

**CASE COMMENT: SHATRUGHAN CHAUHAN & ANR V UNION OF  
INDIAN [DEATH PENALTY AND MERCY PETITION 2014]**

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**Court:** In the Supreme Court of India Criminal Appellate Jurisdiction

**Case no:** Writ petition (Criminal) no.55 of 2013

**Appellants:** Shatrughan Chauhan & Anr

**Respondents:** Union of India & Ors

**Bench:** Hon'ble Justice P.Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh

**SYNOPSIS**

The study deals with the analysis of the *Shatrughan Chauhan & Anr vs Union of India & Ors* on 21 January 2014 case in light of the Constitutional provisions contested thereon. In this case, the writ petition was filed under Article 32 of the constitution either by the convict who was awarded death sentence or by the family members of the convicts or by the **Peoples Union for Democratic Rights (PUDR)** which is based on the mercy petition which was rejected by the Governor and President of India. This case provides another momentous occasion, where the court is called upon to decide whether it will be a violation of Article 21 amongst other provisions to execute the levied death sentence on the accused notwithstanding the supervening circumstances. Further, it was also prayed that the order passed by the Governor or President of India rejecting the mercy petitions were illegal and unenforceable. This is a non-doctrinal research paper on case commentaries that discuss discretely the facts and above said prayers and observed the judgement of the hon'ble court.

**KEYWORDS:** Constitutional provisions, writ petition, death sentence, mercy petition, supervening circumstances, unenforceable.

## INTRODUCTION

Our Constitution is highly valued for its articulation. The preamble of our constitution begins like: 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, nothing is more important than the life and personal liberty of its members. This is evident from the paramount position given to Article 21 of the constitution.

One such drafting is Article 21 of the Constitution which postulates that every human being has an inherent right to life and mandates that no person shall be deprived of his life or personal liberty except according to the procedure that is established by law. In this case, writ petitions were filed under article 32 of the constitution of India by the convicts or their family members. Article 32 of the Constitution says about the remedies for the enforcement of rights:

- 1) The right to move to Supreme Court by appropriate proceedings for the enforcement of rights that can be enforced by this part is guaranteed;
- 2) The Supreme Court has the power to issue directions or writs, which is in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of rights conferred by this part.

In this case, the constitutional power vested under Article 72/161 had violated the fundamental rights of petitioners therein. The nature of power that is guaranteed under Art 72/161 is as follows: Article 72 says about the Power of the President to grant pardons, etc. and to suspend, remit or commute sentences in certain cases.

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- 1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or to commute the sentence of the person convicted for any offence.

- a. In all cases where the punishment or sentence that is by a court-martial;

- b. In all cases where the punishment or sentence is for an offence against any law relating to the matter to which the executive power of Union extends;
- c. In all cases where the sentence is that of a death sentence.

2) Nothing in the 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 of the Constitution of India talks about the power of the Governor to grant pardons etc and to suspend, remit or commute sentences in certain cases. The Governor of a state shall have all the power to grant pardons, reprieves, respites or remissions of the punishment or to suspend, remit or to commute the sentence of any of the person convicted of any offence against any law relating to a matter to which the executive power of the state extends. So, let us examine the supervening circumstances of each case to arrive at a coherent decision of our present case commentary.

## BACKGROUND

This is a Non- doctrinal research paper that focuses on the case *Shatrughan Chauhan & Anr vs Union of India & Ors*<sup>1</sup> on 21 January 2014 which was headed by the bench of Hon'ble Justice P. Sathasivam, Justice Ranjan Gogoi and Justice Shiva Kirti Singh and the writ petition (criminal) no.55 of 2013 was filed in the Supreme Court of India. Across various cases, the reason for specifically choosing this case is that to know about the Constitutional remedies under Article 32 and their power under the Constitution of India.

Another thing that makes one go for this case is that the Mercy petition and their unreasonable rejections. In this case, the main issue was the undue delay by the President in rejecting the mercy petitions to death row convicts amount to torture. Such inordinate and

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<sup>1</sup> Shatrughan Chauhan & Anr vs Union of India & Ors, 21 January 2014  
<https://indiankanoon.org/doc/59968841/>

unexplained delay by the President is sufficient in itself to entitle a convict to a commutation. It seeks to correct the re-emergence of the death penalty. It also laid down certain crucial steps to a more humane process.

### **FACTS OF THE CASE**

The brief facts were: Devender Paul Singh Bhullar, who was convicted by the Delhi court for various offences such as TADA, IPC and was found guilty and the death sentence was given. The appeal as well as review filed by him was dismissed by the court. Soon after he filed the mercy petition on the prayer of commutation of sentence on 14.01.2003 to the President of India under Article 72 of the constitution.

During the pendency of this petition, he also filed a curative petition (criminal) no .55 of 2013 which was also dismissed by the court on 12.03. 2013. After the rejection of his petition by the President, he filed a writ petition under Article 32 of the Constitution. While issuing notice in Writ Petition Criminal Diary No. 16039/2011, this Court had directed the respondents to clarify why the petitions made by the petitioner had not been disposed of for the last 8 years.

The court after observing the mercy petitions accepted that there was a delay of 8 years. It was a sufficient ground for commutation of death sentence into life imprisonment but the court dismissed the writ petition stating that it cannot be invoked in cases where a person is convicted for an offence such as TADA or other statutes. The court by analysing the prayers of both the parties had decided the judgement.

### **ISSUES**

1. Whether the petitions are maintainable before the hon'ble court?

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2. Whether the delay in the execution of the death sentence would amount to a violation of the right to life under Article 21 of the Constitution?
3. Whether delay in the execution of a death sentence at the end of the judicial process is wholly unconstitutional?

4. Whether the 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?

## **CONTENTIONS**

### **Contentions in favour of the Petitioners**

- All the writ petitions were filed under Article 32 of the constitution either by the convicts who were given a death sentence or by their family members on the rejection of the mercy petition by the President and Governor of India.
- The writ petition consistently relates to the issuance of a writ of a declaration by stating that execution of death sentence in pursuance of rejection of mercy petition is unconstitutional and to set aside the death sentence by commuting it to imprisonment of life.
- Further prayed to declare that the order passed by the President or Governor of India was illegal and unenforceable.
- It has been repeatedly argued that the power to pardon rests on the advice tendered by the executive to the President under provision Article 74(1).
- An inordinate delay in execution of sentence of death is violative of Article 21 is available to all persons including convicts and continues till last breath if they establish and prove the supervening circumstances, undue delay in disposal of mercy petitions, undoubtedly, by virtue of power under Article 32 and every possible effort should be made to protect the human life and the same should be commuted into imprisonment for life.

### **Contentions in favour of the Respondents**

- On 22.04.2001, Respondent no.1 (Union of India) wrote to Respondent No. 2 asking the record of the case and information on whether the mercy petition had been rejected by the Governor of India Meanwhile, other mercy petitions were received by Respondent No. 1.
- On 13.12.2001, without receiving the trial court judgement Respondent no .2 advised the Governor to reject the mercy petition and the same was rejected by the Governor after taking nine months. On 19.02.2011, Respondent No. 1 advised the President to reject the mercy petition.

- The alleged delay happened because these details are collected and gathered from the State/prison authorities and it takes lots of time according to the Union of India. Delay in itself does not entitle a person under death sentence and commutation of sentence to life imprisonment.
- Article 72/161 of the Constitution entail remedy to all convicts and is not limited to death sentence cases and must be understood accordingly. The power conferred by Article 72 can be used only to reduce the sentence of punishment, and not for enhancing it. It was also contended that there is no time limit prescribed to the President under Article 72 of the Constitution.
- According to the learned counsel for the Union of India, the death sentence is imposed on a person found guilty of an offence of heinous nature after adhering to the due procedure that is established by law which is subject to appeal and review. Therefore, delay in execution must not be a ground for commutation of the sentence of a heinous crime.

## FINDINGS

In the case of *A.R. Antulay Vs. Union of India (1988) 2 SCC 602* the court clarified and pronounced that any writ petition under Article 32 of the Constitution challenging the validity of the order passed by the court as nullity or on the other hand incorrect cannot be entertained. Through this, the maintainability of the petitions was examined. The aforesaid petitions under Article 32 for the infringement of fundamental rights on failure on the part of the executive under Article 71/161 of the constitution within a reasonable time. The petitioners are not challenging the final verdict of the court. They also asserted that if the sentence is executed then and there would be no grievance or cause of action.

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In *Kuljeet Singh vs. Lt. Governor (1982) 1 SCC 417*, the court held that the power of the President under Article 72 of the Constitution to lessen the sentence may have to await examination on an appropriate occasion. Therefore refusing to lessen the sentence of the petitioner, the President has in any manner transgressed his discretionary power under Article 72. Two aspects were highlighted by the learned amicus curiae: One relating to the desirability of reasons in the order of granting pardon and the second was the power to withdraw the order of granting pardon/remission.

According to the Union of India, the time taken in the re-examination of the case may depend upon each case. They said that there cannot be a specific time limit for the examination of mercy petitions. Article 72 envisages no time limit within which the mercy petition is to be disposed of by the President of India. Accordingly, it is contended that the courts may not go into or fix any outer limit. Power of President under Article 72 is discretionary and cannot be altered, modified or interfered with in any manner.

In *Smt Triveniben Vs. State of Gujarat*(1988) 4 SCC 574<sup>2</sup>, the court held that this court will examine only the nature of delay caused and circumstances that ensued after the sentence was confirmed and will have no jurisdiction to re-open the conclusion reached by the court.

## REASONING

The power to pardon is a part of the Constitutional scheme and we do not doubt in our mind that it should also be treated in our Indian Republic. It is a Constitutional responsibility of great significance exercised when the occasion arises. It is not denied as mentioned in the argument of the learned counsel of Petitioners that the power to pardon rests on the advice tendered by the Executive to the President, who is subject to the provisions of Article 74(1) of the Constitution.

Sometimes, repeated filing of mercy petitions by the family members of convicts had caused the delay and also due to the gathering of details from the respective State /prison authorities was a cause for undue delay. Even though it is the discretionary power of the President and Governor of India, there should be proper consideration of the prevailing circumstances.

## DISPOSITION

The right to life under Article 21 is the most fundamental of all rights, provided that no person should be deprived of their life and liberty in accordance with the law. Human life is sacred and inviolable and every effort should be made in such a manner that it is protected. Undue delay in disposal of mercy petitions, undoubtedly under Article 32 the court can commute the sentence of death into life imprisonment. Apart from the order of high

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<sup>2</sup> Smt. Triveniben vs. State of Gujarat (2004), <https://indiankanoon.org/doc/981147/>



dignitaries, in cases of unexplained and inordinate delay, the grievance of the convict can be considered by the Hon'ble court<sup>3</sup>.

### CRITICAL ANALYSIS

In *R.D. Shetty vs. International Airport Authority (1979) 3 SCC 489*, it is said that no matter whether the violation of fundamental right arises out of executive action or not. Article 32 can be used to enforce the fundamental rights in either of the events' the present case the fundamental right of the petitioners were violated by the Constitutional power vested in the executive under Article 71/161 of the Constitution. The court passed appropriate orders as in the cases of *T.V. Vatheeswaran vs. State of Tamil Nadu (1983) 2 SCC 68*, *Sher Singh and Ors. Vs. the State of Punjab (1983) 2 SCC 344*, *Smt Triveniben vs. the State of Gujarat (1988) 4 SCC 574* etc. Accordingly, the petitions are, maintainable before the Hon'ble court.

Significance of Article 32 as foreseen by Dr Ambedkar; His words were appositely reiterated in *Minerva Mills Ltd. and Ors. Vs. Union of India and Ors. (1980) 2 SCC 625* as follows:- 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.

In *Smt. Triveniben vs. the State of Gujarat, (1989) 1 SCC 678* this Court, in para 22, appreciated the aspect of delay in execution in the following words: It was contended that the delay in the execution of sentence will entitle a prisoner to approach this court as his right under Article 21 is being infringed.

It is well settled that the judgment of the court can never be challenged under Article 14 or 21 and therefore the court's judgement on awarding death sentence is not open to challenge as violative of article 14 or 21 has been laid down in the cases of *Naresh Shridhar Mirajkar vs the State of Maharashtra* and also in *A.R. Antukay V. R.S. Nayak*<sup>4</sup>.

In 1972 Privy Council case of *Noel Riley vs. Attorney General (1982) Criminal law Review 679* quoting sentence of death is one thing, sentence of death followed by lengthy

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<sup>3</sup> R.D Shetty vs. International Airport Authority (1979), <https://indiankanoon.org/doc/1008926/>

<sup>4</sup> A.R Antukay vs. R.S Nayak, (1988) <https://indiankanoon.org/doc/873751/>



imprisonment before execution is another. The appropriate relief where there is a delay in execution of death sentence, the court held is to vacate the sentence of death.

## CONCLUSION

Our constitution is highly valued for its articulation. In the above said cases, we decide upon the evolving jurisprudence, which India has to its credit for being at the forefront of the global legal arena. Mercy jurisprudence is a part of the standard of decency, which is the hallmark of society. The death sentence is passed lawfully, the execution of it should be in consonance with the Constitutional mandate and it should not violate the Constitutional principles. It is well known that exercising power under Article 72/161 by the President /Governor is a Constitutional obligation and not a mere Prerogative.

Considering the high status of the office, the framers of the Constitution did not stipulate any outer time limit for disposing of the mercy petitions, where it should be decided within a reasonable time. However, the delay seems to be unreasonable, unexplained and exorbitant and the court should consider this aspect. Every Constitutional duty should be with due care and diligence. Finally, the court held that the delay of twelve years is a sufficient ground for the commutation of the death sentence into life imprisonment. All the writ petitions were accordingly allowed on the above-mentioned terms of the case.

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