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## Delayed Execution of Death Penalty and the Rights of Death Row Convicts: An Exigency for Balance

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*The death penalty is considered a legal penalty in India for some extraordinary or extreme offences referred to as the most exceptional of exceptional cases. The method in which the death penalty has been used has raised considerable concerns throughout the years to the extent that it has led to most countries abolishing the penalty altogether. While some may argue that it is imperative to punish those who commit these heinous crimes with the highest degree of punishment, it is also important to remember that awarding the death penalty to the offenders may bring justice to the victims but the inordinate delay between the death penalty and its execution and the agony the convicts go through waiting for their impending death constitutes and cruel and unusual punishment. This begs the question of whether death penalty execution delays and the rights of death row inmates in India can be ideally balanced<sup>1</sup> without offending the right to life and personal liberty provided in the Constitution of India. In a country like India where the population is at an all-time high and crime still runs rampant, it is safe to assume that abolishing the death penalty may not be the best idea. While the death penalty may be awarded keeping in view deterrence, victim satisfaction, or protection of society from criminals, there is no denying the fact that the delayed execution of it is a gross violation of basic human rights. The delay in execution of the death penalty is caused by various reasons, the fault may lie with the process, the system, or sometimes*

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<sup>1</sup> Tanaya Thakur & Amit Kumar, 'Delay in Execution of Death Penalty: Need for a balance' (Bar and Bench, 7 February 2020) <<https://www.barandbench.com/columns/delay-in-execution-of-death-penalty-need-for-a-balance>> accessed 07 February 2023

*with the convict. This paper aims to show why delayed death penalty executions and the rights of death row inmates desperately need to be balanced<sup>2</sup> without offending Article 21 and give solutions for the same.*

**Keywords:** *death penalty, human rights, delayed execution, convicts.*

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## INTRODUCTION

The death penalty has always been a point of contention in India whether for the controversy surrounding its retention or determination of the fact that it deprives a person of their right to life and personal liberty which is provided to every individual in the Constitution of India. Moral as well as constitutional dilemma has always raised concern about whether the death penalty is a necessary evil or just a barbarous practice. India is one of the nations that still practice the death penalty, but only under the "rarest of rare circumstances" or "for specific reasons" as the worst sentence.<sup>3</sup>

The execution of the death sentence is not proclaimed to be unlawful anywhere in the Indian constitution. Still, excessive delays in doing so violate the prisoners' rights to life and their freedom as they have to live every day in the shadow of their looming death<sup>4</sup>. It has been questioned whether death row convicts even come under the term "person" and the Supreme Court has made it clear on numerous occasions that they indeed come under the said term and their rights would follow them even in prison, though there will be some limitations imposed on them. Therefore, even the death row convicts have fundamental human rights and to violate them, even while the system is not specifically to blame for the death penalty's execution delay but rather the surrounding circumstances, is still a gross violation of the Constitution of India itself and everything that it stands for.

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<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

## DELAYED EXECUTION OF THE DEATH SENTENCE AND ITS IMPACT ON THE RIGHTS OF DEATH ROW INMATES

The main reason that is presented by people that oppose the death penalty is that there is no turning back after a person has been executed.<sup>5</sup> If the person turned out to be innocent it would defeat one of the most important principles of justice which are – "the law holds that it is better than 10 guilty persons escape than that 1 innocent suffer (innocent person be convicted)."<sup>6</sup> Therefore, elucidating the impression that the risk of error is too great and so to avoid them there are multiple safeguards placed at every level of the process. However, this multitude of safeguards is time-consuming and causes a delay in the process of providing justice. This was seen in the Nirbhaya case, where the convicts kept delaying the inevitable by filing petitions one after another.

On one hand, the delay in execution of the death penalty causes delayed justice but on the other hand, it is also a dehumanizing factor. It is this delay that causes additional torment and agony to the convicts, which is not mandated by law. It infringes on the constitution's guarantees of one's life and freedom (Article 21)<sup>7</sup> and the guidelines that were laid down in *Shatrughan Chauhan v Union of India*<sup>8</sup> for the protection of these rights. The major reasons for the excessive delay in the death sentence's execution include the time allotted for the criminal to file a curative petition, the 14-day notice period given to the convict and their family, and the process that is followed when several convicts are facing the capital penalty.<sup>9</sup> All these safeguards directly impact and sometimes violate the rights of the convicts who have to live with the knowledge of their impending death.

The convict's death sentence is still ostensibly "hanging" over his head and lingers in his mind during the delay period. He is like a "lifeless mummy" because of the pain, suffering, and mental

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<sup>5</sup> *Ibid*

<sup>6</sup> Jeffrey Reiman & Ernest Van Den Haag, 'On the Common Saying That It Is Better That Ten Guilty Persons Escape than That One Innocent Suffer: Pro and Con' (1990) 7(2) *Social Philosophy and Policy*

<sup>7</sup> Bhavika Agrawal, 'Delay In Execution Of Death Penalty' (*Jus Corpus*, 6 October 2022)

<<https://www.juscorpus.com/delay-in-execution-of-death-penalty/>> accessed 07 February 2023

<sup>8</sup> *Shatrughan Chauhan & Anr v Union of India & Ors* (2014) 3 SCC 1

<sup>9</sup> Tanaya Thakur (n 2)

torment brought on by the terror of death hanging over his head for such a long time.<sup>10</sup> Dehumanizing the convict is the result of a protracted delay in carrying out a death sentence. The death penalty is a painful, inhumane, and degrading punishment that is inflicted on the convicted prisoner and is more cruel, inhumane, and degrading by the lengthy wait for its execution.<sup>11</sup> His fundamental right to human dignity is violated by this unauthorized interference with his right to life or personal freedom.<sup>12</sup> The constitution forbids torture and other inhumane practices that are destructive of human dignity (*Bachan Singh v State of Punjab*)<sup>13</sup>. Given all the facts, it is clear that to uphold our constitution, it is important to address these problems and find the right balance.

### WHY IS THERE AN EXIGENCY OF BALANCE?

The exigency of balance between the rights of death row inmates and the delay in death sentence execution arises from the slow burn of delayed justice and violation of rights. India's current stance on this issue calls for adequate legal representation, written notice to the convict and family when their request for mercy is denied, an assessment of the convict's physical and mental health, at least 14 days' notice before execution, an opportunity for family members to meet the convict, and a post-execution post mortem report that is required.<sup>14</sup>

The situation in India remains that if the balance tips toward the delayed execution of the death penalty, then it will instigate delayed justice and cause concern in the minds of the people at large. A glimpse of this scenario had been seen in Mumbai's terrifying incidents - Ajmal Kasab<sup>15</sup>, a terrorist attack convict as well as Afzal Guru<sup>16</sup>, a Parliament bombing convict.<sup>17</sup> If the balance tips toward the protection of the rights of death row convicts, then it will result in placing

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<sup>10</sup> K I Vibhute, 'Right to Human Dignity of Convict Under 'Shadow of Death' and Freedoms 'Behind the Bars' in India: A Reflective Perception' (2016) 58(1) *Journal of the Indian Law Institute* <<https://www.jstor.org/stable/45163060>> accessed 12 February 2023

<sup>11</sup> *TV Vatheeswaran v State of Tamil Nadu* AIR (1983) SC 361

<sup>12</sup> K I Vibhute (n 10)

<sup>13</sup> *Bachan Singh v State of Punjab* AIR 1(980) SC 898

<sup>14</sup> Tanaya Thakur (n 2)

<sup>15</sup> *Mohammad Ajmal Amir Kasab v State of Maharashtra* (2012) 9 SCC 1

<sup>16</sup> *State v Mohd Afzal and* (2003) (3) JCC 1669

<sup>17</sup> Tanaya Thakur (n 2)

limitations on the safeguards provided and risk non-compliance with the just, fair, and reasonable procedure established by the Maneka Gandhi judgment. In both scenarios, the cons outweigh the pros. This conclusion marks the exigency of balance between both in India.

### **HOW CAN AN IDEAL BALANCE BE ESTABLISHED?**

Now that we have assimilated the hindrances in the way of striking balance, we turn to find their resolutions. To ensure an ideal balance the resolutions themselves need to bridge the gap between the rights of death row inmates and the timing of the capital penalty's execution, without offending the right to life and personal liberty provided in the Constitution of India. By limiting the amount of time the offender has to submit a curative petition and reducing the 14-day notice period for the offender and their family to 7, an optimal balance can be reached.

The notion of the curative petition can be found in the *Rupa Ashok Hurra v Ashok Hurra*<sup>18</sup> judgment of the Supreme Court of India.<sup>19</sup> The death row convicts in India have a lot of options to delay their execution under the safeguards provided including the filing of review petitions and curative petitions.<sup>20</sup> Considering that a curative petition is the final constitutional remedy that can be used, in case of rejection of the review petition, a time restriction should be established within which it can be filed. The notion of making the curative petitions time-bound becomes more imperative as the delay caused in filing and disposing of curative petitions can conveniently become grounds for the commutation of the death sentence to life imprisonment.<sup>21</sup> Imposing a time limit on the curative petition would cut down the unnecessary and inordinate delay in the execution of the death penalty and subsequently preserve the death row inmates' rights to life and freedom from persecution and violation, as the convicts would not be subject to dehumanizing factors. This would ultimately lead to the establishment of an ideal balance.

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<sup>18</sup> *Rupa Ashok Hurra v Ashok Hurra & Anr* AIR (2002) SC 1771

<sup>19</sup> Muteti Mutisya Mwamisi, 'The Indian Supreme Court and Curative Actions' (2007) Indian Journal of Constitutional Law <<http://www.commonlii.org/in/journals/INJlConLaw/2007/10.pdf>> accessed 09 February 2023

<sup>20</sup> Himanshu Gupta & S Krishnan, 'CAN CAPITAL PUNISHMENT EVER BE JUSTIFIED: A CRITICAL STUDY' (2018) 4(6) International Journal of Legal Developments and Allied Issues <<https://thelawbrigade.com/wp-content/uploads/2019/05/Himanshu-Dr.-S.-Krishnan.pdf>> accessed 09 February 2023

<sup>21</sup> *Ibid*

There will inevitably be a delay between the imposition of the death sentence and the acceptance or denial of the mercy petitions due to the processes of mandatory confirmation of the death sentence from the High Court, allowable appeals to the Supreme Court, and subsequent mercy petitions filed by the convict to the President or Governor of the state.<sup>22</sup> 14 days are provided between the convict's notification that his or her request for compassion was denied and the day of the execution. The basis of this safeguard in its legality aspect is to give time to the convict to avail any remaining judicial remedy and make his will along with allowing the final family meeting before his execution, in its morality aspect. However, the notice period of 14 days before the execution can be curtailed to be of 7 days. On one hand, this curtailment of the period can reduce the delay in the execution of the death penalty and prevent the infliction of additional and unauthorized punishment and agony on the convict thus protecting the spirit of article 21 of the Constitution. On the other hand, it may result in circumstances where the offender is unable to use his remaining remedies, see his family, or make use of the rights granted to him, which would violate the just, fair, and reasonable criteria set out in Article 21 of the Indian Constitution. Using this resolution to establish the ideal balance would require the state to be vigilant and preventive of these situations.

## CONCLUSION

To sum up, everything that has been stated, the death sentence is being executed with excessive delay, which violates the death row inmate's right to life and personal liberty and thus creates an exigency to establish an ideal balance between the two. The past cases bolstered the conclusion that there is an exigency of a perfect balance without offending article 21 of the Constitution of India. The fact that there is no set deadline for the convict to file a curative plea and that there is a minimum 14-day notice period before the execution are other factors contributing to this occurrence. Furthermore, these issues which were proving to be a hindrance in establishing an ideal balance were found and resolved to bridge the gap between the delayed execution of the death penalty and the rights of death row convicts in India. Hence, the concerned authorities should strive to establish an ideal balance between the delayed execution

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<sup>22</sup> K I Vibhute (n 10)

of the death penalty and the rights of death row convicts in India. The rights of the death row convict should not be compromised merely to curb delay and in addition to this, the inordinate delay should not be caused by the death row convict misusing his rights.