



SHATRUGHAN CHAUHAN V. UNION OF INDIA*

A review of Executive powers pertaining to death penalties viz-a-viz Fundamental Rights and other Constitutional issues.

Abstract

India's judicial history has witnessed a plethora of cases pertaining to death penalty. There continues to be extensive debate concerning the constitutionality of capital punishment and reforms that may be brought about in this sphere. This case comment deliberates upon the powers of the Executive on issues of death penalty and the stance of the Judiciary on capital punishment in view of Fundamental Rights and constitutionality. It also examines the element of "undue delay" by the Executive in disposing of mercy petitions and analyzes the viability of the guidelines laid down in the judgment.

INTRODUCTION

The contemporary legal and societal scenario has been witnessing a remarkable rise in concerns pertaining to death penalty, especially with the multiple significant judgments being delivered in this regard. One of such landmark cases is *Shatrughan Chauhan v. Union of India*¹ which consists of unique aspects in the sense that although it does not challenge the legality of the concerned death sentence per se, it seeks to bring about a humanitarian approach towards capital punishment by analyzing mainly the pardoning power of the Executive in the post-conviction stage in this context. The crux around which the challenge to the rejection of mercy petitions by the President revolved in this case was undue delay. Other grounds included mental illness and solitary confinement.

In a plethora of important judgments across several time frames, such as *State of Madras v. V.G. Row* (1952)² and *I.R. Coelho v. State of Tamil Nadu* (2007)³, the Supreme Court has upheld its own status as the watchdog of Fundamental Rights and a just and reasonable interpreter of the Constitution. The Court adopted a similar approach even in disposing of the numerous writ petitions seeking the commutation of death penalty to life imprisonment after mercy petitions were rejected by the President in this case.

This case comment seeks to analyze and present criticisms pertaining to the significant constitutional issues involved which include the principles and rationale behind the judgment,

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¹ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

² *State of Madras v. V.G.Row*, AIR 1952 SC 196.

³ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.

the Supreme Court's stance on the 'death row phenomenon'⁴, the rights of convicts on death row and on the role played by the Judiciary viz a viz the Executive in this regard. This commentary also attempts to analyze the guidelines issued in the judgment which constitute a potential crucial step towards ensuring adherence to the principles of rule of law by adopting a more humane approach towards capital punishment.

FACTS AND SUMMARY

In the present case, a three-judge bench of the Supreme Court was called upon to decide on the several writ petitions which were filed on behalf of 15 death row convicts, which challenged the rejection of mercy petitions by the President on significant grounds of undue delay in disposing of the mercy petitions, mental illness and solitary confinement. The petitioners challenged the rejection of the mercy petitions on the ground of violation of Article 21 of the Constitution⁵ during the pendency of the said mercy petitions, on which ground they sought the commutation of the death sentences to life imprisonment. Hence, the petitioners disputed not the merits of the death penalty per se but the procedural aspect of it. It was argued that the Court would be infringing upon the powers of the Executive if it commuted the death sentence to life imprisonment post-rejection of the mercy petitions as the Executive had exercised such power under Article 72 of the Constitution.⁶ However, the Court asserted that it was not denying the President's discretion in rejecting mercy petitions; rather it was protecting the Fundamental Rights which stood gravely violated under Article 21.

IMPORTANT POINTS OF DELIBERATION

THE RIGHT TO LIFE- ARTICLE 21

In this case, the Court primarily sought to protect the Fundamental Right to Life under Article 21 which seeks to protect the prisoner 'till their last breath'⁷ and hence to which a prisoner remains entitled even in post-conviction and post-sentencing stages. It sought to exercise judicial review over the Executive power and action pertaining to death sentences in light of violation of Fundamental Rights of the convicts which aspect falls squarely within its jurisdiction.

THE 'DEATH ROW PHENOMENON'

From its overall approach, it can be ascertained that in delivering this judgment, the Court took into account the essence of the doctrine of 'death row phenomenon'⁸ dealt with in the Amnesty International Report ACT (1999) and which is a major concern of international law. The doctrine deals with executions after undue delay under torturous conditions of death row which amount to grave violation of human rights and constitute an extremely cruel and inhuman punishment. The phrase 'death row phenomenon' is not precise and encompasses several elements, the most relevant to this context being delay and solitary confinement. The sentence of death per se is not what is challenged; rather it is the torturous period of delay in executing the sentence considering the harsh conditions death row convicts are subjected to. The 'death row phenomenon' has been explicitly recognized as a violation of human rights by several international domestic and international tribunals. Several Tribunals also do not accept the doctrine on the ground that the prisoner themselves might cause the delay by numerous

⁴ *The Death Penalty Worldwide: Developments in 1998*, Amnesty International Report ACT 50/04/99, May 1999.

⁵ INDIA CONST. art. 21.

⁶ INDIA CONST. art. 72.

⁷ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

⁸ *The Death Penalty Worldwide: Developments in 1998*, Amnesty International Report ACT 50/04/99, May 1999

appeals. Nevertheless, Tribunals are beginning to accept the fact that it is but natural for the prisoners to exploit as many chances of staying alive as possible, through legitimate appeals.⁹

IMPORTANT ELEMENTS OF THE 'DEATH ROW PHENOMENON'

Delay

In significant cases such as *Ediga Anamma v. State of Andhra Pradesh* (1974)¹⁰ and *T.V. Vatheeswaran v. State of Tamil Nadu* (1983),¹¹ the Supreme Court held that the element of delay causes the anguish of a horrific uncertainty to the prisoner.

In the present case, the Court analyzed the procedural aspect of disposal of mercy petitions which is as follows:

First, the Supreme Court sentences the convict to death. Following the completion of judicial process, Executive action commences. Under Article 72 of the Constitution,¹² the death row convict can submit a mercy petition to the Governor. If the petition is rejected by the Governor, another mercy petition can be sent to the President under Article 161.¹³ The President delivers the final and binding decision after taking into account a plethora of factors surrounding the sentence, such as, judgments of the lower courts, recommendations made by the Ministry of Home Affairs, etc.

The Respondents sought to justify the element of delay by contending that Article 72 does not prescribe any time limit for disposal of mercy petitions, that the procedure is extremely detailed, that the time taken to examine and dispose of the mercy petitions will depend upon the nature of the case and the scope and limitations of inquiry processes, etc. The Respondents further contended that the President enjoys discretionary powers in this regard which cannot be taken away or modified by other authorities. They argued that the element of delay alone cannot justify the commutation of death sentence to life imprisonment.

In the face of these vehement arguments, the Court held that if a death sentence is executed after an inordinate, unreasonable and unexplained delay, it would infringe upon the Right to Life guaranteed under Article 21 of the Constitution since such delay would lead the prisoner to suffer dehumanizing mental torture in the face of horrific uncertainty. The Court further held that the scope of Article 21 is not limited to the pronouncement of sentence but extends also to due execution of the sentence and therefore, rejected the Respondents' contentions.

The Respondents also raised the contention concerning separation of powers between the Executive and the Judiciary in arguing that even in case of undue delay, the Judiciary cannot deliver a decision; rather the matter must be referred back to the Executive. However, the Court upheld the principles asserted in *T.V. Vatheeswaran v. State of Tamil Nadu* (1983)¹⁴ and *Triveniben & Ors. v. State of Punjab* (1988),¹⁵ that the Court should render both substantial and procedural protection in the face of unreasonable, unexplained and inordinate delay.

Prison Conditions

The Court also analyzed the aspect of prison conditions primarily involving solitary confinement as a supervening circumstance pertaining to death sentence. According to an

⁹ Patrick Hudson, *Does the Death Row Phenomenon Violate a Prisoner's Human Rights Under International Law*, 4 EJIL 833 (2000).

¹⁰ *Ediga Annamma v. State of Andhra Pradesh*, 1974 AIR 799.

¹¹ *T.V. Vatheeswaran v. State of Tamil Nadu*, 1983 AIR 361

¹² INDIA CONST. art. 72.

¹³ INDIA CONST. art. 161.

¹⁴ *T.V. Vatheeswaran v. State of Tamil Nadu*, 1983 AIR 361.

¹⁵ *Triveniben & Ors. V. State of Punjab*, (1988) 4 SCC 574.

Amnesty International Report,¹⁶ ‘death row’ refers to the area in the prison which houses inmates awaiting execution. The harsh regime minimizes the prisoners’ freedoms to a very strict and extreme extent. The prisoners on death row are often subjected to mental torture due to horrific uncertainty about chances of a successful appeal. In *Rajendra Prasad v. State of Uttar Pradesh* (1979),¹⁷ Krishna Iyer J. opined that in the face of such dehumanizing circumstances, the ‘prisoner is reduced to a vegetable’ and hence, the execution of such prisoners after undue delay defeats the very purpose of death penalty, which encompasses death but not inhuman torture and mental deterioration followed by death.

In this case, the Court also took into account the substantive punishment of solitary confinement prescribed under Section 73¹⁸ of the IPC and confinement in a cell apart from other prisoners as prescribed under Section 30(2)¹⁹ of the Prisons Act. With a cruel minimization of freedoms, such as prohibition of contact with others or prohibition of reading materials in the cell, the prisoner’s mind is likely to be occupied only with thoughts of the crime committed and the entailing execution, which are likely to cause major physical and psychological damage. Hence, in the face of undue, unreasonable, unexplained and inordinate delay, executing such death sentences amounts to grave violation of Fundamental Rights of the prisoners.

DELAY VIZ-A-VIZ VICTIM’S RIGHTS

The Respondents contended that commuting the death sentence on the ground of undue delay alone would result in injustice to the victims. Delving into this, the Court distinguished between the status of the Petitioners in the prior stages of the case and their status now, which is that of victims of violation of Fundamental Rights, in being subjected to mental torture by undue delay. Undue delay could be unreasonable, unexplained, inordinate or caused by inefficiency of the concerned Executive or constitutional authorities, and hence, it would not be just to attribute such delay to the prisoners themselves despite the gravity of the offence. The Court further held that there cannot be any exhaustive guidelines to determine whether such delay is undue and that it should depend on the facts and circumstances of the case in the best interest of justice.

THE STANCE OF INTERNATIONAL LAW AGAINST INHUMAN PUNISHMENT

Inhuman and cruel punishment is inconsistent with the recognized principles of international law, such as the Article 6²⁰ of the International Covenant of Civil and Political Rights and Article 3 of the Universal Declaration on Human Rights.²¹

The landmark international judgment in *Soering v. United Kingdom* (1989)²² is of prime importance in this regard. In this case, the Petitioner claimed that five circumstances surrounding the death row phenomenon resulted in violation of Article 3 of the UDHR which included delay in the appeal system, the possibility that the prisoner’s mental condition might not be taken into account during the sentence and the harsh treatment meted out to death row convicts. The Court held that delay caused in execution of the death sentence, even if caused due to the prisoner making several appeals, would amount to cruel and inhuman punishment.

¹⁶ *Conditions for Death Row Prisoners in H-Unit, Oklahoma State Penitentiary*, Amnesty International Report AMR 51/35/94.

¹⁷ *Rajendra Prasad v. State of Uttar Pradesh*, (1979) 3 SCR 78.

¹⁸ The Indian Penal Code, 1860, No. 45, Section 73.

¹⁹ The Prisons Act, 1894, No. IX, Section 30(2).

²⁰ International Covenant on Civil and Political Rights, 1966, Art. 6.

²¹ Universal Declaration on Human Rights, 1948, Art. 3.

²² *Soering v. United Kingdom*, (1989) 11 ECHR 439.

The Court also took into account the harsh conditions of death row and held that the severity of the strict regime was compounded by the length of the detention.

Being somewhat in tune with international law, in the *Shatrughan Chauhan* case, the Court held that undue delay is inconsistent with the procedure established by law, which procedure seeks to ensure humane conditions of punishment. The Court held that the death sentence could be commuted to life imprisonment on the condition that the delay was caused by circumstances beyond the control of the prisoner. However, the Court did not clearly specify the circumstances in the face of which death sentences could be commuted and held that it would depend on the facts and circumstances of each case.

Whether Delay Alone Can Entail Commutation of Death Sentence?

There are a slew of potential conditions to cause delay, such as escape from custody, which are within the control of the prisoner themselves. The Court held that in such cases of delay, commutation of the death sentence to life imprisonment may not be done.

A landmark international judgment may be considered here. In the case of *Pratt and Morgan v. Jamaica* (1989),²³ the United Nations Human Rights Committee stated:

“In principle, prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment even if they can be a source of mental strain for the convicted prisoners. However, the situation could be otherwise in cases involving capital punishment and an assessment of the circumstances of each case would be necessary.”²⁴

In the *Pratt & Morgan* case, it was held that the delay could not be attributed to the prisoner if they are exploiting all the legitimate chances for appeal even if it is with the intention of causing delays. In such a case, the consequence and implications of the delay are more important than the reasons behind it.

In the *Shatrughan Chauhan* case, the Court held that when the undue delay is entirely attributable to the State, the death sentence may be commuted to life imprisonment.

CONCLUSION

Despite criticisms pertaining to the scope of judicial review, the guidelines and the procedural approach of the judgment, it assumes a landmark character in asserting the status of the Judiciary as a protector of Fundamental Rights of prisoners on death row. It presents important interpretations of ‘supervening circumstances’ while taking into consideration the significance of the ‘death row phenomenon’²⁵ in the face of death row conditions such as solitary confinement, horrific uncertainty of life and death during the prolonged pendency of mercy petitions, the immense mental anguish brought about by undue delay and the grave violation of human rights caused by these factors. The judgment is undoubtedly reasonable in its approach of quashing Executive inaction and well-balanced at the same time in not transgressing the separation of powers between the Executive and the Judiciary.

²³ *Pratt and Morgan v. Attorney General for Jamaica*, (1994) 2 AC 1.

²⁴ *Ibid.*

²⁵ *The Death Penalty Worldwide: Developments in 1998*, Amnesty International Report ACT 50/04/99, May 1999.