLP (Crl.) No. 1129 of 2004. This Court did not grant special leave and dismissed the SLP in limine.

211) On 19.04.2004, the petitioner sent a mercy petition through jail superintendent to the President of India and the Governor of Uttar Pradesh. On 22.04.2004, Respondent No. 4 sent a radiogram to Respondent No. 2 to enquire about the status of the petitioner's mercy petition. Thereafter, between 24.04.2004 and 16.05.2005, 14 more such radiograms/letters were sent by Respondent No. 4 to Respondent No. 2 enquiring about the status of the petitioner's mercy petition. These 15 reminders testify to the unreasonable delay caused by the State Government in deciding the petitioner's mercy petition.

212) On 20.05.2005, one year after the receipt of the mercy petition, Respondent No. 2 wrote to the District Magistrate and the Government Advocate, Allahabad High Court for the trial court as well

as the High Court judgments relating to the petitioner's case. Here again, there is no explanation for the delay of 11 months.

213) On 30.09.2005, the Government Advocate, Allahabad High Court sent the High Court judgment in the petitioner's case to Respondent No. 2. Here again, there is no explanation for the delay of four months in sending the judgment.

214) On 28.11.2005, the Governor rejected petitioner's mercy petition. It took one year and seven months in rejecting the petitioner's mercy petition in spite of 15 reminders. On 30.12.2005, the Special Secretary, UP Government informed the Home Ministry, Government of India about the rejection of mercy petition by the Governor.

215) On 22.12.2005, information about the rejection of the mercy petition by the Governor was communicated to the prison authorities one month after its rejection. On 18.01.2006, Respondent No. 1 requested Respondent No. 2 to furnish the petitioner's mercy petition along with the recommendation of the Governor, judgments of the courts and other records of the case.

216) On 17.07.2006, Respondent No. 2 sent the documents to Respondent No. 1 which were requested vide letter dated 18.01.2006 along with a request for an early intimation of the decision on the mercy petition. Here again, there is no explanation for the delay of seven months in sending those documents.

217) As pointed out earlier, Rule V of the Mercy Petition Rules explicitly provides that the mercy petition should be sent along with the judgments and related documents immediately. There is no explanation for this inordinate delay of seven months in sending the papers to Respondent No. 1.

218) On 17.08.2006, Respondent No. 1 advised the President to reject the mercy petition. On 16.01.2007, Respondent No. 2 sent another reminder to Respondent No. 1 regarding the pendency of the petitioner's mercy petition. Thereafter, further 15 reminders were sent on various dates i.e., on 06.09.2007, 10.07.2008, 19.02.2009, 17.03.2009, 29.05.2009, 27.07.2009, 10.09.2009, 29.09.2009, 10.11.2009, 14.01.2010, 20.04.2010, 26.07.2010, 30.08.2010, 15.07.2011 and 22.11.2011. These 16 reminders testify the unreasonable delay caused in deciding the petitioner's mercy petition.

219) On 30.09.2011, Respondent No. 1 recalled the files from the President. There is no explanation for this inordinate delay of 5 years and 1 month. On 01.11.2011, Respondent No. 1 advised the President to reject the mercy petition.

220) On 30.10.2012, the President returned the mercy petition to Respondent No. 1 ostensibly on the ground of a petition sent by 14 retired judges to the President. There was no reference of the plea of Jafar Ali in the representation made by 14 retired judges. On 24.01.2013, Respondent No. 1 advised the President to reject the mercy petition. On 14.03.2013, the President rejected the mercy petition, viz., 7 years and 4 months after rejection by the Governor and after 16 reminders sent by the State Government.

221) On 19.03.2013, Respondent No. 1 informed Respondent No. 2 of the rejection of the mercy petition. On 05.04.2013, the petitioner heard the news reports that his mercy petition has been rejected by the President of India.

222) On 06.04.2013, this Court stayed the execution of the petitioner in Writ Petition (Crl.) No. 56 of 2013 filed by PUDR.

223) On 22.06.2013, the prison authorities were informed vide letter dated 18.06.2013 that the President rejected the petitioner's mercy petition. There is no explanation for this delay of three months in informing the prison authorities and the petitioner about the rejection of the mercy petition.

224) On 08.07.2013, Respondent No. 4 informed the petitioner that his mercy petition had been rejected by the President.

225) The details regarding delay in disposal of mercy petitions by the Governor and the President are as follows:

Custody suffered till date	27.07.2002 – 17.12.2013	11 years, 5 months
Custody suffered under sentence of death	14.07.2003 – 17.12.2013	10 years, 5 months
Total delay in disposal of mercy petition	19.04.2004 – 22.06.2013	9 years, 2 months
Delay in disposal of mercy petition by Governor	19.04.2004 – 29.09.2005	1 year, 5 months
Delay in disposal of mercy petition by the President	29.09.2005 – 14.03.2013	7 years, 5 months
Delay in intimating prisoner of rejection of mercy petition by President	14.03.2013 – 22.06.2013	3 months

226) A perusal of the details furnished by the petitioner, counter affidavit filed by the Union of India as well as the State clearly shows that the delay was to the extent of 9 years. Though in the counter affidavit Respondent No. 1 has discussed various aspects including the decision taken by the Home Ministry and the note which was prepared for the approval of the President, the fact remains that there is no explanation at all for taking seven years and five months for disposal of a mercy petition by the President. It is for the executive, viz., the Home Ministry, to explain the reason for keeping the mercy petition for such a long time. To that extent, everyday, after the confirmation of death sentence by this Court is painful for the convict awaiting the date of execution.

227) Accordingly, in view of the unexplained and undue delay of nine years in disposal of mercy petition by the Governor and the President, we hold that the petitioner is entitled to commutation of death sentence to life.

228) Apart from undue and unexplained delay in disposal of mercy petition, another relevant aspect has not been noted by the Ministry while preparing the notes for the President, viz., when the petitioner preferred special leave to appeal against the decision of the High Court confirming the death sentence, this Court did not grant special leave and dismissed the SLP in limine. Though such recourse is permissible inasmuch as since it is a case of death sentence, it is desirable to examine the materials on record first hand in view of time-honoured practice of this Court and to arrive at an independent conclusion on all issues of facts and law, unbound by the findings of the trial court and the High Court. This principle has been highlighted in various decisions including the recent one in Mohd. Ajmal Kasab vs. State of Maharashtra (2012) 9 SCC 1.

229) In addition, we also perused the notes prepared by the Ministry of Home Affairs, the decision taken by the Home Ministry and the notes placed for the approval of the President. It is not in dispute that the summary prepared by the Ministry of Home Affairs for the President failed to consider the undue delay and there is no explanation for the same at all.

230) We are satisfied that all these grounds enable this court to commute death sentence into life.

Writ Petition (Crl.) Nos. 191 and 136 of 2013

231) Writ Petition (Crl.) No. 191 of 2013 has been filed by Maganlal Barela, death convict, aged about 40 years, hailing from the State of M.P. and on his behalf, PUDR has filed Writ Petition (Crl.) No. 136 of 2013 for similar relief.

232) The petitioner claims that he is in custody for more than three years (single cell confinement). On 03.02.2011, the petitioner, who is a tribal, was convicted by the Sessions Court under Section 302 IPC for the murder of his five daughters and under Section 309 IPC and was imposed a sentence of death. On 12.09.2011, the Division Bench of the Madhya Pradesh High Court confirmed the death sentence passed on the petitioner who was represented on legal aid. On 09.01.2012, the petitioner, through legal aid, filed SLP (Crl.) Nos. 329-330 of 2012. This Court did not grant special leave and dismissed the SLP in limine.

233) On 02.02.2012, the petitioner sent a mercy petition through jail addressed to the President of India and the Governor of Madhya Pradesh. The mercy petition, which was verified by the prison authorities, stated inter alia that the petitioner was suffering from mental illness and was continuously undergoing treatment through Central Jail, Bhopal.

234) On 20.02.2012, the Prison Superintendent, in accordance with Rule 377 of the Madhya Pradesh Prison Manual, submitted a form to the State Government. In column 18, it was stated that his conduct in prison was good. Against column 19, which was for the Prison Superintendent to opine on alteration of the petitioner's sentence, the Superintendent opined as follows:

"Commutation of sentence is recommended".

235) On 20.02.2012, the Prison Superintendent, in accordance with the Government Law and Judiciary Department Circular No. 4837/21 dated 13.12.1982 submitted to the State Government a form entitled "Required Information". The entries made by the Superintendent in the said form stated inter alia that the petitioner is not a habitual criminal, he belongs to the weaker section of the society and he is of mental disorder and at present under treatment of Psychiatry Department Hamidia Hospital, Bhopal. Against Column No. 11 which seeks the Superintendent's recommendations, it was stated that, "Commutation of Sentence is recommended".

236) On 07.08.2012, Respondent No. 1 received the petitioner's mercy petition forwarded by Respondent No. 2. There was a delay of six months in forwarding the mercy petition to Respondent No. 1 and no explanation was given by Respondent No. 2 in the counter affidavit.

237) On 31.08.2012, Respondent No. 1 wrote to Respondent No. 2 requesting the petitioner's medical report since in the mercy petition, it was stated that the petitioner is suffering from mental illness. Respondent No. 1 also requested Respondent No. 2 to confirm whether the petitioner had filed a review petition in this Court against the dismissal of his SLP.

238) On 19.10.2012, Respondent No. 1 sent a reminder to Respondent No. 2 about the queries vide letter dated 31.08.2012. On 29.11.2012, Respondent No. 1 sent the second reminder to Respondent No. 2 about the queries. On 26.02.2013, Respondent No. 1 sent a third reminder to Respondent No. 2 about the same.

239) On 25.03.2013, the Jail Superintendent, Central Jail, Indore forwarded the medical report to Respondent No. 1 and it was also informed that the petitioner has not filed a review petition in this Court against the dismissal of his SLP.

240) On 06.06.2013, the Home Minister advised the President to reject the mercy petition. On 16.07.2013, the President rejected the petitioner's mercy petition. There was no reference to the petitioner's mental health report in the note prepared for approval of the President. Likewise, there was no reference to the fact that this Court had rejected the petitioner's SLP in limine in a death case.

241) On 27.07.2013, the petitioner was orally informed by the prison authorities that his mercy petition has been rejected by the President of India. The petitioner was neither furnished with any official written communication regarding the rejection of his mercy petition by the President of India nor the petitioner was informed that his mercy petition has been rejected by the Governor.

242) On 27.07.2013, the Superintendent of the Central Prison, Jabalpur sent a letter to the Icchawar Police Station asking them to inform the petitioner's family to meet the petitioner urgently.

243) On 07.08.2013, this Court stayed the execution of the petitioner in Writ Petition (Crl.) No. 136 of 2013 filed by PUDR. The details regarding delay in disposal of mercy petition are as follows:

Delay by State to send mercy petition to MHA	2.02.2012 – 07.08.2012	6 months

Total delay since mercy petition was filed	2.02.2012 – 27.07.2013	1 year 6 months
Delay by State to send medical report to MHA	31.08.2012 – 25.03.2012	7 months
Delay by President	7.08.2012 – 27.07.2013	1 year

Insofar as the delay is concerned, it cannot be claimed that the same is excessive though there is a delay of one year in disposal of mercy petition by the President. However, during the period of trial before the Sessions court and even after conviction, the petitioner was suffering from mental illness. This is clear from the note made by the Prison Superintendent who opined for alteration of petitioner's sentence from death to life. This important aspect was not noted by the Home Ministry.

244) Another relevant event which was not noticed by the Home Ministry while considering the notes for approval of the President was that the petitioner filed SLP through legal aid and this Court did not grant special leave and dismissed the SLP in limine. As highlighted in the previous case, we reiterate that in case of death sentence, it is desirable to examine all the materials on record first hand in accordance with the time- bound practice of this Court and arrive at an independent conclusion on all the issues of fact and law irrespective of the findings of the trial court and the High Court. Such recourse was not adopted in this case. This was not highlighted in the notes prepared for the approval of the President. As stated earlier, the summary prepared by the Ministry of Home Affairs for the President fails to consider the mental illness as well as the opinion offered by the Prison Superintendent in terms of the M.P. Prison Manual as a ground for commutation of sentence. For all these reasons, more particularly, with regard to his mental illness, we feel that ends of justice would be met by commuting the sentence of death into life imprisonment.

Writ Petition (Crl.) Nos. 139 and 141 of 2013

245) Shivu – death convict, aged about 31 years, hailing from Karnataka, has filed Writ Petition (Crl.) No. 139 of 2013. Jadeswamy, aged about 25 years, also hailing from Karnataka, has filed Writ Petition (Crl.) No. 141 of 2013. Both are challenging the rejection of their mercy petitions on various grounds. According to them, they are in custody for 11 years and 10 months.

246) Both the petitioners were convicted for an offence under Sections 302, 376 read with Section 34 IPC and were sentenced to death. On 07.11.2005, the Karnataka High Court confirmed the petitioners' death sentence. On 13.02.2007, this Court dismissed their appeal and upheld the death sentence awarded to them.

247) On 27.02.2007, both the petitioners filed separate mercy petitions addressed to the Governor of Karnataka and the President of India through the Prison Superintendent.

248) On 21.03.2007, Respondent No. 1 wrote to Respondent No. 2 requesting to consider petitioners' mercy petitions under Article 161 of the Constitution and, in the event of rejection, to send the mercy petition along with the recommendations, copies of the judgments, copies of the

records of the case, etc. to Respondent No. 1 for consideration under Article 72 of the Constitution.

249) On 05.04.2007 and 09.05.2007, review petitions filed by the petitioners were dismissed.

250) On 10.08.2007, Respondent No. 2 informed Respondent No. 1 that the Governor has rejected the mercy petitions and forwarded the copy of the trial court judgment, the Supreme Court judgment and mercy petitions.

251) On 09.10.2007, Respondent No. 1 wrote to Respondent No. 2 requesting him to provide the judgment of the High Court, the police diary, the court proceedings and the English translation of the trial court judgment. Respondent No. 2 sent some of these documents on 26.07.2012, i.e., after 4 years and 9 ½ months and the rest of the documents were sent on 03.12.2012, i.e., after 5 years and 2 months. There was also no explanation as to why Respondent No. 1 did not take steps to expedite the matter for such a long period.

252) On 03.04.2013, Respondent No. 1 advised the President to reject the mercy petitions. There was a delay of 5 years and 8 months after the Governor rejected the mercy petitions.

253) On 27.05.2013, the President returned the file along with the mercy petitions sent by Shivu's mother and the members of the Badrayyanhalli Gram Panchayat.

254) On 24.06.2013, Respondent No. 1 advised the President to reject the mercy petitions. On 27.07.2013, the President rejected the petitioners' mercy petitions.

255) On 13.08.2013, the petitioners were informed by the prison authorities that their mercy petitions have been rejected by the President. On 16.08.2013, the local police visited the petitioners' family members and informed that they would be executed at 6 a.m. on 22.08.2013 at Belgaum Central Prison. The said procedure was contrary to the Prison Manual. As per the present Rules, the execution can only be scheduled after 14 days of informing the prisoner of rejection of mercy petition and in this case the same was not being followed. The following are the details regarding delay in disposal of mercy petitions by the Governor and the President:

Total custody period till date	15.10.2001 – 17.12.2013	12 years 2 months
Period under sentence of death	29.07.2005 – 17.12.2013	8 years 5 months
Total delay in deciding mercy petitions	27.02.2007 – 13.08.2013	6 ½ years
Delay by the Governor	27.02.2007 – 10.08.2007	6 months
Delay by the President	10.08.2007 – 13.08.2013	6 years

256) It is true that there is some explanation in the affidavit filed on behalf of the State in respect of the time taken by the Governor for rejection of their mercy petitions, however, there is no acceptable/adequate reason for delay of six years at the hands of the Ministry of Home Affairs followed by the rejection order by the President.

257) Though learned counsel has referred to the fact that the trial court and the High Court followed certain decisions which were later held as per incuriam, in view of the fact that there is undue delay of six years which is one of the circumstances for commutation of sentence from death to life, we are not adverting to all other aspects.

258) We also perused the records of the Ministry of Home Affairs produced by learned ASG and the summary prepared for approval of the President. There is no specific explanation in the summary prepared by the Ministry of Home Affairs for the President for the delay of six years. In view of the same and in the light of the principles enunciated in various decisions which we have adverted to in the earlier part of our judgment, we hold that the petitioners have made out a case for commutation of sentence.

Guidelines:

259) In W.P (Crl) No 56 of 2013, Peoples' Union for Democratic Rights have pleaded for guidelines for effective governing of the procedure of filing mercy petitions and for the cause of the death convicts. It is well settled law that executive action and the legal procedure adopted to deprive a person of his life or liberty must be fair, just and reasonable and the protection of Article 21 of the Constitution of India inheres in every person, even death-row prisoners, till the very last breath of their lives. We have already seen the provisions of various State Prison Manuals and the actual procedure to be followed in dealing with mercy petitions and execution of convicts. In view of the disparities in implementing the already existing laws, we intend to frame the following guidelines for safeguarding the interest of the death row convicts.

1. Solitary Confinement: This Court, in Sunil Batra (supra), held that solitary or single cell confinement prior to rejection of the mercy petition by the President is unconstitutional. Almost all the prison Manuals of the States provide necessary rules governing the confinement of death convicts. The rules should not be interpreted to run counter to the above ruling and violate Article 21 of the Constitution.

2. Legal Aid: There is no provision in any of the Prison Manuals for providing legal aid, for preparing appeals or mercy petitions or for accessing judicial remedies after the mercy petition has been rejected. Various judgments of this Court have held that legal aid is a fundamental right under Article 21. Since this Court has also held that Article 21 rights inhere in a convict till his last breath, even after rejection of the mercy petition by the President, the convict can approach a writ court for commutation of the death sentence on the ground of supervening events, if available, and challenge the rejection of the mercy petition and legal aid should be provided to the convict at all stages. Accordingly, Superintendent of Jails are directed to intimate the rejection of mercy petitions to the nearest Legal Aid Centre apart from intimating the convicts.

3. Procedure in placing the mercy petition before the President: The Government of India has framed certain guidelines for disposal of mercy petitions filed by the death convicts after disposal of their appeal by the Supreme Court. As and when any such petition is received or communicated by the State Government after the rejection by the Governor, necessary materials such as police records, judgment of the trial court, the High Court and the Supreme Court and all other connected documents should be called at once fixing a time limit for the authorities for forwarding the same to the Ministry of Home Affairs. Even here, though there are instructions, we have come across that in certain cases the Department calls for those records in piece-meal or one by one and in the same way, the forwarding Departments are also not adhering to the procedure/instructions by sending all the required materials at one stroke. This should be strictly followed to minimize the delay. After getting all the details, it is for the Ministry of Home Affairs to send the recommendation/their views to the President within a reasonable and rational time. Even after sending the necessary particulars, if there is no response from the office of the President, it is the responsibility of the Ministry of Home Affairs to send periodical reminders and to provide required materials for early decision.

4. Communication of Rejection of Mercy Petition by the Governor: No prison manual has any provision for informing the prisoner or his family of the rejection of the mercy petition by the Governor. Since the convict has a constitutional right under Article 161 to make a mercy petition to the Governor, he is entitled to be informed in writing of the decision on that mercy petition. The rejection of the mercy petition by the Governor should forthwith be communicated to the convict and his family in writing or through some other mode of communication available.

5. Communication of Rejection of the Mercy Petition by the President: Many, but not all, prison manuals have provision for informing the convict and his family members of the rejection of mercy petition by the President. All States should inform the prisoner and their family members of the rejection of the mercy petition by the President. Furthermore, even where prison manuals provide for informing the prisoner of the rejection of the mercy petition, we have seen that this information is always communicated orally, and never in writing. Since the convict has a constitutional right under Article 72 to make a mercy petition to the President, he is entitled to be informed in writing of the decision on that mercy petition. The rejection of the mercy petition by the President should forthwith be communicated to the convict and his family in writing.

6. Death convicts are entitled as a right to receive a copy of the rejection of the mercy petition by the President and the Governor.

7. Minimum 14 days notice for execution: Some prison manuals do not provide for any minimum period between the rejection of the mercy petition being communicated to the prisoner and his family and the scheduled date of execution. Some prison manuals have a minimum period of 1 day, others have a minimum period of 14 days. It is necessary that a minimum period of 14 days be stipulated between the receipt of communication of the rejection of the mercy petition and the scheduled date of execution for the following reasons:-

a) It allows the prisoner to prepare himself mentally for execution, to make his peace with god, prepare his will and settle other earthly affairs.

b) It allows the prisoner to have a last and final meeting with his family members. It also allows the prisoners' family members to make arrangements to travel to the prison which may be located at a distant place and meet the prisoner for the last time. Without sufficient notice of the scheduled date of execution, the prisoners' right to avail of judicial remedies will be thwarted and they will be prevented from having a last and final meeting with their families.

It is the obligation of the Superintendent of Jail to see that the family members of the convict receive the message of communication of rejection of mercy petition in time.

8. Mental Health Evaluation: We have seen that in some cases, death-row prisoners lost their mental balance on account of prolonged anxiety and suffering experienced on death row. There should, therefore, be regular mental health evaluation of all death row convicts and appropriate medical care should be given to those in need.

9. Physical and Mental Health Reports: All prison manuals give the Prison Superintendent the discretion to stop an execution on account of the convict's physical or mental ill health. It is, therefore, necessary that after the mercy petition is rejected and the execution warrant is issued, the Prison Superintendent should satisfy himself on the basis of medical reports by Government doctors and psychiatrists that the prisoner is in a fit physical and mental condition to be executed. If the Superintendent is of the opinion that the prisoner is not fit, he should forthwith stop the execution, and produce the prisoner before a Medical Board for a comprehensive evaluation and shall forward the report of the same to the State Government for further action.

10. Furnishing documents to the convict: Most of the death row prisoners are extremely poor and do not have copies of their court papers, judgments, etc. These documents are must for preparation of appeals, mercy petitions and accessing post-mercy judicial remedies which are available to the prisoner under Article 21 of the Constitution. Since the availability of these documents is a necessary pre-requisite to the accessing of these rights, it is necessary that copies of relevant documents should be furnished to the prisoner within a week by the prison authorities to assist in making mercy petition and petitioning the courts.

11. Final Meeting between Prisoner and his Family: While some prison manuals provide for a final meeting between a condemned prisoner and his family immediately prior to execution, many manuals do not. Such a procedure is intrinsic to humanity and justice, and should be followed by all prison authorities. It is therefore, necessary for prison authorities to facilitate and allow a final meeting between the prisoner and his family and friends prior to his execution.

12. Post Mortem Reports: Although, none of the Jail Manuals provide for compulsory post mortem to be conducted on death convicts after the execution, we think in the light of the repeated arguments by the petitioners herein asserting that there is dearth of experienced hangman in the country, the same must be made obligatory.

In Deena alias Deen Dayal and Ors. vs. Union of India (1983) 4 SCC 645, the petitioners therein challenged the constitutional validity of Section 354(5) on the ground that hanging a convict by rope

is a cruel and barbarous method of executing death sentence, which is violative of Article 21 of the Constitution. This court held as follows:-

> "7. ...After making this observation Bhagwati, J., proceeds thus :
>
> The physical pain and suffering which the execution of the sentence of death involves is also no less cruel and inhuman. In India, the method of execution followed is hanging by the rope. Electrocution or application of lethal gas has not yet taken its place as in some of the western countries. It is therefore with reference to execution by hanging that I must consider whether the sentence of death is barbaric and inhuman as entailing physical pain and agony. It is no doubt true that the Royal Commission on Capital Punishment 1949-53 found that hanging is the most humane method of execution and so also in Ichikawa v. Japan, the Japanese Supreme Court held that execution by hanging does not correspond to cruel punishment inhibited by Article 36 of the Japanese Constitution. But whether amongst all the methods of execution, hanging is the most humane or in view of the Japanese Supreme Court, hanging is not cruel punishment within the meaning of Article 36, one thing is clear that hanging is undoubtedly unaccompanied by intense physical torture and pain." (emphasis supplied).

81. Having given our most anxious consideration to the central point of inquiry, we have come to the conclusion that, on the basis of the material to which we have referred extensively, the State has discharged the heavy burden which lies upon it to prove that the method of hanging prescribed by Section 354(5) of the CrPC does not violate the guarantee right contained in Article 21 of the Constitution. The material before us shows that the system of hanging which is now in vogue consists of a mechanism which is easy to assemble. The preliminaries to the act of hanging are quick and simple and they are free from anything that would unnecessarily sharpen the poignancy of the prisoner's apprehension. The chances of an accident during the course of hanging can safely be excluded. The method is a quick and certain means of executing the extreme penalty of law. It eliminates the possibility of a lingering death. Unconsciousness supervenes almost instantaneously after the process is set in motion and the death of the prisoner follows as a result of the dislocation of the cervical vertebrae. The system of hanging, as now used, avoids to the full extent "the chances of strangulation which results on account of too short a drop or of decapitation which results on account of too long a drop. The system is consistent,with the obligation of the State to ensure that the process of execution is conducted with decency and decorum without involving degradation of brutality of any kind." It is obvious from a reading of the aforesaid decision that the method of hanging prescribed by Section 354(5) of the Code was held not violative of the guaranteed right under Article 21 of the Constitution on the basis of scientific evidence and opinions of eminent medical persons which assured that hanging is the least painful way of ending the life. However, it is the contention of learned counsel for the respondents that owing to dearth of experienced hangman, the accused are being hanged in violation of the due procedure.

260) By making the performance of post mortem obligatory, the cause of the death of the convict can be found out, which will reveal whether the person died as a result of the dislocation of the

cervical vertebrate or by strangulation which results on account of too long a drop. Our Constitution permits the execution of death sentence only through procedure established by law and this procedure must be just, fair and reasonable. In our considered view, making post mortem obligatory will ensure just, fair and reasonable procedure of execution of death sentence. Conclusion:

261) In the aforesaid batch of cases, we are called upon to decide on an evolving jurisprudence, which India has to its credit for being at the forefront of the global legal arena. Mercy jurisprudence is a part of evolving standard of decency, which is the hallmark of the society.

262) Certainly, a series of Constitution Benches of this Court have upheld the Constitutional validity of the death sentence in India over the span of decades but these judgments in no way take away the duty to follow the due procedure established by law in the execution of sentence. Like the death sentence is passed lawfully, the execution of the sentence must also be in consonance with the Constitutional mandate and not in violation of the constitutional principles.

263) It is well established that exercising of power under Article 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values.

264) Remember, retribution has no Constitutional value in our largest democratic country. In India, even an accused has a de facto protection under the Constitution and it is the Court's duty to shield and protect the same. Therefore, we make it clear that when the judiciary interferes in such matters, it does not really interfere with the power exercised under Article 72/161 but only to uphold the de facto protection provided by the Constitution to every convict including death convicts.

265) In the light of the above discussion and observations, we dispose of the writ petitions. In the cases of Suresh, Ramji, Bilavendran, Simon, Gnanprakasam, Madiah, Praveen Kumar, Gurmeet Singh, Sonia, Sanjeev, Sundar Singh, Jafar Ali, Magan Lal Berala, Shivu and Jadeswamy, we commute the death sentence into imprisonment for life. All the writ petitions are, accordingly, allowed on the above terms.

.....CJI.

(P. SATHASIVAM) .....J.

(RANJAN GOGOI) .....J.

(SHIVA KIRTI SINGH) NEW DELHI;

JANUARY 21, 2014.
