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THE INDEFINITE SENTENCE: DELAY, DIGNITY AND DEATH ROW IN INDIA

~ *Sreya Shah*

When a Court punishes a criminal, the punishment is meant only for the crime that has been committed by that individual. But what happens when the imposed punishment goes beyond what was deemed appropriate? The learned Counsel of Balwant Singh Rajoana, a death row prisoner, said that he doesn't know if Rajoana was in solitary confinement, in a sane mental condition, or not. Rajoana was punished with a death sentence in 2007 for causing the death of the former Chief Minister of Punjab and 12 other people in 1995. However, it's been 19 years, and Rajoana has still not been hanged by the state. A mercy petition filed by the Shiromani Gurdwara Parbandhak Committee (SGPC) on behalf of Rajoana has been unresolved for the last 13 years. The Supreme Court, on 3rd May 2023, while hearing the writ petition filed by Rajoana, had urged the centre to decide on his petition. Due to the Centre's failure to decide on the plea, on 25th September 2025, the Supreme Court agreed to re-examine the petition afresh.¹ On 22nd April 2026, the petition was reopened by the Supreme Court, wherein a last warning to the centre to file an affidavit within two weeks on Rajoana's mercy plea was issued. Balwant Singh Rajoana has spent over three decades in prison; this duration highlights not only the dreadful experience of Rajoana, who has been suspended in the uncertainty of life and death, but also the systemic failures at play.

¹ *Balwant Singh v. Union of India*, (2005) 3 S.C.C. 399 (India)

ONE MAN OR A BROKEN SYSTEM?

This isn't the case with just one prisoner; the Death Penalty India Report, published by NLU Delhi in 2016,² alarmed us that the median number of years spent under the sentence of death by prisoners whose mercy petitions were rejected was 10 years and 5 months, and the longest was 21 years. The median of the total incarceration period of these mercy-rejected prisoners, starting from their trial, was 16 years and 9 months, with the longest being 25 years.³ Even the prisoners whose mercy petitions were accepted spent a long duration of time on death row, the number of years varying between 18-15.⁴ The statistics on the duration of incarceration and death row reveal the brutal reality of the delay in the procedures of law. They expose the unpleasant truth about the conditions of prisoners who have been subject to deep mental trauma and anxiety due to the never-ending uncertainty of their life and death.

“Since 2020, the sessions courts have imposed more than 120 death sentences every year”- 2025 Annual Statistics Report published by the Square Circle Clinic and NALSAR, University of Law, Hyderabad. Although the session courts have been increasingly imposing the death penalty, the appellate courts have shown hesitation while confirming these punishments. In a span of 10 years, the High Courts have confirmed only 8.31% of sentences. The Supreme Court has not yet decided most of the cases confirmed by the High Court; the ones decided by the Court resulted either in commutation of the sentence or the acquittal of the death convict. Variations in the judgments of courts at different levels indicate inconsistency and non-uniformity in the justice system.

The issue isn't merely inefficiency; opacity goes even further. There is no way to know how many people are waiting, for how long, or whether their petition was ever considered, since the information on the pendency of mercy petitions has not been disclosed by the President's Secretariat. When there is this kind of lack of transparency, the presence of an underlying lack of accountability gets exposed.

² *Death Penalty India Report* vol. I (Nat'l L. Univ. Delhi 2016)

³ *Death Penalty India Report* vol. I (Nat'l L. Univ. Delhi 2016)

⁴ *2025 Annual Statistics Report* (Square Circle Clinic & NALSAR Univ. of Law, Hyderabad 2025)

THE ANATOMY OF DELAY

After an accused is sentenced to death by a trial court, there are certain judicial and constitutional remedies accessible to the convict. These remedies are made available to ensure that justice is being served. Instead, these remedies become a long, never-ending loop, resulting in the delay of justice. The journey from sentencing to execution in India passes through multiple stages, which include the judicial and constitutional remedies. The stages after the trial court imposed the death penalty are as follows:

1. **Mandatory High Court Confirmation:** The sentence to be executed has to be confirmed by the High Court; the sessions court has to refer the case to the High Court under Section 366 (1) of CrPC⁵ (corresponding section in BNSS). The Criminal Procedure Code, now Bharatiya Nyaya Suraksha Sanhitha, gives the High Court the power to confirm the sentence or pass any other sentences warranted by law.
2. **Appeal in the Supreme Court against the Death Sentence:** In a case where the High Court has confirmed the death sentence, the convict has the right to file an appeal in the Supreme Court under Article 132 of the Constitution⁶. The Special Leave Petition filed by the prisoner mandates the Court to review the High Court's decision.
3. **Review Petition:** When the Supreme Court's decision does not fall in favour of the sentenced convict, then the convict has the right to file a review petition in the Supreme Court under Article 137 of the Constitution⁷. The Review Petition is a legal mechanism that allows the Supreme Court to re-examine its own judgment, to ensure that justice has been served.
4. **Curative Petition:** If the Supreme Court upholds the death sentence, the convict can file a curative petition in the Apex Court. Curative Petition is the final judicial remedy developed by the Court using the inherent powers granted by the Constitution under Article 142⁸.
5. **Mercy Petition:** After the convict has exhausted all the judicial remedies, filing a mercy petition under Article 72 of the Constitution⁹, which grants the power to grant pardons to

⁵ Code of Criminal Procedure, No. 2 of 1974, § 366(1) (India).

⁶ INDIA CONST. art. 132

⁷ INDIA CONST. art. 137

⁸ INDIA CONST. art. 142

⁹ INDIA CONST. art. 72

the President, is the last remedy. A mercy petition is a formal request for clemency; if rejected, the mercy petition cannot be challenged (judicial review) in most cases.

The law has certainly provided various remedies to the death row convicts, but the practicality of it all is gruesome. The High Court, as per the 2025 report, takes time ranging from 6 months to 10 years to dispose of a death penalty case. Further, cases of death row prisoners are pending for a duration ranging from less than a year to more than ten years, with an average period of 6.06 years. These statistics point to the delay in attaining justice, which is mainly due to the extensive time taken by Courts to decide such cases. The punishment imposed is the death penalty; in addition to this, the prisoner is subjected to years of incarceration and the dread of the uncertainty of life, which was not even a part of the punishment. When the system has imposed capital punishment, it must also ensure that justice is administered promptly.

ACKNOWLEDGEMENT BY THE COURT

The justice system has not failed to acknowledge the severity of the problem. The delay in the execution process has been observed by the Supreme Court in several cases. One such landmark case is *Shatrughan Chauhan v. Union of India*¹⁰, where the Apex Court heard 11 writ petitions filed by 15 death row convicts. Ruling in favour of the Convicts, the Court commuted the death sentences of all 15 convicts to life imprisonment, upholding the constitutional rights of the prisoners. The Court acknowledged the repercussions of the delay in execution and hence declared it a ground for commutation of the sentence. Although the Court did not specify a reasonable time of delay after which the commutation would be preferred, the Court, while acknowledging the impact of delay, held it to be violative of the Right to life of death row convicts guaranteed under Article 21 of the Constitution. This case came out as a progressive game-changer in cases of death row convicts.

The *Shatrughan Chauhan* case surely brought out a ray of hope for the prisoners sentenced to death, but it did not result in the regulation of the judicial process. With the sessions court imposing death penalties frequently, the burden of deciding the cases increased on the appellate

¹⁰ *Shatrughan Chauhan v. Union of India*, (2014) 3 S.C.C. 1 (India)

courts, resulting in major delays. Hence, the same situation persisted. Yakub Memom, held responsible for providing financial resources in the 1993 bombing, spent 8 years on death row before his execution in 2015, almost two years after the Shatrughan case established the principle. The Nirbhaya case convicts spent 6 years on death row before their execution in 2020, after six years of the Shatrughan case. The prime example of a case where delay persisted is the Rajoana case, where he has not been executed to date, spending more than 10 years on death row after the Shatrughan Case.

These cases indicate that even when the problem has been acknowledged by the system, the delay still persists. The death row convicts still hang in the balance between the question of life and death.

TWO PUNISHMENTS FOR THE PRICE OF ONE

Capital Punishment in India is based on two main principles, Deterrence and Retributive Justice. The belief that imposing the severest punishment for a particular crime, which is death, would reduce the probability of such a crime being committed again, is the Principle of Deterrence. It advocates that all in the people in a society are rational, similar. Retributive Justice ensures that a person who commits a crime should experience the same kind of punishment. It relies on the saying, “an eye for an eye”, meaning the gravity of the crime should determine the punishment to be given. These two principles are used worldwide to advocate for capital punishment.

When a prisoner is being held on a death row for several years due to long-established procedures of law and extremely slow processes, it diminishes the entire base of the two principles. The deterrence theory advocates the positive consequences of capital punishment, but when a death row convict spends years in prison, the connection between crime and consequence weakens, dwindling the significance of deterrence. The uncertainty in the execution of the punishment fades away the deterring affect on people. The Principle of Retributive Justice assumes that the punishment administered is the punishment sanctioned. When the court imposes a death sentence, it only sanctions one punishment, which is execution. But in practice, the death row convict faces years of imprisonment and psychological torment, a punishment which was not sanctioned, hence diminishing the principles of retributive justice.

This brings us to the psychological reality of the life of prisoners sentenced to death. Despite the Supreme Court's repeated guidelines, very little to no change has been observed in the lifestyle of the prisoners sentenced to death. These prisoners are not just held in prison due to the long delays, but they are subjected to the most inhumane treatment known to mankind. As per the Death Penalty Report India, 2016¹¹, the prisoners, even before their death sentence has been confirmed, are treated the same as the death row convicts whose sentences have been confirmed, although several legal remedies remain that could set aside their sentences. The prisoners sentenced to death are subjected to custodial torture and violent investigative techniques. The imposition of solitary confinement has been observed as the most inhuman type of imprisonment, avoided by the majority of countries. Even in India, solitary confinement of prisoners is not allowed until the court itself imposes it, and yet, the prisoners sentenced to death are held in solitary confinement by the prison authorities. They are faced with extreme sleep deprivation due to the conditions of the prisons unsuitable for human sustenance.

These conditions lead to a tremendous amount of stress and anxiety for the prisoners. The report says, "Multiple prisoners told us that they would rather be executed immediately than prolong their agony of living under the death sentence".¹²

The Constitution of India under Article 21 guarantees the right to life, and the Courts have interpreted the right to live with dignity as a part of Article 21¹³. In the case of *Sunil Batra vs. Delhi Administration*¹⁴, the Supreme Court ruled that prisoners in India are entitled to fundamental rights as the rest of the citizens. When death row inmates are put through such inhuman conditions during incarceration, they are forced to live with absolutely no dignity.

The death penalty practiced in India is a vastly different punishment from the death penalty justified theoretically and legally by the law. There is a gap between what the State says and what it does. When the death penalty is imposed by the lower courts so frequently, the State

¹¹ *Death Penalty India Report* vol. II (Nat'l L. Univ. Delhi 2016)

¹² *Death Penalty India Report* vol. II (Nat'l L. Univ. Delhi 2016)

¹³ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

¹⁴ *Sunil Batra v. Delhi Administration*, (1978) 4 S.C.C. 494 (India).

might as well take the responsibility of administering it accurately and promptly. What is saddening is not the punishment in itself, but the additional punishment that a prisoner sentenced to death is put through; a living condition that no human deserves.

THE SILENCES

The three silences on this issue remain the main reason why this issue persists. The first silence is of the abolitionists who do not advocate for this issue because it does not serve their narrative cleanly, as it engages with the technicalities of execution rather than its abolition. The retentionists. The second silence is from the retentionists who support the idea of the death penalty but do not want to face the practicality of the procedure, because acknowledging the practicality would weaken their case for retention. The third silence is of the Institution, the State. The issue of the execution delay has never been raised in the Legislature. The President's Secretariat does not disclose the number of mercy petitions pending, time limits have been introduced by BNSS, but there's no enforcement. All these realities point to the inefficiencies of the State. The people who are most directly affected by this, the prisoners sentenced to death, have no means to express their concerns; all they do is wait.

CONCLUSION

India's session courts have been imposing death penalties quite frequently, and this number does not align with the number of death convicts executed by the State in the last few decades. The State imposed the sentences as instructed by the law, but failed to carry them out or withdraw them, creating a paradox of delay, something that the law never sanctioned. Even the Supreme Court had acknowledged in the Shatrughan Case that even the prisoners on death row have the right to live with dignity under Article 21, and the prolonged uncertainty of death violates such a right. The uncertainty persists even after eleven years of the landmark case. The State is meant to administer justice, but what it has administered instead is years of uncertainty, postponed dates, and unanswered petitions. Whether this has a name in Indian law is a question that remains, like the petitions, unanswered.